BRB No. 08-0223

Z.S.	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
SCIENCE APPLICATIONS INTERNATIONAL CORPORATION	)	DATE ISSUED: 11/26/2008
	)	
and	)	
	)	
INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA/AIG WORLDSOURCE	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order Denying Claim, Order Denying Motion for Reconsideration, Order Denying Second Motion for Reconsideration, and Order Denying Third Motion for Reconsideration of Jennifer Gee, Administrative Law Judge, United States Department of Labor.

Joshua T. Gillelan II (Longshore Claimants' National Law Center), Washington, D.C., for claimant.

Michael W. Thomas (Laughlin, Falbo, Levy & Moresi), San Francisco, California, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Claim, Order Denying Motion for Reconsideration, Order Denying Second Motion for Reconsideration, and Order Denying Third Motion for Reconsideration (2006-LDA-00034) of Administrative Law Judge Jennifer Gee rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the

Longshore Act), as extended by the Defense Base Act, 42 U.S.C. §1651 *et seq.* (the DBA). We must affirm the administrative law judge's findings of fact and conclusions of law if they are supported by substantial evidence, are rational, and are in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Science Applications International Corporation (employer or SAIC) is a corporate entity consisting of approximately 50 separate "Groups" which individually hire employees, seek out business opportunities, contract with customers and are thereafter responsible to the customer for the execution of their respective contracts.[1] Pursuant to this arrangement, employer's groups may compete against each other for business, and one group may sub-contract work to another group. Relevant to this case, employer's Dube Group was awarded a contract with the United States Department of Defense to support the Defense Information Systems Network in Iraq (the DGS contract). Through the DGS contract, employer's Dube Group was subsequently assigned Task Order 20, which involved working on the telecommunications infrastructure in the Green Zone of Baghdad, Iraq and, pursuant to this Task Order, the Dube Group was authorized to subcontract work to other organizations, including employer's other groups, as needed. Decision and Order at 3-4.

On January 31, 2001, claimant commenced employment for, and at all relevant times continued to be employed exclusively by, employer's Young Group. In July 2003, claimant, based upon her telecom expertise, was approached by employer's vice-president for program management, Mr. DeCort, regarding going to Iraq.[2] Decision and Order at 4. Claimant left for Iraq with Mr. DeCort on August 23, 2003. *Id.* at 5. Since only individuals working under government contracts were allowed to enter and reside in the Green Zone of Baghdad, employer acquired for claimant a contractor's badge indicating that she was working on a contract between employer and the Iraqi Media Network (IMN). Claimant testified, however, that she performed no work for IMN; rather, claimant's badge was issued in order for her to have access to and reside in the Green Zone. *Id.*

[1]For identification purposes, each group is named for its general manager; thus, the Dube Group is headed by Peter Dube, while the Young Group is headed by Robert Young.

[2]Mr. Decort's responsibilities for employer involved developing new work and contracts.

While in Iraq, claimant was instructed to acquire new contracts and subcontracts for the Young Group, who had no actual contracts in that country. In attempting to fulfill this assignment, claimant approached the Dube Group's supervisor, Mr. Rodakowski, about the possibility of the Young Group's assisting the Dube Group in its performance of its DGS contract; the Young Group, however, did not receive a contract from the Dube Group to work on this project. Decision and Order at 5-6. Claimant also wrote proposals for the Iraqi Reconstruction Development Committee (IRDC), but those proposals did not result in the awarding of a contract. During this period of time, claimant charged her time to and was paid from the overhead accounts of employer and the Young Group. *Id.* at 7.

While in Baghdad, claimant lodged at the Al-Rashid Hotel, which was located within the Green Zone. On September 27, 2003, claimant was at the hotel when it was attacked. On October 26, 2003, she was in her room when the hotel was attacked by rocket fire. On November 17, 2003, claimant returned to the United States, where she continued to work for the Young Group until she was laid off on February 21, 2004. Subsequent to her layoff, claimant was diagnosed with post-traumatic stress disorder which her treating psychiatrist attributed to the traumatic events she experienced in Iraq. Claimant filed a claim for benefits for her post-traumatic stress disorder (PTSD). Employer asserted in response that claimant did not have PTSD and that, in any event, she was not within the coverage of the DBA during her work in Iraq.

In her Decision and Order, the administrative law judge initially determined that claimant suffers from PTSD. The administrative law judge concluded, however, that claimant's injury did not meet the coverage requirements of the DBA. The administrative law judge first found that claimant's work in Iraq was not covered by Section 1(a)(4) of the DBA, 42 U.S.C. §1651(a)(4), as it was not pursuant to a contract or subcontract entered into with the United States government; rather, the administrative law judge determined that the evidence establishes that claimant went to Iraq to develop business opportunities for the Young Group. The administrative law judge also determined that the Green Zone of Baghdad is not a military base for purposes of coverage under Section 1(a)(1) of the DBA; specifically, the administrative law judge found that there is no definitive evidence of the Green Zone's official military status and that, while the Green Zone was partly protected by the military, it was not controlled or owned by the military. The administrative law judge also concluded that the Green Zone is not a territory or possession sufficient to confer coverage under Section 1(a)(2) of the DBA. Accordingly, the administrative law judge denied claimant's claim for benefits under the DBA. Claimant's requests for reconsideration were also denied by the administrative law judge.

On appeal, claimant challenges the administrative law judge's conclusion that she is not covered under the DBA. Employer responds, urging affirmance of the administrative law judge's denial of benefits. Employer has additionally filed a Motion to Strike Excerpts of Petition for Review, in which it challenges 15 specific assertions contained in claimant's brief on the grounds that they are either inaccurate or without support in the record, and a Request for Judicial Notice of various documents cited or referred to in a district court case which employer cites in its brief. Claimant, in her reply brief, urges the Board to deny these motions.

Estoppel

Claimant initially contends that the administrative law judge erred in failing to hold employer estopped from denying her coverage under the DBA since employer paid its insurance carrier premiums for such coverage and represented to claimant that she would be covered under the DBA during the period of her employment in Iraq. In response, employer argues, *inter alia*, that the issue of estoppel was not raised before the administrative law judge and may not be raised for the first time on appeal. In reply to this argument, claimant asserts that estoppel is not a new "claim" but an alternative basis for a finding on the sole claim presented – that claimant is covered by the DBA - and as such may be raised at any time.

In this case, estoppel was not raised before the administrative law judge. The Board has long held with few exceptions that it will not address issues raised on appeal which were not raised before the administrative law judge; thus, a party generally may not raise a new issue on appeal to the Board. *See, e.g., Turk v. E. Shore R.R. Inc.,* 34 BRBS 27 (2000). An exception to this rule occurs where a pure question of law is concerned and failure to address it would result in a miscarriage of justice.[3] *See Bernuth Marine Shipping, Inc. v. Mendez*, 638 F.2d 1232 (5th Cir. 1981). Whether estoppel applies is not a pure question of law; rather, it is a question which requires determinations of fact by an administrative law judge.[4] We reject claimant's contention that she is

[3]The Board has also held that payments of interest and additional assessments of compensation under 33 U.S.C. §914(e) are mandatory, and thus these issues may be raised at any time. *See, e.g., Scott v. Tug Mate, Inc.,* 22 BRBS 124 (1989).

[4]Application of the general doctrine of estoppel requires four elements: (1) the party to be estopped must know the facts; (2) he must intend that his conduct shall be acted on or must so act that the party asserting the estoppel has a right to believe it is so intended; (3) the latter must be ignorant of the facts; and (4) he must rely upon the former's conduct to his injury. *See Rambo v. Director, OWCP*, 81 F.3d 840, 30 BRBS 27(CRT) (9th Cir. 1996), *vacated and remanded sub nom. Metropolitan Stevedore Co. v.*

entitled to raise this theory before the Board for the first time on the basis that it is not a new "claim" but rather is an additional argument supporting her original claim. Cl. Reply Brief at 3-4. The Board's well-established practice prohibits the parties from raising new *issues* on appeal, and estoppel is not merely an ancillary argument supporting coverage but a new theory requiring additional findings of fact. Accordingly, we decline to address this issue for the first time on appeal. *See Goldsmith v. Director, OWCP*, 838 F.2d 1079, 21 BRBS 27(CRT) (9th Cir. 1988)(court affirms Board's refusal to consider argument regarding the applicability of the doctrine of laches, which was raised for the first time on appeal); *Hite v. Dresser Guiberson Pumping*, 22 BRBS 87 (1989)(Board declines to address coverage issues raised for first time on appeal).

Defense Base Act

Claimant next challenges the administrative law judge's conclusion that the DBA does not apply to her claim. Specifically, claimant contends that her employment in Iraq is covered under Sections 1(a)(1) and 1(a)(4) of the DBA.[5]

Rambo, 521 U.S. 121, 31 BRBS 54(CRT) (1997). Thus, application of this doctrine requires factual findings by an administrative law judge. Rather than relying on this rule, however, claimant asserts estoppel based on evidence she asserts shows that SAIC believed DBA insurance was necessary at the time it sent her to Iraq and that it represented to her that she would be covered by the DBA. Claimant asserts that the insurer received a substantial premium for covering her work and is thus estopped from denying coverage, relying on state court cases cited for the proposition that an insurer who collects premiums based on coverage of an employee is precluded from denying liability. As this issue was not raised below, the administrative law judge did not make the necessary findings of fact upon which claimant bases her argument, and we therefore will also not address it. However, we note that in response to claimant's argument, employer asserts the well-established rule that federal jurisdiction cannot be conferred by estoppel. In reply, claimant relies on cases holding that coverage under the Longshore Act does not involve subject matter jurisdiction, *see, e.g., Ramos v. Universal Dredging Corp.*, 653 F.2d 1353, 13 BRBS 689 (9th Cir. 1981), asserting that the present case similarly involves coverage rather than federal jurisdiction. We also need not address these arguments.

[5] Claimant asserts that the Section 20(a) presumption applies to the facts underlying her coverage under the DBA, placing the burden on employer to go forward with substantial evidence to the contrary. Employer here presented relevant evidence in support of its contentions that claimant was not covered by the DBA. Thus, assuming Section 20(a) applies, it was rebutted, and the administrative law judge's decision was properly based upon her weighing the evidence in the record.

The bases for coverage under the DBA are set out at 42 U.S.C. §1651(a)(1)-(6). *See generally Univ. of Rochester v. Hartman*, 618 F.2d 170 (2d Cir. 1980). The sections of the DBA relied upon by claimant in support of her arguments on appeal regarding coverage state, in pertinent part:

> (a) *Places of employment.* Except as herein modified, the provisions of the Longshoremen's and Harbor Workers' Compensation Act . . .shall apply in respect to the injury or death of any employee engaged in any employment—
>
> (1) at any military, air, or naval base acquired after January 1, 1940, by the United States from any foreign government; or
>
> * * *
>
> (4) under a contract entered into with the United States or any executive department, independent establishment, or agency thereof (including any corporate instrumentality of the United States), or any subcontract, or subordinate contract with respect to such contract, where such contract is to be performed outside the continental United States and at places not within the areas described in subparagraphs (1)-(3) of this subdivision, for the purpose of engaging in public work, and every such contract shall contain provisions requiring that the contractor (and subcontractor or subordinate contractor with respect to such contract) (1) shall, before commencing performance of such contract, provide for securing to or on behalf of employees engaged in such public work under such contract the payment of compensation and other benefits under the provisions of this chapter, and (2) shall maintain in full force and effect during the term of such contract, subcontract, or subordinate contract, or while employees are engaged in work performed thereunder, the said security for the payment of such compensation and benefits, but nothing in this paragraph shall be construed to apply to any employee of such contractor or subcontractor who is engaged exclusively in furnishing materials or supplies under his contract[.]

42 U.S.C. §1651(a)(1), (4).

Section 1(a)(1) of the Defense Base Act

Claimant argues that the administrative law judge erred in determining that the area of Baghdad designated as the Green Zone is not a military base acquired by the United States within the meaning of Section 1(a)(1) of the DBA. Claimant avers that the

area was "acquired" by conquest and that it is a "base" as United States military personnel were stationed in the Green Zone.

In describing the Green Zone of Baghdad, the administrative law judge relied on the hearing and deposition testimony of Mssrs. DeCort and Rodakowski. Specifically, the administrative law judge found that:

> The Al-Rashid Hotel was located in the Green Zone of Bagdad, Iraq. The Claimant did most of her work in the Green Zone. (HT, pp. 89, 136, 140 EX 29, 1864.) The Green Zone was approximately a two to three square mile area in Bagdad, Iraq, which was cordoned off and separated from the rest of Bagdad by 10 feet high concrete walls. (HT, pp. 334-35.) The Green Zone was mainly protected by private security contractors. (HT, p. 335.) It provided a secure place for housing for the Coalition Forces, diplomats, contractors, and news media. (HT, pp. 334-35.) The Coalition Forces included both military and civilians from other countries including Italy, Australia, the Netherlands, and Great Britain. (HT, p. 335.) The Green Zone was the primary base of operations for the Coalition Provisional Authority ("CPA"). (HT, p. 335.) Additionally, many indigenous Iraqis lived in the Green Zone and set up shops and markets there. (HT, p. 336.) Military enclaves and headquarters were also located within the Green Zone. (HT, p. 336.)
>
> There were guarded areas controlled by military police and guards at entrances and exits to the Army posts within the Green Zone. (EX 29, p. 1875.) Although the Green Zone was partly protected by the military and had an appointed mayor who was a U.S. military officer, it was not governed controlled or owned by the military. (EX 29, p. 1839-40.) Rather the CPA owned and controlled the Green Zone, maintained order in the Green Zone, and issued entrance badges. (HT, pp. 137, 140; EX 29, pp. 1839, 1840, 1865.) The people within the Green Zone were not required to follow U.S. military rules or standards of procedure normally required on a military base. (EX 29, pp. 1840, 1841.).

Decision and Order at 8.

In analyzing the issue of whether the Green Zone is a military base for purposes of coverage under Section 1(a)(1) of the DBA based on these findings, the administrative law judge determined that this area of Baghdad had not been a military base before the war, that the area designated as the Green Zone was designed to be a safe haven for contractors, media, military personnel and civilians, and that many Iraqi civilians live and

work within this area. Decision and Order at 19-20. The administrative law judge further found that while the military partly protects the Green Zone, it does not control or own that area, nor were the United States military's rules or standards of procedure applicable to people within that area. *Id.* Based upon these findings, the administrative law judge concluded:

> Although there is evidence that lends itself to the plausibility that the United States used the Green Zone for military purposes, there is no definitive evidence of official military status. Furthermore, there is no evidence that the United States acquired the Green Zone for purposes of the statute. In conclusion, I find that based on the evidence provided, the Green Zone is not a military base. Thus, the Claimant is not covered under 42 U.S.C. § 1651(a)(1).

Decision and Order at 20.

The question of what constitutes a "military base" for purposes of coverage under Section 1(a)(1) of the DBA is one of first impression, as the parties agree that the DBA contains no statutory definition of the term and neither the Board nor the courts have previously addressed its meaning. *See generally Republic Aviation Corp. v. Lowe*, 164 F.2d 18 (2^{d} Cir. 1947)(existing base "acquired" by conquest). In support of her position on appeal, claimant contends that since United States military forces are stationed within the Green Zone, that area is the "base" for those troops and, consequently, the ordinary meaning of the term requires that the entire area designated as the Green Zone be considered a "military base" for purposes of coverage under Section 1(a)(1) of the DBA. Employer, in response, asserts that substantial and unrefuted evidence supports the administrative law judge's conclusion that the Green Zone is not a military base, and that claimant has not established on appeal that the administrative law judge's finding on this issue is contrary to law, irrational or unsupported by substantial evidence.

While the DBA does not define the term "military base," the United States Code, under the heading General Military Law, defines the term "military installation" as a "base . . . under the jurisdiction of the Secretary of a military department . . . or the Secretary of Defense." 10 U.S.C. §2801(2). Similarly, United States Army, Navy and Air Force regulations addressing military construction projects define a "government installation" as a facility having fixed boundaries owned or controlled by the government. *See* 32 C.F.R. §§536.91(b), 750.63(c), 842.74(a). Accordingly, these provisions indicate that a military installation is one governed or controlled by the United States government. Section 1(a)(1) of the DBA describes a "base" as being either "military, air, or naval." Thus, an area must be under the control of the United States military in order to be considered a base within the meaning of Section 1(a)(1).

We affirm the administrative law judge's finding that the Green Zone is not a "military base." Although the Green Zone has fixed boundaries and contains military enclaves within those boundaries,[6] and it is protected by military forces and private security contractors, substantial evidence supports the administrative law judge's findings that the United States military did not control the entire Green Zone. The evidence credited establishes that individuals within the Green Zone were not required to follow the United States military's rules or standards of procedure. EX 29 at 137, 140, 1039-41, 1865. The stationing of military personnel in the Green Zone alone is insufficient to establish that the United States military governed the area such that the entire Green Zone could be considered a "military base." Accordingly, based on the evidence credited by the administrative law judge, which establishes that control of the Green Zone in Baghdad did not rest with the United States military, we affirm the conclusion that the Green Zone is not a military base for purposes of coverage under Section 1(a)(1) of the DBA.[7]

Section 1(a)(4) of the Defense Base Act

Claimant next challenges the administrative law judge's determination that she did not perform work "under a contract" with the United States during her period of employment in Iraq. Specifically, claimant contends she established that her work in Iraq involved the employer's IMN contract, the Dube Group's DGS/Task Order 20 contract, and the preparation of proposals for the IRDC. Claimant asserts that the administrative law judge erred in focusing her analysis on whether claimant's time was billed to an existing contract instead of examining whether her work was "related to" or "in furtherance of" SAIC's existing contacts. Accordingly, claimant avers that she has established coverage under the DBA pursuant to Section 1(a)(4).

In testifying in support of her claim for benefits under the DBA, claimant asserted that she performed services in Iraq in support of employer's contracts with the United States. In this regard, claimant testified that she sat in office space designated for employees working on employer's IMN contract and that she answered these employees' telephones if necessary, that she worked in furtherance of the Dube Group's DGS/Task Order 20 contract, and that she prepared proposals for the IRDC. While claimant

[6]It is uncontroverted that military units from the United States, Great Britain, Italy, Australia, and the Netherlands were stationed within the Green Zone.

[7]We therefore need not address whether the Coalition Provisional Authority was an entity of the United States government, and employer's motion for judicial notice of documents relevant to this issue is moot.

testified in her deposition that the purpose of her trip was to develop new business for the Young Group, EX 21 at 75-76, she later issued an errata sheet revoking that testimony. *Id.*, Errata Sheet at 2. Similarly, claimant deposed that she attempted to secure subcontracts under the existing contract held by the Dube Group. EX 19 at 265. Claimant conceded that she was never issued the security clearance necessary to work on a government contract, and that she billed all of her time in Iraq to the Young Group and employer's corporate account. Tr. at 96-97, 223.

Mr. Young, general manager of employer's Young Group, testified on deposition that his Group sent claimant to Iraq exclusively to develop business for the Young Group and that claimant was not working under any contract during that period.[8] EX 28 at 1695-96. Mr. Young's deposition testimony was corroborated by that of Mr. DeCort, employer's vice president for program management who accompanied claimant to Iraq, who testified that claimant was sent to Iraq to develop business. Tr. at 296-97, 302-05, 314-15. Mr. Rodakowski, the Dube Group's supervisor in Iraq, testified on deposition that claimant did not work on his Groups' DGS/Task Order 20 contract but, rather, unsuccessfully attempted to secure a subcontract for the Young Group under that contract. EX 29 at 1806-07, 1816-18, 1863. E-mails sent by claimant from Iraq to Mr. Young discussed her ongoing attempts to secure contracts for the Young Group, while other e-mails sent among employer's employees referred to claimant's attempts to bring home contracts.

We affirm the administrative law judge's finding that the testimony of Mssrs. Young, DeCort and Rodakowski, corroborated by e-mails and claimant's deposition testimony, establish that claimant was sent to Iraq to obtain business for the Young Group and that, while in Iraq, claimant did not engage in employment under a contract between employer and the United States. Contrary to claimant's contentions, the administrative law judge did not place too much emphasis on claimant's billing records but appropriately considered them in the context of the other evidence, and she considered whether claimant's work was "related to" or "in furtherance of" a contract with the United States. Specifically, the administrative law judge identified three alternative ways in which claimant could establish she performed work under a government contract: 1) if the employee acted in furtherance of a government contract, *see Airey v. Birdair, Div. of Bird & Sons*, 12 BRBS 405 (1980); 2) if the employee was involved in the performance of a government contract, *see Rosenthal v. Statistica*, 31 BRBS 215 (1998); or 3) if the employee was doing work which was related to the employer's contract with the United States. *See Casey v. Chapman College-Pace Program*, 23 BRBS 7 (1989). The administrative law judge found the evidence

[8] Claimant does not contend that the Young Group had a contract with the United States at any time during her presence in Iraq.

establishes that claimant was sent to Iraq in order to develop business opportunities for the Young Group, which at the time of her employment in Iraq had no contracts there. In support of this determination, the administrative law judge relied on an e-mail from claimant to the Young Group's business manager following her return to the United States wherein claimant wrote

> I was not on a contract while in Iraq. I went per your authorization to do business development. . . . We had no contract with any contractor for the work I performed. I believe you know that.

EX 9 at 829.

Next, the administrative law judge found that claimant was not working under employer's IMN contract and that, in fact, e-mails from employer's personnel in Iraq to Mr. Young indicated that claimant had to leave employer's IMN workspace.[9] Regarding the Dube Group's DGS and Task Order 20 contracts, the administrative law judge credited the deposition testimony of Mr. Rodakowski that the Young Group received no subcontract for the work being performed by his Group, and that claimant performed no work on the contracts held by his Group. EX 29 at 1863. Additionally, the administrative law judge found that while claimant designed proposals for the IRDC, the Young Group never received a contract as a result of this work. Lastly, citing *Rosenthal*,

---

[9]Claimant's testimony regarding her work with the IMN staff states:

> Q Okay. Did you have any interaction with reference to the work being done by the Iraqi Media Network people under that contract?
>
> A No, not too much. My work was very independent because I was there for telecom reconstruction. . . .That's where my expertise was. And so I didn't work much with them. Actually, I didn't work with them at all, except the fact that when I was sitting in that area if someone, for example, from someone on vacation would come and ask a question and would want – and nobody else was there, then I would do whatever needed to be done, but that was the only – that was the extent of . . . .

Tr. at 124.

Moreover, while employer issued claimant a contractor's badge upon her arrival in Iraq, claimant conceded that the issuance of that badge was merely the method by which she was allowed to stay in the Green Zone. *See* Tr. at 124, 141 – 143.

31 BRBS 215, the administrative law judge determined that claimant's timesheets did not support her contention that she was working under a government contract while in Iraq, since claimant was never assigned a billing code for a contract held between employer and the United States; rather, all of claimant's billable time while in Iraq was charged to the Young Group or employer's corporate account. Tr. at 96-97, 223. Based upon the testimony of Mssrs. Young, DeCort and Rodakowski, claimant's initial deposition testimony, her e-mail correspondence indicating that she was not working under a contract while in Iraq, her lack of the requisite security clearance to work on a government contract, and her timesheets which charged her work to the Young Group and employer's corporate overhead accounts and not to a government contract, the administrative law judge concluded that there is no evidence, aside from claimant's own testimony, to substantiate her claim that she worked on a government contract while in Iraq. Consequently, the administrative law judge concluded that claimant is not covered under Section 1(a)(4) of the DBA.

It is well established that the administrative law judge is entitled to evaluate the credibility of all witnesses and to draw her own inferences from the evidence. *See Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961). In her decision, the administrative law judge rationally credited the hearing and deposition testimony of Mssrs. Young, DeCort and Rodakowski in determining that claimant did not perform work under a contract with the United States during her period of employment in Iraq. Specifically, Mssrs. Young and DeCort testified that claimant went to Iraq to work on developing business opportunities, and not to work with any existing contracts, *see* EX 28 at 1695; Tr. at 296 – 318, while Mr. Rodakowki testified that claimant unsuccessfully sought to have the Young Group obtain a subcontract from his Dube Group, and that claimant did not work for the Dube Group on the DGS and Task Order 20 contracts. EX 27 at 1560 – 1589; EX 29 at 1807 – 1811, 1818 – 1821, 1863. Additionally, the administrative law judge found this testimony to be supported by claimant's not having received the security clearance necessary to work on a government contract while in Iraq, the e-mails sent by claimant to employer regarding her employment in Iraq, claimant's billing records, and claimant's deposition testimony regarding her employment duties in Iraq. As the administrative law judge fully addressed the evidence on this issue, and as claimant has not established error in this regard, we affirm the administrative law judge's finding that claimant did not work under a government contract while in Iraq.[10] Thus, as claimant did not establish that her employment is covered under the DBA, we affirm the denial of benefits.

[10]In view of this decision, employer's Motion to Strike Excerpts of Petition for Review is denied.

Accordingly, the administrative law judge's Decision and Order Denying Claim, Order Denying Motion for Reconsideration, Order Denying Second Motion for Reconsideration, and Order Denying Third Motion for Reconsideration are affirmed.

SO ORDERED.

_____
NANCY S. DOLDER, Chief
Administrative Appeals Judge

_____
ROY P. SMITH
Administrative Appeals Judge

_____
BETTY JEAN HALL
Administrative Appeals Judge