2010 WL 3198445 (DOL Ben.Rev.Bd.)

Office of Administrative Law Judges
United States Department of Labor

***1** IN THE MATTER OF: CAROLYN A.
VICK
(WIDOW OF ALLEN
VICK
), CLAIMANT,
v.
NORTHROP GRUMMAN SHIPBUILDING, INC. (FORMERLY
NEWPORT

NEWS
SHIPBUILDING AND DRY DOCK, COMPANY) EMPLOYER (SELF-INSURED),
AND
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, PARTY IN INTEREST.

Case No.: 2009-LHC-00321
OWCP No.: 05-127613

June 4, 2010

DECISION AND ORDER

Appearances: W. Mark Broadwell, Esq., For the Claimant

Jonathan Walker, Esq., For the Employer/Carrier

Before: Richard K. Malamphy, Administrative Law Judge

This proceeding involves a claim for death benefits filed under the Longshore and Harbor Workers' Compensation Act ("the Longshore Act"), as amended, 33 U.S.C. § 901, *et seq.* (2000). A formal hearing was held in Newport News, Virginia on February 10, 2010, at which time all parties were afforded full opportunity to present evidence and argument as provided in the Longshore Act and the applicable regulations. At the hearing, the following exhibits were admitted without objection: Claimant's exhibits ("CX") CX 1 through CX 29 and Employer's exhibits ("EX") EX 1 through EX 20. Transcript ("TR") at 5-6. Post-hearing, the Employer submitted EX 21 through EX 23.

The findings and conclusions which follow are based upon a complete review of the entire record in light of the arguments of the parties, applicable statutory provisions, regulations and pertinent precedent.

STIPULATIONS

The Claimant and the Employer have stipulated to the following:

1. That the parties are subject to the jurisdiction of the Longshore Act;
2. That an employer/employee relationship existed at all relevant times;
3. That Carolyn Vick alleges that Allen Vick suffered from depression due to his work duties, resulting in his committing suicide on April 12, 2008;
4. That Allen Vick's average weekly wage at the time he passed away was $1,419.18, resulting in a compensation rate of $946.12;
5. That if the Administrative Law Judge finds that Allen Vick's depression and suicide are compensable under the Act, then Carolyn Vick would be entitled to $709.59 per week from April 12, 2008 to the present and continuing;
6. That if the Administrative Law Judge finds that Allen Vick's depression and suicide are compensable under the Act, then Lauren Vick would be entitled to $227.07 per week from April 12, 2008 to May 15, 2009; and
7. That if the Administrative Law Judge finds that Allen Vick's depression and suicide are compensable under the Act, then the Estate of Allen Vick would be entitled to reimbursement for funeral expenses at the maximum allowable amount under the Longshore Act.

Joint Stipulations of the parties.

ISSUES

1. Whether working conditions existed at the time of Allen Vick's employment with the Employer which could have caused depression which resulted in Mr. Vick committing suicide on April 12, 2008.
***2** 2. Whether Mr. Vick's suicide was a willful, intentional act, such that benefits are barred by Section 3(c) of the Act.
3. Whether the Employer is entitled to Section 8(f) relief.

STATEMENT OF THE CASE

I. Testimony of David Horton

Mr. Horton worked at the Newport News Shipyard for twenty-eight years, starting in August of 1980. TR at 18. He met Mr. Vick in 1988 or 1989 in a Class Submarine Program. *Id.* He saw Mr. Vick almost every day at work. *Id.* Mr. Horton served as a supervisor and Mr. Vick as a construction supervisor from the late 1980s to the early 1990s. TR at 18-19. By early 2003 both men served as construction supervisors for the Virginia Class Submarine Program working on the *Texas.* TR at 19. Mr. Horton testified that he believed that Mr. Vick had been a construction supervisor for approximately 20 years prior to 2003. *Id.* A construction supervisor's duties include making sure his team meets the schedule and stays as close to the budget as possible. TR at 20-21. If the team gets behind on the schedule, it is the supervisor's job to develop a recovery plan to get back to the schedule. TR at 21. The supervisor is also in charge of getting each section of the submarine inserted, testing all of the electronic components, and dealing with engine room operations. *Id.* Construction supervisors reported to a superintendent and Bob Meyer, the overall manager. TR at 21-22.

The *Texas* submarine was divided into 19 hull sections which contained modules. TR at 20. Mr. Vick was in charge of Section 7, Section 8 and Section 9. TR at 21. Section 7 contained the electronic components, Section 8 held the engine room raft, and Section 9 was the upper level nucleonic lab deck. TR at 44. Mr. Horton testified that Section 9 was known as the "biggest headache [] module." TR at 21.

Mr. Horton testified that one afternoon in the fall of 2003 he asked Mr. Vick if he was ready to head home and Mr. Vick responded that he felt overloaded and like he could not handle the job. TR at 24. [FN1] Mr. Horton noted that being a construction supervisor during this time was "more complex and more demanding" since they were building the submarine at two different shipyards. TR at 25-26. He also stated that Mr. Vick was in charge of more than any of the other construction supervisors. TR at 26. He testified that he was in charge of two modules, while Mr. Vick was in charge of three. TR at 43-44. In 2003 the supervisors arrived no later than 6::30 AM and were required to stay until

4:00 or 4:30 PM, but normally stayed until 5:00 or 5:30 PM and sometimes until 6:00 PM. TR at 27. As to additional work time, Mr. Horton testified:

> If things were going on weekends, you were required to be there on the weekends to handle your areas of responsibility, whether it be all day Saturday, all day Sunday, whether it be in the evening time, whatever it is, something going on in your module that you need to be there for, whether it be 2:00 in the morning, 10:00 in the morning, it made no difference, it was your responsibility to be there to control anything and everything that was going on in your area of responsibility.

***3** TR at 27-28.

Mr. Horton explained that Mr. Meyer required the construction supervisors to fill out quarterly control account manager (CAM) reports to indicate whether their area of responsibility was on schedule and/or adhering to costs and what needed to be done to get it back on schedule or budget. TR at 29. Mr. Horton stated that the reports were very time consuming and required a lot of after-hours work. TR at 30-31.

Mr. Horton testified that prior to 2003, "Allen was as big a cut up as everyone else was in there, just as jovial as he could be." TR at 33. Mr. Vick would frequently go out with the other shipyard workers to get a beer in the afternoon and "he'd be in there cutting up and getting on everybody else, just like everybody else was getting on him and having a good time." *Id.* During 2003, Mr. Vick would go out with the other shipyard workers less:

> Allen came or became to be more withdrawn from the rest of the crowd that we worked with, became very shaky as far as smoking cigarettes, you could just see his hands shaking. He wasn't the cut up that he had used to be…

TR at 34.

Mr. Vick left the shipyard for a period in 2003 and when he came back he was still a construction supervisor, but was put on a lighter duty assignment. TR at 35. Mr. Vick was not in charge of any modules. *Id.* Instead when one of the managers had a problem or special task, Mr. Vick stepped in. TR at 35-36. Mr. Horton testified that prior to leaving for a period, Mr. Vick had asked management for additional personnel to help in his areas of responsibility. TR at 48.

Starting in 2004:

> [Mr. Horton and Mr. Vick] had many, many occasions to talk about our stress, anxiety, how we felt, how different medications were working or weren't working, pretty much that was our normal conversations from that point on, as how each one were doing, kind of felt like we were going through pretty much the same thing together and leaning on one another as buddy buddy.

TR at 29. Mr. Horton stated that while he discussed problems in his personal life, Mr. Vick never mentioned any problems that he was having outside of work. TR at 34-35, 36-39.

During this time, Mr. Horton had been diagnosed with depression and anxiety. TR at 46. He testified that there were times when he "had so much anxiety that [he] didn't even want to see the shipyard or go down near the shipyard." *Id.*

II. Testimony of Carolyn Vick

Mrs. Vick testified during the hearing and a deposition taken September 28, 2009. TR at 50; EX 21. Mrs. Vick was married to Mr. Vick for nineteen years and they have one daughter together. TR at 51; CX 2; CX 3. Mrs. Vick did not have a full-time job during most of the marriage, but finished getting a nursing degree and started working in December 2007. TR at 51-52. Through the spring of 2008 she was working twelve-hour shifts. TR at 52.

Mrs. Vick testified that when she met Mr. Vick in 1984, he had just become a construction supervisor. TR at 52. Mrs. Vick became familiar with her husband's job through conversations with him at home and other shipyard workers at social events. TR at 52. She stated that her husband took pride in his job. TR at 53. In 2002, Mr. Vick would work twelve-hour shifts and he was sometimes sent overseas for a few months at a time. *Id.* Starting in 2003:

> ***4** Allen would be working a 12-hour shift and there would be a new module coming in, and he would have to --

> say he'd get home, like 6:00, 7:00 at night, then he'd have to get up at midnight and go to Langley because one of the modules was coming in, and he had to be there to unload the module and that would take, like, four hours, and he'd come home at 4:00 in the morning and then he would get back up and be back to work at 7 to continue his job.

TR at 54. Prior to working on the Virginia Class Program (VCP), the construction supervisors went in on the weekends on a rotation basis, but while working on VCP he started having to go in every day. TR at 55. During her deposition, Mrs. Vick agreed that it was not uncommon for there to be times when her husband had to work twelve-hours shifts over a period of time. EX 21.12.

Mrs. Vick testified that his stress started increasing in the spring of 2003 and he would tell her that he felt he couldn't handle his job and that he was doing the job of three people. TR at 55-56; EX 21.11, 13. She also noted that he felt his time was not being utilized correctly: "He felt like they were wasting his time sitting in a meeting when he could be doing something more productive because he had so much paperwork to do." EX 21.18. By October 2003 ""he started becoming extremely anxious, and he started shaking and pacing." TR at 55. Mrs. Vick was unaware of any mental health issues that her husband had prior to 2003. TR at 54. As the pressures at work increased, Mrs. Vick noticed that he withdrew socially:

> At home he became -- he would isolate himself, he became very impatient with my daughter when he was trying to help with her homework. … Before he would help her with her -- you know, help her with her homework. Math would be something that they had in common; history, they had that in common. Allen decreased his eating, he, basically, went from about 205 pounds down to 150 pounds through the span of his life after he was diagnosed with depression.
>
> He stopped drinking all together for periods at a time. He couldn't focus on watching TV or he used to buy magazines, and he stopped reading his magazines. He lost interest with a lot of things that he liked to do. He stopped playing guitar. He stopped going to Pipe Club Meetings. He stopped doing a lot of the hobbies that he did at home. …
>
> At the beginning of 2003, he was so involved with his work, that it consumed him. When he was outside of the shipyard, he couldn't think about anything else…

TR at 56-57.

On October 7, 2003, Mr. Meyer called Mrs. Vick to ask her to pick up her husband. TR at 58. She testified that Mr. Meyer told her that her husband was ""not acting right" and he did not think he could drive. *Id.* She took him from the shipyard to Riverside Emergency Room. *Id.* She stated, "He was not Allen. He was moving all around, his eyes weren't focused, he looked like he was having a nervous breakdown." *Id.* The Employee's Assistance Program at the shipyard set Mr. Vick up with a licensed clinical social worker named Wayne Martin. TR at 59. After Mr. Vick met with Mr. Martin for a few days, he returned to work with restrictions. TR at 61; EX 21.21. Mrs. Vick testified that he was there for a week or two before he had to leave again because nothing had changed. *Id.* "And then when he went out that time, then he was out for a few months, and he went back on conditional return, so he could leave work if it got to be too much for him." TR at 61. Mr. Vick attempted suicide in January of 2004. TR at 62.

***5** Mrs. Vick explained that they built an addition on their home in 2003 using the equity in their house. EX 21.26.

> Q: The notes from January, of '04, say that he was stressed out about financial situations and being out of work. Was that your understanding too?
>
> A: That was how he perceived his situation.
>
> Q: Was there a financial problem at the time I guess is my question?
>
> A: No.

Id. She testified that there were no relationship problems between her husband and herself or their daughter. EX 21.27. She stated that his mother had congestive heart failure and "she went into a depression which is normal [following congestive heart failure]." *Id.* She also testified that her husband's mother's brother had committed suicide. TR at 28.

Mrs. Vick would frequently go with her husband to meetings with his health care providers to help him communicate with his doctors. TR at 62-63.

> Q: Generally speaking, from October 2003 up until 2008, did his condition that you were able to observe stay the

> same, get worse or get better?
> A: It waxed and waned.
> Q: And were there period of time when he went back to work?
> A: There were periods of time that he -- after his first series of ECT treatments [electroconvulsive therapy], his depression had all but disappeared. He -- the treatment had very little effect, cognitive effect on him, his depression disappeared, and he went back to work as a construction supervisor. … [H]e stayed at work for about a year and-a-half and then I saw him start to withdraw socially again…

TR at 63. Approximately five months after his suicide attempt, he returned to work. EX 21.25. Mr. Vick was working modified duties as a fire warden. TR at 85. He conducted risk assessments and ran meetings to teach others about risk assessment. TR at 86. Eventually his complaints about being overworked returned. EX 21.31. He became withdrawn at home, experienced loss of appetite, and became agitated. EX 21.34. After a year and a half of working, he left work again for a period in 2005 and then went back for five months in 2006. TR at 64-65. She testified that he would return to work between his ECT treatments, but the time back at work become shorter after each treatment. EX 21.35.

In 2006, Mr. Vick was primarily been treated by Dr. Kenneth Brooks. TR at 65. Dr. Brooks provided medication and admitted him to Tucker Psychiatric Hospital for the ECT treatments. TR at 65-66. Over the course of his treatment, he had 33 separate ECT treatments. TR at 66. Mrs. Vick testified that the ECT treatments became less effective over time. EX 21.36. Each treatment also caused more memory loss problems. *Id.* The cognitive problems started small, such as not remembering dates, and progressed to not being able to do simple tasks, such as making a sandwich or drive. EX 21.37-39.

