U.S. Department of Labor

Benefits Review Board
P.O. Box 37601
Washington, DC 20013-7601

BRB No. 15-0174

DAVID A. PERRON	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	DATE ISSUED: Nov. 17, 2015
HUNTINGTON INGALLS INDUSTRIES, INCORPORATED	)	
	)	
	)	
Self-Insured Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Dana Rosen, Administrative Law Judge, United States Department of Labor.

Gregory E. Camden (Montagna Klein Camden, LLP), Norfolk, Virginia, for claimant.

Benjamin M. Mason (Mason, Mason, Walker & Hedrick, P.C.), Newport News, Virginia, for self-insured employer.

Before: BUZZARD, GILLIGAN and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (2014-LHC-00501) of Administrative Law Judge Dana Rosen 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 Act). We must affirm the administrative law judge's findings of fact and conclusions of law if they are rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant, a crane operator, has qualifications as a "radiation worker." This requires that claimant undergo a physical examination at employer's clinic every year; every other year, a rectal examination is required. Tr. at 15, 33. On January 7, 2013,

claimant underwent a rectal examination by Nurse-Practitioner Kathryn Stansbury. CX 5. Claimant found the examination to be painful and he sought outside medical attention four days later. CX 7. Claimant's pain resolved by January 25, 2013. CX 8 at 2. However, on April 23, 2013, claimant was diagnosed with acute bacterial prostatitis. CX 8 at 3. This infection cleared up by the end of May 2013 after a course of antibiotics. Tr. at 20-21. Claimant also began psychological counseling in February 2013; he reported that he was "traumatized, humiliated and embarrassed" by the January 7 examination. CX 6. Claimant was diagnosed with a stress disorder by William Walters and Sheila Gordon, both of whom are licensed psychological counselors. CXs 6, 9.[1] Claimant filed a claim under the Act for medical benefits, alleging that the January 7 examination resulted in acute bacterial prostatitis and post-traumatic stress disorder (PTSD). 33 U.S.C. §907(a). Employer controverted the claim. CX 4.

The administrative law judge found that claimant established a prima facie case with respect to both injuries and that Section 20(a) applies to presume that claimant's prostatitis and PTSD are related to the January 7 examination. 33 U.S.C. §920(a); Decision and Order at 18-19. The administrative law judge, however, found that employer rebutted the presumption and, on weighing the record as a whole, that claimant failed to establish the work-relatedness of these conditions. Accordingly, the administrative law judge denied the claim for medical benefits. Claimant appeals, and employer responds, urging affirmance. Claimant filed a reply brief.

Claimant first contends that the administrative law judge erred in finding that employer rebutted the Section 20(a) presumption that his prostatitis was work-related. Once the Section 20(a) presumption is invoked, as here, the burden shifts to the employer to rebut the presumption with substantial evidence that the claimant's condition was not caused, contributed to or aggravated by his employment. *See Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997). The employer's burden is one of production, not persuasion. The employer need produce only "as much relevant factual matter as a reasonable mind would need to accept, as one rational conclusion" that claimant's condition was not caused or aggravated by the work incident. *Newport News Shipbuilding & Dry Dock Co. v. Holiday*, 591 F.3d 219, 226, 43 BRBS 67, 69(CRT) (4th Cir. 2009). If the administrative law judge finds that the Section 20(a) presumption is rebutted, it drops from the case, and she must weigh the relevant evidence and resolve the causation issue based on the record as a whole, with claimant bearing the burden of persuasion. *Moore*, 126 F.3d at 262-263, 31 BRBS at 123(CRT); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994).

[1] Ms. Gordon also identified other, non-work-related bases for claimant's stress and anxiety. CX 9.

