BRB No. 06-0470

BIRGITT EYSSELINCK (Widow of TIMOTHY EYSSELINCK)	)	
Claimant-Petitioner	)	
v.	)	
RONCO CONSULTING CORPORATION	)	DATE ISSUED: 01/30/2007
and	)	
FIDELITY AND CASUALTY COMPANY/ CNA INTERNATIONAL	)	
Employer/Carrier- Respondents	)	DECISION and ORDER

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

Gary B. Pitts (Pitts & Associates), Houston, Texas, for claimant.

Roger A. Levy and Michael T. Quinn (Laughlin, Falbo, Levy & Moresi LLP), San Francisco, California, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (2005-LDA-12) 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). We must affirm the findings of fact and conclusions of law of the administrative law judge which are rational, supported by substantial evidence, and in accordance with law. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant is the widow of the deceased employee, who died on April 23, 2004, of a self-inflicted gunshot wound. She filed a claim seeking death benefits from employer under 33 U.S.C. §909. Employer engages in de-mining operations around the world. Decedent, claimant's husband, was initially employed by employer in Namibia as a duty task leader, with responsibilities which included administrative and finance work, general project management and training. In March 2001, decedent was reassigned by employer to Ethiopia, where he was responsible for the overall administration of employer's de-mining operations in that country. In July 2003, decedent was assigned to employer's operations in Iraq. Upon arriving in Baghdad, Iraq, in August 2003, decedent lived and worked primarily in the "Green Zone" in that city. While decedent's work in Iraq did not involve actual de-mining or the destruction of unexploded ordinance, decedent occasionally left the Green Zone to observe employer's workers who were in the field. As the security situation in Iraq gradually began to deteriorate, decedent commenced wearing a bullet-proof vest and carrying a firearm. Decision and Order at 6.

In December 2003, decedent left Iraq and returned to Namibia to visit his wife and children. After attending a company conference in Florida on January 3, 2004, decedent returned to Iraq on January 7. Employer subsequently approved decedent's request for a three-month leave of absence. When leaving Iraq, decedent's plane was required to ignite defensive flares. Decedent returned to Namibia on February 21, 2004.

Claimant testified that decedent experienced no readjustment problems upon his return to Namibia and his family until the last week in March 2004, when he became irritable, could not sleep and complained of being depressed. Decision and Order at 7; Tr. at 82-87. On the date of his death, April 23, 2004, claimant stated that decedent returned from a three-day hunting trip in an agitated state, complaining that he had shot an animal but had been unable to track it. Claimant stated decedent was in an "angry and aggressive" state, throwing a pair of binoculars against a table, complaining about his failure to receive a special order rifle and telling his wife he was concerned about employees in Iraq. *Id.;* Tr. at 99-105. Later that day, a disagreement arose between claimant and decedent about allowing decedent's step-son to attend a local carnival. Decedent ultimately agreed to let his step-son attend, and he personally dropped him off at a friend's home that evening. Tr. at 106-110. After dinner that evening, claimant and decedent played cards, with decedent consuming two glasses of wine. After making a comment regarding claimant's need to get him professional help, a negative statement regarding his step-son which he immediately retracted, and a comment that he didn't want to be the bad man, decedent left the room, returned brandishing a pistol, and shot himself. *Id.;* Tr. at 111-114. Claimant subsequently filed a claim for death benefits under Section 9 of the Act, 33 U.S.C. §909, alleging that decedent's death was related to his employment with employer in Iraq.

In support of her claim for benefits under the Act, claimant relied upon the opinion of Dr. Sieberhagen, a Board-certified psychiatrist, who concluded that the only possible explanation for decedent's suicide was that decedent suffered from a post-traumatic stress

disorder following his return from Iraq, and that decedent's suicide was the result of an impulsive act brought about by work-related causes. In rendering this opinion, Dr. Sieberhagen testified that, after eliminating other possibilities, he could not come up with a better explanation as to why decedent committed suicide. Specifically, after acknowledging the awkward situation of having to render a mental assessment without having ever examined the decedent,[1] CX 147 at 23, Dr. Sieberhagen, stated that "the only answer that we can possibly come up with is that he may have suffered from a post-trauma stress disorder given the facts that we have before us." *Id.* at 24. However, Dr. Sieberhagen acknowledged that "the fact remains that we still don't have an answer as to why [decedent] killed himself." *Id.* at 83.

In response, employer presented the contrary opinion of Dr. Brodsky, who is also a Board-certified psychiatrist and who opined that decedent did not have a post-traumatic stress disorder upon his return from Iraq, and that there was no evidence of any relationship between decedent's employment with employer and his death. Rather, Dr. Brodsky attributed decedent's suicide to the numerous non-work stressors that decedent experienced upon his return from Iraq in February 2003, including an ongoing lawsuit, uncertainty regarding his future employment, his relationship with his step-son, the non-receipt of a specially-ordered firearm, an unsuccessful hunting experience with a friend, and a disagreement with his wife on the day of his demise. RX 24 at 42. Dr. Brodsky concluded that there was no evidence of any relationship between decedent's employment with employer and his decision to take his own life on April 23, 2004. *Id.* at 46-49.

