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Issue Date: 13 February 2020

CASE NOS.: 2017-LDA-00977
2017-LDA-00978

OWCP NOS.: 07-307294
07-309482

IN THE MATTER OF

AMERICO J. GATEWOOD
Claimant

v.

SERVICE EMPLOYEES INTERNATIONAL, INC.
Employer

and

FLUOR FEDERAL GLOBAL PROJECTS, INC.
Employer

and

INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA
c/o AIG Global Claims
Carrier

APPEARANCES:

For the Claimant: Gary Pitts, Esq.

For the Employer Service Employees International, Inc.: John Walker, Esq.

For the Employer Fluor Federal Global Projects, Inc.: John Karpousis, Esq. and Matthew Pallay, Esq.

BEFORE: ANGELA F. DONALDSON
Administrative Law Judge

DECISION AND ORDER DENYING BENEFITS

This claim was filed pursuant to the Longshore and Harbor Workers' Compensation Act, as amended (LHWCA or "the Act"), U.S. Code Title 33, Chapter 18, as extended by the Defense Base Act, 42 U.S.C. § 1651 *et seq.*, and the implementing regulations, 20 C.F.R. Parts 701 and 702. On September 19, 2017, the Director, Office of Workers' Compensation Programs (OWCP), referred case numbers 07-307294 and 07-309482 to this Office, and they were docketed as a consolidated proceeding (OALJ Case Nos. 2017-LDA-00977 and 2017-LDA-00978). The named Employers are Service Employees International, Inc. (SEII)[1] and Fluor Federal Global Projects, Inc. (Fluor); there is a single carrier, Insurance Company of the State of Pennsylvania c/o AIG Global Claims. Claimant alleges that he sustained a chronic skin disease and psychological injuries arising out of his overseas employment in Afghanistan and Iraq. (CX-2, 6).

A formal hearing was held on March 27, 2019, in Dallas, Texas, at which time the parties were afforded full opportunity to present evidence and argument in support of their respective positions. Gary Pitts, Esq. was present at the hearing on behalf of the Claimant. For Employer SEII, attorney John Walker was present; for Employer Fluor, attorneys John Karpousis and Matthew Pallay were present.

Claimant testified at the hearing. Fluor's witnesses Natasha Cox, Rebecca Sprick, and Dr. John Tsanadis[2] also testified. The following exhibits were admitted at the hearing without objection: Claimant's Exhibits 1 - 8 (referred to herein as "CX"); SEII's Exhibits 1 - 23 (except Exhibit 12, which was withdrawn) (referred to herein as "EX"); and Fluor's Exhibits A - II (except Exhibits L, T, BB, which were withdrawn;[3] CC, DD, and EE were reserved for other parties' exhibits and impeachment/rebuttal evidence, which ultimately were not submitted). (TR[4] at 8-11). Fluor submitted post-hearing the deposition of Steven Hubert, M.D., marked Exhibit JJ; no objection was stated at hearing or raised later, and therefore, Exhibit JJ is admitted. (TR at 23-24).

Consistent with filing deadlines ordered by the undersigned, Claimant, SEII and Fluor filed post-hearing briefs. The findings of fact, credibility determinations, and legal analyses and conclusions that follow are based on a complete review of the entire record, the arguments of the parties, and applicable statutory provisions, regulations and relevant precedent. The hearing was held, and claimant resides, in the jurisdictional area of the U.S. Court of Appeals for the Fifth Circuit. For the reasons set forth below, the Claimant's claims for medical benefits and disability compensation are DENIED.

I. CONTESTED ISSUES

[1] At times SEII is referred to in the record as its parent "KBR."
[2] The transcript referred to this witness at times as Dr. Cenatus, which was a typo.
[3] As indicated on Fluor's Fifth Amended Exhibit List, portions of the following exhibits were also withdrawn: Exh. A, J, S, W, and X).
[4] The transcript of the hearing is abbreviated "TR."

1. Whether Claimant provided timely notice of an injury or occupational disease and whether he timely filed his claim.

2. Whether Claimant sustained an injury or occupational disease arising out of the conditions of his overseas employment.

3. Whether SEII or Fluor is the responsible employer with regard to Claimant's alleged injury or occupational disease.

4. Whether Claimant is disabled as a result of his alleged injury or occupational disease.

5. Whether Claimant is entitled to indemnity and medical benefits.

6. If Claimant is entitled to indemnity benefits, what is the proper Average Weekly Wage?

II. RELEVANT EVIDENCE CONSIDERED

A. Stipulations

The parties stated agreement to the following, which I find to be established as facts:

1. The LHWCA/DBA applies to this claim.

2. There was an Employer/Employee relationship at the time of the alleged injuries, with regard to both Employers.

3. Claimant worked for SEII over two periods of time: January 23, 2014 to July 2007, and January 2008 to November 2009.

4. Claimant worked for Fluor from December 2009 to November 2012.

(TR at 6, 203-04).

B. Relevant and Material Findings of Fact

Based on the parties' stipulations, documentary exhibits, and testimonial evidence presented, the undersigned makes the following relevant and material findings of fact in this case:

1. Americo Gatewood was fifty-one years old at the time of the hearing. He graduated high school, attended one year of college, and after college held commercial driver's license (CDL) certifications, which were expired by the hearing date. (TR at 24-25).

Overseas Employment

2. Before going overseas, Claimant's employment history included working for a deli

for about 1 ½ years, an oil rig for about 3 years, and a labor position at Fort Polk. After obtaining his first CDL, Claimant worked for a concrete company for about one month. After the concrete company, he began working for KBR's subsidiary SEII in Iraq and Afghanistan; his initial SEII employment as a fuel truck driver lasted about 3 ½ years, from January 2004 to July 2007 (Kandahar, Afghanistan). (TR at 25-27, 49, 203-04).

3. As a fuel truck driver for SEII from 2004 to 2007, Claimant delivered fuel to aircraft and generators on the bases; he handled hoses and fuel. He did not experience any skin condition symptoms, such as eruptions, though his hands itched. He experienced rocket attacks during those years as well, starting on his first night there. In the first 3 ½ years of SEII employment, Claimant did not miss a shift, did not call in sick, and did not seek medical treatment for physical or mental conditions. (TR at 49-52).

4. After the first period of SEII employment, Claimant returned stateside and worked for a couple of months for Boise Cascade, a lumber company, in Louisiana. Claimant then returned to SEII from January 2008 to November 2009 and worked in Fallujah and Camp Iowa, Iraq. He again working as a fuel truck operator, handling hoses and fuel. He still had no skin eruptions. Claimant did not seek any treatment for physical or mental health issues; he did not miss a shift or call in sick. During his last period of SEII employment, Claimant earned $97,957.32 (12/2008 – 11/2009); his monthly pay ranged from about $6,000 to over $10,000. (TR at 26-27, 52-53, 55; EX-16).

5. Claimant left his second period of employment with SEII to work for Fluor as a fuel truck driver, which returned him to Afghanistan. In December 2010, he told Fluor he was in "excellent" health, had not sought counseling or mental health care in the previous year, and had no history of skin diseases. In January 2012, Claimant reported "very good health" and again denied a history of skin diseases. He worked for Fluor from December 2009 until November 2012, at Forward Operating Base (FOB) Shank, Camp Deh Dadi, and Camp Marmal, Afghanistan, among other places. (TR at 27-28, 54-55, 59; Exh. II at 11, 13, 42).

6. While working for Fluor in Afghanistan, Claimant traveled between Camp Dwyer and Bagram in a helicopter, which was never attacked but nonetheless caused him stress. He also saw a container housing unit that had been attacked the previous day. (TR at 57-58).

7. The position of fuel truck driver that Claimant performed overseas required him to "go around generators on each and every base, whatever base I was at [,] refilling generators" with fuel. The generators provided electricity to the bases. His schedule was usually 7 days per week, 12 hours per day. (TR at 28-29).

8. While performing the duties of fuel truck driver, fuel would often make contact with Claimant's skin. Rubber also made contact with his skin in the form of personal protective equipment (PPE) that he wore, such as fire retardant clothing, goggles with rubber seals and long, heavy duty rubber or plastic gloves. He also used a long,

rubber hose. His hands would sweat inside the gloves. Claimant said his hands were "itching" and "sweating" when working overseas. He denied that itching or sweating was accompanied by any blisters or skin eruptions. (TR at 29, 38, 50, 99-100, 121-22).

9. Claimant's role as a supervisor, a Fuel Distribution Systems Supervisor, for a period of time at Fluor still required some performance of the physical aspects of the fuel truck driver job, including driving the fuel truck and handling fuel lines. (TR at 38, 56, 99; Exh. H).

10. While overseas working for SEII and then Fluor, Claimant never reported any skin problems to any medical staff. He was aware of available medical clinics providing medical care at no charge. Fluor's records of Claimant's pre-employment physicals reflect no complaints or observations of skin problems. (TR at 30, 101; Exh. II).

11. Claimant denied experiencing "stress issues," denied ever treating with a psychologist, psychiatrist, or psychotherapist, and denied having any medication prescribed for a psychological condition before working in Iraq and Afghanistan. (TR at 34-35).

12. Claimant described Afghanistan as having worse conditions because of constant "incoming" (mortar rounds), sniper fire, suicide bombing attempts, and generally "things blowing up around you." He did not personally witness the physical damage to the base as it occurred, but he saw the damage afterward. There were also "lots of suicides." He did not witness any suicides. Claimant recalled a particular incident where he filled a generator near the place where nine dead bodies, the victims of a suicide bombing, were lying in body bags. He did not witness anyone injured or killed. At some locations, such as FOB Shank, incoming mortar would occur about 4 to 5 times per week. The locations where Claimant worked did not have advance warning systems. (TR at 35-37, 58, 116-18).

13. Fluor terminated Claimant in mid-November 2012 after it discovered that 300,000-plus gallons of fuel valued at $1,000,000 were missing. Claimant was a supervisor responsible for oversight over the fuel department where the shortage occurred. Fluor's audit concluded that Claimant provided instructions to subordinate employees on how to manipulate gauges to disguise discrepancies in the fuel inventories. Claimant was terminated for unsatisfactory job performance. As the result of the termination, Claimant lost his security clearance necessary for overseas work. Claimant's taxable Social Security earnings in 2012 totaled $110,100. (TR at 59-61, 63, 85-86; Exh. I; Exh. J at 1-6; EX-23).

Subsequent Employment

14. When Claimant applied to work for J.A.M. Distributing Company, Houston, Texas, in December 2013, he denied having any "nervous or psychiatric disorders, e.g., severe depression." He made $18.50 per hour at J.A.M. as a "Package Driver"

responsible for delivering packages of petroleum and/or lubricant products to commercial and industrial accounts. He voluntarily left their employment on September 5, 2014, saying he was starting a new job that paid more money. (TR at 75-76; Exh. II at 72; Exh. W at 4-5, 15-16, 31).

15. Claimant started working for Pilot Thomas in North Dakota in late September 2014, as a fuel truck driver, for about eight months. He worked 7 days per week, 12 hours per day, earning $18.50 per hour at first and $24 per hour by May 2015. He was fired on or about May 25, 2015, after leaving work to attend his daughter's graduation and also for seeking additional time off for treatment for his skin condition at that time, which required more time off from work than Pilot Thomas would accommodate. The Separation Notice noted his last day of work was May 13, 2015, and stated, "Americo has to take a few months off for medical treatment." (TR at 43-46, 48, 76-77; EX-19 at 2; Exh. X at 2, 11, 25).

16. Claimant engaged in cooking cocaine for income, as he stated during his hearing testimony and also documented in information he provided in April 2017 to his counselors at Caring Choices, after testing positive for cocaine. Claimant denied using the drug, but admitted that he had "held" and "cooked it," because he was "hustling to get money." Claimant did not report any self-employment earnings to any authorities or on LS-200 forms in this case. (TR at 89, 91; Exh. R; Exh. V at 73, 76; EX-23).

Treatment for Skin Condition (Sylvia Hsu, M.D.; Rajani Katta, M.D.; Arturo Dominguez, M.D.)

17. Claimant first experienced a skin eruption of red bumps on his arms, hands, legs and stomach around the late summer of 2013. At the time, he had just bought a new house. He had leather furniture. He mowed the lawn himself and initially thought he was bitten by chiggers. His wife at the time, Dr. Natasha Cox, also first noticed Claimant's dermatological issues during the summer of 2013, particularly after doing yard work. She had never previously noticed him having a skin condition or rash. (TR at 30, 70-71, 129).

18. The work Claimant performed at J.A.M. Distribution started in January 2014, and involved handling rubber, oil and antifreeze. Blistering on Claimant's hands first started in or around March 2014. (TR at 72-73; Exh. W at 96, 98).

19. Claimant initially treated with Dr. Dorsey in March and April 2014. Dr. Dorsey released Claimant to return to work with no restrictions. Claimant next saw Dr. Sylvia Hsu, a dermatologist, on May 27, 2014, complaining of a skin rash of 1.5 to 2 months duration. Dr. Hsu did not know the source or cause of Claimant's skin eruption and noted it was located on the posterior neck, trunk, upper and lower arms, and dorsal hands. A skin biopsy showed allergic contact dermatitis. Dr. Hsu referred Claimant to Rajani Katta, M.D., who noted on August 25, 2014, that the rash began in January 2014. He diagnosed eczema and/or allergic contact dermatitis possibly due to fragrance, preservatives, textiles, meds, rubber, nickel, transfer or other. (TR at 77-

78; CX-1 at 1, 3-4).

20. Dr. Hsu saw Claimant at monthly follow-up visits in June, July, and August 2014. She initially noted he vastly improved on prednisone taper then his condition slowly recurred. At the time of his skin patch testing on August 25, 2014, the treatment notes state he was a truck driver who "wears uniform; blue colored overalls," "wears white or black t-shirts underneath," "wears sweatpant shorts," "contacts grease, oil, diesel fuel," "goes into chemical plants," "wears gloves; leather" that he will "discard when saturated" and "rubber gloves may have broken him out the first time." Dr. Hsu advised him to avoid leather and rubber gloves, use white cotton gloves covered by heavy duty vinyl gloves or cotton canvas gloves, carry his own soap, take his medication, and consider a change in diet. (CX-1 at 1-4; TR at 77-78).

21. On May 28, 2015, Claimant returned to Dr. Hsu and reported his skin eruption began flaring again the previous week. The cause of the flaring was not mentioned, nor were Claimant's activities at the time of the flaring. UVB phototherapy was recommended in May and administered in June 2015. It was around this time that Claimant left work at Pilot Thomas to undergo treatment. (EX-5 at 8-9; Exh. X at 2).

22. Dr. Hsu's treatment notes do not contain work restrictions. However, on February 12, 2016, Dr. Hsu authored a letter stating that Claimant has a severe case of eczema affecting his entire body and not improving with various treatments. Dr. Hsu stated that Claimant has "severe, intractable itching which prevents him from sleeping and prevents him from working full-time due to tremendous burden of the symptoms." She authored a similar letter dated August 29, 2016. (CX-1 at 5, 34).

23. Claimant began treating with Dr. Arturo Dominguez, dermatologist, for his skin condition on or about May 17, 2016. Claimant was unemployed at the time and told Dr. Dominguez that while driving petroleum trucks in Afghanistan, he "was exposed to burning petroleum oil, rubber and other industrial products." At this visit, Claimant did not mention his more recent work in the three-plus years since his return to the States, as a package driver for J.A.M. or fuel truck driver for Pilot Thomas. Claimant's skin testing was positive for, among other things, leather and rubber. Dr. Dominguez began expressing the opinion that Claimant's skin condition was related to the conditions of his overseas employment. (TR at 79, 103-04; CX-1 at 6).

24. In an email dated May 31, 2016, Claimant reached out to Dr. Dominguez for "an explanation [via a letter] of the cause of my condition." The Claimant asked Dr. Dominguez to explain how the "breakdown" of his "immune system" is playing a part in his "severe allergic responses" experienced over the "past three years." Claimant and the doctor had apparently discussed the doctor's opinions at his first visit two weeks earlier, based on the histories the Claimant provided at that time. Claimant stated in the email on May 31, 2016, "I have no personal or family history of allergies. I worked overseas on military bases from Jan. 2004 – Nov. 2012. I was exposed daily for nine years to fuel products, chemical toxins, and who knows what else from the burn pit that was located on the base, and never noticed any issues.

When I returned home, I took off work for 6-8 months with no issues. After that, I bought a house, got new leather furniture, started cutting grass, went back to work delivering fuel/petroleum products, etc., and had a SEVERE allergic reaction. Testing revealed that at 47 years old. I am now allergic to virtually everything." (Exh. U at 23).

25. Dr. Dominguez replied that he would be happy to write a letter explain Claimant's medical situation. He advised, "I can't say with CERTAINTY that it was something you were exposed to overseas, but I can say that it is LIKELY that repeated exposures to numerous contact allergens is well known to cause severe contact allergies like the one you have." Regarding causation, Dr. Dominguez again stated that "[r]epeat exposure to contact allergens can trigger a contact dermatitis." (Exh. U at 23).

26. Claimant followed up his treatment with Dr. Dominguez on July 5, 2016, and continued to have thick and scaly plaques on both of his elbows. He reported significant improvement after starting an ointment treatment for his face. Kenelog injections were given for his elbows. (CX-1 at 23).

27. Dr. Dominguez provided a written opinion dated July 22, 2016, stating he began seeing Claimant in May 2016 for chronic eczematous dermatitis, likely allergic contact. Dr. Dominguez described patch testing that was positive for leather, metals, rubber, and fragrances. Dr. Dominguez commented on Claimant's prior employment overseas driving petroleum trucks with exposure to burning petroleum oil, rubber and other industrial products, and opined that "there is a high likelihood that these exposures have contributed to his chronic eczematous dermatitis." Although Claimant began showing improvement through systemic immunosuppressive treatment, and may be able to "return to work in the near future," the past three years of the disease had caused "significant impact on his mental and physical health." (CX-1 at 33).

28. Claimant's follow-up visits with Dr. Dominguez between August 2016 and January 2017, did not reflect much change in his condition. (CX-1 at 36-37, 44-45; Exh. U at 57-142).

29. In a written note to Claimant dated August 18, 2016, Dr. Dominguez stated that many of his patients undergo immunosuppressive treatment and are able to work; likewise many patients that receive organ transplants take similar medications and are also able to work. Accordingly, he was not sure he was able to state the Claimant was unable to work due to undergoing this treatment. (Exh. U at 495).

30. Claimant and Dr. Dominguez again exchanged email correspondence in December 2016 and January 2017, regarding more detailed written opinions that Claimant requested Dr. Dominguez provide regarding the source of his skin condition, to further clarify the doctor's prior written opinion. Claimant stated, "My attorney has asked me to get a more detailed explanation on how my immune system has been affected by the repeated exposures," as a follow-up to Dr. Dominguez' May 31st

email stating that Claimant was being treated with an immunosuppressive medication that targets T-cells "that have been stimulated by repeated exposure to the contact allergen to cause [Claimant's] skin rash." (Exh. U at 105-132).

