BRB No. 12-0048

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| ANTHONY L. RICCA | ) | |
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| Claimant-Respondent | ) | |
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| v. | ) | |
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| DYNCORP INTERNATIONAL | ) | |
| | ) | |
| and | ) | |
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| INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA | ) | DATE ISSUED: 09/17/2012 |
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| Employer/Carrier-Petitioners | ) | |
| | ) | |
| GLOBAL STRATEGIES GROUP | ) | |
| | ) | |
| and | ) | |
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| ACE AMERICAN INSURANCE COMPANY | ) | |
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| Employer/Carrier-Respondents | ) | DECISION and ORDER |

Appeal of the Decision and Order Awarding Benefits of Adele Higgins Odegard, Administrative Law Judge, United States Department of Labor.

David C. Barnett (Barnett & Lerner, P.A.), Fort Lauderdale, Florida, for claimant.

James L. Azzarello, Jr., (Kelley Kronenberg, P.A.), Chicago, Illinois, for Dyncorp International and Insurance Company of the State of Pennsylvania.

Alan G. Brackett, Jon B. Robinson, and Wilton E. Bland, IV (Mouledoux, Bland, Legrand & Brackett, LLC), New Orleans, Louisiana, for Global Strategies Group and ACE American Insurance Company.

Before: McGRANERY, HALL, and BOGGS, Administrative Appeals Judges.

PER CURIAM:

DynCorp International appeals the Decision and Order Awarding Benefits (2009-LDA-00237, 2011-LDA-00065) of Administrative Law Judge Adele Higgins Odegard rendered on claims filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq*. as extended by the Defense Base Act, 42 U.S.C. §1651 *et seq.* (the Act). We must affirm the administrative law judge's findings of fact and conclusions of law if they are supported by substantial evidence, are rational, and are in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In 2006, claimant began his third contract with DynCorp International (DynCorp), working as a security guard in Qatar. On September 29, 2006, while working in Qatar, claimant suffered a psychological injury which required a brief hospitalization. JX 10 at 31, 69; JX 11 at 26. Claimant returned to the United States for treatment on October 17, 2006. After recuperating, he returned to Qatar to work the last nine days of his contract with DynCorp in "late November, early December." Afterward, he returned to the United States briefly, and at the end of December 2006, he began a job as a security guard for Global Services Group (Global) in Iraq. JX 10 at 28. Claimant testified that no doctor had given him work restrictions, he felt "fine" before he began working in Iraq, and he had passed an employment physical prior to starting work there. *Id*. at 19-20, 31. While in Iraq, claimant experienced several traumatic incidents. JX 11 at 61-62, 71. Claimant was terminated from Global in August 2007 because he refused to sign the corporate code of conduct. JX 10 at 29, 93. When he returned to the United States in August 2007, he did not adjust well.[1] Claimant testified to having chronic tremors, headaches, spasms, hypervigilance, and anxiety when he was in crowded areas. JX 10 at 87, 95, 101. He was diagnosed with chronic post-traumatic stress disorder (PTSD), JX 13 at 13, 70, and he filed claims against both employers.

Finding that all physicians and psychologists of record diagnosed claimant with a psychological disorder, the administrative law judge found that claimant suffers a harm. DynCorp stipulated that claimant suffered a psychological injury during the course of his employment in Qatar, and the administrative law judge found that conditions existed in Iraq, while claimant worked for Global, that could have caused, accelerated, or aggravated claimant's psychological harm; therefore, the administrative law judge found that claimant established a *prima facie* case, invoking the Section 20(a) presumption

[1]The parties stipulated to an August 16, 2007, injury.

against both employers. 33 U.S.C. §920(a). The administrative law judge credited the opinion of Dr. Smith, claimant's treating physician, and found that claimant's condition is "ultimately" the result of the natural progression of the injury he suffered in Qatar. As the parties stipulated that claimant is entitled to temporary total disability benefits in the event of a compensable claim, the administrative law judge found DynCorp liable under the Act for benefits from September 29 through December 7, 2006, and ongoing from August 17, 2007. 33 U.S.C. §908(b).

DynCorp appeals the administrative law judge's finding that it is the responsible employer, asserting that it is not supported by substantial evidence. Global responds, urging affirmance. Claimant responds, taking no position.

In a case involving multiple traumatic injuries (as the administrative law judge considered the injuries in this case), 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. If the claimant's disability results from the natural progression of the first injury and would have occurred notwithstanding the subsequent incident, the claimant's employer at the time of the first injury is the responsible employer. If his covered employment thereafter aggravates, accelerates or combines with the earlier injury, resulting in the claimant's disability, the claimant has sustained a new injury, and the employer at that time is the employer responsible for the payment of benefits thereafter.[2] *Delaware River Stevedores, Inc. v. Director, OWCP*, 279 F.3d 233, 35 BRBS 154(CRT) (3d 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*). Where a claimant's work results in an exacerbation of his symptoms, the employer at the time of the work events resulting in the exacerbation is responsible for any resulting disability. *See Kelaita v. Director, OWCP*, 799 F.2d 1308 (9th Cir. 1986); *see also Marinette Marine Corp. v. Director, OWCP*, 431 F.3d 1032, 39 BRBS 82(CRT) (7th Cir. 2005); *Obert v. John T. Clark & Son of Maryland*, 23 BRBS 157 (1990).