> Q: What symptoms would you notice after he had -- or what behaviors would you notice after he had the last five or six series [of ECT treatments].
> ***6** A: It was different for each time, I had to -- each time he came out of the hospital, I would have to reorient him and re -- let him relearn certain things, like, I would quiz him on birth dates, he would forget my birth date, his daughter's birth date, his Social Security number. He had to relearn things that were short-term/long-term. After the second one, it was harder. After the third one, he started to dress differently…
> Q: So when you say he started to dress differently, what do you mean?
> A: Allen always dressed in blue jeans, plaid shirt; he was very conservative in his appearance. He kept a comb in his pocket, he was always combing his hair, making sure his shirt was tucked in. When he started dressing differently, he started wearing camouflage pants, heavy metal band T-shirts, rings with skulls on them, something that you'd see, like, a 17-year-old on the street wearing, not a man of 50.

TR at 66-68.

Mrs. Vick explained that he started listening to heavy metal music, bought 24 electric guitars and 1,500+ CDs, and started collecting skull jewelry. TR at 68. Mrs. Vick testified:

> When he'd bring a CD home, he would peel the labels, the little price stickers, the little stickers that would hold it on, if it was scratched he would change the case. He would go out and buy new CD boxes, jewel case boxes, and if the box of the one that he bought was damaged in any way, he would put it in a new box. …
> When he went into his depression, sometimes he'd want to listen to the music, he'd put the headphones on, because he said -- he told me that it drowned out what was going on in his head. And he used to [repeat] things in his head.

TR at 68-69. She said he would repeat "I got to get back to work, I got to get back to work." TR at 69. She testified that he would "clench himself up" and as he got more agitated it got to "the point where he couldn't sit still." TR at 69-70.

Starting in late 2007, his sleeping pattern changed:

> He would tell me that he wasn't sleeping. He would lay in a dark room for 11 hours, about 11 hours a day and this is when I could tell that his depression was getting worse because he started smoking more… And he wasn't sleeping much, but he was laying in bed.

TR at 71. His weight also dropped drastically. *Id.*

On March 21, 2008, Mr. Vick filed an application for Social Security Disability Benefits. CX 7. In March and April

2008, after Mr. Vick completed his last series of ECTs, he was no longer able to drive:

> After his last series of ECT's, he was not Allen anymore, and by saying that, I mean, that he didn't know where he was. He grew up in Newport News and Hampton, and he didn't know who I was at first, and I had to tell him…

TR at 72. In late March 2008, Dr. Brooks wanted to change Mr. Vick's medication. TR at 73. In order to switch medications, Mr. Vick had to be off medication for 14 days. *Id.* The new medication was not helpful, so he was switched back to a higher dose of his original medication on April 8, 2008. TR at 73-74. Mr. Vick committed suicide on April 12, 2008 while Mrs. Vick was at work. TR at 74-75; CX 1. Mrs. Vick testified that prior to his suicide, he expressed suicide idealization but he never expressed an intent to actually act on it. EX 21.44, 46-47. She had no longer felt the need to "suicide proof" the home because she did not have a concern that he would commit suicide. EX 21.50-51. She believed that his inability to return to work might have been the "last straw." EX 21.48. He did not leave a note. EX 21.52. Mrs. Vick testified that he was acting normal when she left for work that morning. EX 21.53.

III. Testimony of Gary Werlau

***7** Mr. Werlau has worked for the Newport News Shipyard for thirty-three years. EX 22.2. In 2003, Mr. Werlau was a superintendent of submarine construction on the *Texas*, the submarine Mr. Vick was working on. EX 22.2-3. He was Mr. Vick's supervisor through most of 2003. EX 22.4.

> Q: Did the workload for the supervisors increase in the spring of 2003?
>
> A: No, not significantly, it was pretty much routine for that period of time, everything progresses, it gets more hectic as you get closer to launch, but we were at least a year away or more from that.

EX 22.5. An article from *Yardlines*, a month publication for the shipyard, noted that three construction milestones were completed in a week on the *Texas* in April 2008. CX 25. Mr. Werlau testified that the most significant milestone was loading the power unit for the submarine. EX 22.6.

Mr. Werlau testified that he became aware of Mr. Vick's mental health problems around the end of 2003. EX 22.7.

> Q: Did Mr. Vick ever have discussions with you about what he perceived to be stressful conditions at work?
>
> A: Not that I recall, no.
>
> …
>
> Q: Did Mr. Vick ever have any discussions with you about what he felt were the reasons behind his mental problems that lead to his — what you described as a breakdown towards the end of 2003?
>
> A: Actually, whenever he discussed it with me he said he had no idea what brought it on, and he didn't know why he had been changing like that.
>
> …
>
> Q: So 2006 is when he told you he had no idea what brought it on?
>
> A: No, I'd asked him if he understood, you know, what could have caused it, and he never gave any other indication other than the fact that he really didn't have any idea what was causing it and that was frustrating him.

EX 22.7-8. He noted that when Mr. Vick came back to work after the fall of 2003, he was given light duty jobs. EX 22.9.

IV. Testimony of Robert Meyer

Mr. Meyer has been employed at the Newport News Shipyard for twenty-eight years and is currently the construction director for the Virginia Class Submarine Program. EX 23.5, 7. He has held that position since 2001. EX 23.6. He testified that the Virginia Class Submarine Program started around 1997. EX 23.12.

> [A]s you can imagine with any construction program [the amount of work] escalates. So, you know, you start off with parts and you get more parts and you get more parts. So I'm not sure how to characterize a ramp up in 2002. It was a continuation of the program.

EX 23.13. He testified that some construction supervisors were working longer hours and more days per week in the spring of 2003 than they had previously, but he could not recall if Mr. Vick was one of those supervisors. *Id.* He believed that Mr. Vick was only in charge of the engine room. EX 23.20. In March or April of 2003, an engine room modular came in and had to be installed. EX 23.41. Mr. Meyer testified that the installation would have required Mr.

Vick to work extra hours and on the weekends. EX 23.42-43.

***8** In the summer of 2003, Mr. Meyer and other co-workers noticed a change in Mr. Vick's behavior. EX 23.20-21. Mr. Vick's co-workers told Mr. Meyer that he seemed "very frustrated," so Mr. Meyer began observing him more. EX 23.22. He found that Mr. Vick was still performing his job well, but did not seem as focused or as precise as he had been in the past. EX 23.23.

> Allen was always a little -- I mean, from the beginnings [sic] when I knew Allen, he was always one that sometimes got very [unfocused], and then he would be very even keel. I mean, he had his kind of peaks and valleys. … Allen had periods of being up and down over the years that I had known him, but he was always very -- on top of his game, on top of his job.

EX 23.23-24.

In the fall of 2003, Mr. Meyer spoke with Mr. Vick about his coworkers concerns:

> I would characterize the conversation as I asked Allen, you know, I've noticed; some [of] your co-workers noticed that you seemed unfocused, and will you please tell me, is this — you know, is this correct? Is there something I can help with? That type of conversation. And his response back to me was, yes, he felt -- he felt stressed. He felt like he had -- he was unfocused. I don't remember if that's the word he used.

EX 23.30.

> Q: Did he tell you that he thought he was being asked to do the work of three people?
>
> A: I'm confident he would -- he had never said that to me.
>
> Q: Did he express that he was stressed working 60 or 70 hours per week?
>
> A: I do not recollect having that conversation with him.
>
> Q: Did he identify any factors of work that -- because of stress? Again this is in his opinion.
>
> A: My best characterization of it is that my impression was that life as causing him to be stress[ed], and work was part of his life. So I can't remember if it was focused on work or what it was. …
>
> Q: I'm asking what you and he talked about. You don't remember what it was that he told you?
>
> A: Yes. I said before I believe that he felt stressed. He felt -- he was having trouble concentrating, and he felt pressures, yes.

EX 23.31-32. He did not discuss with Mr. Vick any stressors outside of work. EX 23.33.

In October 2003, Mr. Meyer called Mrs. Vick to talk to her about the change in Mr. Vick's behavior. EX 23.21.

> Q: [H]ad you and [Mrs. Vick] discussed his demeanor prior to that, prior to October?
>
> A: I can't remember when. Somewhere along the line Carolyn called me one night, and said that she was -- had concerns about Allen and that he was acting erratic. I don't know if it was before the October timeframe. It must have been because he was still at work, and then somewhere around October of 2003 there was a suggestions by an employee that it's possible that Allen had been drinking. I approached Allen and engaged with him. Personally I didn't see any -- I didn't smell any signs of it. He was acting agitated. … So that's why I called Carol.

***9** EX 23.39-40. Mr. Meyer recommended that Mr. Vick seek out the employee ""assistant" program. EX 23.32. He testified that he "didn't get involved with what's causing [Mr. Vick's stress]." *Id.* Mr. Vick began missing extended periods of time in October 2003. EX 23.25. Mr. Meyer was unaware of any physical problems that would have prevented Mr. Vick from performing his job tasks. EX 23.27. Mr. Meyer received updates from Mrs. Vick and assured her that Mr. Vick's long-term employment with the company was not in jeopardy. EX 23.40. Mr. Vick was able to return to work in March of 2004. EX 23.27. At that point, Mr. Vick was not performing the job of a "typical construction supervisor." EX 23.26. Mr. Meyer testified that he never assigned Mr. Vick construction supervisor duties after October 2003 because

> [W]e recognized that he had some issues [] outside the shipyard. And I worked with the shipyard to find a position that Allen could come back and regain employment, be a contributor to the Virginia Class Program.

EX 23.28-29. He testified that Mr. Vick was back at work for a few months before he started missing time again, then he came back for a year in 2005 before missing time again in 2006. EX 23.27-28. Mr. Vick did not miss any significant amount of time from work prior to October 2003. EX 23.38.

Mr. Meyer testified that Mr. Horton never addressed stress with him. EX 23.36.

V. Medical Treatment

1. Wayne Martin and Dr. Santiago Nunez

Mr. Vick first met with Wayne Martin, a licensed clinical social worker, on October 8, 2003. CX 15.2. Mr. Martin noted that Mr. Vick was stressed and felt pressure from work, he could not think clearly, and was not eating or sleeping properly. *Id.* Mr. Vick explained that he had been working 10-12 hour days during the week and 6 hour days on Saturday and Sunday since the Spring of 2003. *Id.* Mr. Martin wrote that Mrs. Vick took her husband to the ER on October 5 and he was prescribed medication for anxiety. *Id.* Mr. Martin noted that Mr. Vick's mother had congestive heart failure and severe depression. CX 15.3. Mr. Martin wrote, "It's all about work -- only about work." *Id.* Mr. Vick also reported that he spent his whole vacation in August "just thinking about work." CX 15.4.

Mr. Vick was seen again on October 10, 2003. CX 15.5. Mr. Vick reported that he was "not on the edge but still up there." *Id.* He was out of work on open ended sick leave. *Id.* Mr. Martin noted that he felt consumed by his job. *Id.* Mrs. Vick stated that he was always a perfectionist and very orderly. *Id.* Mr. Martin wrote: "Recovery plan -- work stays there -- not bring it home." *Id.*

On October 14, 2003, Mr. Martin noted that Mr. Vick had been engaging in activities with his family and by himself and was feeling better. CX 15.6. He wrote: "Allen has to work at relaxing — a lot of obsessing stuff. … It's a big change — being in balance, 'chilling out."D' *Id.*

***10** On October 16, 2003, Mr. Martin wrote that Mr. Vick was more relaxed and would return to work on October 27. CX 15.7. "There is always apprehension about work." *Id.*

On October 21, 2003, Mr. Martin noted "Shingles triggered by stress/worry -- obsessing about the return to work." CX 15.7. It was difficult for Mr. Vick to ""sit around and do nothing…after 27 years of working." *Id.* On October 23, 2003, Dr. Nunez wrote: "Thinks about job obsessively — going back to work. Was on overload — sleeping better — depression better — not unhappy — temper ok — not bored — appetite getting better — energy good — thinks he can handle job." CX 16.3.

At the next appointment on November 18, 2003, Mr. Vick was not better and was going "rapidly downhill." CX 15.8. Mrs. Vick reported that her husband was agitated and restlessness, spent full days in bed, had isolated himself, ate too late, had excessive motor activity, was not participating in household activities or chores, and was not talking to her. *Id.* Mr. Martin observed excessive weight loss. *Id.* He noted that Mr. Vick's mother was doing worse. *Id.* Mr. Vick had returned to work and was working ten hours a day. *Id.* Mr. Vick was "very anxious," could not sleep and had a loss of appetite. *Id.*

On November 20, 2003, Mr. Vick listed his fears/worries as his mother's poor health, his own health, anxiety, depression, and poor concentration. CX 15.9. Mr. Martin recommended that Mr. Vick take work off his "worry list" and develop a life away from work. *Id.*

On December 1, 2003, Mrs. Vick noted that her husband was twitching, groaning constantly, and was hard to talk to because he mumbled. CX 15.10. She noted that his mother is in poor mental health and he is "much like his mother." *Id.* She stated, "This is not my husband sitting here." *Id.* Mr. Martin wrote: ""Thoughts are stuck and negative. Fleeting suicidal idealizations -- self pity. Not sleeping at night." *Id.* Mr. Martin also observed constant restlessness. *Id.*

On December 11, 2003, Mr. Vick was doing worse and continued to have fleeting suicidal idealization. CX 15.12. Mr.

Martin wrote that Mr. Vick was restless, agitated, and had repetitive "doom and gloom" thinking and statements. *Id.* He stated "Put me out of my misery," "I can't take this anymore.," and "I can't get calm, feel like I'll explode." *Id.* Mr. Martin recommended that he be admitted to a hospital. *Id.*

Mr. Martin noted on December 29, 2003 that Mr. Vick denied current suicidal idealization. CX 15.12. He withdrew from his family during the holidays, lost weight, and remained anxious. CX 15.13.

On January 12, 2004, Mr. Vick was worse and "not functioning." CX 15.14. Mrs. Vick felt that she could not trust him and observed him measuring a knife. *Id.* On January 15, 2004, Mr. Vick was admitted to Riverside Behavior Health Center after attempting suicide. CX 15.15. On January 22, 2004, Mr. Martin noted that ECT was an option. *Id.* On January 28, 2004, Dr. Nunez wrote that Mr. Vick was no better, was doing the same thing constantly, and stays nervous all the time. CX 16.7. He always thinks of suicide and does not feel like he would be able to work. *Id.* By the February 18, 2004 meeting, Mr. Vick had undergone 5 ECTs. CX 15.16. Mr. Martin noted that Mr. Vick was doing okay and was ready to go back to work. *Id.* He wrote: "Sleeping well. More animated — not at all agitated — calm — no excessive body movement." *Id.* Dr. Nunez wrote that Mr. Vick was ""doing great" with no anxiety or depression. CX 16.8. Mr. Vick was a little confused and his memory was a little fuzzy following the ECTs, but Dr. Nunez stated it "will take a few days to settle down." *Id.*

***11** By letter dated February 24, 2004, Mr. Martin and Dr. Nunez cleared Mr. Vick to return to work on March 8, 2004. CX 15.17. The only restriction was that Mr. Vick only work a half day the first week of his return. *Id.* Mr. Martin and Dr. Nunez noted that they had been treating Mr. Vick for "major depression, recurrent, severe without psychotic features. *Id.* On March 3, 2004, Mr. Vick expressed anxiety about returning to work. CX 15.18. Mr. Vick's treatment was then transferred to Rock Landing Psychological Associates. EX 15.1.

On October 12, 2009, Mr. Martin wrote a letter to Claimant's counsel. CX 23; EX 15. Mr. Martin wrote: "The referral to me was from Mr. David Kirk, who was the coordinator of the [Newport News Shipyard] EAP program. The chief concern was being 'stressed/pressure from NNSY. Dwells on work — cannot think clearly feels overwhelmed.' Therefore, the initial referral was job related." CX 23.2; EX 15.2. He stated that Mr. Vick's progress was inconsistent. He noted that he raised ECT as an option:

> In my experience only the most severely depressed patients, who do not respond to medications, are given ECT. He had 5 ECT's in early February [2004]. He seemed improved enough that he was ready to return to work. As he was soon running out of his disability benefit, I agreed, with the condition that he return part time and make a slow transition to full time work.

Id. He noted that he had no contact with Mr. Vick after March 3, 2004. *Id.* As to the cause of Mr. Vick's depression, Mr. Martin wrote: "Mr. Vick's initial presentation was due to work pressure and stress. Adding to his depression are other causative factors: his genetic predisposition due to family history of depression; financial stressors; his own personality type. His condition was very severe." *Id.* As to whether he believed Mr. Vick's suicide was the result of an irrational, irresistible impulse, Mr. Martin stated:

> There was a 4 year gap in time from my last seeing Mr. Vick until his tragic suicide by hanging on April 22, 2008. … I read the medical records you sent, that he continued in treatment for an additional four years. Mr. Vick was severely depressed, I cannot judge whether at the time of his death that he-the patient-was in rational thought. I can only state, that it is my subjective view that those who hang themselves as a way of causing their own death are able to plan and scheme such an action, and at the moment they see no better outcome for their situation but death. At this moment, they have stopped honestly communicating with others—family, friends, therapists. One could argue that this action is not the act of someone thinking clearly.

CX 23.2-3; EX 15.2-3.

2. Riverside Behavioral Health Center

Mr. Vick was admitted to the Acute Adult Unit for observation with suicide precautions on December 12, 2003. CX 17.1. Mr. Vick presented with suicidal ideation along with feelings of anxiety and depression. *Id.* He reported that he

had been feeling increasingly depressed and anxious for the past five or more months. CX 17.2. He responded well to medication and participated in treatment. CX 17.1. It was noted that Mr. Vick had a "significant family history of mental and emotional illness", including his mother who had a history of depression, one brother who has a psychiatric history of depression and another brother who has a history of alcoholism. CX 17.3. Dr. Sari Kohazi, the attending physician, diagnosed depression and anxiety disorder not otherwise specified (NOS). *Id.* The psychological and environmental stressors identified included: family, marital, interpersonal, and job related issues. *Id.* Mr. Vick was released on December 15, 2003. *Id.*

***12** Mr. Vick returned to Riverside on January 15, 2004 after attempting suicide. CX 17.13. Dr. Cristobal Nogues, the attending physician, wrote: "He states he is stressed out of a financial situation and been out of work on short term disability since October, 2003." CX 17.14. Dr. Nogues also noted ""Does admit to thoughts of wanting to end his life. Insight and judgment grossly impaired at this time. The patient has difficulties maintaining focus or making decisions." CX 17.15. She diagnosed Mr. Vick with "major depression; recurrent, severe no psychotic features" and anxiety disorder NOS. *Id.* He was released on January 19, 2004. CX 17.13.

3. Dr. Karen Haskett

Dr. Haskett, a clinical neuropsychologist, conducted an evaluation of Mr. Vick's cognitive impairment, difficulty with daily functioning and depression and prepared a report on December 19, 2003. CX 18; CX 28. She wrote:

> Mr. Vick was in his usual state of health until about March of 2003 when he started to become overwhelmed by increasing pressures at work. … Over a six month period Mr. Vick started slowly withdrawing from others and by August of 2003 he totally stopped drinking and going out with his friends after work, which he used to do about twice a week. … He started having more and more difficulty at work and went out on medical leave on October 7, 2003. … He tried to return to work from October 27, 2003, to November 13, 2003, but apparently was unable to perform his duties. A number of his coworkers went to his boss and reported that they saw no improvement and that they were fearful that he could present a danger of injury to himself. Mr. Vick went back out on medical leave around November 15, 2003, or so and has not been able to return to work.

CX 18.1-2. Mr. Vick reported a "great deal of stress" due to his mother's diagnosis of congestive heart failure and early onset dementia. CX 18.2. He also mentioned that he was refinancing his home and building an addition onto the house. *Id.* His symptoms included feelings of depression and anxiety, staying in bed most of the day, insomnia, irregular breathing, loss of appetite and weight, low energy, and loss of interest in daily activities. *Id.* Mrs. Vick reported that her husband "constantly stretches, cracks his legs, fidgets, and moves around." *Id.* Mr. Vick was also experiencing problems with short- and long-term memory, losing track of time, misplacing things, and difficulties concentrating. CX 18.3. Dr. Haskett wrote that "[f]amily medical history is strongly positive for neurological disorders," including his mother and both maternal grandparents having dementia, his mother suffering from depression, his maternal uncle committing suicide, a brother developing a "movement disorder" and a paternal uncle and brother suffering from alcoholism. CX 18.4.

Neuropsychological testing indicated impaired concentration and severe clinical depression and anxiety. CX 18.8-9. Dr. Haskett noted that Mr. Vick's problems with memory and concentration are likely related to the severe depression and anxiety. CX 18.9. His depression and anxiety are not responding to treatment, and seem to be worsening over time. *Id.* Dr. Haskett recommended that Mr. Vick try a different antidepressant and consider electroconvulsive therapy if the medication was not effective. CX 18.10. She also stated that he should remain on medical leave. *Id.* She diagnosed "Major Depressive Disorder, Single Episode, Severe Without Psychotic Features" and "Generalized Anxiety Disorder, Severe." *Id.*

***13** On January 19, 2010, Dr. Haskett prepared a report aider reviewing her previous notes and records from Dr. Brooks, Dr. Wells, Dr. Apostoles, and Mr. Vick's Performance Management Process Individual Performance Agreement. CX 28. Dr. Haskett wrote: "To a reasonable degree of neuropsychological probability, Mr. Vick's depression was originally primarily, but not entirely, caused by job-related stress." CX 28.3. She explained that on November 19, 2003, Mr. Vick reported that pressures at work had increased and he felt overwhelmed. *Id.*

> As time went on his depression worsened, his job performance became worse, and he became even more distressed because he had always prided himself in doing a good job in the past. … The more depressed he got, the more difficulty he experienced with concentration and memory, and therefore, his work performance suffered.

Id. Mr. Vick also listed other stressors during the interviews, including his mother's health problems, refinancing his home, and building an addition onto his home. *Id.* She concluded:

> Therefore, to a reasonable degree of neuropsychological certainty, it appears that Mr. Vick's work-related stress, specifically, his feeling that he was given more work responsibilities than he could handle, in his employment as a construction supervisor at Northrop Grumman Newport News, was a precipitating factor in his severe depression which significantly worsened over time and as it worsened, his job performance worsened, which in turn increased his depression. However, other factors, including his own personal fears about what other people thought about people with mental health problems as well as concerns about his mother's health, financial issues, and a home addition, appear to be stressors that were not primary, but were certainly contributory.

Id. Dr. Haskett did not feel that she could offer an opinion as to whether Mr. Vick's suicide was the result of an irrational irresistible impulse. CX 28.3-4.

4. Rock Landing Psychological Group

Dr. Bruce Colburn completed Mr. Vick's intake form on March 16, 2004. CX 14.22; EX 6.2. He noted that Mr. Vick suffered from major depressive disorder. CX 14.22; EX 6.3. On March 19, 2004, Dr. Colburn noted that Mr. Vick was ""[u]nder a lot of pressure at work when the depression started" and that his mother was having a lot of medical problems. CX 14.21.

Dr. Emelita Ramos, a psychiatrist saw Mr. Vick for the first time on April 5, 2004. CX 14.16; EX 6.17. Dr. Ramos noted that his illness started about midyear 2003, when feelings of work-related stress and being overworked lead to depression. *Id.* She diagnosed major depressive disorder and listed "stress at job" as the Axis IV psychological and environmental problem. CX 14.2. EX 6.19. On June 14, 2004, Dr. Ramos noted "[s]ymptoms have worsed to where he is not able to function. Pt. referred to ECT." CX 14.8; EX 6.22. On June 21, 2004, Dr. Ramos wrote that, due to non-response to oral medication, Mr. Vick was to start electroconvulsive therapy and would not be available for work for four weeks. EX 6.15.

***14** Mr. Vick received six shock treatments from July 1 to July 14, 2004 under the care of Dr. Kenneth Brooks. EX 6.16. On July 24, 2004, Dr. Ramos wrote: "Response to treatment has been good. Mr. Vick is more motivated, is sleeping well and concentration has improved." *Id.* She opined that Mr. Vick could return to work on July 27, 2004. *Id.*

5. Dr. Kenneth Brooks

Dr. Brooks, a board-certified psychiatrist, began treating Mr. Vick in July of 2004. CX 11; EX 7; CX 12.31. On July 21, 2004, Dr. Brooks noted that Mr. Vick was "much less depressed" following six ECTs. EX 7.62. A seventh ECT was performed on July 30, 2004 and an eighth ECT was performed August 20, 2004. EX 7.61-62. Through late 2004 and 2005, the severity of Mr. Vick's depression waxed and waned. *See* CX 11.1-14; EX 7.51-62. On December 16, 2005, Dr. Brooks wrote: "Both [Mr. and Mrs. Vick] agree that his depression has gradually worsened. Ms. Vick, particularly, is concerned about him having thoughts regarding suicide. Both of them feel that he would not act on these thoughts." CX 11.15. Dr. Brooks continued to note that Mr. Vick's depression eased and worsened throughout early 2006. CX 11.16-22; EX 7.45-50.

On July 14, 2006, Dr. Brooks noted that Mrs. Vick felt her husband was """'halfway there' meaning that the depression is about half as bad as it can get." CX 11.23. He noted that it had been two years since Mr. Vick's last ECT. *Id.* Another ECT was performed on July 28, 2006. CX 11.26. Dr. Brooks noted that Mr. Vick had a course of 6 ECTs, finishing August 2, 2006. CX 11.30; EX 7.43. Mrs. Vick reported an improved mood, he didn't spend as much time in bed and he was more verbal, but there was some short-term memory loss. *Id.* On September 5, 2006, Dr. Brooks wrote that Mr.

Vick's mood continued to improve, but he was not yet able to return to work. CX 11.31; EX 7.42. On October 20, 2006, it was noted that Mr. Vick was working full-time. CX 11.33; EX 7.40. Through the rest of 2006, Mr. Vick had some problems concentrating but was more alert and able to work. CX 34-36; EX 7.37-39.

On January 19, 2007, Dr. Brooks noted that Mr. Vick was "extremely depressed" one week ago. CX 11.37. By February 23, 2007, Mr. Vick had completed another round of 6 ECTs. CX 11.43; EX 7.36. An additional 3 ECTs were completed by March 2007. CX 11.44; EX 7.35. He continued to have some depressive symptoms, but was eager to return to work. CX 11.45; EX 7.34. He had returned to work by April 6, 2007. CX 11.46; EX 7.33. A few weeks later, Mr. Vick reported that he was "almost 100%." CX 11.47; EX 7.32. There was some worsening of Mr. Vick's condition in the early summer of 2007, but on July 31, 2007 Dr. Brooks noted that Mr. Vick's "mood clearly was much better" and he was more active. CX 11.48-51; EX 7.29-31. "His wife is concerned that she did see some hypomanic thinking such as an interest in becoming president. This is not truly a delusion." CX 11.51.

***15** Dr. Brooks noted that Mr. Vick was still sad and anxious, but improved through the fall of 2007. CX 11.52-; EX 7.-28. On November 19, 2007, Dr. Brooks wrote:

> He does attend work on a few occasions, but then spends most of his time in bed. He is becoming extremely incapacitated. He has expressed some feelings of hopelessness. He has not responded to medication and so we are going to plan on admission for electroconvulsive therapy. This is the only treatment that has worked consistently for him in the past.

CX 11.63. Mr. Vick had a course of 8 ECTs in December 2007. CX 11.64; EX 7.22. Mr. Vick was able to return to work January 7, 2008. CX 11.65; EX 7.21.

On March 7, 2008, Dr. Brooks noted that Mr. Vick was unable to return to work and was depressed, but "not suicidal." CX 11.68; EX 7.18. On March 28, 2008, Dr. Brooks wrote:

> He has had a slow deteriorating course. He still spends most of his day in bed. He is extremely anxious and fearful. He shows motor restlessness. … His wife reports that both he and she are reluctant to pursue electroconvulsive therapy because the results had been incomplete this time and he has been left with continued difficulties with short-term memory and new learning. … Ms. Vick said that he has never mentioned suicide at this time and she feels confident that both she and the patient's father can watch him closely. We did discuss hospitalization, however, and I think this would not be the best time to admit him because we are going to need at least 10 days off of the Ensam before we can do trial of antidepressant therapy. … If he is not showing an improvement [in eight or nine days] we have discussed the possibility of him being hospitalized.

CX 11.70. On April 8, 2008, Mr. Vick denied being suicidal and Mrs. Vick felt that he was safe at home. CX 11.71; EX 7.17. Throughout Dr. Brooks' treatment of Mr. Vick, he noted that the patient was alert and oriented to his situation and that his thinking was coherent and goal oriented. CX 11; EX 7.

On April 15, 2008, following Mr. Vick's suicide, Dr. Brooks wrote:

> [Mrs. Vick] said that she has seen a progressive worsening of his depression over the past two years. That the electroconvulsive therapy had been very helpful initially, but had subsequently become less and less helpful. She said that he was suffering greatly with his level of depression… She said that he had never wanted to return to electroconvulsive therapy because of worsening problems with his memory and the lack of response. Despite this, his depression continued to cause him great problems and she believes that his inability to work may have been "the last [straw]."

CX 11.72.

On June 30, 2008, Dr. Brooks wrote the following letter to Claimant's counsel:

> [Mr. Vick] suffered from a severe form of depression that required electroconvulsive therapy on several different occasions. During this past year, he had had particularly severe depression which required the electroconvulsive therapy leaving him with some difficulties with memory, but persistent depressed mood.
>
> ***16** He was always very eager to be able to return to his job. I had had a number of conversations with his supervisor and we discussed Mr. Vick's performance on the job. We had had him return to work on several occa-

sions, but he had difficulty performing in that setting. We had talked at length about him being placed on disability from his work, which he accepted reluctantly. I believe he did apply for this disability, but a response did not occur.

During my final sessions with him, he always seemed extremely upset about the situation regarding work. On the one hand he was eager to return to the job, but said that he could stop worrying if he could at least be awarded disability. I think his anguish regarding this played some role in his suicide.

CX 13.1.

During a deposition on April 27, 2009, Dr. Brooks testified that Mr. Vick had been diagnosed with major depressive disorder. CX 12.4. He agreed that someone who had attempted suicide in the past was at a higher risk to commit suicide in the future. CX 12.7. He stated that, during his treatment of Mr. Vick, he had serious problems with depression but was not actively suicidal. CX 12.9.

Q: Did you ask him why he had tried to commit suicide in the past?

A: Well, usually the reason being he would get intensely worried, preoccupied by difficulties with the future. He was very -- he was always very upset about not being able to return to work, kind of wanting to return to work, a sense that he somehow failed or there would be dire consequences from his not working.

He also was feeling terrible in terms of just being very anxious, not eating, not sleeping. He would spend a lot of time just in a dark room sitting, that kind of thing. So it was a lot of subjective distress. …

Q: When you last saw him, he was expressing those same concerns; that is, with the money issues, the inability to return to work?

A: Right.

CX 12.9-11. As to the reasons for Mr. Vick's suicide, Dr. Brooks testified:

Q: What goes through someone's head or his head when -- that suicide would be the solution to a money problem or the problem with worrying about his providing for his family.

A: Yeah. Well, in his case, I'm not sure he would commit suicide as a solution to the problem. Just as a desperate attempt to escape the problem. I think a lot of people when they're suicidal sort of wrestle with this in their mind; that is, you know, part of them wants to escape this torment they're under, but by the same token, they're worried about, you know, how their families will do …

Q: I take it you don't know the reasons he committed suicide?

A: Not exactly. I mean, I do believe he was suffering in a serious way. Exactly, you now, what was going through his mind at that moment, no, I don't know. …

Q: You didn't think he was going to commit suicide at [the time when you last discharged him]?

A: No, I did not. He did have a very good support system with his wife…

***17** Q: Was he oriented to place and time when you last saw him?

A: Yes. Yes.

Q: He didn't have any delusions of any kind, did he?

A: Sort of depends how you define -- did he believe people were chasing him or something of that sort? No. Was his ability to perceive, you know, the reality of the future and his situation -- I think that was kind of seriously distorted by how depressed he was. …

Q: He didn't have any psychotic features?

A: …[H]e would -- I would think there were times when his depression was near that magnitude. …

Q: Well, when you last saw him, was he capable of rational thought?

A: Yes. Yeah, to some degree. Yes.

CX 12.12-14. As to whether stress from work was a factor in Mr. Vick's illness, Dr. Brooks explained:

Q: [T]here wasn't any specific stressor in the work environment that was identified to you, was there?

A: Well, no, other than supervisor insisted it was a fairly exact -- a job that required a fairly exacting degree of accuracy of some sort. So, you know, I think the room for error wasn't very great but, no, I don't think it was specifically that one particular job that would have caused problems and none other.

Q: It was really a general sense of stress of going to work, correct?

A: Correct.

…

Q: How would [the] kind of stress on the job [that Mr. Vick reported] affect his depression?

A: Well, I think that could play a role in triggering a course of depression.
Q: And when you say triggering a course of depression, is this going to be something ongoing?
A: It could be, given the individual.
Q: Okay. And he reported to Dr. Ramos on April 5, 2004, that -- stress at work, he's overworked, he went into a depression. Does being overworked affect your depression?
A: It can be -- a cause and a factor. Again, you know, people inherit a certain propensity towards depression, and then environmental factors can be triggering events, whether that's, you know, food, diet, exercise, but also stresses in life, losses, daily pressure from the job, problems in one's life.
Q: March 19, 2004, he was talking to Bruce Colburn, a licensed clinical psychologist, under a lot of pressure at work when the depression started. Is that common that you see?
A: Yes. It's certainly a pattern we see.
Q: All right. And then do you kind of follow a pattern where because of stress in the job, you can't do your job but because you can't do your job, you're even more depressed, and it just keeps going around in a cycle?
A: Often. Exactly. That cycle, the depression starts and then as depression worsens, the job becomes even more problematic.

CX 12.15-16, 21-22

In an August 18, 2009 letter, Dr. Brooks wrote:

> It is my opinion that Mr. Vick was significantly impacted by difficulties at his job at work. I had not seen him at the time he first became disabled and so a good deal of my information is gathered by speaking with him in subsequent visits. I believe Mr. Vick was always a somewhat perfectionistic individual. He expected himself to perform his job at the Newport News Shipyard with a high degree of accuracy. Unfortunately, his worsening psychiatric illness made it progressively more difficult for him to do this job. He consistently worried about the difficulty he was having performing his job and was always eager to try to return to work. He became increasingly unsuccessful. He would often feel discouraged, when he would attempt to perform the job despite his worsening cognitive abilities brought on by his depression and treatment for his depression. He was conflicted about whether he could obtain disability benefits and began catastrophizing this dilemma and seeing it as unsolvable. I do feel that this stress in the work environment was at least one causative factor in regard to his depression. Many of my notes meeting with Mr. Vick and his wife reflect his conflict regarding his ability to perform his job. In essence, he saw himself as a perfectionist working in a field where perfectionism was required.
>
> ***18** I do feel that his suicidal act was the result of an impulsive and irresistible act. Mr. Vick's cognitive abilities and ability to remain rational had greatly deteriorated over the course of his illness. Towards the end, there would be prolonged periods of time where he took his own life and there were no witnesses to my knowledge, I am not able to opine as to his state of mind at the time he committed suicide or to what extent he could or could not have resisted the impulse to take his life.

EX 12.

6. Dr. P. Steven Apostoles

Dr. Apostoles, the Medical Director for Northrop Grumman, reviewed Mr. Vick's medical records and prepared a report on October 2, 2008. CX 19. Dr. Apostoles wrote:

> I have concluded that Mr. Vick's suicide on April 12, 2008 was the result of numerous conditions, including his pre-existing refractory depression, diagnosed as early as 2003, and his work-related stress and anxiety. … Based on my review of Mr. Vick's medical records, I have determined that Mr. Vick's death was not solely due to his work-related stress and anxiety. Rather, Mr. Vick's work-related stress and depression, in combination with his refractory depression, contributed to his death on April 12, 2008. Had Mr. Vick not suffered from work-related stress and anxiety, it is possible that his major depression would have eventually resulted in suicide.

CX 19.1-2.

In a follow-up letter on May 28, 2009, Dr. Apostoles wrote:

> I am in receipt of the report that has been generated by Dr. Mary Wells regarding the causes of Mr. Vick's suicide

> and the state of mind that Mr. Vick exhibited prior to his unfortunate death. I certainly defer to her greater expertise in both areas, as psychology and mental health are by no means my field of expertise.

EX 11.

7. Dr. Mary Wells

Dr. Wells, a clinical psychologist, conducted a review of Mr. Vick's medical and personnel records for the Employer and prepared a report on May 19, 2009. EX 1; EX 2. Dr. Wells concluded:

> Based on my 20+ years experience treating depression associated with work injury and a long history of treating workers compensation patients, I cannot see, based on the records made available to me, any evidence or connection that would suggest that a work related injury or event caused Mr. Vick's depression, much less his suicide. He certainly appears to have worked at a highly professional level as a construction planner, but his job appears to be one of several stressors to which he reacted as a result of his depression rather than a causal triggering event of that condition. …
>
> There is no evidence in the record of a specific precipitating event that would suggest that something at work set the stage for this event, especially in light of the long history of depression and frequent treatment attempts, coupled with efforts from his employer to keep him at work as much as possible. There is no evidence of a hostile work environment, a traumatizing event, or injury that set the stage for this type of depression. There is on the other hand strong evidence in the record of family history of depression and of suicide ideation, which are high risk factors. Individuals with first degree biological relatives with depression have a 1.5 to 3 times greater likelihood than the general population to develop major depression.

***19** EX 1.5. Dr. Wells noted that "general job stress" was only "one of many contributing stress factors," which also included his mother's health, difficulty getting work done on his home, his daughter's grades and his concerns about being able to support his family, to which Mr. Vick reacted as a result of his depression. *Id.*

Dr. Wells opined that suicide was not an unexpected or surprising outcome of Mr. Vick's severe depression. EX 11.6. "Suicide is not an infrequent outcome from severe depression that becomes intractable and resistant to treatment and certainly there was evidence at several points in the record of ideation and attempts prior to his final completion in April 2008." *Id.* Dr. Wells also believed that Mr. Vick's suicide was a deliberate act:

> It should be noted that all suicides are, by social definition, irrational actions and all suicides are the result of a person judging suicide to be a better choice than living. The evidence suggests that the patient was at all times oriented to person, place and time; there was no record of delusions or psychosis; he had a high IQ and remained capable of high level reasoning that allowed him the capacity to evaluate his ultimate decision to commit suicide. Suicide is a well known risk in severe depression and hanging is a method frequently used to insure lethality. The fact that hanging was the method of choice is consistent with deliberative conduct as opposed to impulse. Based upon my experience and review of the available records, I believe it is more probable [than] not that Mr. Vick retained the power to reason, plan and choose his action and understand that continuing to live was at least an option, though ultimately not his option of choice.

Id.

8. Dr. Lawrence Wilson

Dr. Wilson, who is board-certified in clinical and forensic psychiatry and neurology, conducted a review of Mr. Vick's medical records on behalf of the Employer and prepared a report on January 7, 2010. EX 16.1, 10. Dr. Wilson's conclusion was threefold. First, he opined that Mr. Vick's psychiatric disorder has a statistically significant link to genetic and biological roots. EX 16.4. He noted that in Mr. Vick's family, "there was extremely powerful 'genetic loading' for depressive illness." *Id.* Dr. Wilson wrote:

> With this level of genetic/biological predisposition, environmental events in life that most people would regard as "stressors" probably played an immaterial role in the onset and progression of his illness and eventual suicide. Mr. Vick appeared a perfectionist person who was a good fit for a job requiring exacting attention to detail, but I feel that his work at Northrop Grumman Shipbuilding did not trigger or cause in any meaningful way the illness he

> experienced. In my opinion, it is more probable than not that the Major Depressive Disorder would have occurred essentially when it did in his life, no matter what occupation he had followed, or the stress level on that job. I feel that the usual stresses of life, in conjunction with the strong predisposition attributed to his genetic makeup, account for the onset and ongoing nature of his illness.

***20** *Id.*

Second, Dr. Wilson felt that workplace stressors did not aggravate Mr. Vick's condition. EX 16.4. He wrote:

> [Mr. Vick's] self-concept and self-esteem seemed closely linked to his ability to continue to perform the job he was trained to do. As his illness would return with more disruption in his thinking abilities, and with continuing anxiety manifested in physical shakiness and inattentiveness, it appears he was even less able to do those job tasks he previously could do. In my opinion, to a reasonable degree of medical certainty, whatever stress he experienced on his job when he returned on multiple occasions to work in the years 2004-2008, were cognitive and physical manifestations of his illness and not a traumatic reaction to material work stressors.

Id.

Third, Dr. Wilson opined that Mr. Vick's suicide was not the result of an ""irresistible impulse." EX 16.4. He noted that Dr. Brooks had written on April 8, 2008, four days prior to Mr. Vick's suicide, that Mr. Vick's thinking was ""clear, coherent, non-distorted, goal-directed, and without hallucinations or delusional beliefs." EX 16.5. No concern for impulsive behavior was noted. *Id.* Furthermore, Mrs. Vick testified that there was nothing unusual or different about her husband's behavior the day he died. *Id.*

> There was absolutely no evidence that Mr. Allen Vick was not able to make clear and reasoned decisions that day. The decision he seemed to make was that he decided to die. However irrational that decision may seem, it was a process of reasoning. He proceeded to plan and carry out fashioning a noose from a bungee cord and hanging himself with it. …
>
> In my opinion, to a reasonable degree of medical certainty, Mr. Allen Vick chose to make a serious effort to kill himself with a lethal means that he expected to be successful, and it was successful. Regardless of one's qualifications in psychiatry, one can only grossly speculate, presume or imagine the presence of "irresistible impulse" to explain his voluntary actions.

Id.

9. Dr. Liza H. Gold

Dr. Gold, who is board-certified in clinical and forensic psychiatry and neurology, conducted a records review for the Claimant and prepared a report on January 13, 2010. CX 27. Dr. Gold opined that Mr. Vick's depression was caused by or contributed to, at least in part, by his work for the Employer. CX 27.4. Dr. Gold based her opinion on "[t]he contemporaneous reports of work stress, as voiced by Mr. Vick to his treatment providers from the first day he sought psychiatric help, and the treatment providers' contemporaneous documentation of these statements and their own assessments…" CX 27.4-5. Dr. Gold noted the following as significant:

> 1. Mr. Martin:
>
> a. 10/8/03: Mr. Martin noted that Mr. Vick's chief complaint was " "stressed/pressure from NNSY. Dwells on work, can't think clearly, feels overwhelmed, 27 years at NNSY, … never found myself this concerned with job, working on new class of subs."
>
> ***21** b. 10/8/03: Mr. Vick noted that he was working "10-12 hours a day and 6 on Saturday/Sunday" and that he had been working "at this pace since spring '03." He also stated: "It's all about work - only about work."
>
> c. 10/10/03: Mr. Vick reported that he was "consumed by job."
>
> 4. Dr. Brooks indicated in letters following Mr. Vick's death and during his deposition that he believed Mr. Vick's suicide was an "impulsive and irresistible act" and not a rational act.

CX 27.3-4. Dr. Gold also found that Mrs. Vick's testimony that her husband ""gave no indication that he was feeling any differently than he had in the past weeks" supported Dr. Brooks' assessment. CX 27.4.

> Ms. Vick's observations of her husband's state on the morning of April 12, 2008 support Dr. Brooks' assessment in that they indicate suicide based on an acute impulse. Ms. Vick's report implies that Mr. Vick was not actively

> suicidal in the morning when she left for work. The lack of a note is consistent with lack of planning, lack of rational thinking to compose a note, and impulsive behavior such that he may have been unwilling to take the time to write a note.
>
> These circumstances are also consistent with the assessment that Mr. Vick had impaired rational capacities, and was unable to resist the impulse to kill himself because his depression has rendered him incapable of formulating any options other than suicide.

Id.

Finally, Dr. Gold noted her disagreement with Dr. Wells' opinion. CX 27.6. She first disagreed with her position that Mr. Vick's depression was not caused by work-related stress. *Id.*

> Dr. Wells reports that Mr. Vick did not appear to suffer from any specific incident or event that would cause depression. There is no evidence that Mr. Vick claimed that his illness was caused or related to a specific incident or event. Rather, Mr. Vick complained in October 2003 of chronic work stress due to excessive work hours and increased work responsibilities to which he had been subjected since March 2003.

Id. She noted that Dr. Wells did not comment on the above working conditions Mr. Vick complained were present. *Id.* Dr. Gold wrote: "The psychological effects of occupational stress, including its association with depression, are commonly recognized in psychiatric and psychological literature. … If Mr. Vick was working as he described to Mr. Martin …, he likely suffered from occupational stress, as he described. This stress could have contributed to the development of depression…" CX 27.6-7.

Dr. Gold next contended that Dr. Wells was incorrect in stating that Mr. Vick probably had the "power to reason, plan and choose his actions" at the time of his suicide. CX 27.7. She noted that Dr. Wells' opinion was in direct contradiction to Mr. Vick's treating psychiatrist Dr. Brooks. *Id.* Dr. Gold stated:

> Many individuals who suffer the type of malignant depression suffered by Mr. Vick develop mood-congruent irrational thinking, including irrational belief, bordering on delusional thinking, that they have no future and that suicide is their only viable option. Their ability to reason and control their impulses is distorted by their severe depression. Dr. Brook's stated in his deposition that Mr. Vick's depression was causing cognitive distortion near the magnitude of delusion (page 14). Mr. Vick's irrational thinking and near delusional, if not delusional, depression, is also indicated by Dr. Brooks' escalating prescriptions of antipsychotic medication in March and April 2008.
>
> ***22** Dr. Brooks' records and testimony leave no doubt that in his last weeks, Mr. Vick's continued deterioration resulted in cognitive distortion and irrational thinking. Within a reasonable degree of psychiatric certainty, Mr. Vick committed suicide while irrational and unable to resist an impulse to kill himself as a result of his severe depressive illness.

Id.

10. Dr. Richard Rappaport

Dr. Rappaport, a forensic psychiatrist, conducted a review of Mr. Vick's records on behalf of the Employer and prepared a report on January 19, 2010. EX 17.1, 6. Regarding Mr. Vick's working history, Dr. Rappaport wrote: "He was also noted to be quite compulsive and somewhat of a perfectionist, a very conscientious worker, always committed to his tasks to the point sometimes of obsessive concern to him." EX 17.2. He also noted that Mr. Vick had a "strong biologic predisposition to both depression and suicide" based on his family history. *Id.*

As to Mr. Vick's complaints of increased hours and stress in 2003, Dr. Rappaport wrote:

> Although long hours and increased responsibilities were periodically not uncommon for him, apparently he had at this point developed a mental condition which made his responsibilities appear more burdensome and was the source of his initial verbal complaints. He had in reality become less able to manage the work load, the hours and the responsibility required which he had done so well and successfully for 20 years. In retrospect one can see that he had developed a severe depression which interfered with his cognitive, emotional and physical functioning.

EX 17.2. He also stated: "Mr. Vick had 20 years of experience in his job and many times met their position's increased

needs without becoming sick in any fashion. It was only after the onset of the depression that the job appeared to be more than he could handle." EX 17.3.

Dr. Rappaport concluded that it was more probable than not that Mr. Vick's major depressive disorder was unrelated to his occupation and the working conditions that existed in 2003, but would have occurred at any point in his life, regardless of his occupation or degree of stress. EX 17.4. He opined that the depression was caused by an inherent predisposition and not an external cause. *Id.* He also stated that it was more probable than not that the workplace did not aggravate Mr. Vick's depressive disorder. *Id.* "It was his view of himself not being able to measure up to the task at hand once he had the depression, which made him more unhappy than he would have been had he not had a depression." EX 17.4-5. He further opined that Mr. Vick's job, when he was able to work, may have provided some relief from his depression. EX 17.5.

Dr. Rappaport did not believe that Mr. Vick's suicide was the result of an irresistible impulse:

> I do believe that people have complete freedom of choice about what they want to do when they are feeling ill (and are not psychotic), even to the degree of illness described in Mr. Vick. Mr. Vick was never actually psychotic, at least not around the time of his suicide. If he had been so disturbed he would have likely required hospitalization or at least not been left at home by his wife. Rather, he was alert and not confused and planned his act in a manner which did not appear to be bizarre or a product of a delusion. … [It] gave him enough relief when he planned it that he was willing to go to the extreme in ending his emotional pain. It was more probably than not a conscious and premeditated plan to end a seemingly endless and painful journey and not a sudden and impulsive act.

***23** EX 17.5.

Dr. Rappaport opined that:

> [W]hen one reaches the decision to actually take action [on suicide ideation] and establishes a plan to [commit] suicide it brings the subject into a state of emotional relief from the original apprehension and ambivalence which was aroused by the initial suicidal ideation. Thus, Mr. Vick was seen by his doctors and wife as calm and seemingly "better" just before he actually took his life. They did not recognize that the calmness they saw was the result of Mr. Vick's satisfaction and relief from his decision to [commit] suicide.

EX 17.3-4. He explained that suicidal ideation is common for people with serious depression as a theoretical method to gain relief from a painful illness:

> Thus, it is rational thinking that one needs to end the misery which has not been possible to end by any other means over the course of five years [of treatment for depression]. Having tried suicide in the past and knowing of his family history of suicide Mr. Vick's suicidal act could not be viewed as an impulsive act because the subject was not new to him nor were the feelings that would have accompanied or arisen from the previous act or the family history of such acts. In a sense, his mother's and his uncle's suicides gave him permission to cross any moral barriers which might have existed.

EX 17.4.

11. Dr. William Reid

Dr. Reid, who is board-certified in clinical and forensic psychiatry and neurology, conducted a review of Mr. Vick's records for the Employer and prepared a report on January 20, 2010. EX 18.1, 7. Dr. Reid opined that Mr. Vick's depressive disorder should be attributed to biological factors and not his occupation: "No one is immune [to major depressive disorders] as a result of occupation, nor is the onset usually hastened by occupational factors." EX 18.1. Dr. Reid also held the opinion that workplace stressors did not aggravate Mr. Vick's depressive disorder. EX 18.2. "[P]ersons with severe depression (including symptomatic major depressive disorder) often *perceive* their environments in an inaccurately stressful, untenable, pessimistic, or hopeless way. … Thus, for example, perceptions of overwhelming difficulty, criticism, hopelessness, helplessness, etc., are likely to be based in the patients view through depressive 'lenses' rather than in reality." *Id.*

Dr. Reid concluded that Mr. Vick's suicide was not the result of an irresistible impulse:

> Although his decision was almost certainly guided by impaired insight and judgment related to his depression, Mr. Vick "chose" to end his life in the sense that there is no indication that he was acting on immediate or irresistible impulse or in some "automatic" way that controlled his behavior. … Mr. Vick waited for his wife to leave, then carried out logical and deliberate steps in order to effect his death. The record clearly indicates that Mr. Vick knew what he was doing, knew that his behavior would likely end his life, knew that his suicide would be prevented if someone were with him, and acted accordingly. Further, there is no indication that he might somehow have believed he would not truly die as a result of his actions.

***24** EX 18.2-3.

Finally, Dr. Reid criticized Dr. Gold's report. EX 18.3. He first noted that Dr. Gold's report contained errors or misinterpretations of the record. *Id.* He wrote that, contrary to Dr. Gold's conclusion, Dr. Brooks did not opine that Mr. Vick's suicide was the result of an "automatic" response. *Id.* "The record indicates that Mr. Vick wrestled for years with severe depression and thoughts of killing himself, but there is nothing that tells us what he was thinking during his final minutes of life, and very little to suggest his inner thoughts at any time prior to his death." *Id.* Dr. Reid also stated that Dr. Gold ""inappropriately [assumed] that Mr. Vick's job was extraordinary stressful," when the record indicated that he had worked the same job for many years, he had previously had periods that required him to work very long hours, he wished to continue to work, his employer attempted to accommodate his condition, and his job was not significantly different from others in his field. EX 18.3-4. Dr. Reid pointed out that while Dr. Gold's claimed that Dr. Brooks prescribed Mr. Vick anti-psychotic medication, the medication was actually prescribed for anxiety. EX 18.4. Contrary to Dr. Gold's opinion, Dr. Reid found it insignificant that Dr. Brooks did not note that Mr. Vick appeared "acutely suicidal" in his final weeks because patients frequently keep their suicidal thoughts and plans to themselves. *Id.* "[T]he suicide itself required several minutes of deliberate behavior." *Id.*

Second, Dr. Reid opined that Dr. Gold misinterpreted or overstated the psychiatric and epidemiological literature as it may apply to Mr. Vick. EX 18.4. He also noted that the articles Dr. Gold cited "reflect only a small part of the overall professional literature on possible relationships between occupational stress and depression or other mental illness." *Id.* He wrote that other studies conclude that the effect of stress on major depressive disorder is small and the evidence for causation must be viewed as "circumstantial." *Id.*

Third, Dr. Reid stated that Dr. Gold misunderstood the meaning of some clinical and research information "in the context apparently contemplated by the Court's issues." EX 18.5.

> The mere fact that there may (or may not) be an increased prevalence of severe depression in workers who experience extraordinary job stress should not be construed to imply — and certainly not "more probably than not" — that an individual with severe depression developed it because of his or her work environment. … [E]ven the most suggestive studies report that the prevalence of major depressive disorder in people with very stressful jobs [] is under 10%."

Id. Dr. Reid also noted that "depression" is not the same as "major depressive disorder": "It is inaccurate and scientifically inappropriate to imply that a statistical suggestion of stress-related 'depression' is equivalent to causation of Mr. Vick's severe mental illness." *Id.*

12. Dr. Harold Bursztajn

***25** Dr. Bursztajn, who is board-certified in clinical and forensic psychiatry and neurology, conducted a record review on behalf of the Employer and prepared two reports, one a forensic neuropsychiatric opinion and one a response to Dr. Gold's report. EX 19.1, 14, 28. Based on Dr. Bursztajn's review of the record, he concluded:

> 1. Mr. Vick's onset of major depression in 2003 was not the result, in whole or in any material part, of cumulative exposure to workplace stressors. It is more probable than not that Mr. Vick's major depressive disorder would have occurred approximately when it did and in the degree it did regardless of his occupation or the degree of stress he encountered in his job.
>
> 2. Workplace stressors did not aggravate either a pre-existing major depressive disorder or the major depressive

> disorder after diagnosis. Rather, Mr. Vick's work situation was part of the overall life situation with which he coped in an increasingly impaired manner during the clinically foreseeable (although not necessarily predictable) worsening course of his major depressive disorder. The data I have reviewed and analyzed to date are consistent with a reasonable inference of likelihood that Northrop Grumman repeatedly made reasonable accommodations for Mr. Vick when he attempted to return to work throughout the period of his illness.
>
> 3. Mr. Vick's suicide was not the result of volitional insanity, also referred to as "irresistible impulse." On the contrary, Mr. Vick was capable of making, and did make, the choice to end his life.

EX 19.2. Dr. Bursztajn based his opinions on Mr. Vick's family history which made him a high risk for depressive disorders, reports of significant stressors outside of work in 2003 (mother's illness, financial issues, daughter's education), the absence of psychotic features, his perfectionist nature, his repeated suicidal ideation and previous suicide attempts, the possibility that ECTs over a span of time damaged his neurologic makeup, the instability of his ""psychopharmacological environment," and possible role of alcohol in his suicide. EX 19.2-6. Dr. Bursztajn wrote:

> The hypothesis that work-related stress or stressors (other than his increasing inability to return to his normal job duties) caused or exacerbated Mr. Vick's depression, thereby contributing to his suicide, is not supported by review and analysis of the data made available to date. For one thing, no specific events of a hostile or injurious nature have been documented. Nor has any avoidance behavior on Mr. Vick's part with respect to his job been documented, as would be expected in the case of a person traumatized in the workplace. If anything, Mr. Vick repeatedly expressed and acted on a desire to go back to work, despite the problems he had there. No hostile work environment has been shown; on the contrary, Mr. Vick was well liked and respected in his workplace. Moreover, the available data indicate that reasonable accommodations were made for his disabilities… In my opinion, consistent with the data reviewed and analyzed to date, it is more probable than not that, in view of the history and the course of his illness, Mr. Vick's complaints about work were a symptom, not a cause, of his major depressive disorder.

***26** EX 19.7.

Dr. Bursztajn also concluded that the record was "consistent with Mr. Vick's having purposefully planned, deliberated, and carried out the taking of his own life of his own volition." EX 19.7. Dr. Bursztajn based his conclusion on the following:

> 1. Dr. Haskett's evaluation in 2003 gave no indication of impulsive personality traits. "Indeed, Mr. Vick's well documented obsessive perfectionism is at the opposite extreme from impulsivity."
>
> 2. "No one, including the people closest to Mr. Vick and most involved in his care, saw him to be unstable and at risk for succumbing to self-destructive impulse in the days before his death. … [Mr. Vick's actions in the days before his suicide] are consistent with Mr. Vick's having the capacity to conceal his suicidal intentions, as in his conveying an appearance of normality when his wife left for work."
>
> 3. "Perfectionistic individuals can be very intolerant of what they consider to be imperfections in themselves… It is likely that, as is common with perfectionists who break down, he was filled with rage and decided that suicide was his best or only acceptable option. Hanging himself in his garage while his wife was at work required a certain amount of planning and calculation."

EX 19.8-9.

Dr. Bursztajn opined that Dr. Brooks' opinion on whether work-related stress contributed to Mr. Vick's illness and whether his suicide was a volitional act are "necessarily unreliable for forensic purposes." EX 19.9. He stated that it was generally accepted that a treating psychiatrist could not offer ""forensically reliable" opinions on their own patients. *Id.* He also noted that Dr. Brooks' letters concerning Mr. Vick's suicide do not indicate that he conducted a forensic evaluation to reach his conclusions. EX 19.10.

Dr. Bursztajn also discussed the following problems he found with Dr. Gold's report:

> 1. Dr. Gold relied on Dr. Brooks' impressions as the treating clinician without critically evaluating his notes: "Her presumption that a treating clinician is a source of forensically reliable opinions reflects a fundamental misunderstanding of the methodology of forensic psychiatric evaluation." EX 19.16-17.
>
> 2. Dr. Gold's report represents a selective presentation of data. Dr. Bursztajn noted that Dr. Gold failed to discuss

Mr. Vick's family history of depression, his marital problems, his use of alcohol during his illness, and other concurrent stressors. EX 19.17-18. Dr. Bursztajn pointed to other reports from which Dr. Gold selectively drew quotes. EX 19.19-20.

3. Dr. Gold failed to address alternative hypotheses. EX 19.20-25.

a. "She does not address the considerable impact of Mr. Vick's depressive disorder on Mr. Vick's ability to work and thus does not consider the reasonable alternative hypothesis that his depression, already developing for reasons unrelated to the workplace, contributed significantly even to the initial difficulties with work of which he complained in 2003…"

***27** b. "Dr. Gold does not explore Allen Vick's life history for potential causes of his depressive disorder."

c. Dr. Gold failed to consider the potential causal role not of genetic factors and the aggravating effect of his mother's deteriorating health, which included severe depression.

d. Dr. Gold did not address whether Mr. Vick's cognitive impairments were due to the ECTs, not depression.

e. Dr. Gold did not consider a potential family history of movement disorders.

f. Dr. Gold did not consider the effects of changing medication late in the course of his illness.

g. She did not consider whether Mr. Vick's personality trait of perfectionism was to blame for his problems at work, rather than work-related stress.

h. She did not consider whether Mr. Vick was misattributing his problems to work instead of pre-existing problems.

DISCUSSION

It has been consistently held that the Act must be construed liberally in favor of the Claimant. *Voris v. Eikel,* 346 U.S. 328, 333 (1953); *J. B. Vozzolo, Inc. v. Britton,* 377 F.2d 144, 147 (D.C. Cir. 1967). However, the United States Supreme Court has determined that the "true-doubt" rule, which resolves factual doubt in favor of the Claimant when the evidence is evenly balanced, violates Section 7(c) of the Administrative Procedure Act, 5 U.S.C. Section 556(d), which specifies that the proponent of a rule or position has the burden of proof and, thus, the burden of persuasion. *Director, OWCP v. Greenwich Collieries,* 512 U.S. 267 (1994), *aff'g,* 990 F.2d 730 (3d Cir. 1993).

In arriving at a decision in this matter, it is well settled that the finder of fact is entitled to determine the credibility of witnesses, to weigh the evidence and draw his own inferences therefrom, and is not bound to accept the opinion or theory of any particular medical examiners. *Duhagon v. Metro. Stevedore Co.,* 31 BRBS 98, 101 (1997), *aff'd,* 169 F.3d 615, 33 BRBS 1 (CRT) (9th Cir. 1999); *Avondale Shipyards, Inc. v. Kennel,* 914 F.2d 88, 91, 24 BRBS 46, 48 (CRT) (5th Cir. 1988); *Atl. Mar., Inc. & Hartford Accident & Indem. Co. v. Bruce,* 661 F.2d 898, 900, 14 BRBS 63 (CRT) (5th Cir. 1981); *Bank v. Chicago Grain Trimmers Ass'n,* 390 U.S. 459, 467, *reh'g denied,* 391 U.S. 929 (1968).

Claimant claims that she is entitled to survivor benefits under Section 9 of the Act. Under Section 9 of the Act:

> If the injury causes death, the compensation therefore shall be known as a death benefit and shall be payable in the amount and to or for the benefit of the persons following:
>
> (a) Reasonable funeral expenses not exceeding $3,000;
>
> (b) If there be a widow or widower and no child of the deceased to such widow or widower 50 per centum of the average wages of the deceased, during widowhood, or dependent widowerhood, with two years' compensation in one sum upon remarriage; and if there be a surviving child or children of the deceased, the additional amount of 16 2/3 per centum of such wages for each child…

***28** 33 U.S.C. § 909(a)-(b) (2000).

I. Causation and Section 20(a)

A. Claimant's *Prima Facie* Case

The Claimant has the burden of establishing a *prima facie* case of compensability. A psychological impairment which

is work-related is compensable under the Act. *Sanders v. Alabama Dry Dock & Shipbuilding Co.*, 22 BRBS 340 (1989); *Turner v. Chesapeake & Potomac Telephone Co.*, 16 BRBS 255 (1984) (Ramsey, C.J., dissenting on other grounds). Furthermore, the Section 20(a) presumption is applicable in psychological injury cases. *Cotton v. Newport News Shipbuilding & Dry Dock Co.*, 23 BRBS 380, 384 n.2 (1990). In order to be entitled to the Section 20(a) presumption, however, claimant must establish a *prima facie* case by showing that her husband suffered a harm and that either a work-related accident occurred or that working conditions existed which could have caused or aggravated the harm. *See Stevens v. Tacoma Boatbuilding Co.*, 23 BRBS 191 (1990); *Perry v. Carolina Shipping Co.*, 20 BRBS 90 (1987). Furthermore, the claimant's psychological injury need only be due *in part* to work-related conditions to be compensable under the Act. *See Peterson v. General Dynamics Corp.*, 25 BRBS 78 (1991), *aff'd sub nom.; Ins. Co. of North America v. U.S. Dept. of Labor, OWCP*, 969 F.2d 1400, 26 BRBS 14 (CRT) (2d Cir. 1992), *cert. denied*, 507 U.S. 909 (1993). Under the aggravation rule, if an employee's work played any role in the manifestation of his symptoms, then the non-work-relatedness of the condition is irrelevant and the entire resulting disability is compensable. *See e.g., Cairns v. Matson Terminals*, 21 BRBS 252 (1988).

The Board has consistently held that a psychological injury caused or aggravated by work-related cumulative stress is compensable under the Act. *Sewell v. Noncommissioned Officers Open Mess*, 32 BRBS 127 (1997), *aff'd on recon. en banc*, 32 BRBS 134 (1998); *see also Konno v. Young Brothers, Ltd.*, 28 BRBS 57 (1994); *Mario v. Navy Exchange*, 20 BRBS 166 (1988). In a case involving allegations of stressful working conditions, the claimant is not required to show unusually stressful conditions in order to establish a prima facie case; rather, even where stress may seem relatively mild, claimant may recover if an injury results. *See Konno*, 28 BRBS at 61; *Cairns*, 21 BRBS 252; *Wheatley v. Adler*, 407 F.2d 307 (D.C. Cir. 1968) (*en banc*). The issue in such situations is the effect of this stress on claimant. *Id.*

It is clear and undisputed in this case that Mr. Vick suffered a psychological injury in the form of severe depression. Therefore, the Claimant need only show that Mr. Vick's working conditions could have, at least in part, contributed to his depression in order to invoke the Section 20(a) presumption. The Claimant met this burden through her own testimony, the testimony of Mr. Horton, the reports and testimony from Mr. Vick's treating physicians and reports from Drs. Haskett and Gold.

***29** Mr. Horton testified that in the fall of 2003, Mr. Vick expressed feelings of being overwhelmed. TR at 21. Mr. Horton noted that being a construction supervisor during that time was "more complex and more demanding" since the submarine was being built at two locations and that the section Mr. Vick was in charge of was known as the "biggest headache [] module." TR at 25-26, 24. He testified that construction supervisors were frequently working 11-12 hours shifts and coming in on weekends. TR at 27-28. He also noted that Mr. Vick became more withdrawn during 2003. TR at 33-34. Mr. Horton stated that Mr. Vick did not discuss any problems he was having outside of work. TR at 34-35, 36-39.

Mrs. Vick testified that her husband's job stress started increasing in the spring of 2003. TR at 55-56; EX 21.11-13. She stated that he would tell her that he felt that he was doing the job of three people. *Id.* She also noted that he frequently worked 12 hours shifts and started having to go in every weekend. TR at 54-55. She testified that she was unaware of any health problems Mr. Vick had prior to 2003. TR at 54. Starting in 2003 she noticed that he had become ""extremely anxious" and would isolate himself. TR at 56-57. She stated: "At the beginning of 2003, he was so involved with his work, that it consumed him. When he was outside of the shipyard, he couldn't think about anything else." TR at 57. She noted that they built an addition to their home in 2003, but believed there were no financial problems and there were no relationship problems in the home. EX 21.26-27.

During Mr. Vick's initial sessions with Mr. Martin in the fall of 2003, he reported that he was stressed and felt pressure from work. CX 15.2. Mr. Vick stated "It's all about work — only about work" and that he spent his August 2003 vacation "just thinking about work." CX 15.4. Mr. Martin wrote that Mr. Vick felt "consumed" by his job. CX 15.5. On October 12, 2009, Mr. Martin noted in a letter that Mr. Vick was referred to him with his "chief concern [] being "stressed/pressure from NNSY. Dwells on work — cannot think clearly feels overwhelmed." CX 23.2. He wrote that the initial referral was job related. *Id.* Mr. Martin agreed that there were other factors adding to Mr. Vick's condition,

including his genetic predisposition, financial stressors, and his own personality type. *Id.*

Dr. Haskett noted that Mr. Vick had a "[f]amily medical history [which] is strongly positive for neurological disorders," including his mother and both material grandparents having dementia, his mother suffering from depression, his maternal uncle committing suicide, a brother developing a "movement disorder" and a paternal uncle and brother suffering from alcoholism. CX 18.4. After taking a medical history and conducting neuropsychological testing, Dr. Haskett concluded that "Mr. Vick's depression was originally primarily, but not entirely, caused by job-related stress." CSX 28.3. She further explained that ""it appears that Mr. Vick's work-related stress, specifically his feeling that he was given more work responsibilities than he could handle, in his employment as a construction supervisor…, was a precipitating factor in his severe depression…" *Id.*

***30** Dr. Brooks, Mr. Vick's treating psychiatrist from July 2004 to his death, opined that the job stress that Mr. Vick reported could have played a role in triggering his course of depression. CX 12.21; CX 20. He stated: ""[P]eople inherit a certain propensity towards depression, and then environmental factors can be triggering events, whether that's you know, food, diet, exercise, but also stresses in life, losses, daily pressure from the job, problems in one's life." CX 12.21-22.