In his Decision and Order, the administrative law judge credited the testimony of Dr. Brodsky, finding that this physician's opinion was more logical and persuasive than the opinion of Dr. Sieberhagen. Consequently, the administrative law judge determined that as decedent, when confronted with a combination of non-work related stressors, made a decision to end his life, employer was not responsible for decedent's conduct and he accordingly denied the benefits sought by claimant.

On appeal, claimant contends that the administrative law judge erred in denying her claim for benefits under the Act. Specifically, claimant challenges the administrative law judge's decision to credit the opinion of Dr. Brodsky over that of Dr. Sieberhagen when addressing the potential relationship between decedent's employment in Iraq and his death. Employer responds, urging affirmance of the administrative law judge's decision in its entirety.

In denying benefits, the administrative law judge relied on Section 3(c), which states:

[1] Neither claimant's medical expert, Dr. Sieberhagen, nor employer's medical expert, Dr. Brodsky, examined decedent prior to his death.

> No compensation shall be payable if the injury was occasioned . . . by the willful intention of the employee to injure or kill himself or another.

33 U.S.C. §903(c). *See O'Connor v. Triple A Machine* Shop, 13 BRBS 473 (1981)(Miller, J., concurring in part and dissenting in part); *Kielczweski v. The Washington Post Co.,* 8 BRBS 428 (1978); *Rogers v. Dalton Steamship Corp.,* 7 BRBS 207 (1977). Section 20(d) of the Act affords a claimant the benefit of the presumption "that the injury was not occasioned by the willful intention of the injured employee to injure or kill himself or another." 33 U.S.C. §920(d). *See Maddon v. Western Asbestos Co.,* 23 BRBS 55 (1989). Where an employee's suicide is the result of an irresistible suicidal impulse due to a work-related condition, it is not due to "willful intent" on the part of the employee, and Section 3(c) does not bar the compensation claim. *See Director, OWCP v. Potomac Elec. Power Co.,* 607 F.2d 1378, 10 BRBS 1048 (D.C. Cir. 1979) (work injury results in psychological problems, leading to suicide); *Voris v. Texas Employers Ins. Ass'n*, 190 F.2d 929 (5th Cir. 1951); *see also Terminal Shipping Co. v. Traynor*, 243 F.Supp. 915 (D.Md. 1965); *Konno v. Young Bros., Ltd.,* 28 BRBS 57 (1994).

Claimant asserts that the administrative law judge erred in evaluating the medical evidence of record regarding decedent's state of mind following his return to Namibia in February 2004, and in crediting the testimony of Dr. Brodsky over the testimony of Dr. Sieberhagen. Specifically, claimant avers that decedent suffered from depression upon his return from Iraq, and that Dr. Brodsky's opinion relating decedent's death to multiple non-work stressors lacks credibility. We reject claimant's contentions of error, as the administrative law judge rationally gave greater weight to the opinion of Dr. Brodsky that decedent's death was unrelated to his employment with employer but was, rather, the result of the multiple non-work related stressors that decedent experienced upon his return from Iraq. *See Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962); *John W. McGrath Corp. v. Hughes,* 289 F.2d 403 (2d Cir. 1961). It is well-established that the administrative law judge as the trier of fact is entitled to evaluate the credibility of all witnesses and to draw his own inferences and conclusions from the evidence. *See Calbeck v. Strachan Shipping* Co., 306 F.2d 693 (5th Cir. 1962), *cert. denied,* 373 U.S. 954 (1963). The Board's scope of review under Section 21(b)(3) of the Act, 33 U.S.C. §921(b)(3), is limited to determining whether there is substantial evidence to support the administrative law judge's decision. *O'Keeffe,* 380 U.S. 359.

In the instant case, the administrative law judge took extensive testimony regarding decedent's work and his activities prior to his death. He stated specifically that he was impressed by the honesty and sincerity of claimant and decedent's mother, but found they were mistaken regarding the nature of decedent's work, which did not involve the actual destruction of ordinance but was a desk job. He thus found, based on credible testimony, that claimant was not exposed to life threatening situations in Iraq. He discussed at length the relevant medical opinions of Drs. Sieberhagen and Brodsky. In weighing this evidence, the administrative law judge concluded that the opinion of Dr.

Brodsky was more logical and persuasive than the contrary opinion of Dr. Sieberhagen, who engaged in "backward reasoning" in concluding decedent's suicide must have been caused by a post-traumatic stress disorder or another illness because he could find no other cause. Decision and Order at 17. In contrast, he stated that Dr. Brodsky relied on the DSM-IV and explained how the evidence failed to meet the criteria for a post-traumatic stress disorder. Claimant's contentions on appeal essentially request that we re-weigh this evidence, which we are not empowered to do. Consequently, as the credited medical opinion of Dr. Brodsky constitutes substantial evidence in support of the administrative law judge's conclusion that decedent's death was related to a variety of non-work stressors, we affirm the administrative law judge's denial of claimant's claim for death benefits under the Act.

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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ROY P. SMITH
Administrative Appeals Judge

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BETTY JEAN HALL

Administrative Appeals Judge