31. In an email dated December 19, 2016, Claimant described to Dr. Dominguez his past exposures stating, "For the nine years that I was overseas, I wore fire retardant coveralls, chemical gloves and rubber boots. I handled Petroleum, Oil, and Lubricant products 12 hours a day, 7 days a week[,] 300 days a year. The bags that the fuel came in were made of rubber, the hoses that I pulled on average of 30 times a day were made of rubber and metal. The environment was the confines of a military base, often in excess of 100 degrees with the stench and smoke of the burn pits burning black rubber tires, numerous chemicals, and human waste in close proximity to the fuel location." Claimant asked Dr. Dominguez to explain "what I am allergic to and how an allergic contact dermatitis could develop" from his overseas exposures. (Exh. U at 130-31).

32. In an email exchange on January 23, 2017, in connection with Claimant's request for a more detailed written opinion on causation, Dr. Dominguez asked when Claimant's rash began. Dr. Dominguez mentioned that his records showed the Claimant first saw doctors in Houston in 2014 and Claimant had reported overseas employment that ended in 2012. Claimant responded, "I worked for SEI from January 2004 until 2009 then Fluor from December 2009 until November 2012. I first noticed symptoms in June or July 2013. I thought that it was chiggers, and did not seek any medical treatment." Claimant described a later, "serious flare" in March or April 2014 that prompted him to seek medical treatment. According to Claimant, "The only thing I had while overseas was chronic athletes feet and jock itch." Dr. Dominguez then asked, "So you never had any type of rash over there? What about on your hands? Any blisters, or itching around your fingers? Did you do any mechanic work[?] How would you have been exposured [sic] to metals (aside from smoke or oils that often have many of these metals in them). What would your exposures to rubber have been?" Claimant responded to Dr. Dominguez that the "only thing [he] had over there was itchy sweaty hands," which started sometime around 2007, and Claimant thought it was due to wearing rubber chemical gloves 12 hours per day and the heat. (Exh. U at 107-08).

33. Dr. Dominguez wrote to Karen Young at OWCP on January 23, 2017, to support Claimant's medical claim related to his skin condition. Dr. Dominguez noted that Claimant's work overseas involved the use of rubber gloves in hot weather and also exposed him to rubber hoses and rubber seals on protective equipment, as well as a lot of exposure to metals. According to Dr. Dominguez, "It was when he was overseas in 2007 that he first developed itching and small blisters on his hands." According to Dr. Dominguez, "It is likely that these repeated exposures to substances over a period [of] 7 years may have sensitized and caused a contact allergy to agents containing numerous metals (Cobalt, Chromium, Nickel) and rubber." He noted that allergic contact dermatitis may persist after the work exposure has ended. Dr. Dominguez stated, "It is my medical opinion that Claimant has a chronic eczematous

dermatitis that was positive on patch testing to numerous metals and an allergen found in rubber," to which he was exposed while working overseas where he first "developed recurrent hand dermatitis." Dr. Dominguez described the immunosuppressive treatment for the condition that requires careful monitoring. He did not mention work restrictions. (CX-1 at 48-49).

34. Claimant had a flare of new skin lesions in April 2017, after being off medication for a month when insurance denied authorization of the medication. He was improved by June 27, 2017. (CX-1 at 52-53, 58-60).

35. Fluor subpoenaed Dr. Dominguez to testify at the March 27, 2019, hearing, but he did not appear. Dr. Dominguez was given 21 days' notice of the hearing, and his office location is also in Dallas, where the hearing was held. (Exh. Z).

Opinion of Steven Hubert, M.D. (Dermatology)

36. Dr. Hubert, Lawrenceville Dermatology Associates, P.C., Lawrenceville, New Jersey, provided an opinion regarding any causality between Claimant's rash and his overseas employment. He reviewed Claimant's medical records from Fluor physicals, Dr. Hsu, and Dr. Dominguez, as well as the Claimant's resume and deposition testimony. Dr. Hubert provided a report dated February 27, 2019, and was deposed post-hearing on May 16, 2019. (Exh. D at 1-2; Exh. E; Exh. JJ at 5-6).

37. Dr. Hubert obtained his Doctor of Medicine from Cornell University Medical College in New York, New York, in 1989, completed an internship in the Department of Internal Medicine at the Hospital of the University of Pennsylvania and then completed his residency in the Department of Dermatology, including serving as Chief Resident, at Hahnemann University Hospital in Philadelphia, Pennsylvania. Dr. Hubert has been board certified in dermatology since 1997 and has been an Attending Physician in various medical facilities, a Clinical Assistant Professor, and also engaged in private practice over the previous 20-plus years. The parties stipulated to Dr. Hubert's ability to give opinion testimony on dermatological issues. (Exh. E; Exh. JJ at 7).

38. Dr. Hubert opined that Claimant's diagnosis of allergic contact dermatitis is a "T-cell mediated delayed hypersensitivity reaction," meaning that it "takes about 7-10 days for the immune system to process an antigen and induce an allergic reaction." "In other words, it takes the body about 7-10 days from exposure to a chemical to develop an allergy to that chemical." Also, "[p]atients can be exposed to chemicals for years before developing an allergy and there is no understanding of what triggers the immunological change." (Exh. D at 1-2; Exh. E; Exh. JJ at 15-17).

39. According to Dr. Hubert, Claimant had no documented rash during his employment with Fluor in Afghanistan, but, rather the first rash started many months after Claimant returned to the States. The first diagnosis was uncertain, either atopic dermatitis or allergic contact dermatitis. Dr. Hubert cannot state which, if any, of the

allergens detected on the patch testing are responsible for Claimant's persistent skin eruption. He assumed, for sake of discussion, that the "causative chemical is one of the patch test positive allergens." (Exh. D at 2).

40. Dr. Hubert opined with a "high degree of medical probability" that "[s]ince the onset of the rash was many months after his employment with Fluor ended and Claimant was employed in a similar capacity in the United States, the allergy sensitization responsible for the chronic eruption [] occurred during his domestic employment and not while in Afghanistan." Dr. Hubert believes that if Claimant had developed an allergy due to Fluor employment, he would have developed a rash in Afghanistan or soon thereafter. Dr. Hubert noted that Claimant did not have a rash overseas and came home without any rash. (Exh. D at 2; Exh. JJ at 15, 40-41).

41. Dr. Hubert also addressed whether Claimant is disabled due to his skin condition. He noted that the severity of his condition fluctuates, depending on his medications. Dr. Hubert further commented on Dr. Dominguez's note of August 16, 2016, that "many patients on immunosuppression [] are able to work." Therefore, based on Dr. Dominguez's statements, Claimant is not disabled and is able to work. (Exh. D at 3).

Mental Health Treatment (Rick Parrott, Ph.D; Penelope J. Hooks, M.D; Caring Choices)

42. After returning to the states from overseas employment, following his termination by Fluor in late 2012, Claimant's friends said he "wasn't the same," that his "attitude" was different, and they recommended therapy. According to Claimant, he denied needing therapy "for quite some time," because he thought he was "okay" until "finally, the stress coming home, drinking, just couldn't really function so I decided to get some help." Claimant did not specify what was different or changed, according to his friends, or that any particular behaviors other than "stress coming home" and "drinking" prompted him to seek medical help. (TR at 39-40).

43. Claimant's wife at the time, Dr. Cox, did not recall or witness Claimant having any psychiatric or psychological issues in the years after his return to the States. Claimant did not complain to her about having any flashbacks or hallucinations. She recalled that there were "stresses at home, stresses from the employment issues." She was not asked to elaborate regarding her use of the term "employment issues." She did notice, however, Claimant's skin rashes in and after 2013, and the discomfort that they caused. They separated in January 2016 and divorced in February 2017. (TR at 128, 130-32).

44. Claimant first began seeking mental health treatment with Rick Parrott, Ph.D., LCSW, CFSW, in 2015. He saw Dr. Parrott on two occasions, December 5 and 12, 2015, for "anxieties symptomatically expressed" through his skin disorder (contact dermatitis). Dr. Parrott gave a "preliminary diagnosis" of PTSD, based on reported symptoms of anxious arousal, mixed emotions of anxiety and depression, excessive somatic preoccupation, and intrusive thoughts of nightmares and flashbacks. He referred Claimant to Dr. Penelope Hooks. (TR at 42, 103-04; CX-1 at 41; Exh. HH).

45. In Dr. Parrott's handwritten notes of these two visits, Claimant's skin condition is mentioned at least four times. Also noted is "PTSD" next to the comments "fear" "mid easterners [sic]" and "doesn't want [to go to] public places, i.e., Walmart." Problems with sleep and appetite are noted. Dr. Parrott recommended psychological testing to determine the extent of "trauma and somatization." (Exh. HH).

46. On June 23, 2016, Claimant presented for a biopsychosocial assessment by a licensed clinical social worker (LCSW), Tonya Aaron, at Caring Choices of Leesville, Louisiana. Complaint stated, "I need to get back on my medications. I wasn't like this before I went overseas." He endorsed several PTSD symptoms; the note states that the "trauma that caused his symptoms...involved military combat and witnessing death related to military combat." The "trauma history" on this date, which is repeated in later notes, includes Claimant seeing nine body bags containing the bodies of Afghani soldiers; he was close to "Taliban/Afghani's and Iraqi's" and was "scared of them – the color of their skin; the clothes they wear"; he heard of suicides; and he saw fighter jets from the nearby air base, which were very loud." Regarding the onset of PTSD symptoms, the note states only that the symptoms were "present for 3 months or more." (CX-1 at 10-19).

47. Claimant also described symptoms of depression caused by "life circumstances-health (severe skin disease); cannot work; not where I'm supposed to be; went overseas for 9 years; having to fight to prove that I'm sick." His depressive symptoms "began rapidly over a period of days" and he had "multiple prior depressive episodes," the dates of which were not mentioned. The note does not specifically reference the timing of the onset of any symptoms or difficulties he reported. On exam, there was no indication of thought disorder, hallucinations, or delusions. He was diagnosed with PTSD, chronic, and major depressive disorder (MDD), recurrent, moderate. (CX-1 at 10-19).

48. At follow-up at Caring Choices on July 13, 2016, with Sheila Jones-Jordan, APRN, Claimant requested help with anger and frustration. He reported working for a private contractor in Iraq and having witnessed the "aftermath of multiple deaths and suicides." His sleep was interrupted and he drank alcohol "to forget about things." Claimant was started on Prozac (Fluoxetine) for depression and Prazosin for nightmares/flashbacks. Improvement was noted in an August 19, 2016, progress note by LCSW Aaron. Claimant and his fiancée reported less agitation most days. Claimant also reported his previous dishonesty about having SI (suicidal ideations) in the past, but denied having such thoughts at that time. PTSD symptoms were decreasing. On exam, Claimant's mood was normal, with no signs of depression or mood elevation and no signs of hallucinations or indicators of a psychotic process. (CX-1 at 24-32; Exh. V at 31-33).

49. On September 14, 2016, Claimant reported to APRN Jordan that his mood was calm with medication and he had some sleep difficulties and nightmares. He reported drinking a beer "or so" on occasion. He felt he was doing better. On October 5, 2016,

Claimant reported symptoms of anger and frustration and that he was drinking "almost daily" until he became drunk. According to LCSW Smith, Prozac was continued; Prazosin was increased; and Bupropin was started for depression/sexual dysfunction. On October 31, 2016, Claimant reported depression due to medical issues and endorsed some ongoing anxiety concerning "work etc.", but he denied anger problems, denied recent substance abuse, and felt overall the medication was helping. There was improvement with nightmares, sleep, and appetite. Exam reflected no sign of depression or mood elevation and no hallucinations or symptoms of psychotic process. APRN Jordan increased his Prozac and continued the other drugs. (CX-1 at 38; Exh. V at 35, 43).

50. Tiffany Smith, LCSW, noted again on November 30, 2016, that Claimant was improving; he felt "much better," was smiling and joking and stating that he felt great. No problems with anger were reported. Mental status exam was largely normal. (Exh. V at 49-50).

51. LCSW Smith stated in a letter dated December 20, 2016, that Claimant's diagnosis of PTSD was based on his exposure to actual threatened death and serious injury while employed at KBR and also at Fluor. Smith cited 4 ways that Claimant was so exposed: 1) he "directly experienced the traumatic events (threats of suicidal bombers, threats of incoming missiles, road side bombs)"; 2) he "witnessed these traumatic events happening to others and witness[ed] death of others due to being in war zone"; 3) while at Fluor, he was stationed at FOB Shank, where he "witnessed or experienced incoming missiles 2-3 weeks minimum"; and 4) during his R&R, his sleeping quarters were bombed, killing his friend. Because of a continuation of symptoms such as a persistent negative emotional state, anger and guilt, diminished interest in things previously enjoyed, persistent negative believes about himself and others, and flashbacks and nightmares, she did not recommend that he work, especially in overseas war zone areas. At the bottom of the letter, Sheila Jones-Jordan, APRN, stated concurrence with Smith's findings. (CX-1 at 42-43).

52. Claimant sent Dr. Penelope Hooks a letter on or about December 20, 2016, asking her to confirm his diagnosis of PTSD in writing and explain the basis for the diagnosis and that it was causally related to working in a war zone environment over a period of nine years. (TR at 81-84; Exhs. FF).

53. Dr. Hooks stated in a letter dated January 12, 2017, that she had seen Claimant once, on December 16, 2015. The treatment note for that visit is not included. Dr. Hooks states she diagnosed PTSD, secondary to living and working in a war zone for nine years, and alcohol abuse secondary to PTSD. Dr. Hooks noted that Claimant reported being at a base that was bombed regularly and that he "witnessed killings and suicides." Claimant also reported marital stress. On mental status exam, Claimant's mood was angry and defiant and otherwise normal, with no suicidal/homicidal thoughts, no hallucinations, and no thought disorders. Dr. Hooks opined that Claimant should not return to a war zone or "be expected to function normally in interpersonal relationships," but stated he showed "evidence of his former competent

self" in situations of low conflict. (CX-1 at 46-47). Dr. Hooks stated she did not know Claimant's present condition. She did not specifically address his capacity to work in the States. (CX-1 at 46-47).

54. A Caring Choices progress note dated January 5, 2017, reflected worsening of Claimant's complaints, noting depressed mood and agitation. There was "discussion of reduction of alcohol, possible detox and inpatient substance abuse treatment." He showed signs of "withdrawal from a chemical," including agitation and bilateral pupillary dilation. (Exh. V at 55).

55. A March 2, 2017, progress note recorded partial improvement and continuing PTSD symptoms that were decreasing in frequency or intensity. On April 3, 2017, Claimant stated that relationships with his friends and family were normal and impulsive behaviors were fewer; he continued to drink "several days per month." As of April 25, 2017, Claimant reported to LCSW Smith that he had been off medication for about three weeks as the pharmacy did not have a refill for him. He denied using drugs and "doesn't know how he tested positive for cocaine (admits to ethol use)." Claimant then admitted to "cooking" cocaine because he was "hustling to get money," but again denied using it. He had increased irritability that he attributed to being off medication. He had no signs of anxiety or psychotic symptoms. His previous prescriptions were continued. (Exh. V at 68-72, 73, 76).

56. On May 17, 2017, Claimant reported anger issues, conflict with others, and had a physical altercation with someone since his last visit. The notes state that Claimant "[r]eported that another guy started with a verbal altercation; he got his gun to try to scare him and ended up 'beating him with pistol.'" (Exh. V at 79).

57. Claimant reported a worsening of his symptoms when he returned to Caring Choices on June 5, 2017, stating he was "not doing well at all." "He talked about seeing the dead bodies, talking with the flight crew of a helicopter one day and seeing them dead the next." He reported drinking "all weekend" until he passed out, and he reported anger outbursts. On September 11, 2017, Claimant reported doing well and his mood was stable, thought anxiety was worse to the point he had an upset stomach that caused him to throw up. On November 6, 2017, Claimant announced he had started having visual hallucinations; he stated, "I feel better but I have started seeing things." Specifically, Claimant endorsed seeing a "black image saying 'come on.'" The exam notes that day reflected endorsement of audio/visual hallucinations. His diagnosis of depression was changed from "moderate" to "severe with psychotic symptoms." At this point, additional medication (Seroquel) for psychosis/sleep was added; he was also taking Buspar for anxiety. He reported ongoing irritability and anger in January 2018. His depression diagnosis remained "severe with psychotic symptoms." All prior medications were continued. (CX-1 at 55, 61; Exh. V at 82, 91, 103-05).

58. In September or October 2018, Claimant underwent 30 days of inpatient treatment for alcoholism at a rehabilitation facility. He has been diagnosed with an alcohol abuse problem. The records of this treatment were not submitted as evidence. Claimant has

record of a DUI in 1992. (TR at 86-87).

59. Claimant continues to treat at Caring Choices and has experienced improvement of psychological symptoms as the result of treatment. (TR at 87-88).

Psychological Evaluation – John Tsanadis, Ph.D.

60. Claimant was evaluated by defense expert, John Tsanadis, Ph.D., who conducted a Psychological Evaluation over a period of three to four hours on March 17, 2018. Dr. Tsanadis is a clinical neuropsychologist and licensed clinical psychologist. His degrees include a Master of Science in Clinical Psychology (Ohio University, 2002) and Doctor of Philosophy in Clinical Psychology (Ohio University, 2005). He is board certified by the American Board of Professional Psychology and Clinical Neuropsychology. Dr. Tsanadis has a private practice and also is a neuropsychologist for the Southern Arizona VA Healthcare System. In his role with the VA, Dr. Tsanadis sees at least one hundred patients per year with either occurrence of PTSD symptoms or a history of PTSD. Dr. Tsanadis performs assessments and makes treatment recommendations but does not provide treatments. He assesses whether patients have PTSD, a neurocognitive problem, or something else. (TR at 147-155; Exhs. B & C).

61. Dr. Tsanadis testified at the hearing. His expertise was not disputed by Claimant's counsel. (TR at 152).

62. In connection with his evaluation of Claimant documented in his report, Dr. Tsanadis reviewed Claimant's medical history, his deposition testimony, and evaluated Claimant personally during a clinical interview. Dr. Tsanadis administered a number of tests during the evaluation.[5] Tsanadis reported his findings in an April 9, 2018, Independent Psychological Evaluation report. He also testified at the hearing in this matter. (TR at 155; Exhs. B & C).

63. Claimant told Dr. Tsanadis that he worked as a truck driver after returning to the States. He said he left the first truck driving job because of "Houston traffic" and he became "nervous." He then described working for Pilot Thomas and leaving that job because of his skin condition. Claimant also said he had difficulty getting along with his co-workers. (Exh. B at 9).

64. When asked about his most significant problem, Claimant told Dr. Tsanadis that he had nightmares four to five times per week. He thought the symptoms started in Afghanistan but "was not sure." Claimant "stated that [symptoms] became more

[5] As noted on page 1 of Dr. Tsanadis' report, the following test were administered: PTSD Symptom Scale-Interview for DSM-5 (PSS-I-5); Quick Inventory of Depressive Symptomatology-Clinician Related (QIDS-C); Post-Traumatic Checklist (PCL-5); Minnesota Multiphasic Personality Inventory 2nd Ed. – Restructured Form (MMPI-RF); Montreal Cognitive Assessment (MOCA); Test of Memory Malingering (TOM); Morel Emotional Numbing Test (MENT): Miller Forensic Assessment of Symptoms Test (M-FAST); and the Structured Inventory of Malingered Symptomatology (SIMS). (Exh. B at 1). Additional tests were referenced throughout the report. (Exh. B).

prominent around the time he started treatment." Claimant also reported having anxiety so badly that he starts shaking and sometimes throws up; he said he had these symptoms in Afghanistan. Claimant also described having chronic contact dermatitis, trouble getting along with others, irritability, sleeping at most five hours per night, and said he had problems with alcohol use since returning to the States in 2012. According to Dr. Tsanadis, Claimant "was vague when discussing the onset of [PTSD] symptoms." (Exh. B at 9-10, 13).