DynCorp asserts that the administrative law judge erred in relying on Dr. Smith's opinion for the proposition that claimant's condition is solely the result of the initial injury he suffered in Qatar. The administrative law judge stated that Dr. Smith "indicated at various times . . . that he believed claimant's psychological state could be the result of

[2]Under the "aggravation rule," where the employment aggravates, exacerbates or combines with a prior condition, the entire resulting disability is compensable. *Strachan Shipping v. Nash*, 782 F.2d 513, 18 BRBS 45(CRT) (5th Cir. 1986) (*en banc*). It follows that the employer at the time of the aggravation is liable for the resulting disability.

aggravation of his Qatar injury." However, the administrative law judge found that, taken as a whole, Dr. Smith's testimony supports the finding that claimant's condition is the result of the natural progression of the Qatar injury.

We agree that the administrative law judge's cursory finding that DynCorp is the responsible employer cannot be affirmed, as the administrative law judge did not sufficiently discuss the totality of Dr. Smith's opinion. The administrative law judge cited Dr. Smith's deposition testimony at JX 13, page 76, for her finding. There, Dr. Smith stated:

> Q: Mr. Ricca's PTSD that he presently has, is that the natural progression of events that occurred in Qatar through August 2007?
>
> A: Yes.
>
> Q: Okay. And the natural progression started in Qatar?
>
> A: Yes. I mean, again, as far as I can tell, there may have been other incidents prior to that hospitalization that I don't know about, but as he describes it, yes.

JX 13 at 76-77. Although Dr. Smith stated that the "natural progression" of claimant's condition started in Qatar, DynCorp points out that the original question included the "natural progression of events that occurred in Qatar through August 2007." JX 13 at 77 (emphasis added). The administrative law judge did not discuss that as claimant was employed in Iraq by Global from December 2006 to August 2007, the reference to "events that occurred in Qatar through August 2007" is ambiguous since the time frame encompasses claimant's work in Iraq. As DynCorp argues, the administrative law judge did not reconcile her determination with several statements by Dr. Smith, in which he opined that claimant's current condition is a consequence of cumulative traumas that began in Qatar and continued in Iraq and that claimant's PTSD became "more chronic" due to his Iraq experiences. JX 13 at 16-17. He also stated that claimant's condition was aggravated by his work in Iraq and that claimant suffered events in Iraq which gave rise to his symptoms. Dr. Smith attributed claimant's disabling PTSD to the cumulative sequence of events in Qatar and Iraq.[3] JX 13 at 16-17, 29, 36, 57-60.

[3]Dr. Smith clearly stated that claimant's PTSD was not caused by one specific incident. JX 13 at 16-17.

As the administrative law judge did not address the totality of Dr. Smith's opinion, we must vacate her finding that claimant's condition is solely the result of the natural progression of his Qatar injury and that DynCorp is the responsible employer, and we remand the case for further consideration. On remand, the administrative law judge must address the totality of Dr. Smith's opinion and make a finding whether claimant's condition is the result of the natural progression of the Qatar injury or the aggravation of that injury in Iraq.[4] *Delaware River Stevedores*, 279 F.3d 233, 35 BRBS 154(CRT). If, on remand, the administrative law judge finds that claimant's condition was aggravated by injuries he suffered in Iraq and that Global, therefore, is the responsible employer, the administrative law judge must address Global's assertion that the claim against it was not timely filed. *See Reposky v. Int'l Transp. Services*, 40 BRBS 65 (2006); 33 U.S.C. §§913, 930(f).

[4]We reject DynCorp's assertion that the administrative law judge erred in failing to consider Dr. Mattis's opinion as to whether claimant's experiences in Iraq aggravated his Qatar injury. The administrative law judge rationally found Dr. Mattis's opinion, as it relates to an aggravating injury, is entitled to little weight because Dr. Mattis did not diagnose an initial injury occurring in Qatar. *See John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961); *Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 373 U.S. 954 (1963) (an administrative law judge may draw her own inferences and conclusions from the evidence).

Accordingly, the administrative law judge's finding that DynCorp is the responsible employer is vacated, and the case is remanded for further consideration consistent with this decision. DynCorp is to continue to make payments to claimant pursuant to the administrative law judge's decision and shall be entitled to reimbursement from Global should, on remand, Global be found to the responsible employer. *Schuchardt v. Dillingham Ship Repair*, 40 BRBS 1 (2005) (order on recon).

SO ORDERED.

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REGINA C. McGRANERY
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge