

**U.S. Department of Labor**

Office of Administrative Law Judges  
90 Seventh Street, Suite 4-800  
San Francisco, CA 94103-1516

(415) 625-2200  
(415) 625-2201 (FAX)



**Issue Date: 10 November 2022**

CASE NO.: 2020-LDA-01787

OWCP NO: 02-325872

*In the Matter of:*

**MIRZA IMAMOVIC,**  
Claimant,

vs.

**FLUOR CONOPS LIMITED and  
INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA,**  
Respondents Employer and Carrier.

**DIRECTOR, OFFICE OF WORKERS'  
COMPENSATION PROGRAMS,**  
Party-in-Interest.

*Appearances:*

Mirza Imamovic, *pro per*  
For the Claimant

Yaakov U. Adler, Esq.  
John F. Karpousis, Esq.  
For the Respondents

*Before:*

Susan Hoffman  
Administrative Law Judge

**DECISION AND ORDER DENYING BENEFITS**

This case arises under the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §§ 901-950, as extended by the Defense Base Act, 42 U.S.C. §§ 1651-1655 (collectively, the "Longshore Act" or "Act"). Claimant Mirza Imamovic, a self-represented litigant, is seeking compensation and medical benefits from Respondents Fluor Conops Limited and Insurance Company of the State of Pennsylvania (collectively, "Fluor") for injuries Claimant allegedly sustained in the course of his employment. This matter was initiated with the Office of

Administrative Law Judges (“OALJ”) on April 17, 2020, when it was referred for formal hearing by the Director, Office of Workers’ Compensation Programs (“OWCP”). The Director did not formally appear in this case.

Both parties having had a full and fair opportunity to submit evidence and file closing briefs, the case is now ripe for decision. In reaching this decision, the undersigned has considered all the evidence admitted into the record, the legal arguments of the parties, and the applicable law. For the reasons set forth below, Claimant’s claims for disability compensation and medical benefits are DENIED.

## **I. PROCEDURAL HISTORY**

This case was docketed on September 9, 2020, and assigned to the undersigned on November 25, 2020. On December 2, 2020, the undersigned issued a *Notice of Hearing and Prehearing Order*, setting this case for hearing on a written record. On December 16, 2020, Respondents filed an unopposed request for hearing via video conference. On March 19, 2021, the undersigned issued an *Amended Notice of Hearing and PreHearing Order*, setting the hearing for videoconference on May 26, 2021.

On March 25, 2021, Claimant’s counsel filed a motion to withdraw as Claimant’s counsel and stay proceedings, which was granted by the undersigned on April 7, 2021. Claimant was instructed to notify the tribunal with an update regarding his representation status by April 28, 2021. The undersigned also continued the video-hearing to July 8, 2021. On April 28, 2021, Claimant informed this tribunal that he would be proceeding *pro per*.

Respondents filed pre-hearing submissions on June 8, 2021, and Claimant submitted an email with witness information and 11 photos on June 11, 2021. Respondents submitted a Pretrial Motion in Limine on June 21, 2021, which was granted in part and denied in part by the undersigned during the hearing on July 8, 2021. (Hearing Transcript at 11-12.) Claimant’s listed witnesses were excluded from testifying, and the rest of the relief requested in the motion was denied. (Hearing Transcript at 12.) On July 1, 2021, Respondents submitted their final exhibits, and on July 9, 2021, in compliance with the undersigned’s request, Respondents electronically submitted a copy of Claimant’s proposed exhibits 12 through 14.

A formal hearing was held in this case by videoconference using Microsoft Teams on July 8, 2021, at which all parties were afforded a full and fair opportunity to present evidence and argument. The official hearing transcript (“HT”) was received on July 22, 2021. Claimant testified via a translator at the hearing (HT 16-85). Respondents called Hamza Botic, a field case manager for JAG International (HT at 86-97), as a rebuttal witness, and Doctor Jake Epker as Respondents’ expert psychologist (HT at 99-120). At the hearing, Claimant’s exhibits (“CX”) 1 through 11 were admitted without objection. (HT at 9-10.) CX 12 through 14 were admitted, with Respondents’ objections to the evidence going to the weight of the evidence. (HT at 38-39.) Respondents’ exhibits (“RX”) A through M were admitted without objection. (HT at 11.) Although every exhibit in the record may not be discussed below, each was carefully considered in reaching this decision.

On July 27, 2021, Respondents requested an extension of time to file closing briefs and to enlarge the page limit, which was granted in part by the undersigned on August 2, 2021. The deadline to file closing briefs was extended to October 6, 2021. On September 16, 2021, Respondents requested to engage in a settlement conference. Judge Christopher Larsen was appointed as the settlement judge on September 17, 2021. Settlement judge proceedings concluded without resolution on October 29, 2021. The deadline to submit closing briefs was extended to November 5, 2021, on September 27, 2021, and to December 6, 2021, on October 27, 2021. On December 6, 2021, Claimant filed *Briefing* (“Cl. Brief”), and Respondents filed *Employer and Carrier’s Post-Trial Brief* (“Resp. Brief”), along with an *Annex A*.

## II. STIPULATIONS

At the hearing and in their pre-hearing submissions, the parties agreed to the following:

1. The Act applies to this claim; and
2. An employer-employee relationship existed at the time of the alleged injury.

(HT at 14.)

## III. ISSUES

The parties agreed at hearing that the issues to be decided in this case are as follows:

1. Whether Claimant has suffered injury or disease;
2. Whether Claimant’s injury or disease arose out of and in the course of employment;
3. Whether the claim was timely noticed and timely filed;
4. Nature and extent of Claimant’s disability;
5. Entitlement to compensation and medical benefits; and
6. Claimant’s average weekly wage (“AWW”); and
7. Claimant’s entitlement to attorney fees, penalties, and interest.

(HT at 14-15.)

## IV. BACKGROUND AND CLAIMANT’S TESTIMONY

Claimant worked for Respondents in Afghanistan from 2010 to 2014, and from January to March 2017. (HT at 18-20.) Claimant testified to multiple traumatic events that took place during his employment from May 2010 to 2017. (HT at 17-19, 51, 55-59, 74; RX C at 14-23, 31-32.) He stopped working for Respondents in 2014 because his son was born. (HT at 18.) From 2014 to 2017, Claimant “mainly [] work[ed] with [his] father driving things” and “selling socks”. (HT at 19, 70-71; *see also* RX C at 25-26.) He testified he returned to Afghanistan in 2017 due to money and because he “felt [he] wouldn’t have any problems [or] consequences”. (HT at 19.) Claimant left his employment in March 2017 because the military police found a cell phone, which was prohibited. (HT at 20-21, 40-41.) Claimant testified that he had a cell phone to contact his son, who was sick. (HT at 20-21.)

When he returned home to Bosnia in 2017, Claimant testified he did not do anything initially “because [he] felt bad.” (HT at 22.) He later began working for his father, and began

working for Bingo, a superstore, in 2018. (HT at 22.) His employment lasted about a year. (HT at 78.) Claimant worked with four other people in the office, but testified that he had to go through the warehouse to bring documents and was in contact with a lot of people. (HT at 78-79.) He stopped working for Bingo in November or December 2019, stating, “I couldn’t really tolerate people around me. I was very nervous. I was afraid that I was going to hurt somebody or hurt myself.” (HT at 22; *see also* HT at 79; RX C at 37.) Since quitting his job, Claimant’s father helps him financially. (HT at 22-23.) Sometimes, Claimant completes small jobs on the internet or “sell[s] something” with his friend. (HT at 22-23; *see also* HT at 80; RX C at 40-41.) He applied to work at another supermarket called Konzum in 2020, but was not offered the job. (HT at 79; *see also* RX C at 38.)

Claimant testified that he began having problems with his mental health between 2010 to 2014, experiencing symptoms such as sleeplessness, fear, trouble falling asleep, difficulty breathing, and nightmares about his work in Afghanistan. (HT at 59-61; RX C at 23-24.) Between 2014 and 2017, Claimant did not have any problems, other than with sleeplessness, which “was normal.” (HT at 19; *see also* HT at 69; RX C at 24-25.) He would fall asleep and wake up thinking he was in Afghanistan, and would hear Apache helicopters flying. (HT at 69-70; RX C at 25.) Claimant also testified that he did experience fear, but “that would depend about situation and, realistically, [he] would simply lose myself.” (HT at 69; *see also* RX C at 24-25.) He “thought it was normal and that would stop over some time. [He] didn’t pay attention.” (HT at 70.) Claimant’s sleeplessness and fear relating to Afghanistan did not prevent him from working from 2014 to 2017. (RX C at 26.) Claimant concealed the psychological symptoms he was experiencing between 2014 to 2017 from Fluor in order to get re-hired by them in 2017. (HT at 73; *see also* RX C at 28.) Prior to leaving Afghanistan in 2017, Claimant experienced fear and sleeplessness. (HT at 75; *see also* RX C at 33.) When Claimant returned home in 2017, he testified at hearing that he began “feeling very, very bad” two or three months later. (HT at 70.)

Claimant also testified about his treatment with providers. Claimant began seeing Dr. Mirzi Jamakovic<sup>1</sup>, a psychologist, in October 2019. (HT at 23, 75; *see also* RX C at 33-34.) Dr. Jamakovic died after Claimant visited him once, and Claimant began seeing Dr. Jasmine Hamdovic, a psychiatrist, in November or December 2019.<sup>2</sup> (HT at 23, 25; *see also* RX C at 34.) Claimant sees Dr. Hamdovic about once a month. (HT at 26.) Claimant continued to treat with Dr. Hamdovic at the time of the hearing. (HT at 25-26.) Claimant testified that he saw a treating provider named Mitra Mierkovic<sup>3</sup> once, because the hospitals were busy due to COVID. (HT at 34; *see also* RX C at 35-36.) He testified he went to see Mitra Mierkovic “[t]o see if we [could] do some more tests to see the progression of [his] illness.” (HT at 35.) He testified, “I don’t even know myself, I just had to see her.” (HT at 35.)

---

<sup>1</sup> This provider’s name is spelled Jarakovic Mirsad in the medical records. (*See* CX 12.)

<sup>2</sup> This provider’s name is spelled Jasmin Hamidovic in the medical records. (*See* CX 13.)

<sup>3</sup> This provider’s name is spelled Mitra Mirkovic-Hajdukov in the medical records. (*See* CX 14.)

## V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

### A. General Legal Standard

For cases brought under the Defense Base Act, the location of the office of the District Director, whose compensation order is involved, establishes the pertinent geographical jurisdiction and applicable Circuit law. *Serv. Emps. Int'l, Inc. v. Dir., OWCP*, 595 F.3d 447, 454 (2d Cir. 2010); *McDonald v. Aecom Tech. Corp.*, 45 BRBS 45 (2011). The Acting District Director indicated that this Decision and Order should be sent for service to the Jacksonville, Florida office. (See Case Docketed, 4/17/2020.) Therefore, the Acting District Director in Jacksonville would serve any compensation order, and Eleventh Circuit law controls in this case.