Dr. Gold opined, based on Mr. Martin and Dr. Brooks' records and Mrs. Vick's testimony, that Mr. Vick's depression was caused by or contributed to, at least in part, by work-related stress. CX 27.4-5. She wrote: "The psychological effects of occupational stress, including its association with depression, are commonly recognized in psychiatric and psychological literature. … If Mr. Vick was working as he described to Mr. Martin…, he likely suffered from occupational stress, as he described. This stress could have contributed to the development of depression." CX 27.6-7.

Based on the evidence above, I find that the Claimant has shown that stressful working conditions existed which could have, at least in part, caused the onset of Mr. Vick's depression. Therefore, the Section 20(a) presumption has been invoked.

Once Section 20(a) applies, there is a presumption, in the absence of substantial evidence to the contrary, that the claim for death benefits comes within the provisions of the Act, i.e., that the death was work-related. *Spraque v. Director, OWCP*, 688 F.2d 862(1st Cir. 1982); *Woodside v. Bethlehem Steel Corp.*, 14 BRBS 601 (1982) ("It is well-established that, if an injury aggravates, exacerbates, accelerates, contributes to, or combines with a previous infirmity, disease, or underlying condition, the resultant condition is compensable. … This rule is consistent with the maxim that 'to hasten death is to cause it."D').

B. Employer's Rebuttal

Once the presumption is invoked, Section 20(a) places the burden on the Employer to come forward with substantial countervailing evidence to rebut the presumption that Mr. Vick's depression and suicide were caused, at least in part, by his employment. *Swinton v. J. Frank Kelly, Inc.*, 554 F.2d 1075, 1081 (D.C. Cir. 1976), *cert. denied*, 429 U.S. 820 (1976). Where aggravation or contribution to a pre-existing condition is alleged, the employer must establish that a claimant's condition was not caused or aggravated by his employment. *Cairns*, 21 BRBS 252. The Employer asserted the following as grounds to rebut the Section 20(a) presumption: (1) Mr. Vick's major depressive disorder was caused by internal factors, such as a family history of depression, rather than work-place stress; (2) general stress of everyday work activity cannot cause major depressive disorder; (3) it was his inability to return to work, not working conditions that affected his disorder; and (4) assignment to his position was a legitimate personnel action that cannot be the basis of recovery.

***31** In support of the first three contentions, the Employer submitted the testimony of Gary Werlau and Robert Meyer and medical opinions from Drs. Wells, Wilson, Rappaport, Reid and Bursztajn.

Mr. Werlau, Mr. Vick's supervisor on the *Texas*, testified that the workload of construction supervisors on the submarine did not increase significantly in the spring of 2003. EX 22.5. He did not recall Mr. Vick complaining to him about stressful conditions at work. EX 22.7. He testified that in 2006 Mr. Vick told him "that he really didn't have any idea what was causing [his depression]." EX 22.8.

Mr. Meyer, the submarine construction director, testified that there may have been times when Mr. Vick and the other construction supervisors were working longer hours and on weekends, but he did not recollect Mr. Vick expressing that he was feeling stressed by the hours or that he felt he was doing the job of three people. EX 23.13, 31-32, 36, 42-43. He testified: "[M]y impression was that life was causing him to be stress[ed], and work was part of his life. So I can't remember if it was focused on work or what it was." EX 23.31-32.

Dr. Wells opined that Mr. Vick's reaction to stressors at work was the result of the depression rather than the cause of the depression: "his job appears to be one of several stressors to which he reacted as a result of his depression rather than a causal triggering event of that condition." EX 1.5. She noted that there was no "evidence of a hostile work environment, a traumatizing event, or injury that set the stage for [his] type of depression." *Id.* Dr. Wells stated that there was a strong family history of depression and suicide ideation, which are high risk factors for developing depression: "Individuals with first degree biological relatives with depression have a 1.5 to 3 times greater likelihood than the general population to develop major depression." *Id.*

Dr. Wilson also opined that Mr. Vick's family history was the cause of his depression: "With [his] level of genetic/biological predisposition, environmental events in life that most people would regard as 'stressors' probably played an immaterial role in the onset and progression of his illness and eventual suicide." EX 16.4. He wrote that Mr. Vick's depression was caused by "the usual stresses of life, in conjunction with the strong predisposition attributed to his genetic makeup." *Id.* Dr. Wilson also noted that work-related stress did not aggravate Mr. Vick's depression: "In my opinion, to a reasonable degree of medical certainty, whatever stress he experienced on his job when he returned on multiple occasions to work in the years 2004-2008, were cognitive and physical manifestations of his illness and not a traumatic reaction to material work stressors." *Id.* He opined that it was more probable than not that Mr. Vick's major depressive disorder would have occurred no matter his occupation. *Id.*

***32** Dr. Rappaport concurred that Mr. Vick had a "strong biologic predisposition to both depression and suicide." EX 17.2. The doctor wrote that Mr. Vick had met his position's increased needs "many times" over his 20 years of employment and only started complaining of increased hours and stress in 2003 because "he had developed a severe depression which interfered with his cognitive, emotional and physical functioning." *Id.* He opined that Mr. Vick's ""mental condition [] made his responsibilities appear more burdensome and was the source of his initial verbal complaints." *Id.* Dr. Rappaport also wrote that it was more probable than not that workplace stress did not aggravate Mr. Vick's depression, especially in light of the possibility that when Mr. Vick was able to work it may have provided him some relief from his depression. EX 17.4-5. Dr. Rappaport concluded that Mr. Vick's major depressive disorder was unrelated to works-related stress and "would have occurred at any point in his life, regardless of his occupation or degree of stress." EX 17.4.

Dr. Reid also held the opinion that Mr. Vick's depressive disorder should be attributed to biological factors and not his occupation. EX 18.1. He noted that major depressive disorder occurs in "people of all backgrounds and occupations at, on average, roughly the same rate and severity" and the onset is usually not hastened by occupational factors. *Id.* Dr. Reid mentioned that the lifetime prevalence of major depressive disorder for males in the general population is 5-12%, but the presence of genetic predisposition increases the risk by 150-300%. EX 18.5. He further wrote that workplace stressors did not aggravate Mr. Vick's depressive disorder: "persons with severe depression [] often *perceive* their environments in an inaccurately stressful, untenable, pessimistic, or hopeless way." EX 18.2. Therefore, it was more likely that Mr. Vick's feelings of being overwhelmed were caused by his viewing them through his "depressive lenses." *Id.*

Dr. Bursztajn agreed with the preceding four doctors in finding that Mr. Vick's depression was not the result of

"cumulative exposure to workplace stressors" and that he was at a "high risk relative to the general population" for developing a major depressive disorder. EX 19.2, 4. Dr. Bursztajn wrote that Mr. Vick's depression would have occurred approximately when it did regardless of his occupation or the degree of stress he encountered in the job. EX 19.2. He also opined that work-related stress did not aggravate "a pre-existing major depressive disorder or the major depressive disorder after diagnosis." He explained that "Mr. Vick's work situation was part of the overall life situation with which he coped in an increasingly impaired manner during the clinically foreseeable [] worsening course of his major depressive disorder." *Id.* He noted that the available data did not support a hypothesis that work-related stress caused or exacerbated Mr. Vick's depression because there was no specific event of a hostile or injurious nature; Mr. Vick did not display avoidance behavior, as would be expected from a person traumatized by the workplace; no hostile work environment was shown; and reasonable accommodations were made for his disabilities. EX 19.7.

***33** I find that the foregoing doctors' opinions are sufficient to rebut the presumption that Mr. Vick's depression was caused, at least in part, by work-related stress. All five doctors, in well-reasoned and well-documented opinions, found that Mr. Vick's depression was due to his genetic predisposition, not work-related stress. They further found that work-related stress did not aggravate his condition.

Finally, the Employer argued that appointing Mr. Vick to supervise construction of the engine room was a legitimate personnel decision which cannot be the basis for compensation under the Act. In *Marino v. Navy Exchange,* 20 BRBS 166 (1988), the Benefits Review Board held that a psychological injury resulting from a legitimate personnel action, such as a reduction-in-force, was not compensable under the Act, and to hold otherwise would unfairly hinder the employer in making legitimate personnel decisions and in conducting its business. In *Pedroza v. Benefits Review Board,* 583 F.3d 1139, 43 BRBS 51(CRT) (9th Cir. 2009), the Ninth Circuit held that psychological injuries stemming from a legitimate personnel action were not compensable under the Act as "[s]uch injuries are not caused by working conditions and they are not work related." However, the Claimant is not claiming that her husband's psychological impairment was triggered by the personnel decision to put Mr. Vick in charge of a greater area of responsibility. Her claim is that the general working conditions, including long hours and feeling like he was doing the work of three people, that existed in 2003 caused stress which triggered Mr. Vick's depression. The *Marino* Court held that if the psychological injury is caused by sources of work-related stress, rather than a personnel decision, then the injury can be compensable under the Act:

> Claimant [] argued…that his psychological injury was the product of cumulative stress on the job due to supervising a number of locations, insufficient personnel to perform the job, working more than the required number of hours, and performing the duties of his subordinates, in addition to the notification that he was being laid off. The administrative law judge did not consider whether these alleged sources of stress on the job caused claimant's psychological injury and we therefore remand this case for reconsideration of this issue.

Marino, 20 BRBS 168. Therefore, the "legitimate personnel decision" line of reasoning does not preclude recovery in this claim.

C. Record as a Whole

Once the presumption is rebutted, it falls out of the case and claimant must establish a causal relationship based on the record as a whole. *Universal Mar. Corp.*, 126 F.3d at 262 (*citing Del Vecchio v. Bowers,* 296 U.S. 280, 286 (1935)).

The record contains opinions on the cause of Mr. Vick's depression from one social worker, eight mental health professionals and one general medical doctor. Mr. Martin, a licensed clinical social worker, was the first to treat Mr. Vick. CX 15. He frequently noted that Mr. Vick was obsessively thinking about his job and felt stressed and overwhelmed. CX 15.2-5; 23.2. He wrote that Mr. Vick was initially referred to him for job related reasons. CX 23.2. However, since Mr. Martin is a social worker, not a psychologist or psychiatrist, his opinion will be given less weight than the doctors of record.

***34** Dr. Apostoles opined that Mr. Vick's depression was the result of pre-existing refractory depression and work-related stress and anxiety. CX 19.1. However, Dr. Apostoles, a general physician, is accorded little weight as he

stated "psychology and mental health are by no means my field of expertise." EX 11.

The remaining opinions are from eight mental health professionals. Dr. Haskett and Dr. Wells both hold doctorates in psychology but are not medical doctors in the field. Therefore, their opinions must be accorded less weight than those of Drs. Brooks, Gold, Wilson, Rappaport, Reid, and Bursztajn, who all hold medical degrees in psychology.

Dr. Haskett conducted neuropsychological testing and determined that he had impaired concentration and severe clinical depression and anxiety. CX 18.8. She wrote: "His personality style is that of a nonassertive individual who does not like conflict, and who is likely to blame himself for perceived shortcomings or failures. It is likely that Mr. Vick's complaints of difficulty with memory and concentration are related to severe depression and anxiety…" CX 18.9 She mentioned Mr. Vick's positive family medical history for neurological disorders, but concluded that it appeared that Mr. Vick's depression was caused, in part, by job-related stress. CX 18.4; 28.3. She based her finding on Mr. Vick's statements that pressures at work had increased and caused him to feel overwhelmed. CX 28.3.

Dr. Brooks testified that there was not a specific work stressor that caused Mr. Vick's depression. CX 12.15. He did not believe "it was specifically that one particular job that would have caused problems and none other." CX 12.15-16. He stated that job stress *could* have played a role in triggering Mr. Vick's depression and that an inherited propensity towards depression could be triggered by the stresses of everyday life, such as pressure from the job. CX 12.21. Dr. Brooks also wrote that "Mr. Vick was significantly impacted by difficulties at work. … [H]is worsening psychiatric illness made it progressively more difficult for him to do this job. He consistently worried about the difficulty he was having performing his job and was always eager to try to return to work." CX 20. Dr. Brooks never unequivocally opined that work-related stress was a contributing factor to the start or aggravation of Mr. Vick's depression.

Dr. Gold opined, based on the reports of Mr. Martin and Dr. Brooks, that Mr. Vick's depression was caused by or contributed to, at least in part, by his work. However, as noted by Dr. Bursztajn, Dr. Gold failed to discuss the contribution of Mr. Vick's biological predisposition towards depression. The other doctors of record found this contribution to be very significant and, therefore, I find it appropriate to accord less weight to Dr. Gold's opinion for failing to consider the effect of Mr. Vick's family history on his illness.

***35** Drs. Wells, Wilson, Rappaport, Reid and Bursztajn all agreed that Mr. Vick's depression was the result of his strong biologic predisposition to depression, not work-related stress. EX 1.5; EX 16.4; EX 17.2; EX 18.1; EX 19.2, 4. Drs. Wells and Reid noted that people with first degree biological relatives, such as Mr. Vick's mother, with depression have a 1.5 to 3 times greater likelihood than the general population to develop major depression. EX 1.5; EX 18.5. All five doctors also stated that Mr. Vick's reaction to work place stressors was the *result* of his depression, rather than the cause of his depression. EX 1.5; EX 16.4; EX 17.2; EX 18.2; EX 19.2. Dr. Rappaport wrote that Mr. Vick had successfully met the demands of his position for 20 years and only started complaining of increased stress in 2003 because "he had developed a severe depression which interfered with his cognitive, emotional and physical functioning." EX 17.2. Dr. Reid noted that severely depressed persons often perceive their environments in an inaccurately stressful way, so it was more likely that Mr. Vick's feelings of being overwhelmed were caused by his viewing his situation through a "depressive lens." EX 18.5.

Drs. Wilson, Rappaport, Reid and Bursztajn also opined that work-related stress did not aggravate Mr. Vick's depression. EX 16.4; EX 17.4-5; EX 18.3; EX 19.2. Drs. Rappaport and Bursztajn noted that Mr. Vick seemed to gain some relief from his depression when he was able to return to work and did not display avoidance behavior, "as would be expected from a person traumatized by the workplace." EX 17.4-5; EX 19.7. Finally, Drs. Wilson, Rappaport and Bursztajn opined that Mr. Vick's depression would have occurred regardless of his occupation or the degree of work-related stress he was exposed to. EX 16.4; EX 17.4; EX 19.2.

I find the opinions of Drs. Wells, Wilson, Rappaport, Reid and Bursztajn to be the most well-reasoned and documented opinions in the record. Therefore, I find that the preponderance of the evidence supports a finding that Mr.

Vick's depression was not triggered or aggravated by his work-place stress, but by a genetic predisposition that then caused him to feel overwhelmed by his work duties.

II. Irresistible Impulse, Section 3(c) and Section 20(d)

Section 3(c) bars compensation under the Act if the injury is caused by the willful intention of the employee to kill himself or another. 33 U.S.C. § 903(c) (2000). However, Section 20(d) provides a presumption that "the injury was not occasioned by the willful intention of the injured employee to injure or kill himself or another." 33 U.S.C. § 920(d) (2000). Where, as in this case, it is uncontested that the death was the result of suicide, the presumption applies but is rebutted; therefore, the presumption does not aid the claimant in resolving the issue of willful intention. *See Del Vecchio v. Bowers*, 296 U.S. 280, 280 (1935). The claimant bears the burden of proving by a preponderance of the evidence that the decedent's suicide was not intentional. *Cooper v. Cooper Assocs.*, 7 BRBS 853 (1978).

***36** Cases involving death due to suicide under the Act require a chain of causation, with the suicide resulting from an "irresistible impulse." Where an employee's death is not due to a "willful intent" to commit suicide but results from an irresistible suicidal impulse resulting from a work-related condition, Section 3(c) does not bar the compensation claim. *See Madden v. Western Asbestos Co.*, 23 BRBS 55 (1980); *see also Voris v. Texas Employers Ins. Ass'n*, 190 F.2d 929, 934 (5th Cir. 1951) ("[Case law] clearly draw a distinction between the intention of a person in possession of his ordinary reasoning faculties and the intention of a person whose reasoning faculties are sufficiently impaired. A similar distinction should be and has been drawn under section 3(b) of the Act between a willful intention of the employee to kill himself and an act of self-destruction which, because of his mental condition due to insanity, is not willful."). In *Konno v. Young Brothers, LTD.*, 28 BRBS 57, 64-65 (1994), the Benefits Review Board affirmed the finding of ""irresistible impulse" where a doctor opined that the decedent had depression induced "tunnel vision" which prevented his view of rational alternatives to suicide. *In Voris*, 190 F.2d 929, the 5th Circuit found suicide not to be willful where the claimant developed "manic-depressive insanity" after being severely burned due to an explosion at work.

Regardless of whether Mr. Vick's initial depression was caused or aggravated, at least in part, by work-related stress, I find that the Claimant has failed to prove that her husband's suicide was caused by an irresistible impulse and, therefore, her claim for benefits must be denied under Section 3(c) of the Act

Mr. Martin stated that he could not judge whether Mr. Vick was thinking rationally at the time of his death. CX 23.2-3. Dr. Haskett also declined to offer an opinion on whether Mr. Vick's death was the result of an irresistible impulse. CX 28.3-4. Dr. Apostoles did not offer an opinion on Mr. Vick's state of mind. CX 19; EX 11.

In late March 2008, Dr. Brooks proposed hospitalization but decided to try antidepressant therapy instead and Mrs. Vick stated she felt she and Mr. Vick's father could watch them. CX 11.70. Dr. Brooks testified that during his treatment of Mr. Vick, he was severely depressed, but not actively suicidal. CX 12.9. Dr. Brooks did not believe Mr. Vick would commit suicide at his last appointment and noted that he was oriented as to time and place and capable of rational thought. CX 12.12-14. He explained that Mr. Vick was not experiencing delusions, but his ability to perceive the reality of his future was distorted by his depression. *Id.* On August 18, 2009, Dr. Brooks wrote:

> I do feel that his suicidal act was the result of an impulsive and irresistible act. Mr. Vick's cognitive abilities and ability to remain rational had greatly deteriorated over the course of his illness. … He had become increasingly irrational and impulsive… He had become increasingly withdrawn and I believe it was in the midst of one of these episodes that he acted on his suicidal impulse.
>
> ***37** I think he was, at that point, behaving in an irrational fashion in many different ways and could not view his options rationally.

CX 20. On October 29, 2009, Dr. Brooks wrote that he did not believe Mr. Vick's suicide was the result of an automatic response or that Mr. Vick was incapable of controlling his actions. EX 12. In regards to his August 18, 2009 letter, he explained: "I did not mean that suicide was an automated action or response. Rather, I meant that Mr. Vick in the past had episodes of impulsive and irrational behavior and on the day of his death he chose not to resist an urge

which he had been able to resist for several years." *Id.*

Dr. Brooks' opinion on whether Mr. Vick's suicide was the result of an ""irresistible impulse" is inconsistent. He noted that he did not believe Mr. Vick was suicidal during their last meeting, that he was capable of rational thought and not delusional, and his suicide was not the result of an automatic response. Then he stated he believed the suicide resulted from an impulsive and irresistible act and Mr. Vick's ability to remain rational had deteriorated over time such that he could not view his opinions rationally. He also stated that Mr. Vick *chose* to not resist the urge to commit suicide. I accord less weight to Dr. Brooks' opinion due to these contradictions in his reports and testimony.

Dr. Wells opined that Mr. Vick's suicide was a deliberate act. EX 11.6. She stated that at all times he was oriented to person, place and time; there was no record of delusions or psychosis; and he remained capable of evaluating the decision to commit suicide. *Id.* She noted that committing suicide by the method of hanging is "used to insure lethality" and is "consistent with deliberate conduct as opposed to impulse." *Id.* Dr. Wells concluded: "I believe it is more probable [than] not that Mr. Vick retained the power to reason, plan and choose his action and understand that continuing to live was at least an option, though ultimately not his option of choice." *Id.* Dr. Gold stated that Dr. Wells' opinion was in direct contradiction to Dr. Brooks' findings: "Many individuals who suffer the type of malignant depression suffered by Mr. Vick develop mood-congruent irrational thinking, including irrational belief, bordering on delusional thinking, that they have no future and that suicide is their only viable option. Their ability to reason and control their impulses is distorted by their severe depression." CX 27.7.

Dr. Wilson wrote that Dr. Brooks noted on April 8, 2008 that Mr. Vick's thinking was "clear, coherent, non-distorted, goal-directed, and without hallucinations or delusional beliefs" and Dr. Brooks wrote that he denied suicidal ideation and Mrs. Vick felt he was safe at home. EX 16.5. Mrs. Vick had also testified that there was nothing unusual about her husband's behavior on the day he died. *Id.* Dr. Wilson concluded that

> ***38** There was absolutely no evidence that Mr. Allen Vick was not able to make clear and reasoned decisions that day. The decision he seemed to make was that he decided to die. However irrational that decision may seem, it was a process of reasoning. He proceeded to plan and carry out fashioning a noose from a bungee cord and hanging himself with it. … [He] chose to make a serious effort to kill himself with a lethal means that he expected to be successful, and it was successful."

Id.

Dr. Gold opined that "Mr. Vick's depression caused him to have an irresistible impulse to commit suicide and impaired his reasoning faculties to such a degree that he was unable to formulate a rational alternative to his suicidal impulses." CX 27.3. She based her opinion on Dr. Brooks prescribing Mr. Vick increasing strengths of antipsychotic medication prior to his death, Dr. Brooks finding that Mr. Vick was not suicidal on April 8, 2008, and Dr. Brooks' writing that he believed Mr. Vick's suicide was an "impulsive and irresistible act." CX 27.3-4. Dr. Gold noted that Mrs. Vick's testimony supported Dr. Brooks' findings by indicating that he gave no indication that he was feeling any differently on the day he died. CX 27.4. "The lack of a note is consistent with lack of planning, lack of rational thinking to compose a note, and impulsive behavior such that he may have been unwilling to take the time to write a note." *Id.* Dr. Gold also opined that "Mr. Vick's irrational thinking and near delusional, if not delusional, depression, is also indicated by Dr. Brooks' escalating prescriptions of antipsychotic medication in March and April 2008." CX 27.7.

Drs. Reid and Bursztajn criticized Dr. Gold's report. Dr. Reid stated that, contrary to Dr. Gold's report, Dr. Brooks did not opine that Mr. Vick's suicide was the result of an "automatic" response. EX 18.3. Dr. Reid noted that Dr. Brooks had prescribed anti-psychotic medication for Mr. Vick's anxiety, not to prevent delusional thinking. EX 18.4. Dr. Bursztajn also wrote that "Dr. Brooks makes clear that antipsychotics were not prescribed for symptoms of psychosis." EX 12-13. Dr. Reid opined that it was insignificant that Dr. Brooks noted that Mr. Vick did not appear "acutely suicidal" during his final weeks because patients frequently keep suicidal thoughts to themselves. *Id.* Dr. Bursztajn stated that "in claiming that the absence of a suicide note indicates impulsivity, Dr. Gold commits the methodological fallacy of ignoring the base rate; i.e., most people who commit suicide do not leave a note." EX 24.13-14.

Dr. Rappaport opined that Mr. Vick's suicide was not the result of an irresistible impulse:

> Mr. Vick was never psychotic, at least not around the time of his suicide. If he had been so disturbed he would have likely required hospitalization or at least not been left at home by his wife. Rather, he was alert and not confused and planned his act in a manner which did not appear to be bizarre or a product of a delusion. … It was more probably than not a conscious and premeditated plan to end a seemingly endless and painful journey and not a sudden and impulsive act.

***39** EX 17.5. Dr. Rappaport noted that Dr. Brooks and Mrs. Vick could have viewed Mr. Vick as calm and seemingly "better" just before he took his life because establishing a plan to commit suicide can provide emotional relief. EX 17.3-4. Dr. Rappaport also opined that Mr. Vick's suicide could not be impulsive because "the subject was not new to him" because of his previous attempts and his family history of such acts. EX 17.4.

Dr. Reid wrote that there was no indication that Mr. Vick was "acting on immediate or irresistible impulse or in some 'automatic' way that controlled his behavior," so Mr. Vick "chose" to end his life. EX 18.2. He noted that Mr. Vick waited for his wife to leave and then carried out deliberate steps to end his life. EX 18.2-3. "The record clearly indicates that Mr. Vick knew what he was doing, knew that his behavior would likely end his life, knew that his suicide would be prevented if someone were with him, and acted accordingly." *Id.* He also noted that Mr. Vick's suicide itself, "choosing a particular method and location," required several minutes of deliberate behavior. EX 18.3-4.

Dr. Bursztajn opined that Mr. Vick's suicide was not the result of an irresistible impulse because he was capable of making a choice whether to end his life. EX 19.2. Dr. Bursztajn concluded that the record was "consistent with Mr. Vick's having purposefully planned, deliberated, and carried out the taking of his own life of his own volition." EX 19.7. He wrote:

> No one, including the people closest to Mr. Vick and most involved in his care, saw him to be unstable and at risk for succumbing to self-destructive impulse in the days before his death. … [Mr. Vick's actions on the days before his suicide] are consistent with Mr. Vick's having the capacity to conceal his suicidal intentions, as in his conveying an appearance of normality when his wife left for work. … Hanging himself in his garage while his wife was at work required a certain amount of planning and calculation.

EX 19.8-9.

The weight of the medical evidence, including the reports of Drs. Wells, Wilson, Reid, Rappaport and Bursztajn, supports the finding that Mr. Vick made a conscious choice to commit suicide and then took steps to insure he was successful. Even Dr. Brooks opined that he did not believe Mr. Vick's suicide was the result of an automatic response and that Mr. Vick was capable of controlling his actions and thinking rationally. He stated that Mr. Vick "chose not to resist" his decision to commit suicide. There is no evidence in the record that Mr. Vick was delusional or incapable of rational thought at the time he died. Indeed, Mrs. Vick testified that her husband was acting normally when she left for work on the day he committed suicide. EX 21.53. Her testimony that her husband would not have committed suicide if she had been home also does not support the finding that his suicide was the result of an impulse that he could not act against. TR at 81.

***40** The Claimant has failed to show that her husband's suicide was caused by an irresistible impulse and, therefore, her claim for benefits is barred by Section 3(c) of the Act.

ORDER

Mrs. Vick's claim for survivor benefits under the Act is hereby **DENIED.**

RICHARD K. MALAMPHY
Administrative Law Judge

FN1. During the hearing, the Employer objected to this testimony as hearsay. The standards governing the admissi-

bility of evidence in administrative hearings are less stringent than those which govern under the Federal Rules of Civil Procedure. The administrative law judge is not bound by common law or statutory rules of evidence or technical or formal rules of procedure, but must conduct hearings in a manner which will best ascertain the rights of the parties. 33 U.S.C. § 923(a) (2006); 20 C.F.R. § 702.339 (2008); *Casey v. Georgetown Univ. Med. Ctr.*, 31 BRBS 147 (1997); *Brown v. Washington Metro. Area Transit Auth.*, 16 BRBS 80, 82 (1984), *aff'd*, 764 F.2d 926 (D.C. Cir. 1985) (rejecting claimant's argument that admissibility of depositions is limited by Fed. R. Civ. Proc. 32).' "Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." 29 C.F.R. § 18.401 (2008). Hearsay evidence is generally admissible if considered reliable and probative. *See Richardson v. Perales*, 402 U.S. 389, 402 (1971); *Vonthronsohnhaus v. Ingalls Shipbuilding, Inc.*, 24 BRBS 154, 157-58 (1990). I find that Mr. Horton's testimony as to the Claimant's state of mind and his opinions on the difficulty of the construction supervisor position are reliable and relevant.

2010 WL 3198445 (DOL Ben.Rev.Bd.)

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