

ANTHONY L. RICCA)	
)	
Claimant-Respondent)	
)	
v.)	
)	
DYNCORP INTERNATIONAL)	
)	
and)	
)	
INSURANCE COMPANY OF THE STATE)	DATE ISSUED: 01/24/2013
OF PENNSYLVANIA)	
)	
Employer/Carrier-)	
Petitioners)	
)	
GLOBAL STRATEGIES GROUP)	
)	
and)	
)	
ACE AMERICAN INSURANCE)	
COMPANY)	
)	
Employer/Carrier-)	ORDER on MOTION for
Respondents)	RECONSIDERATION

McGRANERY, Administrative Appeals Judge:

Global Strategies Group/Ace American Insurance Company (Global) has filed a timely motion for reconsideration of the Board's Decision and Order in the captioned case, *Ricca v. DynCorp International*, BRB No. 12-0048 (Sep. 17, 2012). 33 U.S.C. §921(b)(5); 20 C.F.R. §802.407. DynCorp responds, urging the Board to deny the motion. For the reasons set forth below, we deny Global's motion for reconsideration.

In its decision, the Board vacated the administrative law judge's finding that claimant's condition is the result of the natural progression of the injury he sustained in Qatar. The Board explained that the administrative law judge did not sufficiently discuss

the totality of Dr. Smith's testimony, given that his reference to "events that occurred in Qatar through August 2007" is ambiguous because the time frame encompasses claimant's work in Iraq from December 2006 until August 2007, and that Dr. Smith also stated claimant's condition was aggravated by events in Iraq. *Ricca*, slip op. at 4.

In its motion for reconsideration, Global asserts that the Board exceeded its scope of review in vacating the administrative law judge's finding as inadequately explained. Global asserts that substantial evidence supports the administrative law judge's finding because Dr. Smith unambiguously opined that claimant's condition is the "natural progression" of his Qatar injury. Specifically, Global asserts that because the term "natural progression" as used in last employer cases excludes an aggravation injury, and because Dr. Smith was aware that claimant suffered multiple events in Qatar, Dr. Smith's statement unambiguously excluded subsequent events in Iraq as having aggravated an earlier injury. Global explains that "the post-modifying prepositional phrase 'through August 2007' must refer back to [the passage of time associated with] 'natural progression,'" rather than modify "events that occurred" because "events that occurred through August 2007" implicates an aggravation injury in Iraq, which is necessarily excluded by the term "natural progression." M/R at 20. We are not persuaded by Global's analysis.

In cases involving multiple traumatic injuries, the determination of the responsible employer turns on whether the claimant's condition is the result of the natural progression or the aggravation of a prior injury. *Delaware River Stevedores, Inc. v. Director, OWCP*, 279 F.3d 233, 35 BRBS 154(CRT) (3^d Cir. 2002); *see also Foundation Constructors, Inc. v. Director, OWCP*, 950 F.2d 621, 25 BRBS 71(CRT) (9th Cir. 1991); *Strachan Shipping Co. v. Nash*, 782 F.2d 513, 18 BRBS 45(CRT) (5th Cir. 1986) (*en banc*); *McKnight v. Carolina Shipping Co.*, 32 BRBS 165, *aff'd on recon. en banc*, 32 BRBS 251 (1998); *Ricca*, slip op. at 3. Although "natural progression" injuries are mutually exclusive of "aggravation" injuries for purposes of establishing a responsible employer, contrary to Global's assertion, it is not clear that, by using the term "natural progression," in this portion of his deposition, JX 13 at 76-77, Dr. Smith was excluding claimant's employment in Iraq between December 2006 and August 2007 in relating claimant's condition to "the natural progression of events that occurred in Qatar through August 2007." Dr. Smith's statement refers to a "natural progression of events" that span claimant's time in both Qatar and Iraq, and he did not state in this passage that claimant's condition was due solely to the Qatar injuries. Further, Global's argument that the

prepositional phrase “through August 2007” modifies only “natural progression” is grammatically unsound.¹ Furthermore, its assertion that, by definition, “natural progression” necessarily excludes the possibility of an aggravation injury, overlooks the reference to the time period when claimant worked for employer in Iraq, and it ignores the fact that Dr. Smith’s opinion is a medical opinion as to the events that caused claimant’s condition, and not a legal opinion as to which employer is responsible for benefits. Therefore, further explanation is necessary to demonstrate that substantial evidence supports the administrative law judge’s determination that Dr. Smith’s statement indicates the absence of an aggravation injury, especially since Dr. Smith explicitly stated elsewhere in his opinion that events in Iraq gave rise to claimant’s symptoms.² Accordingly, the Board properly remanded the case to the administrative law judge to reconsider Dr. Smith’s opinion in its entirety and to explain the basis for her conclusion as to which employer is liable for claimant’s disabling injury. *See generally Volpe v. Northeast Marine Terminals*, 671 F.2d 697, 14 BRBS 538 (2^d Cir. 1982) (Board must remand case to administrative law judge when findings of fact are required).

¹According to a grammatical analysis of the sentence, “claimant’s condition is ‘the natural progression of events that occurred in Qatar through August 2007,’” the prepositional phrases “in Qatar” and “through August 2007” modify “events,” expressing a temporal relationship between the “events that occurred in Qatar” and those in “August 2007.” The structure of the sentence indicates that claimant’s condition is the natural progression of events that began in Qatar and ended with events that occurred in August 2007. Claimant’s employment from December 2006 through August 2007 was with Global in Iraq.

²The administrative law judge did not reference any other portion of Dr. Smith’s opinion or any other record evidence that would support her finding no aggravation injury.

Accordingly, Global's motion for reconsideration is denied. 20 C.F.R. §802.409.
The Board's decision is affirmed.

SO ORDERED.

REGINA C. McGRANERY
Administrative Appeals Judge

I concur:

BETTY JEAN HALL
Administrative Appeals Judge

I concur in the result only:

JUDITH S. BOGGS
Administrative Appeals Judge