The Defense Base Act extends workers' compensation coverage under the Longshore Act to injured employees of American contractors engaged in employment at various locations outside the United States, including military bases. 42 U.S.C. § 1651; see also *G4S Int'l Employment Servs. (Jersey) v. Newton-Sealey*, 975 F.3d 182, 186 (2d Cir. 2020). The benefits set forth in the Defense Base Act apply to U.S. citizens and to aliens and to foreign individuals who are not residents of the United States. 42 U.S.C. § 1652(b).

Section 2(2) of the Longshore Act defines an "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 out of such employment or as naturally or unavoidably results from such accidental injury . . . ." 33 U.S.C. § 902(2). The Longshore Act defines disability in economic terms as "incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or other employment." 33 U.S.C. § 902(10). To receive a disability award under the Longshore Act, a claimant must have an economic loss coupled with a physical or psychological impairment. *Sprull v. Stevedoring Servs. of Am.*, 25 BRBS 100, 110 (1991).

An injury must both arise out of and occur in the course of the employment ("AOE/COE"). These "are separate elements: the former refers to injury causation; the latter refers to the time, place, and circumstances of the injury." *U.S. Indus./Fed. Sheet Metal v. Dir., OWCP*, 455 U.S. 608, 615 (1982). Under the Defense Base Act, an injury is also compensable where it did not occur within the space and time boundaries of work, but the employee was nonetheless in a "zone of special danger." See e.g., *O'Leary v. Brown-Pacific-Maxon*, 340 U.S. 504 (1951) (employee drowned attempting a rescue while spending the afternoon at a recreational facility in Guam); *Kalama Servs. v. Dir., OWCP*, 354 F.3d 1085 (9th Cir. 2004), cert. denied, 543 U.S. 809 (2004) (claimant was injured at a social club after work).

### B. Compensability and the Section 20(a) Presumption

#### 1. *Legal Framework*

Claimants are aided by the presumption in Section 20(a) of the Act in demonstrating AOE/COE: if they can establish a *prima facie* case, then they are entitled to a rebuttable presumption that the claim comes within the provisions of the Act, which includes the issue of whether the injury is work-related. 33 U.S.C. § 920(a); *Am. Stevedoring Ltd. v. Marinelli*, 248 F.3d 54, 64 (2d Cir. 2001); *Kubin v. Pro-Football, Inc.*, 29 BRBS 117 (1995). The Act and the

Section 20(a) presumption apply to both physical and psychological injury cases. *See Pedroza v. BRB*, 624 F.3d 926, 931 (9th Cir. 2010).

To establish a *prima facie* case, a claimant must show that: (1) the claimant sustained a harm or pain, and (2) that working conditions existed or an accident occurred which could have caused the harm or pain. *Kelaita v. Triple A Mach. Shop*, 13 BRBS 326, 330–31 (1981), *decision and order after remand*, 17 BRBS 10 (1984), *aff'd sub nom. Kelaita v. Dir., OWCP*, 799 F.2d 1308 (9th Cir. 1986). The Section 20(a) presumption does not dispense with the requirement that a claim of injury be made in the first instance, nor is it a substitute for the evidence necessary to establish a *prima facie* case. *U.S. Indus.*, 455 U.S. at 612–15.

To show the first element of a *prima facie* case, a claimant need not establish any particular diagnoses, just that “something has gone wrong with the human frame.” *Crawford v. Dir., OWCP*, 932 F.2d 152, 154 (2d Cir. 1991) (citing *Romeike v. Kaiser Shipyards*, 22 BRBS 57 (1989)); *Wheatley v. Adler*, 407 F.2d 307, 313–14 (D.C. Cir. 1968); *Southern Stevedoring Corp. v. Henderson*, 175 F.2d 863, 866–67 (5th Cir. 1949); *Golden v. Eller & Co.*, 8 BRBS 846, 848–49 (1978), *aff'd*, 620 F.2d 71 (5th Cir. 1980). Credible complaints of subjective symptoms and pain can be sufficient to establish the element of harm necessary for a *prima facie* case for Section 20(a) invocation. *See Sylvester v. Bethlehem Steel Corp.*, 14 BRBS 234, 236 (1981), *aff'd sub nom.* 14 BRBS 984 (CRT), *aff'd* 681 F.2d 359 (5th Cir. 1982).

The “working conditions” element requires that the claimant demonstrate the existence of working conditions which *could* have caused the harm alleged; the Claimant does not have to prove the causal nexus. *See Everett v. Newport News Shipbuilding & Dry Dock Co.*, 23 BRBS 316, 318 (1989). A claimant is not required to show unusually stressful conditions in order to establish the *prima facie* case; rather, even where stress may seem relatively mild, a claimant may recover if an injury results. *See Cairns v. Matson Terminals, Inc.*, 21 BRBS 252 (1988); *Konno v. Young Brothers Ltd.*, 28 BRBS 57, 61 (1994); *Bazor v. Boomtown Belle Casino*, 35 BRBS 121 (2001), *rev'd on other grounds*, 313 F.3d 300 (5th Cir. 2002), *cert denied*, 540 U.S. 814 (2003). The hazardous conditions which are peculiar to employment in a war zone have been recognized as sufficient to cause the occupational diseases of PTSD and depression. *See Gindo v. Aecom Nat'l Sec. Programs, Inc.*, 52 BRBS 51, 54 (2018).

When a claimant establishes his *prima facie* case, the Section 20(a) presumption applies to the issue of causation, linking the harm or pain with the claimant's employment. *Lacy v. Four Corners Pipe Line*, 17 BRBS 139 (1985); *Graham v. Newport News Shipbuilding & Dry Dock Co.*, 13 BRBS 336 (1981); *Kelaita*, 13 BRBS at 331. The burden then shifts to the respondent to rebut the presumption of causation with “substantial evidence to the contrary.” 33 U.S.C. § 920. Substantial evidence “means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938).

The burden on the employer imposed by Section 20(a) is a burden of production, not persuasion. *American Grain Trimmers, Inc. v. Dir., OWCP*, 181 F.3d 810, 816–17 (7th Cir. 1999); *Albina Engine & Mach. v. Dir., OWCP*, 627 F.3d 1293, 1298 (9th Cir. 2010). Employer must produce facts, not mere speculation, in order to rebut the presumption of compensability. *See Conoco, Inc. v. Dir., OWCP*, 194 F.3d 684, 687–88 (5th Cir. 1999); *Bridier v. Alabama Dry Dock & Shipbuilding Corp.*, 29 BRBS 84 (1995); *Hampton v. Bethlehem Steel Corp.*, 24 BRBS 141,

144 (1990). Thus, “reliance on mere hypothetical probabilities in rejecting a claim is contrary to the presumption created by the Act.” *Swinton v. J. Frank Kelly, Inc.*, 554 F.2d 1075, 1085 (D.C. Cir. 1976) (quoting *Steele v. Adler*, 269 F. Supp. 376, 379 (D.D.C. 1967)), *cert. denied*, 429 U.S. 820 (1976). The employer must offer admissible evidence that, if believed, would support a finding in its favor. *American Grain Trimmers*, 181 F.3d at 818. Evidence from a doctor that no relationship exists between the injury and a claimant’s employment is sufficient to rebut the presumption. *Holmes v. Universal Maritime Serv. Corp.*, 29 BRBS 18, 20 (1995).

The 20(a) presumption is a procedural tool that falls out of the case once substantial evidence has been produced, not a rule about weighing evidence. *Sprague v. Dir.*, *OWCP*, 688 F.2d 862, 865 (1st Cir. 1982) (citing *Travelers Ins. Co. v. Belair*, 412 F.2d 297, 301 n.6 (1st Cir. 1969)); *Volpe v. Northeast Marine Terminals*, 671 F.2d 697, 700 (2d Cir. 1982). If the employer rebuts the 20(a) presumption, “the presumption disappears and the trier of fact must decide the case based solely on evidence of record.” *American Grain Trimmers*, 181 F.3d at 818; *see also Marinelli*, 248 F.3d at 65; *Del Vecchio v. Bowers*, 296 U.S. 280, 286-87 (1935). In evaluating the record as a whole, the claimant, as the proponent of coverage, bears the burden of persuasion by a preponderance of the evidence. *Dir.*, *OWCP v. Greenwich Collieries*, 512 U.S. 267, 277–78, 281 (1994); *see also Steadman v. SEC*, 450 U.S. 91, 91 (1981).

## **2. Claimant’s Prima Facie Case**

Claimant has established the first element of a *prima facie* case. Claimant submitted 22 medical notes from his physicians or healthcare providers, ranging from October 14, 2019, to June 15, 2021. (CX 12; CX 13; CX 14.) All of the medical notes were translated, had a seal of the translator and medical institution, and had the seal and signature of the reviewing physician or healthcare provider. (*See* CX 12; CX 13; CX 14 at 2, 4.)

Claimant saw “Prim.dr. Jarakovic Mirsad” (“Dr. Mirsad”) at the Public Health Institution Health Center Lukavac on October 14, 2019, for psychotherapy treatment. (CX 12.) The medical note was titled “Findings and opinion of medical specialist”, and Dr. Mirsad listed his signature title as neuropsychiatrist. (CX 12.) Dr. Mirsad wrote that Claimant had mental difficulties for a long period of time, which manifested with occurrences of fear, frequent changes of mood, occasional sleeping disorder, and very-frequent war-related nightmares. (CX 12.) Claimant also had difficulty establishing interpersonal relations as he had become more cautious in his communications with others and did not want to discuss his traumatic experiences. (CX 12.)

At the screening that day, Dr. Mirsad noted that Claimant was anxious, had a “very low frustration tolerance level”, and was emotionally hypersensitive and inclined to short-circuit reactions. (CX 12.) Dr. Mirsad wrote that “depressive ideas [were] present in his thoughts with symptoms of PTSD”, the most frequent being “avoidance of stimulus”. (CX 12.) Claimant had a “[r]eduction in will dynamics sphere, with social compromitation [sic]”. (CX 12.) Dr. Mirsad diagnosed Claimant with affective disorder, stress related, and prescribed two medications, noting that his next medical control was in three weeks. (CX 12.)

Claimant saw “Mr.med.sci. Hamidovic dr Jasmine” (“Dr. Hamidovic”) at the psychiatric clinic of Public Health Institution, University Clinical Centre Tuzla (“Tuzla Center”) on November 19, 2019, December 16, 2019, January 15, 2020, February 12, 2020, March 14, 2020, April 18,

2020, May 17, 2020, June 17, 2020, July 16, 2020, September 16, 2020, October 16, 2020, November 8, 2020, January 13, 2021, February 17, 2021, March 15, 2021, April 14, 2021, and June 15, 2021. (CX 13 at 1-5, 7-16, 21-46, 50-54.) These medical notes are all titled “Opinion and Findings of a Doctor of Medicine – Specialist”. (CX 13 at 1-2, 4-5, 7-8, 10, 12, 14, 21, 27, 31, 35, 37, 39, 44, 51.) On August 14, 2020, and May 17, 2021, Claimant saw Dr. Hamidovic at Polyclinic Medical Irac. (CX 13 at 17-20, 47-49.) In multiple notes, Dr. Hamidovic’s title was listed as neuropsychiatrist. (CX 13 at 19, 28, 38, 40, 45, 48, 52.) Claimant came in for medical screenings and was usually escorted by a friend. (CX 13 at 1-2, 4-5, 7-8, 10, 12, 14, 18, 21, 27, 47.)

Generally, Claimant complained that he was nervous and moody, did not have the will to do anything, experienced unpredictable mood changes, slept very poorly, and had nightmares related to his stay in Afghanistan. He was constantly afraid, hardly communicated with others, got easily upset in conversations, and could not find an interest in anything. He often experienced a racing heartbeat and symptoms of panic attacks, and felt tense. Dr. Hamidovic wrote that Claimant indicated that “when he sees the migrants in the city it reminds him of the situations from Afghanistan.” (CX 13 at 1; *see also* CX 13 at 12, 14, 18, 21.) Claimant often came to his appointments unshaven, with no desire to maintain his hygiene. (CX 13 at 4-5, 7, 8, 18, 27, 44, 51.) Claimant also experienced worsening symptoms after earthquakes, when hearing firecrackers, and during the COVID pandemic. (CX 13 at 2, 4, 8, 10, 12, 14, 18, 21, 35.)

In the notes from Tuzla Center, Dr. Hamidovic generally described Claimant’s mental status as aware, tense, anxious, disomnia, and his emotional status as: symptoms of intrusion and avoidance from post-traumatic stress disorder circle, fluctuating anxiety, vegetative symptoms, hypersensitivity, low frustration tolerance level, constant feeling of danger, sleeping disorder, fall of vital energy, decrease of initiative and activity, reduced will dynamics, decrease in mental efficiency, fall of functions. (CX 13 at 1-2, 4-5, 7, 9, 11, 13, 15, 22, 27, 32, 35, 37, 39, 44, 52.) In the notes from Polyclinic Medical Irac, Claimant’s mental status was described as: “aware, communicative, of wider throughs flow with frequent excursions to traumatic topics. Burdened by traumatic experiences. Tense. Anxious. Affectively irritable. Lower basic mood. Symptoms from PTSD circle (numbing, elevated excitement, flash back, avoidance and re-experience). Low frustration tolerance level. Decrease in will dynamics. Dyssomnia”. (CX 13 at 18; *see also* CX 13 at 47.)

Claimant was diagnosed with affective disorder, stress-related; adjustment disorder; and suspected post-traumatic stress disorder on November 19, 2019. (CX 13 at 1.) On December 16, 2019, Dr. Hamidovic diagnosed Claimant with “Susp. PTSD” and “adjustment disorder”. (CX 13 at 2.) From January 15, 2020, to May 17, 2020, Dr. Hamidovic diagnosed Claimant with post-traumatic stress disorder and adjustment disorder. (CX 13 at 4-5, 7, 9, 11.) From June 17, 2020, to June 15, 2021, Dr. Hamidovic diagnosed Claimant with post-traumatic stress disorder, adjustment disorder, and panic attacks (CX 13 at 13, 15, 19, 22, 28, 32, 35, 38, 40, 48, 52), except, on April 14, 2021, Dr. Hamidovic diagnosed Claimant with post-traumatic stress disorder, combined anxiety depressive disorder, and panic attacks. (CX 13 at 44.) The adjustment disorder was labeled as having an anxiety depressive picture after October 16, 2020. (CX 13 at 28, 32, 35, 38, 40, 48, 52.)



Claimant saw “mr.sci. Mitra Mirkovic-Hajdukov” (“Ms. Mirkovic-Hajdukov”), psychologist specialist, at the psychiatric clinic of Tuzla Center on July 17, 2020. (CX 14.) Ms. Mirkovic-Hajdukov included her findings in a report titled “Opinion and Findings of a Doctor of Medicine – Specialist”. (CX 14 at 1.) The report included the following sections: Claimant’s history, observations, used tools, analysis of test materials, and conclusion. (CX 14 at 1-2.)

Ms. Mirkovic-Hajdukov summarized Claimant’s history. Claimant stated that divorce procedures were ongoing, as his marriage became dysfunctional since his return from Afghanistan in 2017. (CX 14 at 1.) Ms. Mirkovic-Hajdukov noted that Claimant had been treated by a psychiatrist specialist for the past year “due to mental problems he felt while he was in Afghanistan”, but Claimant did not go see a doctor because “he was afraid of losing the employment and of what people would say.” (CX 14 at 1.) Ms. Mirkovic-Hajdukov then wrote: “[i]n the same period his marital problems have started, including lack of understanding, fights; he felt that he has changed mentally. He was constantly tense, moody; he used to flare for no reason.” (CX 14 at 1.) Claimant was bothered by “everything” but “noise the most.” (CX 14 at 1.) She also noted that Claimant could not relax and was constantly tired, could not properly socialize or communicate with others, had no patience, had poor sleep and nightmares related to traumatic experiences from Afghanistan, and experienced increased heart rates and panic attacks “particularly when something reminds him of those experiences from Afghanistan.” (CX 14 at 1.) “He says he was constantly exposed to life-threatening situations. He was afraid for his own life. He used to see dead and wounded people, and now those images haunt him.” (CX 14 at 1.)

In her analysis of the testing materials, Ms. Mirkovic-Hajdukov wrote that Claimant’s personality test showed a valid profile “describing an insecure, tense, concerned, irritable person of low frustration tolerance level, fixated to somatic difficulties, of highly limited possibilities to efficiently process stress and anxiety, almost completely incapable of relaxing.” (CX 14 at 2.) Claimant was described as reacting to stressful situations with sudden somatic difficulties in the form of panic attacks, fixation, and obsessive disorders, and as being rigid and afraid in interpersonal relations. (CX 14 at 2.) Ms. Mirkovic-Hajdukov then wrote: “[b]ased on the analysis of the projected test material, the following has been determined: caution, fear suspicion and lack of confidence in relations, lack of goals and motivation, hyper-sensibility, fixation to psychosomatic disorder.” (CX 14 at 2.) She noticed delays and disorders during Claimant’s mental activities, “which led to slightly lower achievements at all scales”, and rated Claimant’s memory ratio as “very low average values.” (CX 14 at 2.) In the LB and organicity test, Ms. Mirkovic-Hajdukov wrote Claimant obtained slightly poorer graph-motor reproduction, with discrepancies in the form of micrograph, rotation, and inadequate reproduction of figures. (CX 14 at 2.) In his stress and trauma evaluation, Claimant “verbalize[d] the symptoms from PTSD circle in the form of caution, withdrawal, concentration and attention difficulties, tension, irritability, fixation to somatic disorder, insomnia, hopelessness, avoidance and re-experience symptoms, intensified excitement and fear.” (CX 14 at 2.)

Ms. Mirkovic-Hajdukov concluded that, based on the overall psychological evaluation, Claimant was “chronically depressed, tense, worried, insecure and indecisive person, with slight disorders in the sphere of cognitive functions.” (CX 14 at 2.) Claimant exhibited depressive symptoms of neurotic features, which are accompanied by panic attacks and adjustment problems. (CX 14 at 2.) “PTSD symptoms of high intensity are dominant in the mental status of the patient.” (CX 14 at 2.)

Setting aside the issue of whether Claimant's own statements of his symptoms are credible, the undersigned finds that the medical records from Dr. Mirsad, Dr. Hamidovic, and Ms. Mirkovic-Hajdukovic constitute some evidence that Claimant suffered psychological harm. The records all give diagnoses of PTSD or a stress-related disorder, are stamped by the medical institution and have the stamp and signature of the treating provider, and are generally consistent with Claimant's testimony that he first received a diagnosis of a psychological condition in 2019. Given the liberal standard to be applied in construing the Act and the low threshold to establish harm, the undersigned considers that the medical records are sufficient to meet the first element of Claimant's *prima facie* case.

As to the second element, Claimant has established that he was employed in a war zone while working for Respondents. Claimant submitted several photographs containing images of pins, his workspace, and him standing with some colleagues. (CX 2 - CX 11.) Claimant testified to multiple traumatic events that took place during his employment from 2010 to 2014 and in 2017. As a matter of law, the hazardous conditions which are peculiar to employment in a war zone are sufficient to establish that such employment could have caused psychological harm. *See Gindo*, 52 BRBS at 54. Further, Claimant presented some evidence of working conditions that could have caused the alleged harm.

Accordingly, the undersigned finds that working conditions existed during Claimant's employment with Respondents that could have caused the alleged harm. Claimant is therefore entitled to invoke the Section 20(a) presumption.

### **3. Respondents' Rebuttal**

In rebuttal, Respondents offer the IME Report of Dr. Jake Epker. Dr. Jake Epker prepared a psychological IME Report, dated October 14, 2020, for Respondents. (RX E; HT at 118.) He also testified at the hearing on July 8, 2021. (HT at 99-120.) On September 17, 2020, Dr. Epker administered a 3-hour evaluation of Claimant via teleconference. (RX E at 1, 4; HT at 101-102.) From this, he generated an initial report and a subsequent addendum. (HT at 101.) Dr. Epker submitted the addendum to his IME report on July 6, 2021, after reviewing additional records. (RX E at 13.)

Dr. Epker obtained his Ph.D. in Clinical Psychology from the University of Texas Southwestern Medical Center at Dallas in 1998, and completed a two-year post-doctoral fellowship in Health Psychology at the same institution in 2000. (RX F at 1; HT at 100.) He is a licensed psychologist in the states of Alabama, Mississippi, and Louisiana. (HT at 101.) Since 2000, Dr. Epker has been in private practice and focuses on the evaluation and treatment of individuals with work-related injuries, chronic pain, or emotional distress. (RX F at 1; HT at 101.) Dr. Epker has also given numerous presentations and authored various publications. (RX F at 2-7.)

For his initial IME report, Dr. Epker reviewed Claimant's Claim for Compensation, dated December 12, 2019; Employer's First Report of Injury or Occupational Illness, dated December 19, 2019; treatment records from Jarakovic Mirsad, dated October 14, 2019; and treatment records from Jasmin Hamidovic, dated November 18, 2019, to July 16, 2020. (RX E at 1.) The IME report included Claimant's pertinent background, including developmental, academic, vocational, social

and adaptive functioning, medical, substance use, potentially traumatic events, mental health, and legal backgrounds; mental status examination results; psychological testing results; and a summary and discussion of Claimant's condition. (RX E at 1-12.) Claimant was administered two symptom validity tests to assess for valid responding and symptom reporting: the Test of Memory Malingered ("TOMM") and the Morel Emotional Numbing Test for PTSD ("MENT"). (RX E at 6-7; HT at 105.)

Dr. Epker found that Claimant's report of symptoms onset and timeline of development "is generally consistent with what is known of the mechanism of injury for Posttraumatic Stress Disorder." (RX E at 8.) However, he found six major problems and inconsistencies in Claimant's reporting and noted there was evidence to support malingering and exaggeration of complaints. (RX E at 8, 11.) Dr. Epker concluded that based on all the clinical data, "there is no[] support for the claimant having PTSD or any other psychiatric condition causally related to his experiences in Afghanistan several years ago". (RX E at 9; *see also* RX E at 10-11; HT at 117.) "[T]he evidence does not support the presence of a mental illness/diagnosis." (RX E at 10.) Claimant may have developed a depressed mood secondary to his marital difficulties, and to assert that Claimant's marriage issues were attributable to any alleged work-related PTSD "lacks support." (RX E at 9.)

On July 6, 2021, Dr. Epker submitted an addendum to his IME after receiving additional records to review. (RX E at 13.) In particular, Dr. Epker reviewed treatment records from Jasmin Hamidovic, dated August 14, 2020, to May 17, 2021; a psychological report from Mitra Mirkovic-Hajdukovic, dated July 17, 2020; and Claimant's deposition transcript, dated January 27, 2021. (RX E at 13.) His addendum included a summary and discussion of the records. (RX E at 13-17.)

Dr. Epker noted several issues with the additional records. (RX E at 15.) He concluded that Claimant's "psychiatric records appear biased towards support of a severe psychiatric impairment with little to no discussion about any other factors other than experiences in Afghanistan which could account for his reported symptoms and no consideration of the ways aspects of his reported history are inconsistent with his current narrative and presentation." (RX E at 17.) He found that Claimant's deposition testimony conflicted "in several ways" with his history and what he previously reported during his IME, and thus appeared to be an effort to address problematic data points for his current claim. (RX E at 17.) As such, Dr. Epker found Claimant's report to be non-credible, and wrote, "there is nothing which alters the opinions or conclusions stated in the original IME report" from October 14, 2020. (RX E at 17.)

In both his IME report and addendum, Dr. Epker concluded that Claimant did not have a diagnosable psychological disorder and did not suffer from a work-related injury. Dr. Epker's credentials and expertise in the field of psychology are established, and his reports are thorough, detailed, and well supported. The undersigned considers these reports to be substantial evidence that is specific and comprehensive enough to rebut the Section 20(a) presumption that Claimant sustained a psychological injury resulting from his employment with Fluor.

#### **4. *Weighing and Analyzing the Evidence***

In arriving at a decision, the ALJ as a finder of fact is entitled to determine the credibility of witnesses, to weigh evidence, and to draw her own inferences from the evidence. *See Banks v. Chicago Grain Trimmers Ass'n, Inc.*, 390 U.S. 459, 467 (1968), *reh'g denied*, 391 U.S. 929 (1968);

*Pietrunti v. Dir., OWCP*, 119 F.3d 1035, 1042 (2nd Cir. 1997). Credibility “involves more than demeanor. It apprehends the over-all evaluation of testimony in the light of its rationality or internal consistency and the manner in which it hangs together with other evidence.” *Carbo v. U.S.*, 314 F.2d 718, 749 (9th Cir. 1963). An ALJ is not bound to believe or disbelieve the entirety of a witness’s testimony, but may choose to believe only certain portions of it. *Altemose Constr. Co. v. Nat’l Labor Relations Bd.*, 514 F.2d 8, 14 n.5 (3rd Cir. 1975); *Pimpinella v. Univ. Maritime Serv., Inc.*, 27 BRBS 154, 157 (1993).

In evaluating expert testimony, an ALJ may rely on her own common sense. *Avondale Indus., Inc. v. Dir., OWCP*, 977 F.2d 186, 189 (5th Cir. 1992). An ALJ is bound to accept the expert opinion of a treating physician as to the existence of a disability unless the opinion is contradicted by substantial evidence to the contrary. *Pietrunti*, 119 F.3d at 1042. If rational inferences urge a contrary conclusion, an ALJ is not bound to accept any physician’s opinion. *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741, 742 (5th Cir. 1962). An ALJ also may base one finding on a physician’s opinion and then, on another issue, find contrary to that physician’s opinion. *Pimpinella*, 27 BRBS at 157.

### Claimant’s Medical Records

Claimant’s treating medical records have little persuasive value. Initially, the undersigned notes that Claimant’s providers were not available for examination by opposing counsel. As stated at the hearing, the undersigned has the ability to draw adverse inferences in such situations and give less weight to a treating physician’s report.<sup>4</sup> (HT at 36-37.) See *Bales v. L-3 Commc’ns*, 46 BRBS 1121, 1141(ALJ) (2012).

All of the medical notes were translated, had a seal of the translator and medical institution, and had the seal and signature of the reviewing physician or treating healthcare provider. (See CX 12; CX 13; CX 14 at 2, 4.) The records support Claimant’s testimony that he received his psychological diagnosis from Dr. Mirsad in October 2019, whom he met with only once, and that he began seeing Dr. Hamidovic once a month in November or December 2019 after Dr. Mirsad passed away. (See HT at 23, 25-26, 75; RX C at 34.)

No credentials were provided to supplement the medical records. In the notes, Dr. Mirsad’s signature title is neuropsychiatrist, Dr. Hamidovic’s title is neuropsychiatrist, and Ms. Mirkovic-Hajdukov’s title is psychologist specialist. (CX 12; CX 13 at 19, 28, 38, 40, 45, 48, 52; CX 14 at 2.) Without credentialing evidence to support the titles of these providers, the undersigned cannot determine the specific qualifications, licenses, or credentials of the providers. As 20 of the 22 notes are signed by Dr. Hamidovic, it is clear from the record that Dr. Hamidovic had a long-standing treating relationship with Claimant. Dr. Mirsad and Ms. Mirkovic-Hajdukov, however, each only met with Claimant once. These two providers did not have a long-standing relationship with Claimant, and the undersigned therefore does not give their records any enhanced weight as treating physicians. (See HT at 23, 34; CX 12; CX 14.) The documentary evidence of Claimant’s

---

<sup>4</sup> Claimant testified that he talked to Dr. Hamidovic about the request to give testimony, but Dr. Hamidovic “became surprised and said that they didn’t do that, that nobody in Bosnia did that. Because [Claimant’s] doctor didn’t know that [he] was in dispute with the company until [Claimant] told him about his.” (HT at 29-30.) Claimant also stated that Dr. Hamidovic is “a doctor for the state”, and that his “resulted diagnosis says everything.” (HT at 28.)

three treating providers, Dr. Mirsad, Dr. Hamidovic, and Ms. Mirkovic-Hajdukovic, is evaluated with these general considerations in mind. (See CX 12; CX 13; CX 14.)

Dr. Mirsad

Dr. Mirsad diagnosed Claimant with “Affective disorder, stress related,” largely based on Claimant’s subjective description of symptoms, an extremely limited recitation of history (for instance, Claimant did not want to discuss stressful situations related to family problems), and a report on Claimant’s mental status. (CX 12.) The undersigned gives little weight to Dr. Mirsad’s conclusion as to Claimant’s diagnosis, as it was based on one screening encounter, no objective testing, and a limited understanding of Claimant’s history. Dr. Mirsad gave no opinion as to causation of Claimant’s condition and simply reported Claimant’s belief that “it is all a consequence of his stay in Afghanistan.”

Dr. Hamidovic

Dr. Hamidovic relied heavily on Claimant’s self-reported symptoms in reaching his diagnoses and conclusions. Although each of his notes report on Claimant’s mental status, which the undersigned presumes to be a report on the provider’s observations of Claimant, the same observations are made virtually verbatim in the notes from the initial encounter on November 19, 2019, to July 16, 2020, as follows: “Aware, tense, anxious, disomnia<sup>5</sup>.” (CX 13 at 1-2, 4-5, 7, 9, 11, 13, 15.) Additional descriptions in this part of the notes are of Claimant’s reported symptoms. On August 14, 2020, Claimant’s mental status was noted as “aware, communicative, of wider thoughts flow [sic] with frequent excursions to traumatic topics. Burdened by traumatic experiences. Tense. Anxious. Affectively irritable. Lower basic mood. Symptoms from PTSD circle (numbing, elevated excitement, flash back, avoidance and re-experience). Low frustration tolerance level. Decrease in will dynamics. Dyssomnia.” (CX 13 at 18.) At the next encounter (September 16, 2020) and those following until April 14, 2021, Claimant’s mental status is again noted as “Aware, tense, anxious, dyssomnia;” followed by a description of his reported symptoms. (CX 13 at 22, 27, 32, 35, 37, 39, 44.) On May 17, 2021, Claimant’s mental status was described in very similar terms to those reported on August 14, 2020. (CX 13 at 47.) The last encounter on June 15, 2021, included the description of mental status as “Aware, tense, anxious, dyssomnia.” (CX 13 at 52.) The undersigned finds that Dr. Hamidovic’s purported observations of Claimant’s mental status are entitled to little weight, as a basis for his diagnostic conclusions, as they are largely duplicative and do not appear to be based on differential assessments of Claimant’s mental status at each encounter. In some of his notes, Dr. Hamidovic also comments on Claimant’s poor hygiene, neglected appearance, apathy, and hopelessness. However, none of Dr. Hamidovic’s observations provide much in the way of explanation or support for his opinions.

Dr. Hamidovic’s work restrictions were also largely based on Claimant’s self-reporting. For example, on December 16, 2019, Dr. Hamidovic noted that Claimant quit his job because “he could not stand communication with his colleagues” and was impulsive and “could not control himself”. (CX 13 at 2.) On March 14, 2020, and April 18, 2020, Claimant told Dr. Hamidovic that he does not think about work and does not feel capable of working. (CX 13 at 7, 8-9.) “He

---

<sup>5</sup> This last word is alternately spelled in the translated records as “dyssomnia”.

tried it, but realized he was not ready. He is afraid of having [] conflict with someone due to his health condition.” (CX 13 at 7, 8-9.) From April 18, 2020, to June 17, 2020, Dr. Hamidovic determined Claimant was not “capable for work”. (CX 13 at 9, 11, 13.) From May 17, 2020, onwards, Claimant stated that he still felt incapable of working, and that he began a job “but [] could not stand the communication with his colleagues and could not concentrate, so he resigned.” (CX 13 at 10, 12-13, 15, 22, 27, 35, 39, 44, 52; *see also* CX 13 at 37, 47.) Dr. Hamidovic then recommended that Claimant should not complete jobs “requiring intensive communication with people, higher concentration and stressful situations” from July 16, 2020, to June 15, 2021. (CX 13 at 15, 22, 28, 32, 36, 38, 40, 45, 48; *see also* CX 13 at 19, 52.)<sup>6</sup> There appears to be no rationale for these restrictions apart from Claimant’s own statements.

In reaching his conclusions, Dr. Hamidovic stated he completed objective testing. On October 16, 2020, April 14, 2021, and May 17, 2021, Dr. Hamidovic wrote that the Beck’s scale depression test was completed, which “showed serious depressiveness”, and the Beck’s scale of anxiety “showed [a] high score”. (CX 13 at 27; *see also* CX 13 at 44, 47.) On November 8, 2020, Dr. Hamidovic wrote that he used various diagnostic tools used when screening Claimant, including the interview, MMPI, CLJF-Mahover, WB-spel, OM, WTZ, RI. (CX 13 at 31.) Other than the MMPI, the undersigned is not certain to what tests these acronyms refer. He noted that a PTSD check list was done that day, and wrote, “PCL with criteria A, which is surely present, and the obtained score was 53, which contributes to the diagnosis of PTSD.” (CX 13 at 32.) On November 8, 2020, Dr. Hamidovic also summarized the treatment provided to Claimant thus far, listing intensive psychotherapy treatment (psychotherapy sessions, EMDR, and Beck’s depression and anxiety scales<sup>7</sup>) and pharmacotherapy treatment. (CX 13 at 31.) On June 15, 2021, Dr. Hamidovic wrote that Claimant completed “standard” psychology tests used in Bosnia for evaluation purposes, and that these tests “showed very high scores for PTSD, anxiety and depression.” (CX 13 at 51.) He also wrote that extensive psychology testing confirmed Claimant’s PTSD diagnosis, and that over the course of Claimant’s treatment, MMPI testing (“a standard test for evaluation of PTSD”), and EMDR psychotherapy (“officially used as [the] selected method in psychotherapy approach to patients with PTSD”) were conducted. (CX 13 at 51.) Dr. Hamidovic summarily supported his conclusions with the purported results of the stated objective testing, but the undersigned is unable to ascertain, due to the lack of explanation of the testing or its results, the validity of his conclusions.

On November 8, 2020, and June 15, 2021, Dr. Hamidovic wrote that Claimant’s PTSD diagnosis was determined based on DSM V and MKB 10 criteria. (CX 13 at 31, 51.) He stated that under the DSM V criteria: (1) Claimant was directly exposed to life threatening events and witnessed trauma, (2) Claimant mentioned on several occasions that he intensely re-experiences thoughts and experiences from Afghanistan, (3) Claimant avoids reminders related to his trauma, such as migrants present in Bosnia, (4) Claimant has a reduced interest in activities, (5) Claimant is irritable, impulsive, and has poor concentration and sleep, (6) these symptoms have lasted over a month, (7) the symptoms create suffering and functional damage, and (8) the symptoms are not related to the use of substances or any other diseases. (CX 13 at 31.) Dr. Hamidovic opined that

---

<sup>6</sup> On June 15, 2021, Dr. Hamidovic found Claimant was not capable of work, particularly work that requires “concentration, communication, intensive focus, pressure or stress of any kind or any responsibility.” (CX 13 at 52.) It is unclear which jobs, if any, require no responsibility.

<sup>7</sup> Dr. Hamidovic earlier listed the Beck’s depression and anxiety scales as tests, not treatment.

Claimant therefore met all the criteria for PTSD, anxiety depressive disorder, and panic attacks. (CX 13 at 31, 51.)

Dr. Hamidovic wrote that Claimant's PTSD diagnosis was determined based on DSM V and MKB 10 criteria, and that, among other requirements, Claimant's symptoms were not related to the use of substances or any other diseases. (CX 13 at 31, 51.) On June 15, 2021, Dr. Hamidovic opined that Claimant's mental health problems were "exclusively related to his stay in the war zone and stressful situations he experienced there; all other difficulties and adaption problems in private and business life are the consequences of that, and not something else." (CX 13 at 51.) No explanation or reasoning was provided to support this determination of exclusive causation, other than Claimant's own statements. Claimant had recounted situations in Afghanistan where he faced bomb threats and stressful searches by soldiers, which triggered intense fear. (See CX 13 at 1, 5, 7.) He also discussed relationship problems with his wife, eventually leading to a separation. (See CX 13 at 14, 18, 21.)<sup>8</sup> The attribution of private and business difficulties to Claimant's wartime employment, without explanation or support, reduces the weight the undersigned would otherwise give to Dr. Hamidovic's opinion. Had he acknowledged that Claimant was suffering stress from personal difficulties, in addition to symptoms related to his employment, the undersigned would consider that to be a reasonable explanation supporting his opinion on causation. But the insistence on exclusive attribution of Claimant's condition to his war zone employment undermines Dr. Hamidovic's credibility on this issue.

As to the undated note from Dr. Hamidovic, with handwritten responses to eight questions, the undersigned assigns it no weight. (CX 13 at 6.) The note included the signature and seal of Dr. Hamidovic. (CX 13 at 6.) Dr. Hamidovic wrote that Claimant had been diagnosed with PTSD and adjustment disorder with symptoms of insomnia, fear, anxiety, mood disorders, nightmares, impulsivity, and problems with concentration. (CX 13 at 6.) Dr. Hamidovic wrote that Claimant's medical condition was caused by his previous work in a war zone, and that Claimant "has experienced very traumatic events which have resulted with insomnia, nightmares, fears, impulsivity, anxiety, etc." (CX 13 at 6.) Dr. Hamidovic found that Claimant was "currently unable to work", and, when asked about maximum medical improvement, noted that Claimant had not yet shown any signs of improvement from his intense psychotherapy. (CX 13 at 6.) The note contains no date, no information as to who asked the questions Dr. Hamidovic answered, and the findings are summarily stated without explanation. The undersigned finds it troubling that, although Dr. Hamidovic elsewhere commented on the appropriateness of Claimant's treatment with EMDR and pharmacology, no explanation is given as to why these treatments apparently produced no positive effect.

In addition, the medical notes contain contradictory accounts of Claimant's awareness of the cause of his mental distress. At his encounter with Dr. Mirsad, Claimant said he thought his psychological issues were "all a consequence of his stay in Afghanistan," but Dr. Mirsad did not diagnose PTSD. (CX 12.) Claimant was diagnosed with PTSD by Dr. Hamidovic for the first time on January 15, 2020 (CX 13 at 4). On June 17, 2020, Dr. Hamidovic stated that, "Now [Claimant] surely knows that the stress he experienced while staying in the war zone left a deep

---

<sup>8</sup> When asked about his symptoms in 2014, Claimant also testified that he had a child and "needed some time to adjust, but [he] was not sleeping in the beginning." (HT at 69.)

trace in his health, primarily mental health”, indicating perhaps that, previously, Claimant had not been sure that his overseas work had impacted his health. (CX 13 at 12.) About a year later, on February 17, 2021, Dr. Hamidovic stated that Claimant “understands that his condition is a consequence of his stay in the war zone. In the beginning, he was convincing himself that it was a consequence of adaption to the return home, to another environment”. (CX 13 at 37.) But Dr. Mirsad’s note, of Claimant first psychiatric encounter, states that Claimant attributed it all to his stay in Afghanistan. Such inconsistencies raise doubts about the reliability of Claimant’s reports to his treating providers.

For these reasons, including the cursory objective testing, lack of review into potential alternative causes, and the reliance on Claimant’s self-reporting of symptoms, the undersigned finds Dr. Hamidovic’s opinions are entitled to little weight.

Ms. Mirkovic-Hajdukov

Ms. Mirkovic-Hajdukov, following her one encounter with Claimant on July 17, 2020, wrote that she used the following tools in reaching her conclusions: “[i]nterview; MMPI; CLFJ-Mahover; LB; WB-spl; IM; WTZ; RI”. (CX 14 at 1.) The undersigned is not persuaded by the mere string citation of acronyms, and these tools are not specifically described or explained. She refers to a personality test, “analysis of the projected test material”, and evaluation of “cognitive capabilities, concentration and attention disorders”, but does not adequately explain the testing protocols or results. (See CX 14 at 2.) She indicated that some of the testing, such as the “LB and organicity test”, demonstrated Claimant’s poor graph-motor skills. (CX 14 at 2.) It is unclear how such testing could lead to or relate to Claimant’s PTSD diagnosis or serve as a measure of symptom validity. She also referenced a “stress and trauma evaluation questionnaire”, in which Claimant “verbalize[d] the symptoms from PTSD circle in the form of caution, withdrawal, concentration and attention difficulties, tension, irritability, fixation to somatic disorder, insomnia, hopelessness, avoidance and re-experience symptoms, intensified excitement and fear”. (CX 14 at 2.) Ms. Mirkovic-Hajdukov did not provide a copy of the questionnaire, explain which type of questions were asked, or provide any information explaining the validity of the questionnaire as an objective test, considering that it appears to be wholly dependent on Claimant’s verbalization of his subjective symptoms. For these reasons, the undersigned cannot determine the value of or assign any probative weight to the objective testing used by Ms. Mirkovic-Hajdukov.

Ms. Mirkovic-Hajdukov noted that “[i]n the same period [since 2017, Claimant’s] marital problems have started, including lack of understanding, fights; he felt that he has changed mentally. He was constantly tense, moody; he used to flare for no reason.” (CX 14 at 1.) Her observations included that Claimant was cooperative and tense. (CX 14 at 1.) She concluded, based “on the overall psychological exploration,” that Claimant was “chronically depressed, tense, worried, insecure and indecisive person, with slight disorders in the sphere of cognitive functions.” (CX 14 at 2.) She also noted that depressive symptoms and PTSD symptoms are dominant in Claimant’s mental status. (CX 14 at 2.) She did not address the relation between Claimant’s employment or personal circumstances and his psychological condition, nor did she provide an opinion as to the causation of Claimant’s condition.

For these reasons, the undersigned gives very little weight to Ms. Mirkovic-Hajdukov’s diagnostic conclusions, as the objective testing is unexplained and her observations are of limited



probative value. It would therefore appear that Claimant's subjective symptoms were largely uncorroborated during this encounter and, given the inconsistencies in Claimant's self-reports (discussed below), the undersigned finds Ms. Mirkovic-Hajdukov's evidence to be unreliable.

### Claimant's Testimony

As to Claimant's testimony of his symptoms and treatment, the undersigned notes some discrepancies. Claimant testified at hearing that he began "feeling very, very bad" a couple of months after returning home in 2017. (HT at 70.) At his deposition, however, Claimant testified that when he returned home in 2017, he did not feel the same symptoms as beforehand, and that his problems did not begin until 2019. (RX C at 33.) Claimant also testified at the hearing that prior to leaving Afghanistan in 2017, he experienced fear and sleeplessness, and continued to have nightmares similar to the ones he was having before, involving content about his work in Afghanistan. (HT at 75.) At his deposition, Claimant testified this his dreams were "a little bit different" and that he did not know how to explain them. (RX C at 33.) He further testified at his deposition that he did not remember his dreams being similar to the ones from 2014 and that they did not include Apache helicopters or grenades. (RX C at 33.) While the undersigned would not expect a thorough and detailed account of every nightmare or dream Claimant had during this time frame, the differing accounts of his symptoms and their onset mar his credibility.

There are also inconsistencies between Claimant's testimony and Claimant's pre-employment medical records. Claimant testified that he began having problems with his mental health in 2010 to 2014. (HT at 59-61.) Claimant initially testified he "was a teenager and [] didn't understand what was going on." (HT at 59.) He then stated he was suffering from sleeplessness, experiencing fear, having trouble falling asleep, experiencing difficulty breathing, and having nightmares about his work in Afghanistan. (HT at 59-61.) These nightmares included an incident with helicopters and a woman crying near a tent, and specifically related to a traumatic incident he experienced in May 2010. (HT at 61.) Claimant testified that during the "R&R" that he went on about every three to four months between 2010 to 2014 to visit home, he did not seek any medical attention for his psychological issues because he "was a young guy and [] didn't know much about it." (HT at 62.)

Claimant did not disclose having any psychological problems or issues with sleeplessness or fear in his annual medical check-ups for Respondents between 2010 and 2014. (HT at 62-63; *see also* RX H at 7, 31, 68, 105, 145.) These checkups involved Claimant filling out paperwork detailing his physical and mental health and were completed to assess his capacity to work for Respondents. (HT at 62-63.) In 2012, Claimant marked his health as excellent in his Pre-Deployment Health Assessment, and also noted he did not have any medical or dental issues, and did not have any concerns about his health. (HT at 65-66; *see also* RX H at 66.) He also noted that he did not have nervous trouble of any sort, anxiety or panic attacks, frequent trouble sleeping, depression or excessive worry, or any other illness or injury. (HT at 66-67; *see also* RX H at 68.) Claimant provided the same answers from 2010 to 2014. (HT at 67; *see also* RX H at 7, 31, 105, 145.) Claimant stated he "was not aware of it" and "thought sleeplessness was normal". (HT at 63.) During his deposition, Claimant wholly denied having any annual mental health evaluations when employed by Respondents. (RX C at 48.) The annual pre-deployment medical screening records submitted by Respondents, however, indicate that Claimant underwent mental health screenings from 2010 to 2014, and in 2016. (*See* RX H at 7, 31, 68, 105, 145, 184.)

When asked about the discrepancy between his testimony and written answers, Claimant stated both were true and he “was too young to fully understand what was going on” and “circled those answers as [he] felt at the moment.” (HT at 67-68.) He explained that “during the medical examination we were all together in one group and we all gave the same answers. Simply, I was too young to understand that, and I was glad to work for Fluor and that was that.” (HT at 68.) The undersigned finds this explanation to be credible. It appears that Claimant may have been experiencing psychological symptoms during the time of his employment with Employer, but the undersigned considers it reasonable and plausible that he would not disclose those symptoms in the context of a group screening process perhaps for fear of not getting the job or of exposing a vulnerability to other applicants.

Respondents argue that Claimant’s testimony regarding the end of his employment with Fluor tarnishes his credibility. An initial and follow-up incident report from March 11, 2017, indicated that Claimant was found in violation of the BAF Base Access Policy for unauthorized possession of a personal cellular phone. (RX I at 1, 3.) Claimant stated he was aware of the Policy prohibiting cell phones but only had the phone because his son was sick. (RX I at 1, 3, 8.) During his exit interview, Claimant identified himself as the owner of the cell phone but understood and did not argue the reasons for confiscation. (RX I at 1, 3, 5.) Claimant was involuntarily terminated and released from his position on March 14, 2017, and received an Installation Bar from the base on March 16, 2017. (RX I at 3, 6-7, 9.)

Respondents also point to Claimant’s contention that he voluntarily resigned as impacting his general credibility. At hearing, Claimant testified that he left his employment in March 2017 because the military police found a cell phone, which was prohibited. (HT at 20-21, 40-41.) Claimant testified that he had a cell phone because his son was very ill, and he had to have his phone on him. (HT at 20-21.) After the military police found his phone, Claimant testified that security visited him two to three days later, and Claimant signed a statement indicating the reason he had a cell phone was because his son was sick. (HT at 21.) “[The supervisor and security guard] told me that is not the problem at all, just go home for some time and you can return if you want, anytime.” (HT at 21; *see also* HT at 83.) He later explained that the security guard “gave [him] a hug and said just call your supervisor and no problem, he will accept you back.” (HT at 83.) Claimant then signed a release form indicating he was voluntarily resigning, and went home. (HT at 22.)

Claimant testified that he circled “demobilization” on his release form and was not involuntarily terminated. (HT at 40-42, 47, 49-51; *see also* RX C at 32.) When opposing counsel showed Claimant their Exhibit I and pointed to the page that indicated that Claimant was involuntarily terminated, Claimant testified that he was never told he was being terminated. (HT at 42-43; *see also* RX I at 9.) Claimant also maintained that he was not permanently barred from returning to work in Afghanistan. (HT at 43.) When counsel pointed to the page in Exhibit I that indicated Claimant was permanently barred from the base, Claimant testified that this was the first time he had seen the document. (HT at 43-44; *see also* RX I at 6-7.) Claimant testified based on the information in the exhibit, he believed he could “probably, yes” go back to work in Afghanistan. (HT at 45-46.)

The undersigned finds Claimant’s explanation of this situation to be plausible and reasonable. Claimant may have genuinely believed that he was signing a voluntary resignation

form. The Release Form indicating that he was being involuntarily terminated does not contain Claimant's signature or any other indication of Claimant's review or input. (See RX I at 9.) It may be that Claimant did not know that his removal from his position resulted in a permanent bar, as Claimant was removed from the base on March 14, 2017, and the Installation Bar document was dated March 16, 2017. (See RX I at 3, 6-7, 9.) Claimant consistently testified that he voluntarily resigned and was not terminated by Respondents, and that the security guard informed him he could return at any point. (HT at 21-22, 50, 83; RX C at 32, 46.) The details about the security guard's sympathetic response to Claimant have a ring of genuineness. Further, Claimant acknowledged that he had to give up his badge when he left his employment with Respondents, but stated that they also had to give up their badge when going on vacations. (HT at 44-45.) The undersigned therefore finds that Claimant's insistence that he voluntarily resigned does not diminish his general credibility.

However, Claimant gave conflicting accounts describing how he voluntarily resigned. As stated above, Claimant testified at hearing that he voluntarily resigned when he signed a statement indicating the reason why he had a cell phone and then signed a release form. (HT at 21-22.) He testified that he talked to a supervisor, "two white American guys", and a male African American security guard, and the security guard gave him a hug and told him that he could return at any time. (HT at 21, 83.) At his deposition, however, Claimant testified that he resigned when he talked to a woman from "Fluor Human Resources". (RX C at 46.) "I told her that I want to go home". (RX C at 46.) At the hearing, Claimant agreed that he testified at his deposition that he resigned from his employment with Fluor because he was involved in a traumatic incident and was "holding [his] chest and crying", and that he told himself if he survived, he would tender his resignation to Respondents. (HT at 50-51; see RX C at 32.) One could conclude that the real reason Claimant left his employment with Fluor was due to the cell phone incident and that the account he gave at his deposition, that he resigned after a traumatic incident, was concocted to bolster his claim of trauma resulting from his employment. Regardless, these shifting explanations about how and why he resigned his employment with Fluor diminish Claimant's credibility.

The undersigned finds that Claimant's testimony as to his symptoms in 2010 to 2014 is not entirely credible, as he denied participating in mental health evaluations during that time when the records show that he did and indicated no health problems. While his youth and ignorance provide context for Claimant's reluctance to report health problems, it does not explain why he chose to return to Fluor's employment in 2017 if he had been experiencing psychological difficulties. As to leaving his employment in 2017, the undersigned finds no corroboration in the documentary evidence of Claimant's allegation that he left due to a traumatic incident. Claimant also gave conflicting accounts as to when his symptoms worsened after leaving his employment with Fluor in 2017. For the above reasons, the undersigned finds Claimant's credibility to be diminished, and his testimony about his symptoms and their onset is given moderate weight.

#### Respondents' Evidence - Dr. Epker

Turning to Respondents' evidence, the undersigned assigns Dr. Epker's opinions great weight. Dr. Epker is a licensed psychologist in the states of Alabama, Mississippi, and Louisiana. (HT at 101.) He obtained his Ph.D. in Clinical Psychology from the University of Texas Southwestern Medical Center at Dallas in 1998, and completed a two-year post-doctoral fellowship in Health Psychology at the same institution in 2000. (RX F at 1; HT at 100.) Since

2000, Dr. Epker has been in private practice and focuses on the evaluation and treatment of individuals with work-related injuries, chronic pain, or emotional distress. (RX F at 1; HT at 101.) The undersigned finds Dr. Epker to be well qualified to offer expert evidence on the psychological issues in controversy in this case.

Dr. Epker's IME report and addendum were detailed and thorough. He administered a 3-hour evaluation of Claimant via teleconference on September 17, 2020. (RX E at 1, 4; HT at 101-102.) From this, he generated an initial report and a subsequent addendum related to additional records he reviewed. (HT at 101.) Dr. Epker testified that tele-evaluations and tele-medicine treatment are standard accepted practices in his field. (HT at 102.) Claimant completed the interview from Bosnia. (RX E at 4.) The interview was conducted in English, but a translator was available to facilitate the conversation as necessary. (RX E at 1, 4; HT at 102-103.) Dr. Epker testified that there was never an expression by Claimant that he did not understand what was happening during the evaluation. (HT at 103.) For his IME report, Dr. Epker reviewed Claimant's Claim for Compensation, dated December 12, 2019; Employer's First Report of Injury or Occupational Illness, dated December 19, 2019; treatment records from Jarakovic Mirsad, dated October 14, 2019; and treatment records from Jasmin Hamidovic, dated November 18, 2019, to July 16, 2020. (RX E at 1.)

Dr. Epker explained, in detail, the importance of a claimant providing accurate information during an examination. He testified that an examiner's conclusions and recommendations could be poorly formed if the patient does not provide accurate information during an examination. (HT at 103-104.) There are several ways an examiner can determine the accuracy or validity of data, including comparing responses from an evaluation to medical records and other sources of data, and comparing responses from an evaluation to what is known, clinically, about a disorder or condition. (HT at 104.) Another method is performing validity testing or symptom validity testing. (HT at 104-105.) Dr. Epker explained that the "[t]he premise behind these [symptom validity] tests is that they are incredibly easy, such that even people with intellectual deficits, limited language abilities, psychiatric disturbance, and a variety of neurological or psychiatric conditions will still do quite well. . . . However, failures on the test is a strong indication that someone is not putting forth their best effort or is misrepresenting themselves in some way." (HT at 106.)

Claimant was administered two symptom validity tests to assess for valid responding and symptom reporting: the Test of Memory Malingered ("TOMM") and the Morel Emotional Numbing Test for PTSD ("MENT"). (RX E at 6-7; HT at 105.) Dr. Epker detailed the results of these exams in the IME report and further explained the results during his testimony. (RX E at 6-7; HT at 105-113.) Dr. Epker noted that that the tests were not standardized to be administered via a teleconferencing platform or normed on individuals of Claimant's ethnic background and language abilities. (RX E at 6.) But Claimant indicated he was fluent in English, and both tests involve nonverbal measures which do not require understanding of English for completion. (RX E at 6.) Dr. Epker also noted there has been clear documentation of the appropriateness and feasibility of administering cognitive tests remotely via video conference, and that he followed the remote administration guidelines published for TOMM. (RX E at 6.) Dr. Epker indicated that he took all such factors into consideration when interpreting the results of the testing. (RX E at 6.)

Dr. Epker noted various discrepancies in Claimant's reporting. He noted that Claimant reported he consistently had problems with concentration and irritability, especially if he was around more than 2-3 people, but began working full-time in late 2018. (RX E at 7.) Claimant began psychiatric treatment in October 2019, a couple months after discovering he could file a claim for benefits under the Defense Base Act, and he filed the claim after seeing the first psychiatrist and quit his job at the supermarket 1-2 months later. (RX E at 7.) Claimant also reported he did not "like to hang out with people", but was able to spend time with friends who worked in Afghanistan for up to 2-3 hours. (RX E at 7.)

Dr. Epker found that Claimant's report of symptoms onset and timeline of development was generally consistent with the mechanism of injury for PTSD, but found six major problems and inconsistencies in Claimant's reporting and noted there was evidence to support malingering and exaggeration of complaints. (RX E at 8, 11.) Dr. Epker concluded that based on all the clinical data, there was "no[] support for the claimant having PTSD or any other psychiatric condition causally related to his experiences in Afghanistan several years ago". (RX E at 9; *see also* RX E at 10-11; HT at 117.) "[T]he evidence does not support the presence of a mental illness/diagnosis." (RX E at 10.) Claimant may have developed a depressed mood secondary to his marital difficulties, and to assert that Claimant's marriage issues were attributable to any alleged work-related PTSD "lack[ed] support." (RX E at 9.)

Dr. Epker provided detailed explanations of the six major problems and inconsistencies, and his findings as to Claimant's overreporting of symptoms were substantiated by specific references to results of the objective tests.

First, Dr. Epker noted that Claimant's sleep disturbance and nightmares that began in May 2010 did not prevent him from effectively working as a food service technician in Afghanistan through 2014, nor did the additional symptoms Claimant reported when he returned to Bosnia in 2014 prevent him from working at his father's company. (RX E at 8.) Claimant's history also did not indicate functional impairment with work or relationships, as he was married in 2013 and had a child in 2014, and reported enjoying speaking with friends who worked in Afghanistan for several hours at a time. (RX E at 8.) This suggested "either [that Claimant] did not have such symptoms or else they did not have a significant impact on his ability to function." (RX E at 8.)

Second, Dr. Epker noted that if Claimant were truly having all of the symptoms he described, it would be unreasonable for him to choose to return to work in Afghanistan in 2017, suggesting that he did not have the reported symptoms, or they did not significantly impact his daily functioning. (RX E at 8.) The undersigned notes that Claimant testified that he returned to Afghanistan for monetary reasons, but he did not explain how this motivation might have outweighed any trepidation at returning to work in a warzone which had previously caused such symptoms. (*See* HT at 19.)

Third, Dr. Epker wrote that Claimant did not seek treatment after his symptoms began in 2010 and waited until 2019 to seek any sort of treatment, which raised questions about the authenticity of his reported problems. (RX E at 8.) He testified that the fact Claimant waited until October 2019 to seek treatment "call[ed] into question the level of distress or suffering, or symptoms that may be occurring" because, typically, a person tends to seek treatment when experiencing significant symptoms even if that person does not know what is happening. (HT at

116-117.) “Even if one asserts [sic] he avoided mental health treatment due to cultural bias and stigmatization, it is reasonable he would have sought treatment from a family physician for problems with sleep, concentration, or the physiological symptoms he reported associated with nightmares.” (RX E at 8.)

Fourth, Dr. Epker noted the timing of Claimant retaining of legal counsel, seeking mental health treatment for the first time, and discontinuing his work was “somewhat curious and raise[d] suspicions about the possibility of secondary gain influencing his choice to discontinue work”. (RX E at 9.) Even though Claimant reported he discontinued work because of the addition of two people to his team, he was able to maintain adequate functioning at work in spite of his reported symptoms until shortly after he sought mental health treatment and filed his claim. (RX E at 9.)

Fifth, Dr. Epker found that Claimant’s presentation on aspects of the Mental Status Examination was not credible, and his performance on psychological measures related to symptom validity were indicative of suboptimal task engagement and simulated impairment. (RX E at 9.) In particular, Claimant demonstrated suboptimal task engagement on the TOMM and his pattern of performance on the MENT was consistent with individuals who simulate symptoms. (RX E at 10.) Dr. Epker opined that the results from the TOMM and MENT accurately indicated that Claimant was simulating his symptoms despite noting earlier that the tests are not standardized to be administered via a teleconferencing platform or normed on individuals of Claimant’s ethnic background and language abilities. (See RX E at 6.) To support his TOMM and MENT conclusions, Dr. Epker explained that Claimant indicated he is fluent in English, that both the TOMM and MENT are nonverbal measures which do not require understanding of English for completion, and that there has been clear documentation of the appropriateness and feasibility of administering cognitive tests remotely via video conference. (RX E at 6.) In addition, Dr. Epker stated that he followed the remote administration guidelines published for TOMM, and took all such factors into consideration when interpreting the results of the testing. (RX E at 6.)

Dr. Epker explained that TOMM is a test that includes presentation of several simple pictures followed by a forced-choice recall. (RX E at 6; HT at 107-108.) He testified that a person performing poorly on the exam is an indication of misrepresentation, as people with moderate dementia, people with traumatic brain injuries, and people who have intellectual deficits all perform normally. (HT at 108.) Dr. Epker completed a total of three TOMM trials of Claimant, and Claimant achieved a failing score on each trial, which “indicate[d] efforts to present as more cognitively impaired than is realistic or plausible.” (HT at 110.) Dr. Epker described Claimant’s performance as “moderately poor.” (HT at 110-111.) While there was the possibility that cultural factors could have influenced his performance, Dr. Epker noted this was not expected because individuals with serious neurological issues, such as mild traumatic brain injury or dementia, typically perform better than Claimant. (RX E at 6-7.) He testified that the only groups that would achieve Claimant’s score would be someone who have a severe brain injury or dementia, such that they required full-time assisted living assistance. (HT at 111.) Dr. Epker noted that the most likely conclusion explaining Claimant’s low scores was that “it was motivated by what’s referred to as ‘secondary gain’, you know, in the context of having an insurance claim. People are often incentivized to present as having more problems or impairment than is realistic or probable, and that was more than likely the case here.” (HT at 112.)

MENT, or the Morel Emotional Numbing Test, is another forced choice response exam specifically designed to evaluate people who may have PTSD. (RX E at 7; HT at 108-110.) People who have PTSD make few, if any, errors, while those misrepresenting themselves make a greater number of errors. (HT at 109-110.) Dr. Epker noted that Claimant's error rate was not consistent with any known clinical population with psychiatric diagnoses, such as military or civilians with PTSD, and testified that Claimant's error rate was "consistent with malingering of PTSD with 100 percent specificity." (RX E at 7; HT at 113.) As Claimant's error rate was higher than schizophrenics who were institutionalized, "the only [] reasonable interpretation of those results is [] intentionality of misrepresenting the presence of PTSD." (HT at 113.)

Sixth, and finally, Dr. Epker noted that Claimant's psychiatrists relied solely on Claimant's self-reports in making their determinations regarding diagnosis and causation, which raised concerns. (RX E at 9.) No detailed history was taken, nor was psychological testing conducted to validate symptoms. (RX E at 9.) Dr. Epker also maintained that because Claimant's medication management was not optimal and had not changed despite reportedly persistent symptoms, Claimant's medical treatment "ha[d] not been a sincere effort to reduce symptoms but rather designed to document reported symptoms to support the narrative he has PTSD." (RX E at 11.)

The records confirm Dr. Epker's note that no detailed history was taken and no symptom validity testing was done. As stated above, Claimant's providers did complete some objective testing, but the testing was not specifically documented or well-explained. As to the sincerity of the medical treatment to reduce symptoms, Dr. Hamidovic made some adjustments to Claimant's medications, albeit without any explanation as to the relative effectiveness of the prescribed treatments. On November 19, 2019, Dr. Hamidovic recommended three medications (Citram, Misar, and Trazem). (CX 13 at 1.) He added a fourth prescription (Q pin) from December 16, 2019, to May 17, 2020. (CX 13 at 2, 4-5, 7, 9, 11.) From June 17, 2020, to June 15, 2021, Claimant was prescribed Citram, Q pin, Misar, and Zasan (instead of Trazem). (CX 13 at 13, 15, 22, 28, 32, 36, 38, 40, 45, 52.) On August 14, 2020, and May 17, 2021, Claimant was prescribed Citram, Q pin, Misar, and Sanval (instead of Zasan). (CX 13 at 19, 48.) Dr. Hamidovic noted on November 8, 2020, and June 15, 2021, that "all available pharmacotherapy [and psychotherapy methods] that [are typically] used in [the] treatment of PTSD" were used during Claimant's therapy sessions, including antidepressants, sedative antipsychotics, anxiolytics, and hypnotics. (CX 13 at 51; *see also* CX 13 at 31.) The undersigned is informed and believes that Trazem, Zasan, and Sanval are all medications used to treat insomnia. Other than the substitution of one for another of these insomnia medications, the only alteration to Claimant's medication throughout the course of his treatment with Dr. Hamidovic was the addition of Q-pin after one month. The undersigned therefore does not discredit Dr. Epker's characterization of Claimant's medication management, because the medication adjustments appear to be relatively minor and do not indicate any changes in treatment protocol intended to address the lack of symptomatic improvement.

The undersigned acknowledges that Claimant indicated he felt intimidated by the presence of Hamza Botic ("Mr. Botic") at his IME, and that this interfered with his ability to answer the IME questions as comfortably as possible. (See CX 1 at 1; RX C at 44-45.) Claimant wrote in an email that Mr. Botic and the female translator in the room would laugh when Claimant answered some questions, which upset Claimant but he "did not react." (CX 1 at 1.) In his closing brief, Claimant also wrote that he ran into Mr. Botic at the Tuzla Police Station the following weekend and "thought [Mr. Botic] was stalking [him]." (Cl. Brief at 7.)

Mr. Botic testified that he is a field case manager of JAG International. (HT at 87-88.) He explained that a field case manager pays for the IME conference room and facilitates the appointment by showing the claimant to the conference room, verifying IDs, and providing technical support. (HT at 88.) Mr. Botic testified that he explained his role to Claimant and said he was there to facilitate the appointment, ensure everything gets done as usual, and pay for it when it was completed. (HT at 89.) He also testified that he clearly stated that he worked for JAG International. (HT at 96.) Mr. Botic testified that neither he nor the interpreter laughed at anything Claimant said during the IME. (HT at 91.) He testified that he ran into Claimant one day afterwards near a local courthouse while running back to his Airbnb, and their conversation lasted a brief 20 to 30 seconds. (HT at 93-94, 96-97.)

