UNITED STATES DEPARTMENT OF LABOR
BENEFITS REVIEW BOARD

MARIA JORDAN, **Claimant-Petitioner,** **v.** **DYNCORP INTERNATIONAL LLC,** **and** **CONTINENTAL CASUALTY COMPANY,** **Employer/Carrier-Respondents.**	**BRB No. 2018-0128** **OALJ Case No. 2015-LDA-0030** **OWCP No. 02-233683**

EMPLOYER DYNCORP INTERNATIONAL LLC'S MEMORANDUM OF LAW IN OPPOSITION TO PETITIONER'S MOTION FOR RELEASE OF [PRIVILEGED] EMAILS TO CLAIMANT

Employer DynCorp International LLC ("DI" or "Company") respectfully submits this Memorandum of Law in Opposition to Petitioner's Motion for Release of [Privileged] Emails to Claimant ("Motion") dated January 2, 2018, which the Company received January 5, 2018.

I. INTRODUCTION

On September 3, 2015, Maria Jordan ("Claimant" or "Ms. Jordan") filed her Motion to Compel Production of Emails and for Sanctions ("Motion to Compel") which, in relevant part, challenged DI's assertion of privilege over two emails within a single email chain. Administrative Law Judge Larry S. Merck ("ALJ Merck") subsequently ordered DI to produce the email chain for *in camera* inspection, which the Company did on October 28, 2015. On February 9, 2016, ALJ Merck denied Ms. Jordan's Motion to Compel based on his finding that the at-issue emails are protected from disclosure by the attorney-client privilege. (See *Order Denying Claimant's Motion to Compel Production of Emails over which Employer has Asserted Attorney-Client Privilege and Order Denying Claimant's Motion for Sanctions* dated February 9,

February 9 Order at 5-6. Next, in opposing Claimant's Motion to Compel, DI established that the privileged portion of the email thread concerned the status of confidential operations issues related to the Company's Worldwide Protective Services ("WPS") Program contract (Element I – *confidential communication*). See February 9 Order at 6. DI further established that the privileged portions of the email thread were transmitted to Christopher Bellomy, Esq., an in-house contract lawyer for DI, along with other DI employees who were responsible for the administration and management of the WPS contract (Element II – *transmitted to a lawyer*). See February 9 Order at 6-7. In addition, DI established that the privileged portion of the email thread, which contains an express request for legal advice, was transmitted to Mr. Bellomy, Esq. to apprise him (and other DI employees with responsibility for the administration and management of the WPS contract) of developments potentially impacting the WPS contract. See February 9 Order at 6-7 (Element III – *seek legal opinion or services*). Thus, DI satisfied its burden of proving that certain portions of the email thread are privileged.

Indeed, ALJ Merck agreed and, in denying Claimant's Motion to Compel, ALJ Merck correctly applied the law and properly concluded as follows:

> In this case, [DI's] management-level employees expressly sought legal advice from [DI's] in-house counsel, and the statements themselves were confidential between employees and the attorney at the time they were made. These emails were received by the in-house counsel and a select group of upper-level employees, and there has been no evidence submitted to this Court that these communications were not kept confidential.

See February 9 Order at 8. Claimant has not established that ALJ Merck abused his discretion and, therefore, her Motion should be denied in its entirety. In addition, the Board should affirm all of ALJ Merck's Orders related to his treatment and resolution of the privileged emails.

B. Claimant's Request for the Board to Release to Her the Privilege Emails Is Without Merit.

Claimant next requests, pursuant to 5 U.S.C. § 556(e), that Board release the privileged

Order at 6. It is well-established that "[t]he submission of documents for judicially-compelled in camera review comports with the principles underlying privilege; that submission itself does not waive privilege." Jordan, 2017 WL 3382057, at *11. On these facts, DI did not waive privilege.

III. CONCLUSION

For the foregoing reasons, DynCorp International LLC respectfully requests that the Board deny Petitioner's Motion in its entirety.

Respectfully submitted,

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