65. Dr. Tsanadis' evaluation of Claimant included tests to measure the validity of the symptoms he reported and to identify any over-reporting of symptoms. The test for memory malingering (referred to as "TOM"), which helps to distinguish an individual with significant memory problems from someone over-reporting memory problems, did not reveal any significant score to indicate that Claimant was misrepresenting any memory symptoms. He had a similar result on the Dot Counting Test, which is similar to the TOM but more focused on attention, and on a performance based measure used by Dr. Tsanadis to identify over-reporting of PTSD symptoms.[6] Claimant's interview-based inventory of symptoms did not reveal problematic scores, but the score from his self-report was "right at the cut-off so indicating there was a possibility of over-reporting," but individuals with severe psychiatric problems can also score at the cut-off level. A mildly elevated score indicating over-reporting of cognitive symptoms was indicated on the "MMPI-2-RF," which is "a very comprehensive measure of mental health functioning" with an assessment of validity. However, like the score from self-reporting of symptoms, the elevated score could indicate a person is experiencing emotional distress. (TR at 169-73).

66. Cognitive screening by Dr. Tsanadis revealed mild impairment. Emotional functioning was assessed via questionnaires for symptoms of depression and anxiety, and Claimant's scores were "unusually high."[7] In fact, the high level of depression and anxiety symptoms that Claimant reported were not consistent with Dr. Tsanadis' observations of Claimant's condition. Similarly, Claimant's score on the PCL-5, which assesses the symptom inventory specific to PTSD, was "one of the highest scores" that Dr. Tsanadis had ever seen. All of the scores indicated a significantly elevated level of symptomatology that would typically require hospitalization. He further noted that symptoms at that level of severity would often indicate that the individual "shouldn't even be able to fill out the questionnaire to begin with because their symptoms would interfere with their functioning so badly." Dr. Tsanadis concluded from his review of the medical records and his own observations and evaluation that Claimant did not require hospitalization. If he had thought so, he would have acted on it. (TR at 155, 173-76; Exh. B at 11-12, 14).

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[6] Dr. Tsanadis explained that he used this performance-based measure for a couple of years and then stopped using it after finding that it was not sensitive enough to identify individuals who were over-reporting symptoms. (TR at 171-72).

[7] Claimant's score of 22 out of 27 on the Patient Health Questionnaire 9 (PHQ-9) indicated major depressive disorder typically requiring hospitalization. His score of 19 out of 21 on the Generalized Anxiety Disorder 7 (GAD-7) and 70 out of 80 on the PCL-5 likewise indicated significantly elevated levels of anxiety and PTSD symptomatology, respectively. (TR at 173-75; Exh. B at 11-12). His score on the PSS-I-5 (57/80) fell in a range typical of individuals experiencing PTSD symptoms. (Exh. B at 13).

67. According to Dr. Tsanadis' hearing testimony, there was "some degree of ramping up symptoms ... a little bit of over-reporting," but not to the degree he would rule out the possibility of genuine symptoms. Despite his comments regarding the significantly elevated levels of symptomatology that did not appear to be otherwise supported by the clinical interview, Dr. Tsanadis concluded from performance and symptom validity assessments that there was "no consistent evidence of misrepresentation of symptoms," and as such he found it more likely than not that Claimant had genuine mental health symptomatology. Dr. Tsanadis assessed a moderate degree of depressive symptomatology. (TR at 155-56, 173-75, 187, 191; Exh. B at 12, 14, 16).

68. Dr. Tsanadis asked Claimant to identify the most significant events that were "distressing and haunting" to him. Claimant identified being warned about deadly sand viper snakes when he arrived in Kandahar in January 2004 (and there was sand in the tents). On one occasion (shortly after arriving there in January 2004), Claimant had to stay outside a bunker because it was full after hearing an explosion, which also caused him to jump out of bed and urinate/defecate on himself. He said the most significant experience was while driving on the job at night in 2005 in Kandahar when the base was on alert for a suicide bomber. On this occasion, Claimant had to fill a generator in an area where he could see nine bodies in body bags lying nearby, which caused him to cry. Claimant described learning that a helicopter pilot he knew was shot down and killed (sometime between 2004 and 2007). Claimant described having to take a dangerous 20-minute ride between Baghdad and the military base, which required a lot of protective equipment and a bullet proof bus (sometime between 2008 and 2009). He did this 3 times over a 2 year period. He recounted seeing a marine point a machine gun at a camp worker (the worker was not shot but Claimant nonetheless visualized it happening) (also sometime between 2008 and 2009). On one occasion, Claimant felt percussion and heat from a rocket attack in Kandahar (sometime between 2004 and 2007). To get to Kandahar (between 2009 and 2012), he had to fly in a helicopter over enemy territory; on one helicopter flight he feared they would crash when it tilted to one side. He was worried about being hit with a missile at the base. One time a rocket attack in Kandahar "went through the room he used to sleep"; he was not present during the attack but found the damage when he returned. Dr. Tsanadis noted that all instances of subjectively reported trauma occurred well before Claimant stopped working for Fluor, and he did not stop working voluntarily but instead was terminated. (Exh. B at 12-14).

69. Dr. Tsanadis concluded that, although Claimant reported some symptoms of depression and anxiety and an alcohol use disorder, there was no "consistent or reliable evidence that he has PTSD." Claimant's history did not indicate any particular incident(s) of his overseas employment that resulted in onset of PTSD symptoms. Another important factor was the absence of a "temporal relationship between traumas and the onset of symptoms." "There was no treatment for a few years after [Claimant] returned home which just does not follow the clinical course" of PTSD. He noted that Claimant continued working, both overseas and in the States, after the traumas without sign of occupational impairment. Thus, there was a

significant gap of no psychological symptoms or treatment after the traumas reportedly occurred. Also, Claimant's medical records reflected that he experienced improvement of psychological symptoms and an absence of anxiety at times (for example, in August, September and October 2016) and then subsequently reported worsening of his symptoms. According to Dr. Tsanadis, all of these aspects of his history did not comport with the clinical course for PTSD. (Exh. B at 13-14; TR at 155-58, 160-61, 176).

70. According to Dr. Tsanadis, in genuine cases of PTSD, one sees "clear evidence of traumatic events followed by a change in the person's behavior, increasing of symptoms [and] more often than not [in cases involving overseas' workers], they wind up getting sent home within a few weeks because they just are not functioning normally and everybody around them sees that something is not right." The condition begins as an acute stress disorder and if it persists, the individual meets the criteria for PTSD. PTSD does not appear suddenly after an extended period of time during which the individual functions "just fine." (TR at 165-66).

71. According to Dr. Tsanadis, Claimant's records do not reflect onset of an initial acute stress disorder. The initial improvement of Claimant's psychological symptoms once he started seeking mental health treatment around August to October of 2016 was initially consistent with the clinical course of PTSD, which often stabilizes and improves with treatment and with the passage of time. However, the subsequent worsening of reported symptoms and appearance of atypical symptoms were not consistent with PTSD. For example, a sudden onset of symptoms of paranoia according to a May 17, 2017, treatment note, and hallucinations reported November 6, 2017, were not symptoms that typically appear spontaneously with PTSD patients; Dr. Tsanadis described hallucinations as "very uncommon" and not typically associated with PTSD. Flashbacks, which are rare, ordinarily present as an individual feeling that they are back in the stressful environment (like Vietnam) and are not described as a hallucination. Dr. Tsanadis explained that PTSD symptoms should "stabilize if not improve" with treatment, and about half of the cases "spontaneously recover with time" because "symptoms dissipate and improve and go away and the person's functioning improves." In this case, Dr. Tsanadis note that the worsening of Claimant's condition after improvement and his symptoms atypical for PTSD could be explained by his alcohol use problem, a substance use problem, and/or the secondary gain (financial incentive) aspect related to Claimant's pursuit of workers' compensation benefits and disability benefits. (TR at 158-59, 161-68, 176-77, 184; Exh. B; Exh. V at 68-82, 103).

72. Dr. Tsanadis diagnosed unspecified depressive disorder, unspecified anxiety disorder, and alcohol use disorder, moderate. He explained that "unspecified" means the individual has symptoms (here, of depression and anxiety) but does not meet the full criteria for any of the specific mood disorders. Depression is related to mood and may involve negative feelings about oneself and sleep disruption, and anxiety indicates worry, irritability, and strong responses to things. (TR at 176-80, 186, 188; Exh. B at 14).

73. Dr. Tsanadis did not find any evidence that Claimant's exposure to work life overseas caused his anxiety or depression or his overall "mental condition." His report contains the following question presented by Fluor, "Does reliable data indicate that the claimant's mental condition was caused or aggravated by his/her employment with Fluor?" Dr. Tsanadis answered, "Evidence is equivocal with respect to the claimant's mental condition being caused or aggravated by his employment with Fluor. Evidence is not compelling that his mental condition was caused exclusively by his employment; however, there is some evidence that experiences he had while working for Fluor may have contributed to his current difficulties. Specifically, the claimant was terminated from his employment and returned home. He then had difficulty readjusting and began problematic alcohol use." (TR at 180; Exh. B at 15).

74. At the hearing, Tsanadis testified that when he referred to work "experiences" with Fluor, he was referring to his "overall experience working overseas," which resulted in "adjustment difficulties" the Claimant experienced after returning from long stints of overseas employment. He noted that Claimant was away from family and friends for most of a decade. Thus, reintegration for Claimant after working overseas required a "big adjustment." In his report, Dr. Tsanadis opined that experiences Claimant had during employment with Fluor "may have contributed to currently symptomatology," but any reports of traumatic experiences had "occurred well before he stopped working" and Claimant also did not voluntarily stop working; these were factors detracting from any causal relationship between Claimant's employment and his mental condition. (TR at 190; Exh. B at 15).

75. According to Dr. Tsanadis' report, the "primary barriers to a return to work for the claimant appeared to be clinical in nature" and that depression and anxiety were restricting him from returning to work. Dr. Tsanadis opined that Claimant's "mental health symptomatology is significant enough that he is currently incapable of performing the material and substantial duties of his occupation. However, with appropriate treatment it is expected that occupational functioning will be restored." The treatment that Dr. Tsanadis recommended involved four months of weekly sessions of empirically validated psychotherapy and pharmacological therapy to address his symptomatology, including anxiety, PTSD-like symptomatology, and depressive symptoms. He felt that the treatment plan should also address alcohol abuse, as it exacerbates the other mental health conditions (Exh. B at 14, 16, 17-18; TR at 188-89).

76. At the hearing, Dr. Tsanadis emphasized the Claimant's alcohol use as the overarching problem that could impede Claimant's successful engagement in gainful employment. He testified Claimant was fit to engage in gainful employment because he assumed Claimant had undergone the treatment Dr. Tsanadis recommended. (TR at 186, 189).

Labor Market Survey

77. Vocational Rehabilitation Consultant Rebecca J. Spricks, M.S., CRC, prepared a Labor Market Survey, at the request of Fluor/AIG's counsel. She has expertise in vocational rehabilitation, which Claimant did not challenge. (Exhs. F, G; TR at 152).

78. Ms. Spricks' noted the DOT job classification of Claimant's overseas position of Fuel-System-Maintenance Supervisor, DOT Code 638.131-010, which has a skill level of 7 (with training time of over 2 years up to and including 4 years), and light exertion level (lifting 20 lbs. occasionally, 10 lbs. frequently, negligible amounts constantly). (Exh. F at 10-13).

79. The Labor Market Survey completed by Ms. Sprick between February 21 and 26, 2019, identified 10 jobs in Claimant's geographical area, with salaries ranging from $20,624 to $60,000 annually, and 4 overseas positions, with salaries ranging from $45,056.88 to $75,000 annually. Ms. Sprick considered Claimant's age, education, employment history, and physical capabilities (Exh. F at 14-20).

80. Claimant applied for the jobs identified in the labor market survey prepared by Ms. Sprick. He did not apply for other jobs on his own, on medical advice. (TR at 33-34, 97-98, 110-11).

Notices of Injury/Filing of Claims

81. On November 8, 2016, SEII filed an LS-202 (Employer's First Report of Injury) referencing Claimant's allegations of PTSD, depression and worsening of psychological condition. The date of injury was August 1, 2015. (EX-1).

82. On December 13, 2016, Claimant filed an LS-203 (Employee's Claim for Compensation), alleging "prolonged and continual exposure to burning petroleum oil, rubber, and other industrials [sic] products." SEII is identified as the employer, and the injury date appears to be February or March 12, 2016 ("date causation established"). (EX-2).

83. On May 12, 2017, Claimant filed an amended LS-203 alleging "prolonged exposure to war zone environment, prolonged exposure to allergens via burn pit exposure" and injury date of November 4, 2015 ("1st date of diagnosis"). Only Fluor is named as employer. (EX-3).

84. A second amended LS-203 was filed on August 17, 2017, naming SEII and Fluor and claiming "PTSD, Depression, worsening of psychological condition, and/or aggravation of a pre-existing psychological condition." This time the injury date given was December 5, 2015. (EX-4).

85. Claimant's Pre-Hearing Statement (Form LS-18) identified injuries of PTSD after working in Afghanistan and Iraq for nine years, and chronic eczematous dermatitis due to prolonged exposure to burn pits overseas. (CX-6).

III. THE PARTIES' POSITIONS

Claimant

As for the timeliness of the notice of his injury or disease, Claimant argues that his skin condition should be considered an occupational disease and he did not know until Dr. Dominguez' July 22, 2016, opinion that his overseas work exposures caused his skin condition and prevented him from working. Thus, given a date of awareness of July 22, 2016, his November 4, 2016, claim regarding his skin disease was timely notice and a timely claim. (Claimant's Post-Hearing Brief at 46-47). Claimant submits that his October 6, 2016, claim for benefits for a psychological disease was actually prior to the December 20, 2016, opinion of LCSW Smith regarding the causal connection between his work overseas and his diagnosis of PTSD, and thus also timely. (*Id.*).

Claimant contends that he successful invoked the Section 20(a) presumption that his skin disease was caused by his overseas employment, and this was not rebutted. Even if the presumption were deemed rebutted, Claimant argues that the weight of the evidence establishes that the claim is compensable. (*Id.* at 10-22). To support his position, Claimant relies on the records of his medical treatment, primarily with Drs. Hsu and Dominguez, and the opinion of Dr. Dominguez that the biopsies and skin patch testing indicated Claimant's diagnosis was possibly allergic contact dermatitis and that his employment activities overseas exposed him to materials containing allergens. (*Id.* at 15-16). Because Dr. Dominguez "noted Claimant first developed itching and small blisters on his hands while working overseas in 2007," Dr. Dominguez opined that these symptoms were "clinically suspicious for hand dermatitis" because "rubber, chromate, nickel and metals are well-known causes of allergic contact dermatitis involving the hands." (*Id.* at 16). As argued by Claimant, "Dr. Dominguez concluded his narrative [opinion] by opining that Claimant's skin condition is consistent with persistent post-occupational dermatitis, noting that he was exposed to allergens on a daily basis while working overseas, where he developed recurrent hand dermatitis." (*Id.* at 17). Claimant also acknowledges that his "first skin eruption occurred in the summer of 2013 at a time when he was not working" and his "hand began blistering" in March 2014" at a time he was working again. (*Id.* at 10, 19).

Addressing the opinion of Dr. Hubert obtained by Fluor, Claimant argues that Dr. Hubert acknowledged that connection between a person's exposure to chemicals for years prior to developing an allergy and the lack of medical understanding regarding the triggers for the immunological change. (*Id.* at 19). Claimant emphasizes that at the time of his first skin eruptions in 2013, he was not working yet in the States following his Fluor employment. (*Id.*). Thus, Claimant takes issue with Dr. Hubert's opinion that Claimant's employment in the States was responsible for the allergy sensitization and chronic eruption that occurred starting in 2013. (*Id.* at 19-21). Claimant also briefly argues that Dr. Hubert "made no mention of smoke exposure Claimant was subject to overseas, though Dr. Dominguez noted the exposure, opining that industrial smoke can often contain metal compounds." (*Id.*).

Concerning his psychological injury, Claimant relies on Dr. Dominguez' opinion that his skin condition caused "significant mental anguish," and Caring Choices notes that Claimant's symptoms of a depressive disorder were precipitated, in part, by his skin disease. (*Id.* at 22, 27).

Claimant contends that traumatic events leading to his psychological condition included being in a helicopter which he thought would crash, being around "bombing and [] death" while working for SEII, "hearing three gunshots and then seeing the body of a soldier who committed suicide" while working for Fluor, seeing "human bodies laid out and being put into body bags," having "heard two people commit suicide in Iraq," being fearful of the Taliban/Afghanis/Iraqis. (*Id.* at 22-25). Claimant asserts that the records document his symptoms of PTSD and depression and that he was at times drinking alcohol heavily, as recognized by both LCSW Aaron and Dr. Tsanadis. (*Id.* at 24). He relies on the records of his treatment at Caring Choices, where he was diagnosed with PTSD and MDD. (*Id.* at 23-28). Claimant also relies on the opinion of LCSW Smith dated December 20, 2016, that the cause of his PTSD was prior exposure overseas to "actual threatened death [] and serious injury" while working for both SEII then Fluor. (*Id.* at 27-28). He also relies on the diagnosis of PTSD and alcohol abuse secondary to the PTSD, by Dr. Hooks. (*Id.* at 28-29).

Like his skin condition, Claimant argues that he is entitled to the Section 20(a) presumption that he sustained a psychological disease caused, aggravated or accelerated by his employment, or as the natural and unavoidable result of his work injury (his skin disease), and not due to any intervening cause. (*Id.* at 29-30, 37-38). Claimant cites *Amerada Hess Corp. v. Director, OWCP*, 543 F.3d 755 (5th Cir. 2008), for the proposition that a psychological condition secondary to a work injury (here, skin disease) is compensable. (*Id.* at 37-38).

Claimant recounts the list of traumatic events that he described to Dr. Tsanadis. (*Id.* at 32-33). Claimant submits that Dr. Tsanadis initially found him to have an elevated score on the PTSD symptom scale in a range typical of individuals experiencing PTSD symptoms, and testing did not indicate misrepresentation of symptoms. (*Id.* at 33-34). Noting Dr. Tsanadis' diagnoses of unspecified anxiety disorder, unspecified depressive disorder, and alcohol use disorder, moderate, which his experiences while working for Fluor "may have contributed to," with no evidence of a mental health condition pre-dating his overseas employment, Claimant argues that his mental health treatment should be deemed compensable "even though it is due only partly" to a work-related condition, citing *Kelley v. Bureau of Nat'l Affairs*, 20 BRBS 169 (1988). (*Id.* at 35). According to Claimant, Dr. Tsanadis also noted the effect of his skin condition (physical discomfort, fidgeting, scratching), yet "made no mention of whether Claimant's severe skin problems may be contributing to his mental state." (*Id.* at 34). Making a distinction between Dr. Tsanadis' report and testimony, Claimant argues that the written opinion does not rebut Claimant's entitlement to the presumption under Section 20(a). (*Id.* at 36).

Claimant takes issue with the difference between Dr. Tsanadis' written report stating that there is some evidence that Claimant's "experiences he had while working for Fluor may have contributed to his current difficulties," whereas he later testified that his use of the term "experiences" meant Claimant's adjustment difficulties. (*Id.* at 38). Further, because Dr. Tsanadis stated in his report that Claimant has PTSD-like symptomatology or symptoms, this is sufficient for Claimant to establish a work-related injury, since claimants need not have any specific diagnosis in order to have a valid claim of a psychological condition caused, aggravated, or accelerated by his employment, citing *S.K. [Kamal] v. ITT* Industries, Inc., 43 BRBS 78 (2009). (*Id.* at 39).

As for the nature and extent of his disability, Claimant argues that his disabilities are permanent because he has not yet reached maximum medical improvement as to his psychological condition, given Dr. Tsanadis' opinion that his symptomatology is significant enough that he is incapable of performing the material and substantial duties of his occupation, as well as the opinions of LCSW Smith and Dr. Hooks. He also argues he is not at MMI regarding his skin condition, given Dr. Hsu's February 12, 2016, opinion that Claimant was unable to work full time due to his severe eczema. (*Id.* at 48, 52). He also contends that Employers have not established the availability of suitable alternate employment, because Ms. Sprick incorrectly assumed the Claimant had completed the therapy recommended by Dr. Tsanadis and had no psychological limitations. (*Id.* at 52-54). Additionally, Claimant contends the labor market should be limited to the area around his residence (his "chosen community") at the time of filing for disability benefits. (*Id.* at 55-59).

As to his wage-earning capacity, Claimant submits that his capacity should be determined by his actual earnings, pursuant to Section 8(h) of the Act, otherwise the Court may fix the wage-earning capacity as may be reasonable, considering the Claimant's usual employment, degree of physical impairment, or other pertinent factors. (*Id.* at 60-66).

Finally, regarding the proper average weekly wage (AWW), Claimant contends that prior to his onset of disability in 2013 (at his "first skin eruption"), he was last employed by Fluor on November 18, 2012, and had $125,909 in taxed Medicare earnings in 2012 up through his last employment date, which yields an average of $2,737.15 over the 46 weeks of work in 2012. (*Id.* at 66). From June 1, 2012, until the date of his termination in November, he would have earned an average of $1,285.93 per week ($66,868.57 over 24.43 weeks), for the 52 weeks from June 1, 2012, to the onset of disability June 1, 2013. (*Id.*). Therefore, Claimant urges use of an AWW of $1,285.93, under Section 10(c) of the Act. (*Id.* at 62-66).

Fluor

Fluor contends that Claimant fails to establish causation of either his psychological or dermatological injuries, and thus cannot establish disability or injury. (Fluor's Post-Hearing Brief at 14). Fluor submits that Claimant did not present any of its medical experts for cross-examination, whether at deposition or at trial, and thus Fluor is entitled to an adverse inference based on Claimant's reliance on treatment records without producing the treating providers for cross-examination. (*Id.* at 14, 23-26). In contrast, Fluor argues that it produced both its medical experts for cross-examination (Dr. Tsanadis and Dr. Hubert).

As for the psychological injury, Fluor contends that Claimant never saw any direct acts of violence, only after-the-fact physical damage to property and body bags concealing the injuries to those persons. (*Id.* at 15). Fluor relies on the opinion of Dr. Tsanadis that Claimant had "no specific incident that resulted in onset of [psychological] symptoms that led to work-related problems," and Claimant did not follow the clinical course of PTSD and did not have PTSD. (*Id.*). Flour acknowledges Claimant had "some psychological symptoms, such as depression and anxiety" and "problematic alcohol use." (*Id.*). Fluor cites the examples of record where Claimant had periods of improvement with mental health treatment as supportive of Dr. Tsanadis' testimony that the absence of treatment for several years after overseas employment,

along with improvement of symptoms followed by exacerbations, did not support a diagnosis of PTSD. (*Id.* at 15-17).

Fluor contends that the mental health records and testimony of Dr. Tsanadis, combined with Claimant's lack of credibility, reflect that secondary gain motivated Claimant's increased psychological complaints. (*Id.* at 16-18). Fluor also points to other sources of Claimant's stress such as loss of a six-figure job and marital strife. (*Id.* at 16-17). On the matter of credibility, Fluor argues that Claimant demonstrated "several moments of a lack of candor" at the formal hearing, including the following examples:

- Claimant's conflicting testimony on whether he was fired by Pilot Thomas, only admitting he was fired after being presented with his deposition testimony.
- The circumstances of Claimant's termination by Fluor due to missing fuel after an inventory of fuel levels and interviews of Claimant and his subordinate employees, though Claimant denied being interviewed in connection with this investigation and also characterized the basis for his termination as due to "downsizing." Claimant persisted in denying any awareness that the reason for his termination was any wrongdoing, but admitted that he was sent home immediately without opportunity to retrieve his personal belongings. Claimant lost his security clearance with the U.S. Department of Defense because of his termination.
- When Claimant told Dr. Dominguez about occupational exposures to fuel products, he identified only his overseas employment and omitted his more recent stateside employment at J.A.M. and Pilot Thomas.
- Claimant initially denied, then claimed inability to affirm or deny, whether his signature appeared on a letter that appeared to be addressed by him to Dr. Hooks seeking confirmation of his diagnosis of PTSD.
- Claimant has a 1992 conviction for driving under the influence and has been treated for alcoholism.
- Claimant admitted to cooking cocaine for money since his overseas employment.
- Claimant admitted to lying on his Statement of Earnings form (LS-200) by not reporting earnings from cooking cocaine.

(*Id.* at 10-11).

Fluor argues that Dr. Tsanadis' opinions should be given more weight than the opinions of treating social workers or registered nurse practitioners, who do not have the same degree of training and experience with mental health assessments, diagnostics or matters of causation. (*Id.* at 19-20). Fluor notes that the only doctors who provided letters on Claimant's behalf were Dr. Parrott and Dr. Hooks. Fluor further notes the very limited duration of their treatment of Claimant, the absence of any testing like that conducted by Dr. Tsanadis, that their credentials are unknown, and that they never provided testimony. (*Id.* at 20-21).

As for Claimant's skin condition, Fluor argues that this claim rests on the "substantially flawed" opinions of Dr. Dominguez. (*Id.* at 21). Fluor takes issue with Dr. Dominguez' failure to address the facts reported by Claimant on May 31, 2016, that Claimant "never noticed any

[skin] issues when working overseas on military bases from Jan. 2004-Nov. 2012," and that it was after returning to the States, not working for several months, buying a home, buying leather furniture, and starting to cut grass, and going back to work delivering fuel and petroleum products that Claimant first had a severe allergic reaction. (*Id.* at 21-22). Given Claimant's decision not to elicit the testimony of Dr. Dominguez, and Dr. Dominguez' failure to heed the hearing subpoena despite his location in the same Dallas area, Fluor contends that a number of questions remain unanswered such as whether Dr. Dominguez ever read Claimant's deposition or Dr. Hsu's records, and whether he knew: the length of Claimant's overseas employment or his duties there, the Claimant's stateside job duties, that Claimant did not seek treatment for his skin overseas or lose any time from work due to his skin, that Claimant had no skin eruptions for 7 years overseas, that Claimant handled detergents and lawn care products in the States, that he worked as a fuel truck driver handling the same products he handled in this position overseas, and that he was able to work as a fuel truck driver after his first eruption. (*Id.* at 25-26).

Fluor submits that, in contrast, the opinions of Dr. Hubert are to be given more weight because he testified by deposition in support of his opinions and explained that the absence of any rash overseas reflects that Claimant's overseas employment was not the cause of his skin condition. (*Id.* at 26-27). Rather, Dr. Hubert testified with a high degree of medical probability that Claimant's stateside exposure was the cause, giving the timing of Claimant's eruption and absence of such symptoms overseas. (*Id.* at 27-29).

Further, Fluor contends that Claimant has no disability resulting from either of his alleged injuries. (*Id.* at 29-33). Fluor argues that disability is economic incapacity coupled with a physical impairment and that Claimant left his overseas employment because he was terminated for cause; therefore, under *Myers v. QinetiQ*, 50 BRBS 97 (ALJ 2016), Claimant does not have a disability under the Act. (*Id.* at 30). Fluor also acknowledges that under *Moody v. Huntington Ingalls, Inc.*, 879 F.3d 96 (4th Cir. 2018) and *Robinson v. AC First, LLC*, 52 BRBS 47 (BRB 2018), voluntary retirement from the workforce may not always precluding a finding of disability. (*Id.* at 31). Fluor argues that *Moody* should not be expanded to apply to the facts in this case, because in *Moody* the claimant retired from work and later experienced an onset of work-related symptoms. Fluor argues that because Claimant's symptoms are not work-related, *Moody* is distinguishable. (*Id.*). Fluor also asserts that *Robinson* is distinguishable because, unlike the claimant in *Robinson*, Claimant here did not voluntarily chose to obtain lower paying work in the United States despite having PTSD resulting from his overseas employment. (*Id.* at 31-32). Rather, Fluor argues, Claimant did not voluntarily choose lower-paying employment in the States; he was fired for malfeasance or misfeasance. (*Id.* at 32). Therefore, Fluor argues that the Claimant's economic incapacity, or "deprivation of economic choice" as described in *Robinson*, is not due to any alleged work-related injury or voluntary change employment. (*Id.*).

In the alternative, if *Moody* were deemed to apply here, Fluor argues that Claimant has not suffered a loss of wage earning capacity. (*Id.* at 33-41). Fluor refers to the injuries at issue as occupational diseases and cites the Claimant's date of injury as December 5, 2015, according to his most recent Form LS-203. (*Id.* at 33; Exh. O at 10). Thus, the time of injury, for purposes of computing AWW, should be the date on which the employee became aware or should have been aware of the relationship of his employment and the disease, according to Section 910(i) of the Act (here, December 5, 2015). (*Id.* at 33).

Fluor computes Claimant's AWW at J.A.M. as ranging from $1,428 - $1,596 and at Pilot Thomas ranging from $1,554 - $1,764. (*Id.* at 35 and n. 19, 20). Fluor argues for application of the National Average Weekly Wage (NAWW) as of December 5, 2015, because Claimant's injury occurred more than one year after "retirement" from DBA employment. (*Id.* at 34). Fluor contends that Claimant's weekly earnings at Pilot Thomas (which is computed to be $1,659) exceeded the NAWW; therefore, he sustained no loss of wage earning capacity. (*Id.* at 34-35).

In addition, Fluor relies on the report and testimony of vocational rehabilitation expert Ms. Sprick, arguing that she found overseas and domestic jobs with wages greater than the NAWW. (*Id.* at 36-37). Fluor computes the AWW for these overseas jobs at $866.48 to $1,442.31, and for the domestic jobs at $396.62 to $1,153.85. (*Id.* at 36 and n. 24, 25, 26).

Lastly, in more complex cases like the present one, involving voluntary withdrawal from the workforce, subsequent employments, and latent/chronic occupational diseases, Fluor argues for the administrative law judge's "wide deference" in utilizing tiered approaches to determining the AWW, citing *Kubin v. Pro-Football, Inc.*, 29 BRBS 117 (BRB 1995) and distinguishing *Blackwater Security Consulting, LLC v. Director, OWCP*, 503 Fed. Appx. 498 (9th Cir. 2012). (*Id.* at 38-39).

SEII

SEII challenges the timeliness of Claimant's notices of injuries under Section 12 of the Act. (SEII's Post-Hearing Brief at 3-5). SEII argues that Claimant knew or should have known of the connection between his skin eruption and his overseas employment by March or April 2014, but did not give notice of this injury within one year (by March or April 2015); SEII asserts the first notice was given by LS-203 dated December 13, 2016. (*Id.* at 4; EX-2).

SEII further argues that Claimant's notice of his psychological injury should have been given within one year of June 23, 2016, when he was diagnosed with a depressive disorder linked to his skin condition. (CX-1 at 11). However, Claimant's first LS-203 alleging a psychological injury against SEII was dated August 17, 2017. (EX-4). For the same reasons, SEII argues that Claimant's claims against it were untimely under Section 13 of the Act. (SEII's Post-Hearing brief at 5-6).

SEII also argues, like Fluor, that Claimant failed to establish a causal connection between his injuries and his overseas employment. (*Id.* at 6-8). SEII points to the Claimant's subsequent employment by Fluor with exposure to the same working conditions (exposure to fuel/petroleum products, exposure to a war zone and its hostilities) for roughly three additional years after his SEII employment. (*Id.* at 7). SEII submits that any presumption of causation invoked by Claimant was rebutted by the only testifying psychologist, Dr. Tsanadis, and by the only testifying dermatology expert, Dr. Hubert. (*Id.* at 7-8). According to SEII, the testimony of Dr. Cox, Claimant's former wife, further supports the absence of skin or psychological symptoms when Claimant returned from overseas employment. (*Id.* at 8).

Like Fluor, SEII also argues for the special method of computing AWW under Section 10(i) of the Act, using the date that Claimant knew or should have known of the relationship between his employment and his alleged injuries (both skin and psychological). (*Id.* at 8-10). Regarding his skin condition, SEII submits that the injury date for AWW purposes should be August 16, 2016, when Dr. Dominguez gave "the first written diagnoses related to work restrictions."[8] SEII contends that Claimant's first diagnosis of his psychological condition, after his return to the States, arising out of his work conditions, is not clear in the record. (*Id.* at 10).

As far as any loss of earning capacity, SEII notes that Claimant was fired by Fluor and lost his security clearances necessary for working for a defense contractor in Iraq or Afghanistan. (*Id.* at 10). Therefore, SEII argues that his loss of wages or earning capacity should be based on his domestic employment earnings. (*Id.* at 10-11). Finally, SEII argues Claimant forfeited entitlement to compensation benefits by omitting any mention of earnings from cooking cocaine, which should be deemed revenue from self-employment, on the LS-200 forms he completed. (*Id.* at 11-13). SEII contends that even illegal earnings should be included as employment income, citing the Tax Code, the Social Security Act, and the BRB in *Young v. Newport News Shipbuilding & Dry Dock Co.*, BRB No. 10-0678, 2011 WL 2616916 (BRB June 22, 2011). (*Id.* at 12).

Finally, SEII revisits the arguments it raised in its previous Motion for Summary Decision, denied by Order dated July 19, 2018 (ALJ Tracy Daly). (*Id.* at 13-16). SEII argues that, at a minimum, Claimant was exposed to injurious stimuli during subsequent employment by Fluor, which could have caused the alleged skin and psychological injuries. Therefore, SEII submits that, as a matter of law, Fluor is the last responsible employer and solely liable for any benefits awarded to Claimant for dermatological and/or psychological injuries. (*Id.* at 15-16).

IV. APPLICABLE LAW AND ANALYSIS

It has been consistently held that the Act must be construed liberally in favor of the Claimant. *Voris v. Eikel*, 346 U.S. 328, 333 (1953); *Atlantic Container Service, Inc. v. Coleman*, 904 F.2d 611, 613 (11th Cir. 1990); *J. V. Vozzolo, Inc. v. Britton*, 377 F.2d 144 (D.C. Cir. 1967). The United States Supreme Court has determined that the "true-doubt" rule, which would resolve factual doubt in favor of the Claimant when the evidence is evenly balanced, violates Section 7(c) of the Administrative Procedure Act, 5 U.S.C. Section 556(d), which specifies that the proponent of a rule or position has the burden of proof and, thus, the burden of persuasion. *Director, OWCP v. Greenwich Collieries*, 512 U.S. 267 (1994).

A. Credibility Determinations and Evaluations of Expert Opinions

The undersigned fully considered the entire testimony of every witness who appeared at the hearing, as well as witnesses who testified by deposition. As the finder of fact in this matter,

[8] SEII does not cite to a part of the record containing an August 16, 2016, opinion of Dr. Dominguez. There is a July 22, 2016, letter by Dr. Dominguez referencing the possibility Claimant can "return to work in the near future" (CX-1 at 33) and an August 29, 2016, letter by Dr. Hsu stating the Claimant's skin condition prevents him from working full time. (CX-1 at 34).

the undersigned is entitled to determine the credibility of witnesses, to weigh evidence, and to draw her own inferences and conclusions from the evidence, and is not bound to accept the opinion or theory of any particular witness. *Banks v. Chicago Grain Trimmers Ass'n.*, 390 U.S. 459, 467 (1968), *reh'g denied*, 391 U.S. 929 (1968) (part of witness's testimony may be accepted without accepting it all); *Atlantic Marine, Inc. v. Bruce*, 661 F.2d 898, 900 (5th Cir. 1981) ("It is fundamental that credibility determinations and the resolution of conflicting evidence are the prerogative of the fact finder, here the ALJ.").

An administrative law judge is not bound to believe or disbelieve the entirety of a witness's testimony, but may choose to believe only certain portions of the testimony. *Mijangos v. Avondale Shipyards, Inc.*, 948 F.2d 941 (5th Cir. 1991). In weighing testimony in this matter, the undersigned considered the extent to which the testimony of each witness was supported or contradicted by other relevant, credible evidence, the relationship of the witnesses to the parties, the witnesses' interest in the outcome, demeanor while testifying, and opportunity to observe or acquire knowledge about the matter at issue. *See Louis v. Blackburn,* 630 F.2d 1105, 1105 (5th Cir. 1980); *United States v. Whitaker*, 2017 U.S. Dist. LEXIS 84894 (M.D. La. 2017) ("In weighing credibility determinations, courts weigh factors such as inconsistencies, intentional omissions, and even demeanor of the witnesses in order to determine if the witness's testimony is credible.") (citations omitted).

As it concerns expert testimony, an administrative law judge may rely on her own common sense. *Avondale Indus., Inc. v. Director, OWCP*, 977 F.2d 186, 189 (5th Cir. 1992). An ALJ is not bound to accept a physician's opinion if rational inferences urge a contrary conclusion. *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741, 742 (5th Cir. 1962). An ALJ may base one finding on a physician's opinion and, then, on another issue, find contrary to that physician's opinion. *Pimpinella v. Universal Maritime Service, Inc.*, 27 BRBS 154, 157 (1993).

A physician's conclusions must be assessed on their logic, the evidence on which the conclusions are based, their internal and external consistency, and how the opinion comports with other evidence in the record. *Newport News Shipbuilding & Dry Dock Co. v. Ward*, 326 F.3d 434, 441-42 & n.4 (4th Cir. 2003). A well-reasoned and well-documented opinion may be entitled to greater evidentiary weight. *Jackson v. Ceres Marine Terminals, Inc.*, 48 BRBS 71 (2014). A medical opinion may be rejected if it has no clear basis, lacks an evidentiary foundation, or relies on a faulty factual premise. *American Grain Trimmers, Inc. v. Director, OWCP [Janich]*, 181 F.3d 810 (7th Cir. 1999); *Hampton v. Bethlehem Steel Corp.*, 24 BRBS 141 (1990). A physician's failure to adequately explain his or her conclusions undermines the opinion's probative value. *Newport News Shipbuilding & Dry Dock Co. v. Winn*, 326 F.3d 427, 433 (4th Cir. 2003).

The opinion of a claimant's treating physician is generally given greater weight, since the treating physician "is employed to cure and has a greater opportunity to know and observe the patient as an individual." *Amos v. Director, OWCP*, 153 F.3d 1051, 1054 (9th Cir. 1998), *amended by* 164 F.3d 480 (9th Cir. 1999), *cert. denied*, 528 U.S. 809 (1999). A treating physician's opinions are "not, however, necessarily conclusive as to either a [the existence of a] condition or the ultimate issue of disability," and an ALJ retains the discretion to disregard even an uncontradicted opinion of a treating physician when the ALJ can identify clear reasons for doing so. *See Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989); *Makhmoor v. Mission*

Essential Personnel, LLC, BRB No. 17-0339 (BRB Jan. 11, 2018), *aff'd*, 2019 U.S. App. LEXIS 32277 (9th Cir. 2019). *See also O'Kelley v. Dep't of the Army/NAF*, 34 BRBS 39 (2000) ("[A]n administrative law judge is not required to find determinative the opinion of [a party's] medical expert simply because the expert is more highly trained or is claimant's treating physician."). The Board has recognized that a "decision to accord greatest weight to the better reasoned opinion of the better credentialed professional is rational and within the administrative law judge's discretion as the fact-finder." *Perron v. Huntington Ingalls Industries, Inc.*, BRB No. 15-0174 (BRB Nov. 17, 2015) (affirming ALJ's denial of claim of work-related PTSD) (citing *Consolidation Coal Co. v. Borda*, 171 F.3d 175 (4th Cir. 1999)).

The undersigned makes the following credibility assessments of the witnesses who presented testimony and evaluations of expert testimony and of the non-testifying medical experts in this case:

1) Claimant Americo Gatewood (TR at 24-127)

Claimant's testimony was at times evasive, inconsistent, or not plausible, which detracted from his credibility. He denied knowing the circumstances of being terminated by Fluor after the company's investigation determined that more than 300,000 gallons of fuel valued at about $1,000,000 was missing in the fuel department under Claimant's supervision in Marmal, Afghanistan. (TR at 60-7; Exh. J at 6). His denial was not plausible. Claimant initially, readily agreed that he was terminated from Fluor. (TR at 60). He then subsequently denied knowing any of the investigative findings that led to his termination or even the fact that he was interviewed by corporate investigators. (TR at 60-62, 64-65). Despite disavowing such knowledge, Claimant then volunteered a potential explanation for missing fuel involving problems that may occur when gauging fuel bags. (*Id.* at 65). Notably, the investigation concerned just that, i.e., the gauging of fuel bags, and investigators found that Claimant was aware of the gauging issues and "instructed personnel to continue manipulating the gauges on the fuel bladders" until the end-of-the-month reports to give the appearance that on-hand fuel amounts were consistent with reported amounts. (Exh. J at 8). When asked whether anyone ever discussed with him fuel missing by mistake, as opposed to intentional stealing of fuel, Claimant said no one had to tell him about any such mistake because he had personally seen the mistake. (*Id.* at 65-66). Claimant then appeared to admit that the company brought the fuel gauge readings to his attention so that he could "take responsibility for it" since he was the supervisor. (*Id.* at 67). However, Claimant still maintained that he believed he was let go due to downsizing. (*Id.* at 67-68). He testified to being notified of his termination in Bagram, Afghanistan, within 24 hours after returning to Marmal (where he had been working and the fuel discrepancies were investigated) after a 21-day vacation; Claimant left the country from Bagram and "never had a chance to go back [to Marmal] and get [his] things." (*Id.*). Claimant could not explain why downsizing would require leaving all of his belongings. His awareness that he "saw the mistake" with gauging and was "charged with those gauge readings ... because I was a supervisor," belies his repeated claims of ignorance of the grounds of his termination.

Claimant was similarly evasive regarding the circumstances of leaving employment with Pilot Thomas, only admitting he was fired after being presented with his deposition testimony. Claimant was asked directly on cross-examination, "Now, that employment [with Pilot Thomas]

ended because you got fired, right?" Claimant answered, "No." (TR at 43-44). At his previous deposition, Claimant testified, "I was fired because I came home for my daughter's graduation." (*Id.* at 44-45; Exh. A at 12). Claimant denied at hearing that these answers were dissimilar. (TR at 45-46). I also note that in the employment history Claimant gave Dr. Tsanadis, he claimed to have left the job he started in January 2014 (J.A.M.) because he had trouble dealing with Houston traffic and became nervous. (Exh. B at 9). The only other reference in the record to the reason for Claimant's departure from J.A.M. was in the employment records provided by J.A.M., which stated Claimant left for another job that paid better. (Exh. W at 4-5).

Claimant gave inconsistent testimony regarding whether he signed a letter dated December 22, 2016, addressed to Dr. Hooks, in which he referenced a telephone conversation with her, a payment for a medical invoice for his 12/23/15 appointment, and additional payment for his 12/16/15 psychiatric diagnostic evaluation, and then summarized his employment history, history of traumas, and ask for a written medical opinion "per my attorney." (Exh. FF). He further described having returned to his hometown in Louisiana where he was continuing his care at Caring Choices of Leesville, mentioning his providers there by name. (*Id.*). Accordingly, the letter contained numerous details that Claimant would likely know. Even so, Claimant initially testified, "That ain't my signature" on the letter. (TR at 81). Then he stated, "I don't recall signing it," and shortly thereafter, he agreed that he had composed a letter like that. (*Id.* at 83). Claimant's testimony shifted quickly, without explanation.

During the hearing, Claimant was asked whether he "used cocaine" since returning from Afghanistan; he stated he did not use it but admitted that "[i]t was in my system." (TR at 88-89). He then denied he had told Caring Choices that he was "selling cocaine," only admitting that he cooked cocaine. (*Id.* at 89). However, when faced with the medical record stating that he was cooking cocaine *for money*, Claimant admitted that it was true that he cooked cocaine for money. (*Id.* at 89, 91). Claimant's answers struck the undersigned as evasive. Claimant admitted that he gave false information on the LS-200 forms for identifying wages or earnings from self-employment, given that he had earned money from cooking cocaine. (*Id.* at 91).

As discussed more substantively below, the Claimant sought the written opinions of his treating dermatologist, Dr. Dominguez, in May 2016 and again in December 2016 and January 2017, asking the doctor explaining the causal relationship between his occupational exposures to fuel products overseas and his skin disease. When Claimant did so, he focused on his overseas employment from 2004 to 2012 as involving repeated exposures to fuel products and chemical toxins. (Exh. U at 23). In his May 2016 correspondence to Dr. Dominguez, Claimant only briefly mentioned going back to work in the States "delivering fuel/petroleum products, etc.," as well as buying a new house and leather furniture, and mowing grass after his overseas work ended. (Exh. U at 23). Even so, Claimant clearly referred the doctor to his history of repeated exposures overseas as purportedly diminishing his immune system and resulting in his stateside skin eruptions. (*Id.* at 23, 105-32, 130-31). When corresponding with Dr. Dominguez in late 2016, Claimant described his overseas employment in significant detail, including specific contact with rubber materials, chemicals and fuel, and no longer mentioned performing similar work in the States. (Exh. U at 107-08, 130-31). Claimant's omission of his work for J.A.M. in 2014 is notable, given his contact in that job with rubber, oil and antifreeze and the first blistering of his hands during that employment. The same is true for his omission of details of

his work in the States as a fuel truck driver for Pilot Thomas, where he was fired, in part, for needing more time than Pilot Thomas could accommodate for undergoing treatment for his skin disease. These circumstances indicate that his skin disease had worsened at Pilot Thomas; yet, Claimant remained focused only on his overseas employment history with Dr. Dominguez. As such, Claimant demonstrated a tendency to focus on a self-serving narrative and omit relevant details of his employment.

Fluor suggests that Claimant's credibility is reduced by his conviction for driving under the influence in 1992 and treatment for alcoholism. However, impeachment by evidence of a criminal conviction has not been attempted or accomplished under Fed. R. Evid. 609(b) (applicable if more than 10 years have passed since the conviction). 29 C.F.R. § 18.609; Fed. R. Evid. Rule 609. I also do not find that alcoholism treatment alone should detract from Claimant's credibility, absent some other evidence that his alcoholism or treatment affected his candor or veracity on matters for resolution here.

For all of the above reasons, Claimant's credibility has been reduced in my estimation, particularly as it concerns the subject matters noted herein on which Claimant was evasive, inconsistent, or self-serving. I am cognizant that I may choose to believe only certain portions of the testimony, as opposed to discounting all of his testimony, and have done so in the substantive analyses of this decision.

2) Natasha Cox (TR a 127- 32)

Natasha Cox is a pediatrician. She was married to Claimant from November 2009 until their separation in January 2016 and divorce in February 2017. Ms. Cox provided somewhat brief testimony regarding her personal observations of Claimant's physical and mental condition during their marriage. Ms. Cox did not appear to exaggerate and was cooperative with all counsel. She limited her testimony to matters of personal observation and recollection and thus came across as a very credible witness.

3) Rebecca Sprick – Vocational Rehabilitation Specialist (TR at 134-50)

Rebecca Sprick is a vocational rehabilitation specialist who was retained by Fluor to prepare a labor market survey and a vocational report. At the hearing, she testified that the jobs identified in the report as suitable and available to Claimant remained available, or there were other similar positions available, in the same pay range. The jobs that she identified were both stateside and overseas. Claimant presents argument against the suitability of positions identified by Ms. Sprick, but there has been no challenge to her qualifications or her credibility. I found her to be a cooperative, credible witness who testified to matters within her specialization and did not speculate or exaggerate.

4) Dr. John Tsanadis – Clinical Neuropsychologist/Licensed Clinical Psychologist (Exhs. B, C)

John Tsanadis, Ph.D., whose professional qualifications and credentials are summarized in the factual findings above, personally conducted a Psychological Evaluation of Claimant on

March 17, 2018. (Exhs. B, C; TR at 147-55). He is the only mental health expert in this matter who administered objective testing, including several symptom inventories, cognitive screening, and performance and symptom validity assessments. (Exh. B at 1; Exh. V; CX-1). Dr. Tsanadis had the opportunity to compare the results of the tests with his own observations of the Claimant's condition during structured, clinical interviews, and he found discrepancies. For example, Claimant's scores on inventories concerning depression, anxiety, and PTSD indicated significantly elevated levels, consistent with patients requiring hospitalization, but Claimant did not present as requiring this level of medical intervention. I also note that Claimant's records do not reflect any recommendations that he be hospitalized for any such reasons, which is consistent with Dr. Tsanadis' observations. Nonetheless, Dr. Tsanadis concluded from performance and symptom validity assessments that there was "no consistent evidence of misrepresentation of symptoms," and as such he found it more likely than not that Claimant had genuine mental health symptomatology. (Exh. B at 16).

Dr. Tsanadis, who has specialized experience assessing patients reporting PTSD symptoms in the VA Healthcare system, and making treatment recommendations, concluded that while Claimant has some valid PTSD symptomatology, he does not have PTSD. Therefore, in his report, Dr. Tsanadis did not include a diagnosis of PTSD, explaining that he based this opinion on the remoteness of the potentially traumatic events described by Claimant, that he continued working for Fluor until terminated, and that his treatment notes reflected significant variability between periods of improvement where Claimant was relatively symptom-free and periods of being highly symptomatic with unusual symptoms like hallucinations despite no other evidence of psychosis. (Exh. B at 13-14). Dr. Tsanadis elaborated on his opinions in this regard at the hearing, testifying that no particular incident overseas resulted in the onset of PTSD symptoms, which he found inconsistent with genuine PTSD cases where there is also clear evidence of traumatic events followed by symptoms that appear much sooner than the "big gaps" that appear in Claimant's mental health history. (TR at 155-58, 160-61, 176).

Dr. Tsanadis' observation regarding a significant gap between Claimant's reported traumas and the onset of any psychological symptoms is supported by the evidence of record. The weight of the evidence indicates that onset of Claimant's psychological symptoms occurred closer in time to his first psychological complaints in late 2015. The records of Dr. Parrott, the first mental health provider that Claimant saw for his psychological conditions at issue, gave no indication of the date of onset of Claimant's complaints or whether symptoms were caused by Claimant's work overseas. (CX-1 at 41). Dr. Parrott's handwritten notes make multiple references to Claimant's skin disease and also mention his fear of Middle Easterners and dislike of public places. However, the only job specifically mentioned was Claimant's truck driver position in "Dakota," which was his most recent stateside employment with Pilot Thomas. (Exh. HH). While Dr. Parrott's notes do not identify a timeframe for the onset of symptoms, Caring Choices' records reference generally the existence of Claimant's PTSD symptoms "for 3 months or more"; this was on June 23, 2016. (CX-1 at 10). The opinions of LCSW Smith/APRN Jordan contain no reference an onset date of psychological symptoms. (CX-1 at 42). Likewise, Dr. Hooks' opinion states only that Claimant "now presents with stress, anxiety, and nightmares" in connection with his sole visit to her on December 16, 2015. (CX-1 at 46). Therefore, the records of Claimant's treating sources indicate that Claimant was experiencing psychological symptoms in and around December 2015, and after, but do not indicate any earlier onset with

specificity.

Dr. Tsanadis attempted to identify the onset of Claimant's symptoms during his structured interview of Claimant. He observed that Claimant was "vague when discussing the onset of [PSTD] symptoms." (Exh. B at 13). Claimant told Dr. Tsanadis that he "thinks" he started having nightmares in Afghanistan but "was not sure." He also said he had anxiety at times that made him shake and throw up and purportedly had these symptoms in Afghanistan. However, the only mental health record that mentions a symptom like this is one visit at Caring Choices on September 11, 2017, which was associated with a recent increase in his anxiety, not an overseas occurrence. (Exh. V at 91). Claimant did not describe any particular onset of psychological problems, only telling Dr. Tsanadis generally that he had problems with alcohol "since returning home in 2012." (Exh. B at 10). As such, Dr. Tsanadis was accurate in his observations of a gap of no psychological complaints, symptoms or treatment.

In his report and during his testimony, Dr. Tsanadis also pointed to periods of Claimant's improvement of symptoms, as reflected in the Caring Choices' records from August to October of 2016, followed by worsening of symptoms. Dr. Tsanadis opined that this variability also does not comport with the true clinical course of PTSD. (TR at 161; Exh. B at 14). Caring Choices' progress notes do, in fact, reflect improvement in Claimant's condition on August 19, 2016, with a normal mood showing no signs of depression or mood elevation and no signs of hallucinations or indicators of a psychotic process. (Exh. V at 31-32). The report and exam was similar on September 14, 2016. (*Id.* at 35). Claimant reported depression due to medical issues on October 31, 2016, but there was improvement with nightmares, sleep, and appetite, and no reported hallucinations or symptoms of psychotic process, and overall the medication was helping; on exam, neither depression nor mood elevation were observed. (*Id.* at 43). As of November 30, 2016, Claimant felt "much better" and was noted to be smiling and joking, no anger issues were reported, and mental status exam was normal. (*Id.* at 49-50). However, in early January 2017, Claimant's mental status exam reflected worsening of his condition, with depressed mood and agitation; a possible explanation was presented as "signs of withdrawal from a chemical" and "agitation, seemingly secondary to withdrawal." (*Id.* at 55). Though partial improvement was noted on March 2, 2017, with reductions of flashbacks, and on April 3, 2017, with fewer impulsive behaviors (*id.* at 68-72), by June 5, 2017, he is "not doing well at all." (*Id.* at 82). At this point, worsening of Claimant's condition is reflected in complaints of flashbacks to seeing dead bodies when overseas, which prompted him to drink "all weekend"; he also reported increased anger outbursts. (*Id.*). Though his mood was stable, his anxiety was worse on September 11, 2017. (*Id.* at 91). And then, after months of no hallucinations, delusions or indicators of psychotic process, Claimant reported on November 6, 2017, that he had started seeing things. (*Id.* at 103). This is the first time in Caring Choices' records that he was prescribed medication for psychosis, and severity of Claimant's depression was noted to be "severe with psychotic symptoms" rather than "moderate." (*Id.* at 105). As such, the medical records reflect periods of improvement of symptoms and stability followed by worsening of psychological symptoms, and even the appearance of new, severe symptoms, consistent with Dr. Tsanadis' observations. For all of these reasons, I have afforded great weight to Dr. Tsanadis' opinion that Claimant does not have PTSD because his supporting rationale is most consistent with other, reliable testimony and medical evidence of record, in addition to internal consistency with his own findings.

As it concerns Claimant's ability to work, Dr. Tsanadis expressed in his report that Claimant's symptomatology was significant enough to prevent him from performing "his occupation,"[9] that the treatment plan recommended by Dr. Tsanadis should include "a return to work," that full-time work could be performed after completion of four months of treatment (for symptoms of anxiety and depression) on a weekly basis, and that Claimant was not permanently disabled. (Exh. B at 14, 17-18). He also reported that the "primary barriers to a return to work for the claimant appeared to be clinical in nature" and that depression and anxiety were restricting him from returning to work. (*Id.* at 16, 17). He noted that alcohol abuse should be addressed more directly, as it exacerbates the other mental health conditions. (*Id.* at 18). At the hearing, however, Dr. Tsanadis testified that Claimant can engage in "gainful employment," though he continued to have a concern about Claimant's alcohol use. (TR at 186). Dr. Tsanadis testified that he felt the overarching problem was Claimant's alcohol use, more than the symptoms of anxiety and depression. (*Id.* at 191-92).

Dr. Tsanadis appeared at the hearing to downplay his previously stated opinions regarding Claimant's barriers to returning to work due to his mental health. I have given more weight to the opinions regarding Claimant's work restrictions stated in Dr. Tsanadis' report, which were internally consistent with the other opinions he expressed. Therefore, I have given less weight to his testimony that Claimant can engage in gainful employment if alcohol use is controlled, and give more weight to the opinions expressed in his report that Claimant should be able to return to full-time work after engaging in the treatment that Dr. Tsanadis recommends. Though Claimant continued treatment at Caring Choices, there is no evidence Claimant has received the course of treatment recommended by Dr. Tsanadis' report.

Lastly, I have given significant weight to Dr. Tsanadis' opinion that the mental health conditions that he observed and assessed are not causally related to Claimant's overseas employment. Dr. Tsanadis testified, "I don't find any evidence that [Claimant's] exposure to work life [overseas] caused his anxiety or depression." (TR at 180). In his report, Dr. Tsanadis cited the following question from Fluor, "Does reliable data indicate that the claimant's mental condition was caused or aggravated by his/her employment with Fluor?" Dr. Tsanadis answered,

> Evidence is equivocal with respect to the claimant's mental condition being caused or aggravated by his employment with Fluor. Evidence is not compelling that his mental condition was caused exclusively by his employment; however, there is some evidence that experiences he had while working for Fluor may have contributed to his current difficulties. Specifically, the claimant was terminated from his employment and returned home. He then had difficulty readjusting and began problematic alcohol use.

(Exh. B at 15). When asked at the hearing about this statement of "evidence of [work] experiences" in his report, Dr. Tsanadis similarly testified that he was referring primarily to

[9] Dr. Tsanadis did not specific what he meant by "his occupation"; elsewhere, his report refers to Claimant's most recent jobs as "truck driver" and "driver" in the States. (Exh. B at 9).

"adjustment difficulties" that Claimant experienced after returning from overseas employment. (TR at 190). Dr. Tsanadis was referring to the Claimant being away from family and friends for most of a decade due to his combined overseas employment, thus making reintegration a "big adjustment." (*Id.*). Dr. Tsanadis' testimony is consistent with his report that any relationship between overseas employment and Claimant's mental condition was potentially due to readjustment after such a long absence, and not to the actual conditions of his employment. Although Dr. Tsanadis' report referred to "experiences [Claimant] had while working," the specific examples of experiences that he immediately gave in his report were only being terminated and returning home, which led to readjustment difficulties. This is entirely consistent with his testimony.

For all of these reasons, I have afforded Dr. Tsanadis' opinions great weight regarding the existence of any psychological conditions and the absence of a causal relationship between Claimant's overseas employment and his psychological conditions.

5) Dr. Steven Hubert – Dermatologist (Exhs. D, E, JJ)

The professional qualifications and credentials of Dr. Hubert are summarized in the factual findings above, and I note that the parties stipulated to his ability to offer opinions on dermatological issues. I have afforded the opinions of Dr. Hubert great weight, because they are based on his review of the Claimant's medical records from Dr. Hsu and Dr. Dominguez, along with Claimant's employment histories/work background, and the Claimant's deposition testimony. Importantly, Dr. Hubert demonstrated an accurate understanding of the timeline of Claimant's skin eruptions and the duties of his domestic and overseas fuel truck operator and package driver positions; his understanding was consistent with the testimony of Claimant and records of treatment for his skin disease.

Dr. Hubert's explanation of the body's development of an allergy to a chemical, and the triggering of an immunological response, is not inconsistent with the opinion of Dr. Dominguez discussed below. However, I am more persuaded that Dr. Hubert's opinion, expressed with a "high degree of medical probability," is based on a more accurate and comprehensive understanding of the timeline of the development of Claimant's skin condition and Claimant's activities during that timeline. Specifically, Dr. Hubert correctly noted that Claimant's first skin eruption occurred around June of 2013, several months after his return to the States from his last overseas employment that ended in November 2012, and that Claimant had no such eruption or rash closer in time to his overseas duties, which led Dr. Hubert to opine that Claimant's overseas employment was not the cause of his dermatological condition.

Dr. Hubert explained in understandable terms the immunological reaction that would have occurred about 7-10 days after exposure to the chemical that caused the reaction; thus, Claimant would have experienced such an allergic reaction in that time frame (7-10 days) while still overseas or shortly thereafter, if the reaction were caused by his overseas employment. Dr. Hubert was clear in his opinion that, if Claimant had developed an allergy due to his employment with Fluor, he would have developed a rash in Afghanistan or soon thereafter. Although Dr. Hubert also acknowledged that a patient can be exposed to a chemical "for years" before developing an allergy, and there is "no understanding of what triggers" that immunological

response, he was nonetheless clear that once the allergic reaction occurs, it will be in fairly close temporal proximity (7-10 days) to the person's exposure to the triggering chemical. Based on the history provided by Claimant of no such allergic reaction in that timeframe, which was also consistent with Claimant's medical records, Dr. Hubert expressed an opinion that ruled out overseas employment as causally related to Claimant's dermatological condition. Because Dr. Hubert expressed an accurate understanding of the timeline of Claimant's skin eruptions and blisters, which were well outside of 7-10 days from any overseas exposures, and provided a well-reasoned explanation for his opinion, I have given his opinion great weight.

6) Non-testifying Medical Experts

Employers assert that an adverse inference should be drawn against Claimant for his failure to present the testimony of treating providers who have given opinions in this matter. As Claimant submitted the records and written opinions of these providers, the type of inference urged by Employers is essentially the uncalled-witness rule. *See Herbert v. Wal-Mart Stores, Inc.*, 911 F.2d 1044, 1046 (5th Cir. 1990) ("The rule . . . is that, if a party has it peculiarly within his power to produce witnesses whose testimony would elucidate the transaction, the fact that he does not do it creates the presumption that the testimony, if produced, would be unfavorable."). However, under federal law, the uncalled-witness rule does not apply when the witness is equally available to each party. *Id.* at 1047; *Davis v. GKD Mgmt., L.P.*, 2018 U.S. Dist. LEXIS 216019 (M.D. La. Dec 20., 2018)(declining to apply the uncalled-witness rule if plaintiff's treating physician is equally susceptible to subpoena by defendants). That being said, a medical expert's opinion may be afforded less weight if he or she has not adequately explained or supported their positions, and testimony often provides such an opportunity.

Two of Claimant's treating physicians provided opinions about Claimant's skin disease via written records and correspondence, Dr. Sylvia Hsu and Arturo Dr. Dominguez.[10] They did not testify.

The professional qualifications and background of **Dr. Hsu** were not submitted; the records in evidence indicate that she is part of the Baylor College of Medicine's Dermatology Clinic. (CX-1 at 5). The written statement that Dr. Hsu provided dated February 12, 2016, identified the Claimant's condition (a severe case of eczema) and the treatments attempted with lack of improvement, and opined that Claimant was prevented from working full time. (*Id.*). However, Dr. Hsu did not address any causal connection between Claimant's work overseas (or any other potential cause) and his skin condition. Therefore, I have given some weight to Dr. Hsu's opinion regarding the severity of Claimant's skin disease and work limitations at the time of her opinion in February 2016, but there is no opinion to weigh regarding causation.

Dr. Dominguez, whose professional qualifications were also not submitted, documented in his treatment records from his first encounter with Claimant on May 17, 2016, that Claimant was seeking treatment for a rash, or break-out of red bumps on his arms, hands, legs, and stomach, that was present since June of 2013. (CX-1 at 1, 6). This is consistent with Claimant's

[10] Dr. Katta saw Claimant on one occasion (August 25, 2014) as documented in a treatment note; he diagnosed eczema and/or allergic contact dermatitis "possibly due to" a number of different substances. He did not provide any opinion regarding employment causation. (CX-1 at 3-4).

hearing testimony that the first time he had red bumps appear on his skin was the summer of 2013 and it became worse when he started working in January 2014. (TR at 30-31). Before this occurrence of red bumps, and while still overseas, the Claimant only recalled hands that were "itching" and "sweating." (TR at 30). He did not mention having bumps, blisters or a rash overseas, and acknowledges that he did not seek treatment for any skin problems until 2014. Claimant told Dr. Dominguez the same thing, when Dr. Dominguez asked whether he ever had any rash or blisters on his hands overseas; Claimant said the "only thing [] over there was itchy sweaty hands" starting around 2007. (Exh. U at 107-08).

However, Dr. Dominguez later based his opinions on causation in this matter, particularly in his more detailed opinion dated January 23, 2017, on the fact that the Claimant "first developed itching **and small blisters** on his hands" in 2007 while working overseas. (CX-1 at 48-49) (emphasis added). Based on this factual assumption, Dr. Dominguez concluded that Claimant developed "recurrent hand dermatitis" overseas and that it persisted when he returned to the States. (CX-1 at 48-49). However, the factual premise of Dr. Dominguez' opinion is flawed, in that Claimant used specific words for the condition of his hands overseas, i.e., itching and sweating, but did not refer to the occurrence of any skin eruption until June of 2013 at the earliest, several months after his last employment overseas. Claimant testified unambiguously under oath that there were "no blisters" and "no eruptions" overseas. (TR at 50; Claimant's Post-Hearing Brief at 8).

Claimant also omitted to Dr. Dominguez detailed information regarding the products with which he had contact while working for J.A.M. (from January to September 2014) and for Pilot Thomas (from September 2014 to May 2015), even though these jobs were performed stateside in the years just before Claimant's visit with Dr. Dominguez, the jobs were much closer in time to Claimant's first complaint of a rash and his first seeking of medical treatment for his skin, and despite the fact that Claimant made contact with grease, oil, diesel fuel, and entered chemical plants in his most recent stateside employment. (CX-1 at 4, 6). At his first visit on May 17, 2016, Claimant gave to Dr. Dominguez a history of "working overseas as a military contractor in Afghanistan and driving petroleum trucks where he was exposed to burning petroleum oil, rubber and other industrial products." At this visit, he stated he was unemployed and did not reference similar, stateside work he had performed since leaving overseas employment. (*Id.* at 6).

Shortly after the first visit with Dr. Dominguez, Claimant began reaching out to him by email on May 31, 2016, for an explanation by letter of the cause of his condition. (Exh. U at 23). Claimant was asking for written documentation of a conversation he had with Dr. Dominguez at the first visit on May 17th, in which Dr. Dominguez had apparently discussed with Claimant that a breakdown of his immune system had played a role in the severe allergic responses Claimant had over the "past three years." (*Id.*). In this correspondence, Claimant briefly mentioned more recent activities like buying a house, buying new leather furniture, starting to cut grass, going back to work "delivering fuel/petroleum products, etc." He again mentioned nine years of overseas employment during which he "never noticed any issues" regarding any allergic reaction. (*Id.*). Even so, Claimant provided significantly more detail regarding what he wore and what products and chemicals he was exposed to overseas, than he provided in a brief mention of delivering fuel/petroleum products in the three years immediately preceding treatment with Dr.

Dominguez. (Exh. U at 106-30). The incorrect factual premise, that Claimant first developed small blisters on his hands in 2007 while overseas, led Dr. Dominguez to conclude that Claimant developed "recurrent hand dermatitis" during overseas employment, which persisted when he returned stateside. Because of the material omissions in the history provided by Claimant and the flawed factual basis of Dr. Dominguez' opinion, I have given little weight to the opinion of Dr. Dominguez.

As for Claimant's psychological condition, **Dr. Rick Parrott** described in a letter dated November 29, 2016, his two occasions to treat Claimant in December 2015; On January 12, 2017, **Dr. Penelope Hooks** provided a written letter regarding her sole visit with Claimant on December 16, 2015; the clinical social workers and registered practicing nurses at **Caring Choices** made diagnoses and observations regarding Claimant's mental health and disability in their treatment notes from June 2016 to January 2018; and **LCSW Tiffany Smith/APRN Jordan** provided an opinion on causation and disability dated December 20, 2016.

Claimant did not present the testimony of any of these witnesses, and their professional qualifications, backgrounds and any areas of specialization are not known. For the reasons stated below, I have not given great weight to any of their views.

Dr. Parrott had two appointments with Claimant on December 5 and 12, 2015, "because of anxieties symptomatically expressed through a skin disorder called: 'Contact Dermatitis." (CX-1 at 41). His letterhead identifies that he is a Ph.D, LCSW, and CFSW (certified financial social worker), but his professional resume was not provided, and his background is not known. In exploring Claimant's understanding of his skin condition, Dr. Parrott observed other symptoms of anxious arousal, mixed emotions of anxiety and depression, excessive somatic preoccupation, and intrusive thoughts of nightmares and flashbacks. (*Id.*). Based on these reported symptoms, Dr. Parrott assigned a "preliminary diagnosis" of PTSD and referred him to Dr. Cook. Dr. Parrott did not see Claimant again, and he summarized his two visits with Claimant about one year later, in a letter dated November 29, 2016. (CX-1 at 41). The letter makes no mention of any psychological evaluation or objective testing; only Dr. Parrott's handwritten notes of these visits were submitted as evidence. (Exh. HH). Nightmares and flashbacks are not referenced in the notes; Claimant's skin disease/disorder is mentioned at least four times in this relatively brief set of notes; "PTSD" is noted next to "fear" "mid easterners [sic]" and "doesn't want [to go to] public places, i.e., Walmart," as well as sleep and appetite disturbances. (*Id.*). Dr. Parrott recommended psychological testing to determine the extent of "trauma and somatization." (*Id.*). Given his limited encounters with Claimant, provision of only a preliminary diagnosis, that Dr. Parrott did not administer psychological testing or have opportunity to review the results of any objective testing later administered, and that he did not provide any written or testimonial opinion regarding the cause of Claimant's symptoms or preliminary diagnosis, I have given his opinions little weight.

By letter dated January 12, 2017, **Dr. Hooks** described her one visit with Claimant over one year earlier, on December 16, 2015; no treatment note from that visit was presented as evidence. (Exh. 1 at 46). In her letter, Dr. Hooks summarized the history provided by Claimant, stating that "his base was bombed regularly, and he witnessed killings and suicides." He also described marital stress. Claimant presented with stress, anxiety, and nightmares and drank a

bottle of alcohol per day. (*Id.*). On exam, Claimant's mood was angry and defiant and otherwise normal, with no suicidal/homicidal thoughts, no hallucinations, and no thought disorders. Some of the factual background provided by Claimant about his exposure to trauma was not accurate. Claimant denied under oath ever personally witnessing physical damage to the base, anyone being injured or killed, or witnessing any suicides. He described seeing the aftermath of such events. (TR at 58, 116-18). However, he gave Dr. Hooks a history of witnessing killings and suicides. Dr. Hooks diagnosed Claimant with PTSD secondary to living and working in a war zone for 9 years and alcohol abuse secondary to PTSD, and opined that he should not return to a war zone or "be expected to function normally in interpersonal relationships," but he showed "evidence of his former competent self" in situations of low conflict. (CX-1 at 46-47). However, Dr. Hooks declined to address Claimant's condition as of the writing of her opinion and did not specifically address his capacity for work in the States. (*Id.* at 47). I assigned Dr. Hooks' opinions little weight because there is no evidence Dr. Hooks had opportunity to review Claimant's mental health treatment records with his various providers; she had even more limited opportunity to observe and assess Claimant than Dr. Parrott, and like Dr. Parrott, did not administer any psychological testing; she was limited to addressing Claimant's condition at the time she saw him more than one year earlier; and she relied on inaccurate information from Claimant about witnessing killings and suicides.

Claimant had been treating at Caring Choices for about six months (and was seen about 7 times) by the time **LCSW Smith** provided written opinions on December 20, 2016, about his diagnoses and symptoms, a causal connection to his overseas work, and inability to work; APRN Jordan agreed with Smith's findings and added her signature to them. (CX-1 at 42-43). LCSW Smith identified diagnoses of PTSD and MDD, recurrent, moderate, stating that Claimant's PTSD was due to "exposure to actual threatened death, serious injury" while employed by SEII and Fluor in Afghanistan. She cited 4 instances of such exposure: that he "**directly experienced** the traumatic events (threats of suicide bombers, threats of incoming missiles, road side bombs); that he "**witnessed these traumatic events happening** to others and **witness[ed] death of others** due to being in a war zone"; he witnessed or experienced incoming missiles 2-3 times per week at FOB Shank during his employment with Fluor; and during his "time of R&R, his "sleeping quarters were bombed in which friend [sic] were killed." (*Id.* at 42) (emphasis added). Claimant reported intrusive and distressing memories and flashbacks and nightmares. LCSW Smith concluded that his symptoms prevented him from working, especially in war zone areas. (*Id.* at 42-43). The diagnoses cited by LCSW Smith appeared after the Claimant's first assessment at Caring Choices in June 2016, when Claimant reported a history of trauma that included "military combat and witnessing death related to military combat." However, there is no indication from Claimant's employment records or his testimony that he had any involvement in "combat" and, as noted above, he denied under oath being a witness to injuries to persons, killings, or suicides, though he saw the effects of same after-the-fact. Although other Caring Choices notes reference Claimant witnessing the "aftermath" of deaths or suicides (CX-1 at 24), LCSW Smith's opinion primarily refers to Claimant directly witnessing or directly experiencing violent or traumatic events, which is an inaccurate and incomplete portrayal of Claimant's experiences.

Smith's opinions were somewhat remote by the hearing date, as well, and no update of her opinion was provided, even though Claimant had continued to treat at Caring Choices and

LCSW Smith saw Claimant in 2017. Like other treating mental health providers with opinions of record, LCSW Smith (and her colleagues) did not administer psychological testing, their professional backgrounds and areas of expertise are not known, they did not testify in support of any opinions they expressed, they did not reference having access to any other records of Claimant's mental health treatment outside the records of Caring Choices, they did not review Claimant's deposition testimony (even though the deposition occurred later, Claimant continued his treatment at this facility up to the time of hearing), and they relied in part on inaccurate and/or incomplete information concerning the Claimant's history of trauma during his overseas employment. For all of these reasons, the reliability of Smith's (and her colleagues') diagnoses and opinions as to causation and disability is diminished. I have not given these opinions great weight.

However, Smith and Jordan also had the opportunity to observe Claimant over several visits at Caring Choices before providing their opinions in December 2016. I also note that some of the traumatic experiences cited in the December 20, 2016, letter are partially consistent with other credible evidence of record, such as Claimant experiencing the threats of incoming missiles and being on military bases subject to rocket attacks/incoming mortar rounds. Thus, some of the information cited in their opinions is reliable. For all of these reasons, I have afforded some weight to the opinions of LCSW Smith/APRN Jordan expressed in the letter of December 20, 2016.

B. Whether Claimant provided timely notices of his injuries and filed timely claims.

SEII argues that the Claimant failed to provide it with timely notice that he suffered from either dermatological or psychological injuries. Claimant responds that timely notice was given under Section 12 and, in the alternative, no employer has produced evidence in the record that it suffered prejudice. All parties agree that the physical and mental injuries at issue involve an occupational disease. Fluor did not present any argument regarding the timeliness of the notice or claims and has thus waived any such arguments.

In cases of occupational disease that do not immediately result in disability, Section 12(a) requires that the claimant give notice within one year after the employee is aware, or through exercise of reasonable diligence or by medical advice should have been aware, of the "relationship between the employment, the disease, and death or disability." 33 U.S.C. § 912(a); 20 C.F.R. § 702.212(b); *Lewis v. Todd Pac. Shipyards Corp.*, 30 BRBS 154, 156 (1996).

As it concerns the date of Claimant's awareness, the date of a medical diagnosis of a work-related condition is significant, but not controlling. *Bezanson v. Gen. Dynamics Corp.*, 13 BRBS 928, 931 (1981). In the case of an occupational disease, the notice period does not begin to run until the employee is disabled. *See* 20 C.F.R. § 702.212(b); *Lindsay v. Bethlehem Steel Corp.*, 18 BRBS 20, 22-23 (1986).

Section 913(a) of the Act requires the filing of a claim within one year after the injury, and in the cases of an "occupational disease which does not immediately result in [] disability [the claim] shall be timely if filed **within two years** after the employee or claimant becomes aware, or in the exercise of reasonable diligence or by reason of medical advice should have

been aware, of the relationship between the employment, the disease, and the death or disability." 33 U.S.C. § 913(a) (emphasis added). The claimant bears the burden of establishing timely notice and claims, and he is aided by the Section 20(b) presumption that sufficient notice of the claim was given. 33 U.S.C. § 920(b).

An employer may rebut the presumption by presenting substantial evidence that it did not have knowledge of the employee's work-related injury or death. *See Blanding v. Director, OWCP*, 186 F.3d 232, 235 (2d Cir. 1999) (citing *Stevenson v. Linens of the Week*, 688 F.2d 93, 98 (D.C. Cir. 1982)). However, the Act provides in relevant part that an untimely notice does not bar a claim if the claimant shows either that (1) the employer/carrier had knowledge of the injury during the filing period, or (2) that the employer/carrier were not prejudiced by the failure to give timely notice. 33 U.S.C. § 912(d). To establish prejudice, an employer must produce substantial evidence showing that the claimant's failure to provide notice prevented it from effectively investigating the injury to determine the nature and extent of the illness or to provide medical services; a conclusory allegation of prejudice or of an inability to investigate the claim when it is fresh is insufficient to meet employer's burden of proof. *See e.g., ITO Corp. v. Director, OWCP*, 883 F.2d 422, 424 (5th Cir. 1989) (stating that "conclusory claim of prejudice is not persuasive").

The parties do not agree on the dates of first notice of the occupational diseases at issue. Claimant asserts notice of his skin disease was provided November 4, 2016 (alleging "skin disease"), and notice of his psychological disease was given October 6, 2016 (alleging "PTSD, depression, worsening of psychological condition"). (CX-2 at 1, 3). However, the employer identified on these notices was Fluor.

SEII asserts that its first notice of Claimant's skin disease was the amended LS-203 dated December 13, 2016 (alleging "chronic eczematous dermatitis"), and first notice of the psychological injury against SEII was the second amended LS-203 dated August 17, 2017 (alleging "PTSD, depression, worsening of psychological condition, and/or aggravation of pre-existing psychological condition"). (CX-2 at 2; EX-2, EX-4). SEII asserts that these LS-203's contain the first mention of KBR (SEII).

(a) Notice/Claim Regarding Skin Disease

On its face, the LS-203 dated December 13, 2016, alleges notice (of a skin disease) within one year of an alleged March 12, 2016, date of injury. The records do not disclose the importance of the date of March 12, 2016, and Claimant argues in his Post-Hearing Brief that the first date he knew or should have known that his overseas work exposures caused his skin condition and rendered him disabled was actually the July 22, 2016, opinion of Dr. Dominguez, and thus no longer references the March 12, 2016, date. SEII focuses on the dates Claimant was first diagnosed with a skin disease ("March or April 2014"), which is not determinative. The record is more supportive of Claimant's position that his date of awareness relevant for Section 12(a) purposes was the July 22, 2016, date of Dr. Dominguez' opinion, as this date concerns the identification of the skin disease, its connection to Claimant's employment, as well as the disabling effects. (CX-1 at 33). This includes notice of Claimant's claim that his exposures included being exposed to "burning petroleum oil, rubber and other industrial products." Dr. Dominguez' more detailed opinion on January 23, 2017, also referenced exposure to industrial

smoke. (*Id.* at 48).[11] While the earlier of opinion of Dr. Hsu addressed the diagnosis and disability, it did not address any relationship to overseas work. Even so, it was also within one year of the December 13, 2016, notice. (*Id.* at 34). Therefore, I conclude that Claimant provided timely notice to SEII of his occupational skin disease and also filed a timely claim.

(b) Notice/Claim Regarding Psychological Injury

On its face, the August 17, 2017, LS-203 does not provide notice (of psychological injuries) within one year of the stated injury date of December 5, 2015. In his Post-Hearing Brief, Claimant argues a different injury or awareness date of December 20, 2016, when LCSW Smith/APRN Jordan opined regarding the causal connection between Claimant's work overseas and his diagnosis of PTSD. SEII contends Claimant was aware, or should have been aware, of the relationship between his employment, his psychological condition, and his disability by June 23, 2016, when he was diagnosed with a depressive disorder linked to his skin condition. During that appointment, the Claimant reported symptoms of a depressive disorder caused by "life circumstances-health (severe skin disease); cannot work; not where I'm supposed to be; went overseas for 9 years; having to fight to prove that I'm sick." (CX-1 at 11). Claimant attributed his skin problems, which helped to cause his depression, to his overseas employment. (*Id.* at 16-17). The treatment note reflects at the time that Claimant was "unemployed" and "disabled"; he had applied for disability. (*Id.* at 14).

The record supports, as asserted by SEII, that the date Claimant was aware, or should have been aware, of the "relationship between the employment, the disease, and death or disability" was June 23, 2016, due to his reports of the relationship between symptoms of depression, overseas employment, and disability. Claimant need not wait for a medical diagnosis for such awareness. If SEII did not have notice of the psychological injury until August 17, 2017, it was not timely because not filed within one year. However, I note SEII's LS-202 (First Report of Injury) dated November 8, 2016, indicating its awareness of Claimant's claim of PTSD, depression and worsening of psychological condition, which reflects timely notice. (EX-1). Moreover, even if notice was untimely, SEII made no attempt to present evidence of being prejudiced by the untimely notice. Therefore, untimely notice of this claim would not bar the claim. Further, because a claim of psychological injuries was filed within two years of June 23, 2016, the claim was timely.

C. Whether Claimant sustained an injury or occupational disease arising out of the conditions of his overseas employment.

Section 2(2) of the Act defines "injury" as an "accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises naturally

[11] Therefore, to the extent that Employers contend lack of notice that Claimant's claim of dermatological injury was based in part on exposure to "burn pits," the record does not support their contention. Although Dr. Dominguez did not specifically expound on any such causal connection, and focuses instead on contact dermatitis due to contact of substances with the Claimant's skin, his opinions refer to employment conditions including burning materials and industrial smoke. Claimant also mentions these conditions in his LS-203's and pre-hearing statement. (EX-2; EX-3; CX-6).

out of such employment or as naturally or unavoidably results from such accidental injury." 33 U.S.C. § 902(2).

1. Presumption under Section 20(a)

Section 20(a) of the Act provides a presumption that aids the claimant in establishing that a harm constitutes a compensable injury under the Act. Section 20(a) of the Act provides in pertinent part:

> In any proceeding for the enforcement of a claim for compensation under this Act it shall be presumed, in the absence of substantial evidence to the contrary-that the claim comes within the provisions of this [Act].

33 U.S.C. § 920(a).

The Benefits Review Board (herein the Board) has explained that a claimant need not affirmatively establish a causal connection between his work and the harm he has suffered, but rather need only show that: (1) he sustained physical harm or pain, and (2) an accident occurred in the course of employment, or conditions existed at work, which could have caused the harm or pain. *Noble Drilling Co. v. Drake*, 795 F.2d 478, 481 (5th Cir. 1986) (citing *Kelaita v. Triple A Machine Shop*, 13 BRBS 326 (1981), *aff'd sub nom. Kelaita v. Director, OWCP*, 799 F.2d 1308 (9th Cir. 1986)).

A claimant's own credible complaints of pain and reports of symptoms can be sufficient proof of physical injury; a claimant need not establish any particular diagnoses, just that "something has gone wrong with the human frame." *Crawford v. Director, OWCP*, 932 F.2d 152, 154 (2d Cir. 1991) (citing *Romeike v. Kaiser Shipyards*, 22 BRBS 57 (1989) (per curiam)). *See also Golden v. Eller & Co.*, 8 BRBS 846 (1978), *aff'd*, 620 F.2d 71 (5th Cir. 1980)("While it would be preferable to have distinct corroborating medical evidence, claimant's credible testimony alone [regarding pain and disability] may constitute a sufficient basis for an award of compensation."); *Gold v. Director*, 424 Fed. Appx. 274, 278 (5th Cir. 2011) (noting that employee must show more than occurrence of injury because something has gone "wrong with the human frame" and must also show the causal relationship to employment). The claimant has a low initial burden, but is nonetheless a burden, and once established there is a presumption that the injury was related to the claimant's employment. 33 U.S.C. § 920.

Claim of dermatological injury

Claimant asserts that he was exposed to materials (rubber, chemicals, petroleum, industrial smoke/burn pits) during his employment as a fuel truck operator and supervisory operator with SEII and Fluor and that the exposures ultimately caused a disabling skin disease. Both Employers focus on arguments that each has rebutted the presumption, and as such do not contend that Claimant is not entitled to the presumption. Because Claimant has asserted exposure, and presented some evidence of such exposure, to materials he encountered in his overseas employment that *could* have led to the physical harm he sustained, he is entitled to the presumption under Section 20(a) regarding his claim of a skin disease.

Claim of psychological injury

Claimant also presented some evidence of working conditions that existed that could have caused psychological injuries, given his work at military bases in or near war zones in Iraq and Afghanistan. Although Dr. Tsanadis opined that Claimant did not have direct experiences of traumatic events, there is no dispute that Claimant worked in and around areas, personnel and equipment damaged by mortar rounds, sniper fire, and suicide and other bombings. Further, while Dr. Tsanadis did not believe Claimant met the diagnostic criteria for a PTSD diagnosis, other medical records contain the diagnosis, and Dr. Tsanadis also identified other, applicable mental health diagnoses after interviewing and testing the Claimant. Because Claimant need only produce "some evidence," of employment conditions that could have caused the psychological harm or pain that he claims, Claimant is also entitled to the Section 20(a) presumption in connection with his claim of a psychological injury.

2. Rebuttal

Once the presumption is successfully invoked, the burden shifts to the employer to rebut the presumption with substantial evidence to the contrary that the claimant's condition was neither caused by his working conditions nor aggravated, accelerated or rendered symptomatic by such conditions. *See Conoco, Inc. v. Director, OWCP [Prewitt]*, 194 F.3d 684, 33 BRBS 187 (CRT) (5th Cir. 1999); *Gooden v. Director, OWCP*, 135 F.3d 1066, 32 BRBS 59 (CRT) (5th Cir. 1998).

Substantial evidence is evidence that provides "a substantial basis of fact from which the fact in issue can be reasonably inferred," or such evidence that "a reasonable mind might accept as adequate to support a conclusion." *New Thoughts Finishing Co. v. Chilton*, 118 F.3d 1028, 1030 (5th Cir. 1997). *See also Ortco Contractors, Inc. v. Charpentier*, 332 F.3d 283 (5th Cir. 2003) (the evidentiary standard necessary to rebut the presumption under Section 20(a) of the Act is "less demanding than the ordinary civil requirement that a party prove a fact by a preponderance of evidence"); *Bath Iron Works Corp. v. Fields*, 599 F.3d 47, 55 (1st Cir. 2010) (the rebuttal analysis is an "objective test" which requires employer to produce the degree of evidence which could satisfy a reasonable fact-finder of non-causation; the determination that the employer has or has not produced sufficient evidence is a legal judgment and is not dependent on credibility).

An employer must produce facts, not speculation or hypothetical probabilities, to overcome the presumption of compensability. *See Smith v. Sealand Terminal, Inc.*, 14 BRBS 844 (1982). The testimony of a physician that no causal relationship exists between an injury and a claimant's employment may rebut the presumption. *See Kier v. Bethlehem Steel Corp.*, 16 BRBS 128 (1984).

Section 20(a) is not rebutted by "any" evidence; it must be substantial. *Rainey v. Director, OWCP,* 517 F.3d 632, 42 BRBS 11(CRT) (2d Cir. 2008) (medical opinions are not substantial evidence to rebut the presumption when based on "false factual premises" or "discredited medical theories").

An employer is not required to "rule out" conclusively the possibility of a causal connection between an injury and employment in order to provide substantial evidence that rebuts the presumption. *See Baba v. SOS Int'l, LLC*, BRB No. 17-0440 (BRB Jan 30, 2018) (unpublished) (citing *Charpentier*, 332 F.3d at 283).

The "burden of rebuttal is one of production rather than persuasion; the credibility of the witnesses and contrary evidence are not weighed at this stage." *Makhmoor v. Mission Essential Personnel, LLC*, BRB No. 17-0339 (BRB Jan. 11, 2018). *See also Lazar v. Worldwide Language Resources*, BRB No. 17-0417 (BRB Jan. 24, 2018).

Claim of dermatological injury

Dr. Hubert's opinion with a "high degree of medical probability" that Claimant's skin disease was the result of an allergy sensitization that did not occur during, or because of, his overseas employment, is substantial evidence sufficient to rebut the Section 20(a) presumption of a work-related dermatological injury. Dr. Hubert testified in support of his opinion and provided rational explanations within his expertise. Therefore, Employers have relied on substantial evidence, not speculation or hypothetical probabilities, and have rebutted the presumption. Moreover, the burden is one of production rather than persuasion, and Employers have met their burden here.

Claim of psychological injury

SEII and Fluor contend that Claimant does not have PTSD, relying on the opinion of Dr. Tsanadis. They further contend that Claimant's other diagnoses of unspecified depressive disorder, unspecified anxiety disorder, and alcohol use disorder are unrelated to Claimant's overseas employment and, moreover, are not disabling. Claimant contends that he suffers from compensable PTSD and MDD as evidenced by the records of Dr. Parrott, Dr. Hooks, and Caring Choices. Additionally, he contends that having PTSD-like symptoms is sufficient to establish a work-related injury even without a specific diagnosis, citing *Kamal*, 43 BRBS 78 (2009).

In *Makhmoor*, the Board upheld the administrative law judge's rational conclusions that the opinions of two mental health experts offered by the employer successfully rebutted the Section 20(a) presumption regarding a claim of psychological injury arising from the claimant's employment as a linguist in Afghanistan. *See Makhmoor, supra*, slip op. at 3-4. One of the employer's experts, a psychiatrist, opined that the claimant was malingering; the second of the employer's experts, a psychiatrist of the same practice, opined that there was no evidence of mental illness and the claimant did not suffer from a psychiatric condition. *See id.*, slip op. at 3. The medical opinions presented by the employer constituted substantial evidence sufficient to rebut the presumption.

The Board also affirmed the administrative law judge's finding that the employer rebutted the Section 20(a) presumption in *Lazar*, which also involved a claim of PTSD arising from a claimant's overseas employment in Iraq as a linguist over two periods of time lasting about four years. *Lazar, supra*, slip op. at 2. In *Lazar*, the administrative law judge thoroughly discussed the opinions of two medical experts presented by employer, one who opined that the

claimant was malingering and did not have PTSD or any work-related psychological injury, and a second expert who opined that the claimant did not have PTSD, MDD (major depressive disorder), or any psychiatric condition related to his overseas employment. *Id.*, slip op. at 2-3. The opinions were deemed legally sufficient to rebut the Section 20(a) presumption, even though the claimant argued that they were not sufficient because the opinions "did not suggest a non-work-related cause for [the claimant's] diagnosed work-related injuries." *Id.*, slip op. at 3. In that case, the doctors had opined that the claimant did not have work-related psychological condition, and, per the Board, "employer is not required to show another agency of causation for claimant's alleged psychological injuries in order to rebut the presumption." *Id.* (citing *O'Kelley v. Dep't of the Army/NAF*, 34 BRBS 39 (2000)).

Here, Fluor presented the opinion of a qualified medical expert, Dr. Tsanadis, that the Claimant does not suffer from PTSD and that any other mental health conditions are not related to Claimant's employment overseas. Dr. Tsanadis conducted a psychological examination of Claimant with a battery of testing, provided a report containing his opinions, and also testified at the hearing to explain his opinions. His opinions are well-reasoned and supported by credible evidence of record and thus legally sufficient to rebut the Section 20(a) presumption. *See Makhmoor, Lazar, supra.*

3. Evidence Weighed as a Whole

If the administrative law judge finds the Section 20(a) presumption has been rebutted, the presumption drops from the case. *See Hawaii Stevedores, Inc. v. Ogawa*, 608 F.3d 642, 44 BRBS 47 (CRT) (9th Cir. 2010). The administrative law judge then must weight all the relevant evidence and resolve an issue of causation based on the record as a whole. *Id.* The Claimant bears the burden of persuasion, by a preponderance of the evidence, at this stage. *Id.*; *see generally Greenwich Collieries*, 512 U.S. 267 (1994).

Claim of dermatological injury

Claimant has not established by preponderant evidence that his skin disease was caused by his overseas employment with SEII or Fluor. As discussed above, Dr. Hsu did not actually offer an opinion on the cause of Claimant's skin disease, which she diagnosed as eczema. Also, I have afforded little weight to the opinion of Dr. Dominguez for reasons summarized in greater detail above, namely, that his opinions are based on a flawed factual assumption that Claimant's dermatitis began during his overseas employment. The consistent, reliable evidence of record, which notably includes Claimant's sworn testimony, is that Claimant's hands were "itchy" and "sweaty" overseas and that he did not have any skin eruptions until June of 2013 at the earliest. Claimant's overseas employment had ended about seven months earlier. Claimant himself testified at the hearing that he had no blisters or skin eruptions overseas. (TR at 50). Therefore, Dr. Dominguez incorrectly cited Claimant having a history of "itching **and small blisters on his hands**" in 2007 while working overseas. (CX-1 at 48) (emphasis added). Moreover, this is a material factual inaccuracy, because the onset of the rash signals that an allergic reaction has been triggered and contact with the triggering agent(s) would have occurred within the previous 7-10 days. (Exh. D at 2; Exh. JJ at 15-17, 40-41). Because Claimant's skin eruption first appeared in June of 2013 and worsened in the spring of 2014, this was well outside the time

period in which an immunological response, manifesting as a dermatological allergic reaction, would occur. There is no indication that the "itching" or "sweating" of Claimant's hands alone would support Dr. Dominguez' opinion regarding causation. In fact, Dr. Dominguez pressed Claimant for more details about his symptoms overseas, after Claimant described only "itching" and "sweating." Dr. Dominguez specifically wanted to know whether Claimant had any type of rash overseas. (Exh. V at 107-08).

Though I gave less weight to Dr. Dominguez' opinion, I also note that he does not contradict the typical timeline between the manifestation of an allergic reaction and contact with the offending material, proffered by Dr. Hubert. Both doctors agreed that an individual can have multiple, repeated exposures over years before having an allergic reaction, and Dr. Dominguez did not contradict the opinion of Dr. Hubert that once an allergic reaction is triggered, it will be in fairly close temporal proximity to the person's exposure to the triggering substance. This explains why Dr. Dominguez continued to ask Claimant about the date his rash begin, whether it started overseas, and whether Claimant sought medical care overseas for any rash. However, when Dr. Dominguez concluded that Claimant "developed recurrent hand dermatitis while he was [overseas]," this was simply incorrect. (CX-1 at 49). Further, as I have noted, Dr. Dominguez's professional qualifications were not submitted, he did not testify, and there is no indication that he reviewed all of Claimant's treatment records for his skin complaints, Claimant's employment records with health information, or Claimant's deposition testimony. Thus, his opinions are afforded little weight.

I have given great weight to the opinion of Dr. Hubert, who opined with a high degree of medical probability that the Claimant's dermatological condition was not caused by his work overseas. (Exh. D). Claimant takes issue with Dr. Hubert's finding that the allergy sensitization responsible for Claimant's "chronic eruption" occurred "during his domestic employment and not while in Afghanistan," arguing that Dr. Hubert is ignoring that Claimant's first skin eruption occurred in the summer of 2013, before the start of Claimant's stateside employment with J.A.M. in January 2014. I note that Dr. Hubert refers to Claimant's "chronic" eruption, which arguably became severe enough in the spring of 2014 that Claimant started to seek treatment. This occurred during Claimant's domestic employment even if his first noticeable skin eruption occurred in June of 2013, before he began working for J.A.M. More importantly, however, the crux of Dr. Hubert's opinion is the lack of a causal relationship between Claimant's overseas employment and his recurrent dermatitis, given his opinion "to a reasonable degree of medical probability [Claimant] was not allergic to the causative allergen when he left employment at Fluor." While Dr. Hubert referred specifically to Fluor, as Claimant's most recent overseas employer, I find that his opinion applies equally to Claimant's overseas employment with SEII, since the same reasoning applies, i.e., Claimant first experienced development of a rash well outside the timeframe to indicate conditions at SEII were in any way responsible for the condition. (*See* Exh. D at 2-3).

