BRB No. 08-0772

A.S. Claimant-Petitioner v. SERVICE EMPLOYERS INTERNATIONAL, INCORPORATED and INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA Employer/Carrier-Respondents	)	DATE ISSUED: 04/27/2009 DECISION and ORDER

Appeal of the Decision and Order of Clement J. Kennington, Administrative Law Judge, United States Department of Labor.

A.S., Jackson, Alabama, *pro se.*

P. Vincent Gaddy and Grover E. Asmus, II (Asmus and Gaddy, LLC), Mobile, Alabama, for employer/carrier.

Before: DOLDER, Chief Administrative Appeals Judge, HALL and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant, representing himself, appeals the Decision and Order (2008-LDA-0071) of Administrative Law Judge Clement J. Kennington rendered on a claim 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). In an appeal by a claimant without legal representation, we will review the findings of fact and conclusions of law of the administrative law judge to determine if they are rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965). If they are, they must be affirmed.

Claimant was employed by employer in various capacities from December 23, 2003 until April 6, 2007, in Kuwait and Iraq.[1] During this time, claimant suffered two physical injuries: a bullet wound to his left arm on April 8, 2004, HT at 62, and a twisted ankle on February 18, 2007.[2] HT at 86-89. Claimant also alleged that a traumatic event in which he came under insurgent fire occurred on February 23, 2007. Claimant claimed he was given a gun during this incident and used it to kill insurgents. Claimant averred that four U.S. Marines were killed in this incident. Claimant did not report this incident to supervisors until April 10, 2007. CX 3. On April 1 and 4, 2007, claimant sought medical help for stress. CX 9. On April 6, 2007, it was recommended that claimant receive immediate medical leave to deal with job stress and home problems.[3] EX 5. Claimant sought disability compensation for his alleged post-traumatic stress disorder (PTSD) and a seizure disorder, as the result of the April 4, 2004, incident, the alleged February 23, 2007, incident, and his alleged repeated exposure to rocket and mortar attacks.

In his Decision and Order, the administrative law judge found that the February 23, 2007, incident did not occur, nor did claimant establish his exposure to enemy fire or listening to soldiers' trauma stories. The administrative law judge found that claimant's claim of PTSD and a seizure disorder, based on the diagnosis of two medical professionals, was premised on these occurrences. Thus, the administrative law judge rejected the doctors' diagnosis of PTSD and a seizure disorder and found that claimant failed to demonstrate that he suffered either a psychological or physical harm. As claimant failed to establish the elements of his *prima facie* case, the administrative law judge denied benefits.

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[1] Claimant was employed as a flatbed truck driver in Arifan, Kuwait, from December 2003 to April 2004, a logistics coordinator in Kuwait for approximately eight months, a dispatcher and moving control team member at Anaconda and Cedar military bases in Iraq, and, for the last eighteen months, as a bus driver at Tallil Air Force Base in Iraq. HT at 58, 72-73, 75-78.

[2] Following the April 8, 2004, incident, claimant sought medical care from a medic at the scene and had bullet fragments removed approximately two weeks later. HT at 66-68. Following the incident on February 18, 2007, claimant's ankle injury resolved after he rested several hours. HT at 85.

[3] Clinic records reflect claimant complained of stress-related disequilibrium, depression, anxiety, and diarrhea arising from concerns for his chronically ill wife who suffers from multiple sclerosis. EX 4.

Claimant, representing himself, appeals the administrative law judge's denial of benefits. Employer responds, urging affirmance.

In establishing that an injury is work-related, a claimant is aided by Section 20(a), 33 U.S.C. §920(a), of the Act which provides a presumed causal nexus between the injury and the employment. In order to be entitled to the Section 20(a) presumption, however, claimant must establish a *prima facie* case by proving the existence of a harm and that a work-related accident occurred or that working conditions existed which could have caused the harm. *Port Cooper/T. Smith Stevedoring Co. v. Hunter*, 227 F.3d 285, 34 BRBS 96(CRT) (5th Cir. 2000).