The undersigned notes here that Claimant testified that he did not tell Mr. Botic that he was uncomfortable with his presence because he thought “that’s the way it goes” and did not “feel that [he could] tell him.” (RX C at 48.) He also did not inform Dr. Epker that he was uncomfortable with Mr. Botic’s presence during the examination. Dr. Epker made no notations as to the presence of Mr. Botic, but it is possible that he was off screen. (*See* RX C at 44.) Dr. Epker did note that the interview was “free from distractions.” (RX E at 4.) The undersigned does not find that the presence of Mr. Botic had an appreciable impact on Claimant’s participation in Dr. Epker’s evaluation.

On July 6, 2021, Dr. Epker submitted an addendum to his IME after receiving additional records to review. (RX E at 13.) In particular, Dr. Epker reviewed treatment records from Jasmin Hamidovic, dated August 14, 2020, to May 17, 2021; a psychological report from Mitra Mirkovic-Hajdukovic, dated July 17, 2020; and Claimant’s deposition transcript, dated January 27, 2021. (RX E at 13.) His addendum included a detailed summary and discussion of the records. (RX E at 13-17.)

Dr. Epker noted several issues with the additional records. (RX E at 15.) First, despite no indication of improvement in symptoms, with many notes instead indicating an aggravation or deterioration of Claimant’s psychological status, there had been no changes to Claimant’s medications since treatment began in 2019. (RX E at 15.) Dr. Epker argued that this raised several possibilities: Dr. Hamidovic was not invested in Claimant’s wellbeing or was delivering substandard care, Claimant was misrepresenting his symptoms to his psychiatrist, or the treatment was part of a systemic effort to conflate or fabricate medical documentation to substantiate the insurance claim as opposed to reflecting authentic treatment for legitimate problems. (RX E at 15.) As stated above, Claimant’s medical notes document some minor changes in his medications, but the undersigned finds no basis on which to question Dr. Epker’s observation that no changes were made in response to Claimant’s purportedly worsening symptoms over time. The records bear out that Claimant reported no improvement in symptoms despite his ongoing treatment (*see* CX 13 at 1, 7-8, 12, 14, 18, 21). Other than summarily attributing this to Claimant’s “significant and long-lasting exposure to trauma” on November 8, 2020 (CX 13 at 31), this lack of improvement in Claimant’s symptomology is not explained by Dr. Hamidovic in light of ongoing treatment with basically unchanged pharmacotherapy. The undersigned considers the possibilities raised by Dr. Epker to be more plausible than the explanation given by Dr. Hamidovic.

Second, Dr. Epker wrote that Ms. Mirkovic-Hadjukovic’s psychological evaluation report included no scores that could be used to verify the interpretation of the results, and the conclusions



and opinions rested primarily upon the Machover and MMPI exam results. (RX E at 15; HT at 114.) Dr. Epker explained that the Machover is a “projective measure” in which a patient draws an object, and the clinician interprets that drawing as an indicator of the person’s personality. (RX E at 15-16; HT at 114.) Dr. Epker testified that this exam “has no applicability for psychiatric diagnosis”, and there is no standardized scoring of this outdated exam, which was created in 1949. (HT at 114; *see also* RX E at 15-16.) Meanwhile, the MMPI is considered “a gold standard clinical tool in evaluating individuals with psychiatric disturbance.” (HT at 114.) However, there is no Bosnian version that has been approved by the publishers. (RX E at 16; HT at 115.) Slovic-language translated versions of the exam have not been validated by the publisher and have not considered the complicated process and interpretation of the original exam, and are therefore not reliable, valid, or predictable. (RX E at 16; HT at 115.) Researchers have stated such translated versions have “no bearing in a medical/legal or a forensic context.” (HT at 115; *see also* RX E at 16.) In addition, Dr. Epker never received the results or scores of the MMPI. (HT at 116.) He therefore concluded, “I would argue that the test, itself, is not valid [but] if one were to try to interpret the specific results, then there’s no way to interpret them without having them available.” (HT at 116.)

Dr. Epker’s concerns with Ms. Mirkovic-Hadjukov’s use of the MMPI are persuasive. Dr. Epker indicated that the MMPI should not be considered the “gold standard” in evaluating Claimant because Bosnian and Slovic versions of the exams have not been approved or verified by the publishers. It is unclear whether Ms. Mirkovic-Hadjukov’s MMPI exam was conducted in the Bosnian language or in English. Although Dr. Epker relied on Claimant’s fluency in English to account for the non-standardization of the TOMM and MENT, he also explained that those tests are nonverbal measures which do not require understanding of English for completion. Claimant’s fluency in English could also have led to accurate MMPI exam results, but Ms. Mirkovic-Hadjukov does not provide any information to allow such verification. She also does not account for the lack of the publisher’s approval or verification of the MMPI for use in Bosnia.

Third, Dr. Epker noted that the records contain few discussions about factors typically included in an objective evaluation, such as history. (RX E at 16.) Instead, there was a description of Claimant’s experience overseas and list of multiple symptoms of psychological distress, which were causally connected. (RX E at 16.) This created the impression to Dr. Epker that the primary motivation behind the documentation was to support a PTSD diagnosis in the context of an insurance claim as opposed to these records being unbiased. (RX E at 16.)

Fourth, Dr. Epker noted that Dr. Hamidovic relied solely on self-reported data to arrive at diagnoses and opinions about causality, and that Dr. Hamidovic did not undertake any other validity techniques in his examinations. (RX E at 16-17.) He argued that the psychological questionnaires Dr. Hamidovic administered do not have built-in validity measures and can only be useful in a clinical context to assess self-reported symptoms, not in a medico-legal context. (RX E at 16-17.) Therefore, Dr. Epker maintained the conclusions about diagnoses and causality must be questioned. (RX E at 17.) As stated above, Claimant’s providers did complete some objective testing, but the testing was not explained or well-documented. Further, Dr. Epker’s point that the testing used by Dr. Hamidovic had no built-in validity measures and was therefore not useful in a medico-legal context is well taken.

Fifth, Dr. Epker argued that Claimant provided conflicting and non-credible accounts regarding symptom onset and the impact on his life. (RX E at 17.) For example, he reported nightmares and fear as early as 2010 but denied having these problems on his medical evaluation forms when applying to return to work for Respondents in 2017. (RX E at 17.) The undersigned notes here that Claimant testified that he concealed his psychological issues from Fluor in order to get hired by them. (HT at 73.) He testified he returned to Afghanistan due to money and because he “felt [he] wouldn’t have any problems [or] consequences”. (HT at 19.)

Dr. Epker concluded that Claimant’s treating medical records appeared biased towards support of a severe psychiatric impairment with little to no discussion about any other factors which could account for his reported symptoms, and no consideration of the ways aspects of Claimant’s reported history are inconsistent with his narrative and presentation. (RX E at 17.) He noted that Claimant’s deposition testimony conflicted “in several ways” with his history and what he previously reported during his IME, and thus appeared to be an effort to address problematic data points for his current claim. (RX E at 17.) For example, Claimant noted he has experienced persistent distress since 2010 but this has not interfered with his ability to function on a daily basis, even though he informed Dr. Epker he left Afghanistan in 2014 due to these symptoms. (RX E at 17.) Dr. Epker found Claimant’s reporting to him to be non-credible. (RX E at 17.) He wrote, “there is nothing which alters the opinions or conclusions stated in the original IME report” from October 14, 2020. (RX E at 17.)

Dr. Epker’s opinions are well-explained, clear, and thorough. He explains in detail why he believes Claimant does not have a psychiatric disability. Given the inconsistencies in Claimant’s reports and evidence of simulated impairment, Dr. Epker questions Claimant’s self-reporting and concludes that the evidence does not support the presence of a mental illness or diagnosis. Dr. Epker relies on objective validity testing in reaching his conclusions about malingering and exaggeration of symptoms, and thoroughly explains the effectiveness and accounts for the limitations of his testing. He also completes a thorough review of Claimant’s medical records and offers cogent explanations and reasoning for his conclusions as to the legitimacy and reliability of those records. Overall, the undersigned finds Dr. Epker’s assessment of Claimant’s psychological condition, in this medical-legal context, to be well-supported and reasoned and entitled to great weight.

### Conclusion

Weighing the evidence as a whole, the undersigned finds that Dr. Epker’s opinion that Claimant is not suffering from any psychological impairment as a result of his employment with Fluor outweighs the evidence from Claimant and his treating providers. Because of both Claimant’s diminished credibility and the reliability issues with the reports of his treating providers, the undersigned gives Claimant’s evidence little weight. The undersigned is persuaded by Dr. Epker’s reasoning that Claimant’s suboptimal task engagement and pattern of performance on symptom validity testing is consistent with individuals who simulate symptoms. Although mindful that exaggeration of symptoms alone would not necessarily lead to a conclusion that an individual had not sustained an injury, the undersigned finds that the totality of the evidence here does not support a finding that Claimant suffers from a psychological impairment attributable to his employment.

The undersigned therefore concludes that Claimant has not met his burden of persuasion by a preponderance of the evidence to establish that he suffered an injury arising out of and in the course of his employment.

**VI. ORDER**

Based on the foregoing findings of fact, conclusions of law, and upon the entire record, Claimant's claims for compensation and medical benefits are DENIED.

**SO ORDERED.**

SUSAN HOFFMAN  
Administrative Law Judge

**U.S Department of Labor**

Office of Administrative Law Judges  
90 Seventh Street, Suite 4-800  
San Francisco, CA 94103-1516

415-625-2200  
415-625-2201 (FAX)



MEMORANDUM FOR: **San Francisco District Director**  
San Francisco, CA

FROM: **Susan Hoffman**  
Administrative Law Judge

SUBJECT: **IMAMOVIC MIRZA v. FLUOR CONOPS LIMITED**  
Case No. 2020LDA01787, OWCP No. 02-325872

In accordance with the Regulations implementing the Defense Base Act, I am transmitting herewith my signed document this 10th day of November, 2022.

Five (5) Business Days from today, this Decision and Order will be posted on our website ([www.oalj.dol.gov](http://www.oalj.dol.gov)); however, under the Act and regulations such posting will NOT constitute official service, which is to be effected by your office.

FORWARDED:

**Jennifer M. Cano**  
LEGAL ASSISTANT  
Enclosure

cc: Clm Atty (w/o encl)  
Emp Atty (w/o encl)  
Sol (w/o encl)

**\*THE OFFICE OF ADMINISTRATIVE LAW JUDGES  
SHOULD NOT BE CONTACTED  
REGARDING SERVICE OF THE ABOVE DOCUMENT.**