For all of these reasons, Claimant's claim alleging a dermatological injury is denied.

Claim of psychological injury

In *Makhmoor*, the Board upheld the administrative law judge's findings based on the greater weight given to two defense medical experts, a psychologist and a psychiatrist of the same practice, who found the claimant was malingering based on objective testing and thus Claimant was found not to have a work-related psychological injury. In so ruling, the administrative law judge gave lesser weight to the opinions of the claimant's treating psychiatrist and his treating therapist, who opined that the claimant's psychological condition was work-related. *See Makhmoor, supra*, slip. op. at 4. In reaching his conclusions, the administrative law judge noted inconsistencies in the claimant's statements, which might have been due to memory problems as opposed to active deception, and his tendency to provide self-serving narratives. The opinions offered by the employer were based on psychological testing, and the administrative law judge observed that the treating psychiatrist's opinions did not explain the cause of the claimant's psychological injury. Further, the treating providers did not provide testimony and saw the claimant a total of 15 times over a 3-year period. *Id.*, slip op. at 5.

In upholding the judge's findings and decision, the Board noted that the "administrative law judge was not required to give determinative weight to the opinions of the treating professionals, but was entitled to consider the rationale, if any, underlying their opinions, as well as other medical evidence of record." *Id.*, slip op. at 5-6 (citations omitted). Because the administrative law judge's decision set forth a "detailed, rational basis for rejecting the evidence claimant submitted in support of his claim of a work-related psychological injury, and for giving greater weight to the psychological test results indicating malingering and the opinion" of the evaluating psychologist, the administrative law judge's denial of the claim in *Makhmoor* was supported by substantial evidence. *Id.*; *see also Lazar, supra*, slip op. at 2, 4-5 (upholding administrative law judge's conclusion that the claimant did not establish work-related PTSD and MDD based on the record as a whole). *See also Kamal*, 43 BRBS 78 ("[T]he administrative law judge must base his decision on the evidence of record, assessing it in terms of weight and credibility.").

(a) PTSD

Claimant has not established by preponderant evidence that he suffers from PTSD. As summarized above, I found the opinions of Claimant's treating sources were entitled to little weight or only some weight. I assigned little weight to the letter opinion of Dr. Parrott who gave only a preliminary diagnosis of PTSD, saw Claimant on two occasions, one week apart, more than three years before the hearing, did not administer psychological testing, and did not provide any written or testimonial opinion regarding the cause of Claimant's symptoms or preliminary PTSD diagnosis. For similar reasons, I assigned little weight to the opinions expressed by Dr. Hooks. Her opinion was also based in part on incorrect factual information, i.e., that Claimant "witnessed killings and suicides."

As discussed in greater detail above, I gave the opinions expressed by LCSW Smith and APRN Jordan some weight to the extent that these practitioners at Caring Choices had the opportunity to observe Claimant several times between June 2016 and the date of their opinions in December 2016, and also because some of the Claimant's history of trauma noted in their opinion is consistent with other credible evidence of record, such as Claimant experiencing the

threats of incoming missiles and being on military bases subject to rocket attacks/incoming mortar rounds; he also witnessed the aftermath of violent incidents.

However, I did not give greater weight to the opinions of LCSW Smith/APRN Jordan because of the remoteness of their opinions, particularly considering that Claimant continued to treat at Caring Choices and his condition fluctuated; no psychological testing was administered; their professional backgrounds and areas of expertise are not known; they did not testify in support of any opinions they expressed; they did not reference having access to any other records of Claimant's mental health treatment outside the records of Caring Choices; and they did not review or consider the Claimant's deposition testimony or the opinions of Dr. Tsanadis. Although LCSW Smith and APRN Jordan opined that Claimant has PTSD associated with traumatic events while working overseas, their opinion does not carry significant weight as it does not attempt to address the timing of the onset of Claimant's symptoms and any importance of the gap between the traumas and the onset of his difficulties. Their opinion also does not address the periods of improvement of symptoms with stability followed by worsening of claimant's symptoms and appearance of new symptoms severe enough to alter his diagnoses and medication regimen. More importantly, Smith and Jorden based their opinions on some inaccurate information regarding the nature of the Claimant's history of trauma. Many of the traumas they cite are described in terms of direct experiences or being a firsthand witness to traumatic events happening to others. If they had known that Claimant did not personally witness injuries, killings, or suicides, or personally witness damage being inflicted on property or equipment, it is unknown how their opinions might change as to diagnoses, severity of symptoms, or causation. Also, Claimant primarily treated at Caring Choices for mental health difficulties, and their records nowhere mention Claimant's periods of successful employment after returning to the States, which did not end due to any mental health problems. The Caring Choices records make no reference to his work at J.A.M. or Pilot Thomas for all of 2014 and half of 2015. Instead, Claimant focused exclusively on having worked overseas and reported he was "unemployed" and "disabled" when treating at Caring Choices. (CX-1 at 14, 27). This is all problematic and detracts significantly from the reliability of the opinion of the Caring Choices practitioners because they relied on inaccurate, potentially misleading, and selective facts regarding Claimant's history of trauma and also his employment history, which bear directly on matters of causation. It is comparable to the limited, selective history Claimant provided regarding his skin disease, which rendered the opinion of Dr. Dominguez less reliable than the opinion of Dr. Hubert.

In the discussion of credibility and medical evaluations above, I summarized the reasons for giving the greatest weight to the opinion of Dr. Tsanadis on the question of whether Claimant has PTSD. I thus credit Dr. Tsanadis' opinion that a formal diagnosis of PTSD is not supported because of: the absence of any particular incident(s) of his overseas employment that resulted in onset of PTSD symptoms; the significant gap of time between traumas and onset of psychological symptoms with indications on normal functioning during the gap; and periods of improvement of psychological symptoms and stability followed by worsening of symptoms, and the spontaneous, late appearance of new symptoms like paranoia and hallucinations, which are not consistent with the clinical course for PTSD.

Although Claimant testified that unspecified "friends" noted changes in his "attitude"

after Claimant's return to the States, which prompted him to seek mental health care, his testimony was vague, did not specify what had changed, and did not identify any particular dates or timeframe. Notably, Claimant's wife, Dr. Cox, did not recall Claimant having any psychiatric or psychological issues in the time gap noted by Dr. Tsanadis. Claimant did not complain to her about having any flashbacks or hallucinations. I find this important not only due to Dr. Cox's opportunity to observe Claimant's behavior frequently in this time period but also due to her medical training. I also note that Dr. Cox readily described Claimant's problems with his skin and his skin-related complaints during the same time period, which suggests to me that if Claimant had other complaints, such as mental health difficulties and particularly indicators of psychotic symptoms, she would have been aware of them. Her testimony is thus consistent with Dr. Tsanadis' observations.

Additionally, in the time gap Dr. Tsanadis noted, Claimant performed full-time work in the States for two different employers. He denied having any nervous or psychiatric disorders, such as depression, when applying to work at J.A.M. in December 2013. He did not leave J.A.M. for any mental health or physical health reason; he left for a higher paying job. I have given more weight to the employment records stating the reason Claimant left J.A.M., than Claimant's statement to Dr. Tsanadis that he left the job because of Houston traffic and becoming "nervous." As noted above, I have found Claimant lacks credibility on several matters, including reasons for leaving various jobs he has held. Claimant left Pilot Thomas because he needed time off for treatment for his skin condition, which again did not reflect any inability to work for psychological symptoms. Accordingly, the record greatly supports Dr. Tsanadis' assessment of a significant gap between reported traumas and onset of psychological difficulties or symptoms, with indications of normal capacity for occupational functioning and maintaining normal daily activities during that gap.

I note that, with regard to his skin-related complaints, Claimant was able to identify particular dates and circumstances associated with the onset of symptoms. For example, he consistently told his providers, and affirmed in his testimony, that he first had a skin eruption in the summer of 2013 and increased symptoms in March or April 2014 that prompted him to seek medical treatment. In contrast, Claimant's reports about the onset of psychological symptoms are vague or equivocal ("not sure"). The treatment notes of Claimant's mental health providers do not reference any onset of psychological problems that contradict the opinions of Dr. Tsanadis.

Although Dr. Tsanadis' opinions expressed in his report were at times directed at Claimant's employment with Fluor, I find that the importance of the gap he noted applies equally to Claimant's claims against both Employers. In fact, the gap is greater when considering the dates of traumas Claimant associated with SEII employment that ended in November 2009. There is no indication that Claimant complained of psychological problems during his employment with SEII or Fluor. Rather, Claimant did not miss a shift, call in sick, or seek mental health treatment during employment with SEII. (TR at 49-53, 55). In December 2010, Claimant told Fluor he was in excellent health and had not sought counseling or mental health care in the previous year, and he again reported very good health in January 2012. (TR at 54-55, 59; Exh. II at 11, 13, 42).

I further note that Dr. Tsanadis has specialized experience assessing PTSD in VA Healthcare system patients. There is no indication that Dr. Parrott, Dr. Hooks, LCSW Smith, APRN Jordan or any other treating source has similar or comparable expertise specific to diagnostic assessments of PTSD.

Therefore, Claimant has not established that he suffers from PTSD arising out his overseas employment with SEII or Fluor.

(b) Depression

In addition to PTSD, Claimant initially alleged work-related depression.[12] (CX-2; EX-4). Dr. Parrott and Dr. Hooks did not identify any diagnosis of depression, whether work-related or not. (CX-1 at 41, 46-47). The December 20, 2016, opinion of LCSW Smith and APRN Jordan addressed only the "cause of Mr. Gatewood's PTSD" and referenced various PTSD criteria; it did not address the cause of depression or any other mental health diagnosis or symptomatology. (CX-1 at 42). When Claimant reported depressive symptoms to his providers at Caring Choices, who diagnosed MDD, the only mention of a work-related component was that Claimant "went overseas for 9 years," which is equally suggestive of the adjustment difficulties noted by Dr. Tsanadis. (CX-1 at 11, 19). Claimant more often mentions to medical providers his own belief that his depression or anxieties are related to his "medical issues," i.e., his skin disorder. (CX-1 at 11, 41; Exh. V at 43). In sum, Claimant has not presented any medical opinion that he suffers from work-related depression.[13]

I have credited with great weight Dr. Tsanadis' opinions that Claimant has unspecified depressive disorder, unspecified anxiety disorder, and alcohol use disorder, moderate, and that they present barriers to working without the treatment course that Dr. Tsanadis recommended. I also gave great weight to Dr. Tsanadis' opinion that evidence of a causal connection between Claimant's mental condition and his work overseas is, at best, equivocal. The doctor's opinion that work-related "experiences" "may have contributed" to his mental health difficulties (Exh. B at 15) does not establish causation by preponderant evidence. And, more importantly, Dr. Tsanadis' report and opinion testimony are consistent in describing such "experiences" to be the claimant's termination by Fluor and his subsequent adjustment difficulties after being away from family and friends for most of a decade. While work-related, a legitimate personnel action such as being terminated for cause is not a condition of working that is compensable under the Act. *See Marino v. Navy Exchange*, 20 BRBS 166 (1988); *Martinez v. Marine Terminals Corp.*, BRB No. 98-1222 (BRB June 7, 1999) (unpub.). The evidence submitted by Fluor reflects the legitimacy of the Claimant's termination, which Claimant has not contradicted. As noted above, Claimant's testimony regarding the circumstances of his termination is not credible and thus not given any weight. (Exh. J). Returning home after being away for many years is likewise not a condition of working that would give rise to a compensable injury or disease.

[12]I note that Claimant's pre-hearing statement (Form LS-18) alleged only PTSD; his interrogatory responses to SEII referred at times to PTSD only and at other times to PTSD and depression. (CX-6; EX-13 at 3, 11).

[13]LSCW Smith refers to Claimant treating for PTSD and MDD. She also recommends that Claimant not work because of his "continuation of symptoms," but as noted herein, she provides no opinion of work-related MDD. (CX-1 at 42-43).

(c) Other psychological injury

Besides PTSD and depression, Claimant generally alleged "worsening of psychological condition" and/or "aggravation of pre-existing psychological condition"; he did not allege a work-related anxiety disorder. (CX-2; EX-4). Claimant has not made any showing of "aggravation of a pre-existing psychological condition," having denied under oath any pre-existing conditions, and the records do not mention any such aggravation. (TR at 34).

Dr. Parrott gave a preliminary diagnosis of PTSD and Dr. Hooks diagnosed PTSD and alcohol abuse secondary to PTSD. (CX-1 at 41, 46-47). As noted above, the Caring Choices providers opined only that Claimant had work-related PTSD. Thus, these providers did not identify any diagnosis of anxiety or address any other psychological condition or symptomatology without formal diagnosis, which Claimant arguably alleges are work-related. As set forth in the discussion of Claimant's alleged depression, I have given great weight to Dr. Tsanadis' opinion that Claimant does not have anxiety or depression caused by his overseas employment.

I have also considered whether Claimant has mental health symptoms (PTSD or otherwise) which constitute a work-related injury or occupational disease even absent a formal mental health diagnosis. *See Kamal, supra,* 43 BRBS 78; *Lazar, supra.* In *Lazar*, the administrative law judge addressed whether Claimant suffered from work-related psychological symptoms even though the administrative law judge found that Claimant did not suffer from work-related PTSD or MDD. *Lazar*, 2015-LDA-00235, slip op. at 72-73. The claimant in *Lazar* initially made a claim for that he "suffered mentally," and the administrative law judge noted "it could be argued that psychological symptoms, even absent a diagnosis, constitute a disabling injury within the meaning of the Act." *Id.*, slip op. at 72. The administrative law judge asked first, whether the claimant made out a connection between his symptoms and his employment, and second, whether he produced evidence that such symptoms are independently disabling. *Id.*, slip op. at 72-73. The judge, however, did not reach the second question because any "medical opinions that would render Claimant's psychological condition disabling are premised on the diagnosis of PTSD." *Id.*, slip op. at 73. Therefore, the claimant had not established "any causal connection between his employment and any psychological symptoms that would be separate from his diagnosis of PTSD." *Id.* The Board affirmed. *Lazar*, BRB No. 17-0417.

Here, Claimant did not specifically allege an injury based on a set of symptoms; rather he alleged an injury of PTSD, depression, "worsening of psychological condition," and/or aggravation. I have given him the benefit of the doubt that "worsening of psychological condition" may include psychological symptoms short of a formal diagnosis. To the extent that Claimant alleges he has compensable "PTSD-like symptomatology," by borrowing Dr. Tsanadis' phrase, the Claimant nonetheless fails to establish causation. The same is true for any general "worsening of psychological condition." Like the claimant in *Lazar*, Claimant here relies on medical opinions on causation that are premised on the diagnosis of PTSD or alcohol abuse secondary to PTSD. Further, Dr. Tsanadis provided an opinion that Claimant's "mental condition," which I assumed for this discussion is broader than formal diagnoses and would include the Claimant's mental health symptomatology, was only equivocally tied to his employment overseas. (Exh. B at 15). He expressed no opinion of the likelihood of a causal

connection. Dr. Tsanadis also consistently described any potentially related work experiences as conditions that are not compensable under the Act (i.e., termination, adjustment difficulties). As such, Claimant cannot rely on Dr. Tsanadis' opinion to establish a work-related psychological injury by a preponderance of the evidence. Claimant's own testimony is also insufficient to carry his burden, given his material omissions and self-serving narratives regarding his symptoms and employment histories. *See Golden*, 620 F.2d at 74.

Claimant also contends in his Post-Hearing Brief that a psychological condition arising from a compensable physical injury is compensable, arguing that he suffers from a compensable psychological injury arising out of his skin disease. Claimant cites *Amerada Hess Corp.*, which recognizes that a claimant may receive benefits under the Act for a subsequent injury, if the claimant presents substantial evidence that the secondary condition "naturally or unavoidably" resulted from the first covered injury. *See* 543 F.3d at 763. However, Claimant did not present medical opinions establishing the existence of psychological conditions caused by his skin disease. Further, any such psychological conditions are not compensable subsequent injuries because Claimant does not have a covered dermatological injury.

Similarly, Claimant's reliance on *Kelley v. Bureau of Nat'l Affairs* is misplaced. Claimant argues that under *Kelley*, medical "treatment is compensable even though it is partly for a work-related condition." (Claimant's Post-Hearing Brief at 35). In *Kelley*, the Board reversed in part and vacated in part the decision of the administrative law judge who denied benefits for medical services, specifically for treatment with a psychologist and psychiatrist, on the ground that the treatment was not causally related to the subject injury. However, the parties had previously settled claimant's claim of a lower back injury and as part of settlement, had stipulated that the claimant had also sustained a psychiatric or psychological injury from her physical injury. *See* 20 BRBS 169. A dispute subsequently arose over whether claimant's mental health treatment for pre-existing borderline personality disorder was work-related. The evidence reflected that "pain associated with the claimant's work injury played some part in her mental health treatment." *See id.* (noting evidence indicating that "less than 5 percent of the treatment [at issue] was for management of pain associated with claimant's work injury"). Thus, remand was ordered for entry of an appropriate award of medical benefits for those expenses deemed reasonable and necessary for treatment of claimant's psychological condition. Accordingly, in *Kelley*, it was already established that the claimant suffered from a work-related psychological injury related to her compensable back injury, and the Board noted evidence of record that the claimant was receiving mental health treatment, at least in part, for her ongoing, work-related psychological condition. Thus, on remand, the administrative law judge was directed to address the reasonableness and necessity of that treatment. *See id.* Here, in contrast, a compensable, psychological injury has yet to be established, and Claimant retains the burden of proving it by a preponderance of the evidence.

Per the discussion herein, I have afforded the greatest weight to the opinions of Dr. Tsanadis, particularly regarding the existence of any psychological conditions and absence of employment causation. I find that Dr. Tsanadis did not appear biased in his opinions regarding Claimant. He found no compelling evidence of misrepresentation of symptoms; noted some potential indicators of over-reporting but overall deemed the results of the evaluation to be a valid representation of Claimant's symptomatology; assessed Claimant as meeting the criteria for

unspecified depressive disorder, unspecified anxiety disorder, and alcohol use disorder; and identified clinical barriers to returning Claimant to work but provided treatment recommendations for same. However, important to the analysis herein, Dr. Tsanadis' well-reasoned opinions support that Claimant's psychological conditions were not caused by his employment overseas with either SEII or Fluor and that he does not have PTSD. Thus, Claimant has not established by a preponderance of the evidence that he suffers from compensable PTSD, depression, or any other work-related psychological conditions.

For all of these reasons, Claimant's claim of psychological injury is also denied. Because I find that Claimant has not shown that he suffered from work-related dermatological and/or psychological injuries, I need not reach the remaining issues in dispute.

V. DECISION AND ORDER

Based upon the foregoing, it is hereby ORDERED that, although Claimant provided timely notices and filed timely claims regarding his alleged dermatological and psychological injuries, Claimant's claims for medical benefits and disability compensation for such injuries are DENIED.

ORDERED this 13th day of February, 2020, at Covington, Louisiana.

Digitally signed by Angela F. Donaldson
DN: CN=Angela F. Donaldson, OU=Administrative Law Judge, O=US DOL Office of Administrative Law Judges, L=Covington, S=LA, C=US
Location: Covington LA

ANGELA F. DONALDSON
ADMINISTRATIVE LAW JUDGE