The administrative law judge found that claimant failed to establish that he suffers from PTSD or a work-related seizure disorder. Although Dr. Lindman and Dr. Cranton diagnosed claimant as suffering from PTSD, the administrative law judge found their opinions are not creditable because they are based on inaccurate information and/or incomplete diagnostic testing. The administrative law judge thus found that claimant did not establish the harm element of his *prima facie* case.

Dr. Lindman, a clinical psychologist, diagnosed claimant as suffering from PTSD based upon the criteria set forth in the *Diagnostic and Statistical Manual of Mental Disorders*, 4th Edition (DSM-IV) relying solely on claimant's assertions that he was involved in traumatic events on April 8, 2004, and February 23, 2007, as well as being exposed to bombing and rocket fire on a daily basis the entire time he was in Iraq. CX 1 at 21-23, 28. Dr. Cranton, a Board-eligible psychiatrist, also diagnosed chronic PTSD based on claimant's reported exposure to a soldier's dying of wounds, involvement in fire fights with insurgents, and listening to and identifying with the soldiers who rode on his bus. CX 10 at 28, 33. Dr. Cranton noted that claimant alleged he had had a seizure as a result of his perception that he had experienced these events. *Id.* at 28. Dr. Cranton testified that objective testing revealed claimant was not psychotic nor did he exhibit impaired judgment or insight. *Id.* at 65.

On the other hand, Dr. Griffith, a Board-certified psychiatrist and pharmacologist, disagreed with the diagnosis of PTSD. Based upon his diagnostic tests which were verified by Dr. Rebenzer, a clinical psychologist, Dr. Griffith opined that claimant was malingering and fabricated the February 23, 2007, incident for secondary gain. EX 20 at 28-29, 36; EX 17. He further stated that it was not typical of individuals suffering from PTSD to exaggerate either their symptoms or battle service. EX 20 at 124. Dr. Griffith stated that those with PTSD view themselves as "lucky survivors" rather than as "battle heroes." *Id.* at 32-33. Dr. Griffith stated that the April 2004 incident was not a sufficient trauma to cause PTSD. *Id.* at 95, 147. Dr. Griffith stated that there is no medical evidence that claimant had any seizures. *Id.* at 44.

In reaching the conclusion that claimant does not suffer from PTSD or a seizure disorder, the administrative law judge relied upon the opinion of Dr. Griffith, giving significantly less weight to the opinions of Drs. Cranton and Lindman. Because Drs. Cranton and Lindman relied upon claimant's narrative of the conditions he experienced while working for employer, the weight accorded the physicians in this case is based upon the credibility the administrative law judge accorded claimant.[4] The administrative law judge found that claimant fabricated the events upon which he based the onset of his PTSD symptoms.

The administrative law judge discussed the deposition testimony of Ms. Curtis, who supervised claimant's work as a bus driver at Tallil Air Force Base. She stated that the incident of February 23, 2007, did not occur. She acknowledged that the base, upon occasion, came under mortar attack, but stated that no bus drivers had been injured. Ms. Curtis had no knowledge of insurgents penetrating, or being killed within, the inner perimeter of the base; she stated that no soldiers had been killed on the base, that army personnel had no authority or need to enlist claimant's help in any fire fight, and that no marines were stationed at the base. EX 18 at 22-42.

The administrative law judge found claimant's testimony concerning the alleged events in Iraq to be "truly incredible." The administrative law judge found that the February 2007 incident never occurred, noting that: there is no record of an alarm sounding despite the alleged incursion onto the base; there is no military record of its occurrence despite claimant's allegation that many insurgents were killed; and claimant was prohibited by military protocol from participating in a fire fight. The administrative law judge also found that the base was not under constant mortar fire as claimant alleged, and that claimant had had no stress-related complaints following the April 2004 shooting. Decision and Order at 14. Indeed, claimant conceded under cross-examination that he was not under mortar or small arms fire on a daily basis, that he never reported the February 23, 2007 incident when he sought help from the stress clinic, and that there were no news reports about the alleged American deaths. HT at 215-225.