In finding the Section 20(a) presumption rebutted with respect to the acute prostatitis, claimant asserts the administrative law judge failed to address Nurse Stansbury's testimony that a rectal examination could aggravate preexisting bacterial prostatitis. Cl. Br. at 13. We disagree. The administrative law judge accurately summarized Nurse Stansbury's testimony. *See* Decision and Order at 14. Nurse Stansbury stated that prostatitis, a bacterial infection, cannot be caused by a manual examination. CX 11 at 16. Thus, the record contains substantial evidence rebutting the direct relationship between the examination and the prostatitis. With regard to whether the exam aggravated a preexisting condition, the administrative law judge observed that claimant was not diagnosed with prostatitis until April 23, 2013; Nurse Stansbury testified that prostatitis inflames the prostate and the examination would have elicited tenderness if claimant's prostate had been inflamed, but it did not; and, Dr. Novosel, who performed an endoscopic examination on January 11, 2013, saw "no obvious infections." Decision and Order at 20; CXs 7, 11 at 22-23. As this evidence "casts doubt on a causative link" between claimant's January 7 examination and his prostatitis, the administrative law judge properly found employer rebutted the presumption with respect to this injury. *Moore*, 126 F.3d at 263, 31 BRBS at 123(CRT); *see Holiday*, 591 F.3d 219, 226, 43 BRBS at 69(CRT); *Coffey v. Marine Terminals Corp.*, 34 BRBS 85 (2000). Further, as the record contains no medical evidence linking claimant's acute prostatitis to his January 7 examination, we affirm the administrative law judge's finding that the record as a whole does not establish that claimant's prostatitis arose from his employment examination. *See Lennon v. Waterfront Transport*, 20 F.3d 658, 28 BRBS 22(CRT) (5th Cir. 1994). Therefore, we affirm the administrative law judge's finding that claimant is not entitled to medical benefits for this condition. 33 U.S.C. §907(a); *Rochester v. George Washington University*, 30 BRBS 233 (1997).

Claimant next contends that the administrative law judge erred in finding, based on the record as a whole, that claimant does not have work-related PTSD.[2] Specifically, claimant asserts that the administrative law judge erred in crediting the opinion of Dr. Sautter, over that of claimant's treating physician, Dr. Dixon, and counselors, Mr. Walters and Ms. Gordon.[3] Claimant also challenges the administrative law judge's finding that his testimony is unreliable.

[2] Claimant does not challenge the administrative law judge's finding that employer rebutted the Section 20(a) presumption on this claim with the opinion of Dr. Sautter. EX 2.

[3] Mr. Walters is a Licensed Professional Counselor and Licensed Marriage and Family Therapist. CX 6. Ms. Gordon is a Licensed Clinical Social Worker. CX 10. Dr. Sautter has a Ph.D. in Clinical Psychology and is certified by the American Board of Neuropsychology. EX 3. Dr. Dixon is an internist. CX 8.

We reject claimant's assertion that the administrative law judge erred in finding that his testimony concerning his continued physical and psychological reaction to the January 7 examination cannot be credited. The administrative law judge is entitled to evaluate the credibility of all witnesses, and her credibility determinations must be affirmed unless they are "inherently incredible or patently unreasonable." *Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 1335, 8 BRBS 744, 747 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). The administrative law judge thoroughly discussed claimant's testimony and provided rational reasons for discounting claimant's subjective physical and psychological complaints which he related to the January 7 examination.[4] Decision and Order at 22-24. Claimant concedes the inconsistencies in the record, but argues that they do not negate his reports that the January 7 examination traumatized him psychologically. Although the administrative law judge could have drawn other inferences from the record, we are not empowered to reweigh the evidence, but must respect the administrative law judge's rational findings and inferences. *Newport News Shipbuilding & Dry Dock Co. v. Director, OWCP [Hess]*, 681 F.2d 938, 14 BRBS 1004 (4th Cir. 1982). As the administrative law judge gave rational reasons for finding claimant's subjective complaints to be suspect, we reject claimant's contention of error in this regard. *Cordero*, 580 F.2d 1331, 8 BRBS 744; *cf. Pietrunti v. Director, OWCP*, 119 F.3d 1035, 31 BRBS 84(CRT) (2d Cir. 1997) (administrative law judge may not reject uncontradicted opinions of psychiatrists on the ground that they relied on claimant's subjective complaints).

With respect to the medical opinion evidence, the administrative law judge found Dr. Sautter's opinion to be entitled to the greatest weight due to his superior qualifications and because, unlike Dr. Dixon, Mr. Walters and Ms. Gordon, Dr. Sautter

[4] The administrative law judge provided three reasons for finding claimant's complaints and testimony inconsistent and unsupported. First, she found claimant's reports of experiencing rectal pain during the June 2014 hearing inconsistent with Dr. Dixon's report on January 25, 2013, that claimant's rectal pain had resolved, as well as claimant's and Dr. Dixon's reports that claimant's prostatitis, diagnosed on April 23, 2013, had resolved in May 2013. Decision and Order at 23; CX 8 at 2, 6-7, 13; Tr. at 20. Second, the administrative law judge found claimant's testimony regarding the identity of the nurse who performed his 2013 and 2014 examinations to be inconsistent. Decision and Order at 23-24. Although claimant stated he would never forget the nurse who performed the 2013 examination, and although Nurse Stansbury performed both the 2013 and 2014 examinations and testified that her appearance did not change, claimant described the 2013 and 2014 nurses as looking "entirely different." CX 11 at 14; EX 5; Tr. at 33-35. Third, the administrative law judge found claimant's testimony regarding the details of the January 2013 examination internally inconsistent, as well as inconsistent with the testimony of Nurse Stansbury. Decision and Order at 24; Tr. at 16, 21-22.

explained the basis for his opinion. *See* Decision and Order at 22. Dr. Sautter reviewed claimant's physical and mental health records. EXs 1, 2. Dr. Sautter explained that the criteria for diagnosing PTSD using the DSM-IV include the criteria that claimant show "intense fear, helplessness or horror" as result of experiencing or witnessing threatened death, serious injury or threat to his physical integrity. The criteria under the DSM-V include the requirement that "the person has been exposed to: death, threatened death, actual or threatened serious injury, actual or threatened sexual violence." Dr. Sautter stated that claimant did not meet the criteria for a PTSD diagnosis under either version of the DSM based on his report that a routine rectal examination was "traumatizing, humiliating and embarrassing."[5] EX 2 at E-F. Moreover, Dr. Sautter stated that the records he reviewed did not provide any "objective empirically derived diagnostic work-up" and that the PTSD diagnosis appeared to be made "by self-report from the Claimant to his therapist." EX 2 at F. Thus, Dr. Sautter concluded that claimant does not have PTSD due to the January 7 examination. *Id.*

In contrast to Dr. Sautter's opinion, the administrative law judge found that Dr. Dixon and Ms. Gordon did not explain how they reached a diagnosis of PTSD, and that Mr. Walter did not diagnosis PTSD. Claimant reported PTSD to Dr. Dixon, for which Dr. Dixon prescribed medication and recommended therapy; Dr. Dixon did not explain how he arrived at the conclusion that claimant has a "PTSD checklist [] score of 40." CX 8 at 10. At her initial evaluation of claimant on July 1, 2013, in addition to discussing claimant's other mental health concerns, Ms. Gordon diagnosed "Axis I: 309.81 PTSD." CX 9 at 15. The administrative law judge found this diagnosis unexplained. Decision and Order at 22. Mr. Walters diagnosed acute stress disorder rather than PTSD, and the administrative law judge found he provided only a summary of his treatment of claimant rather than treatment notes "providing history, symptoms, and complaints." *Id.*; CX 6.

We affirm the administrative law judge's weighing of the medical evidence. The decision to accord greatest weight to the better reasoned opinion of the better credentialed professional is rational and within the administrative law judge's discretion as the fact-finder. *See Consolidation Coal Co. v. Borda*, 171 F.3d 175 (4th Cir. 1999). Claimant's identification of evidence favorable to his claim does not demonstrate error in the administrative law judge's weighing of the evidence. *See generally Newport News Shipbuilding & Dry Dock Co. v. Winn*, 326 F.3d 427, 37 BRBS 29(CRT) (4th Cir. 2003). Moreover, contrary to claimant's contention, the decision in *Amos v. Director, OWCP*, 153 F.3d 1051 (9th Cir. 1998), *amended*, 164 F.3d 480, 32 BRBS 144(CRT) (9th Cir. 1999), *cert. denied*, 528 U.S. 809 (1999), does not require the administrative law judge to

[5] Although claimant asserts that the DSM-V criteria support a diagnosis of PTSD "regardless" of what triggered his trauma, Dr. Sautter's summary and application of the DSM-V criteria are uncontradicted by the record. Cl. Br. at 14-15.

accept the diagnosis of claimant's treating physicians in the face of conflicting, better reasoned, evidence.[6] *Hice v. Director, OWCP*, 48 F.Supp.2d 501 (D. Md. 1999). Therefore, as it is rational and supported by substantial evidence, we affirm the administrative law judge's finding that claimant did not establish by a preponderance of the evidence that he suffers from PTSD as a result of the January 7, 2013 examination. *Id.* Thus, we affirm the denial of medical benefits for this condition. *Rochester*, 30 BRBS 233.

Accordingly, the administrative law judge's Decision and Order Denying Benefits is affirmed.

SO ORDERED.

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GREG J. BUZZARD
Administrative Appeals Judge

_____
RYAN GILLIGAN
Administrative Appeals Judge

_____
JONATHAN ROLFE
Administrative Appeals Judge

[6] In *Amos*, the United States Court of Appeals for the Ninth Circuit considered the weight to be assigned to a treating physician's opinion where a claimant was presented with two valid treatment options. The court stated that the claimant, in consultation with his own doctor, has the right to choose his own course of treatment. The administrative law judge may not find that the course chosen by claimant is unreasonable or unwarranted if no doctor so states.