Based on the administrative law judge's discrediting of the basis for claimant's complaints to the doctors, the administrative law judge found the opinion of Dr. Lindman is not reliable because her diagnosis of PTSD relied primarily on claimant's false history

[4] Dr. Lindman stated that the initial criterion for a diagnosis of PTSD is that the individual was exposed to a traumatic event in which the person experienced, witnessed, or is confronted with an event or events involving actual or threatened death or serious injury to himself or others producing feelings of intense fear, helplessness or horror. CX 1 at 121.

of his activities in Iraq, as well as his misrepresentation of his educational and vocational background.[5] The administrative law judge found that Dr. Lindman failed to fully rule out malingering as required by the DSM-IV,[6] and he rejected her assertion that claimant need not have been actually exposed to a life threatening incident in order to experience PTSD. The administrative law judge similarly found the opinion of Dr. Cranton not creditable. Dr. Cranton stated that if claimant had concocted the February 2007 incident, his diagnosis was nonetheless supported by claimant's hearing about traumatic events from the soldiers in the camp and living in a war zone; the administrative law judge found that there is no evidence that claimant had actually heard such stories. Because the underlying bases for their diagnoses were suspect, the administrative law judge found they could not support claimant's allegation of a harm arising out of his employment. On the other hand, he found Dr. Griffith's assessment that claimant does not have PTSD or a seizure disorder and is malingering consistent with the objective testing and the facts surrounding claimant's actual working conditions in Kuwait and Iraq.[7] Concluding that claimant failed to establish the harm element of his *prima facie* case, the administrative law judge denied the claim.

We affirm the administrative law judge's finding that claimant failed to establish that he has PTSD or a seizure disorder. The administrative law judge acted well within his discretion in discrediting claimant's testimony concerning the alleged work incidents,

[5] Claimant alleged that he had a degree in electromechanical engineering from the University of Nevada at Reno when his transcript revealed he had taken only two courses and passed only one. CX 11; HT at 43, 44, 175. He also related to Drs. Lindman and Cranton that he had driven a fuel truck for employer for three years when he had actually driven a flatbed truck and bus. CX 2. Moreover, the administrative law judge noted that Ms. Curtis, claimant's supervisor, testified that claimant had a reputation among his co-workers of being dishonest. EX 18 at 43.

[6] Dr. Lindman stated she did not fully test claimant for malingering, although she also stated she found no evidence of secondary gain issues. CX 1 at 36, 71-74.

[7] The administrative law judge addressed claimant's allegation that Dr. Griffith lacked sufficient expertise in administering and evaluating psychological tests by noting that Dr. Griffith had the tests verified by a clinical psychologist, who confirmed his diagnosis. Decision and Order at 14; EX 20 at 36.

as well as his recitation of these incidents to the doctors, in view of the absence of any corroborating evidence.[8] *Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). Moreover, as the administrative law judge permissibly found the bases for their opinions undermined, his decision to accord less weight to the opinions of Drs. Lindman and Cranston that claimant has PTSD likewise is rational and supported by substantial evidence. *See generally Rainey v. Director, OWCP*, 517 F.3d 632, 42 BRBS 11(CRT) (2d Cir. 2008); *cf. Pietrunti v. Director, OWCP*, 119 F.3d 1035, 31 BRBS 84(CRT) (2d Cir. 1997) (administrative law judge required to accept uncontradicted and well-supported opinions that claimant has psychiatric condition). It is well established that the administrative law judge is entitled to determine the weight to be accorded to the evidence of record and that the Board cannot reweigh that evidence. *See Burns v. Director, OWCP*, 41 F.3d 1555, 29 BRBS 28(CRT) (D.C.Cir. 1994); *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962). In addition, the credited opinion of Dr. Griffith that claimant does not have PTSD or a seizure disorder supports the administrative law judge's denial of the claim. *Mackey v. Marine Terminals Corp*., 21 BRBS 129 (1988). As claimant failed to establish an essential element of his claim, we affirm the administrative law judge's denial of benefits. *U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982).

[8] By letter received by the Board on December 9, 2008, claimant alleges he has new evidence that would substantiate his participation in the gun fight of February 23, 2007. The Board may not receive new evidence, but is limited to reviewing the record created before the administrative law judge. *Meinert v. Fraser, Inc.*, 37 BRBS 164 (2003); 20 C.F.R. §802.301; *see also* 33 U.S.C. §922.

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge