U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

BRB Nos. 19-0475
and 19-0475A

LABINKA HOWARD	)	
	)	
Claimant-Petitioner	)	
Cross-Respondent	)	
	)	
v.	)	
	)	
DYNCORP INTERNATIONAL	)	
	)	DATE ISSUED: 04/28/2020
and	)	
	)	
ALLIED WORLD NATIONAL ASSURANCE COMPANY c/o BROADSPIRE	)	
	)	
Employer/Carrier-Respondents	)	
Cross-Petitioners	)	DECISION and ORDER

Appeals of the Decision and Order of Clement J. Kennington and the Order Granting in Part and Denying in Part Reconsideration of Lee J. Romero, Jr., Administrative Law Judges, United States Department of Labor.

Scott L. Thaler (Grossman Attorneys at Law), Boca Raton, Florida, for claimant.

M. Lane Lowrey and Bobbi Roquemore (Schouest, Bamdas, Soshea & BenMaier, P.L.L.C.), Houston, Texas, for employer/carrier.

Before: BUZZARD, GRESH and JONES, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals, and employer cross-appeals, the Decision and Order (2017-LDA-00632) of Administrative Law Judge Clement J. Kennington and the Order Granting in Part and Denying in Part Reconsideration of Administrative Law Judge Lee J. Romero, Jr., rendered on a claim filed pursuant to the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq*., as extended by the Defense Base Act, 42 U.S.C. §1651 *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, while working for employer as a supply technician/material maintenance specialist in Iraq, sustained dental and alleged orthopedic injuries as a result of a trip and fall accident on May 23, 2016. She sought treatment with the physician's assistant at Camp Taji on May 23 and 27, 2016, who noted she had two damaged teeth, swelling and limited range of motion in her right knee, and pain and tenderness to her mid-sternum area. On May 30, 2016, claimant returned to the United States to seek medical treatment for her injuries. She initially saw her dentist, who resolved her dental problems. Thereafter, she saw multiple physicians for treatment of orthopedic injuries to her right and left shoulders, right knee, and cervical and lumbar spine.

At employer's request, Dr. Dare examined claimant on November 2, 2016. He diagnosed claimant with resolved right shoulder and right knee medial collateral sprains, a history of a cervical sprain with disk bulging at her C5-6 vertebra, and a lumbar sprain. He opined there was no objective evidence supporting a work-related orthopedic source for claimant's complaints of pain, claimant had reached maximum medical improvement with zero impairment, and she could return to work with a 25-pound lifting restriction. Meanwhile, on October 5, 2016, claimant began seeing Dr. Abdrabbo, a psychiatrist, who diagnosed major depressive disorder (MDD) and social anxiety, but found no evidence of post-traumatic stress disorder (PTSD). Claimant also sought psychiatric evaluations from Drs. Jolly, Ravichandran, and Largen,[1] who each diagnosed MDD and PTSD.

Claimant filed a claim under the Act seeking ongoing total disability benefits for work-related physical injuries resulting from her May 23, 2016 accident. She also claimed psychological injuries resulting from her overseas working conditions. Employer voluntarily paid claimant temporary total disability and medical benefits from May 30, 2016 to December 11, 2016. Claimant has not returned to her usual overseas work. She held three stateside, part-time jobs after her work accident, but was not working at the time

[1]Dr. Jolly is a clinical psychologist, Dr. Ravichandran a psychiatrist, and Dr. Largen a clinical neuropsychologist. CXs 14, 16, 18.

of the hearing because she was determined to be disabled by the Social Security Administration (SSA).

Judge Clement J. Kennington (the administrative law judge) found claimant established a prima facie case and invoked the Section 20(a) presumption based on the pain she experienced in her right knee, cervical spine, lumbar spine, and both shoulders after her work fall. 33 U.S.C. §920(a). He also found claimant invoked the Section 20(a) presumption with regard to her psychological injuries based on her overseas working conditions. The administrative law judge further found employer did not rebut the Section 20(a) presumption with respect to claimant's physical or psychological injuries. Nevertheless, he addressed causation by weighing the evidence in the record as a whole and found claimant established her psychological injuries, but not her physical injuries, are work-related. Finding claimant's psychological injuries preclude her from returning to her usual work and employer did not establish the availability of suitable alternate employment, the administrative law judge concluded claimant is totally disabled. Accordingly, he awarded claimant temporary total disability benefits from May 30, 2016, to May 11, 2018, and ongoing permanent total disability benefits from May 11, 2018, as well as medical benefits, for her work-related psychological injuries. On reconsideration, Judge Romero[2] modified the administrative law judge's award to reflect claimant's entitlement to permanent total disability benefits from May 12, 2018, rather than May 11, 2018, but otherwise denied employer's motion for reconsideration.

On appeal, claimant challenges the administrative law judge's finding that her physical injuries are not work-related. BRB No. 19-0475. Employer responds, urging affirmance of the denial of benefits relating to claimant's physical injuries. Claimant filed a reply brief.[3] On cross-appeal, employer challenges the administrative law judge's findings relating to the nature and extent of claimant's psychological injuries. BRB No.

[2]Judge Kennington retired on June 1, 2019, prompting reassignment of the case.

[3]Employer sought permission to file an additional brief to address statements in claimant's reply brief, as well as claimant's interpretation of Dr. Dare's opinion. Claimant filed a motion to strike employer's request, which employer opposed. We deny employer's motion for permission to file an additional brief. We note the contentions employer raises in its motion and opposition to the motion to strike. 20 C.F.R. §802.215.

19-0475A. Claimant responds, urging affirmance of the award of total disability benefits for those injuries. Employer filed a reply brief.

Causation – Orthopedic Injuries

Claimant contends that because the administrative law judge found employer did not rebut the Section 20(a) presumption with respect to her orthopedic injuries, he erred in finding on the record as a whole that these injuries are not related to her work accident. Employer counters, asserting the administrative law judge erroneously invoked the Section 20(a) presumption with regard to claimant's orthopedic conditions and, alternatively, erred in finding it did not present substantial evidence to rebut the presumption. Employer thus maintains the administrative law judge's denial of benefits for claimant's orthopedic injuries should be affirmed.[4]

In order to be entitled to the Section 20(a) presumption, a claimant must establish a prima facie case by showing she suffered a harm and that either a work-related accident occurred or working conditions existed which could have caused the harm. *See Port Cooper/T. Smith Stevedoring Co. v. Hunter*, 227 F.3d 285, 287, 34 BRBS 96, 97(CRT) (5th Cir. 2000). The claimant is not required to prove the accident in fact caused her harm; she need only show the accident *could have caused* her harm. *Id.*

The administrative law judge permissibly relied on claimant's credible complaints of orthopedic pain following her May 23, 2016 work accident and the medical reports of record to find she established the requisite harm element of her prima facie case.[5] *Welch v. Pennzoil Co.*, 23 BRBS 395 (1990); *Harrison v. Todd Pacific Shipyards Corp.*, 21 BRBS

[4]The Board may address employer's contentions because, although raised in a response brief, they provide an alternate avenue of affirming the administrative law judge's finding that claimant's orthopedic conditions are not work-related. *See Misho v. Global Linguist Solutions*, 48 BRBS 13 (2014); *Reed v. Bath Iron Works Corp.*, 38 BRBS 1 (2004).

[5]The administrative law judge accurately found the record establishes claimant's first complaints of pain occurred as follows: right knee pain on May 23, 2016; right shoulder and upper (cervical) spine pain on June 13, 2016; lumbar spine pain on June 20, 2016; and left shoulder pain on August 30, 2016. The administrative law judge also accurately found the record establishes the following diagnoses: (1) right knee - subtle sprain with a subsequent degenerative tear of the meniscus; (2) right and left shoulders - rotator cuff tendinitis and SLAP tear lesions; (3) cervical spine - cervicalgia and cervical neuritis; and (4) lumbar spine - bilateral arthritic changes in the pelvis as well as joint space narrowing at L2-3.

339 (1988); *Sam v. Loffland Bros. Co.*, 19 BRBS 228 (1987). Additionally, he found claimant's statement credible that on May 23, 2016, "she tripped over a metal grate, twisted as she fell, and hit her face on a concrete ledge" because she "did not have time to catch herself with her hands," sufficient to establish that her trip and fall accident could have caused her orthopedic pain. Decision and Order at 67; *see generally Bis Salamis, Inc. v. Director, OWCP* [*Meeks*], 819 F.3d 116, 50 BRBS 29(CRT) (5th Cir. 2016). Consequently, we affirm the administrative law judge's finding that claimant invoked the Section 20(a) presumption as she established physical harms and a work accident that could have caused them. *Hunter*, 227 F.3d 285, 34 BRBS 96(CRT).

Once the claimant establishes a prima facie case, Section 20(a) applies to relate her injuries to her work incident alleged to have caused them, and the employer can rebut this presumption by producing substantial evidence that her injuries are not related to her work incident. *Ceres Gulf, Inc. v. Director, OWCP* [*Plaisance*], 683 F.3d 225, 46 BRBS 25(CRT) (5th Cir. 2012); *Conoco, Inc. v. Director, OWCP*, 194 F.3d 684, 33 BRBS 187(CRT) (5th Cir. 1999). Substantial evidence is defined as "that relevant evidence—more than a scintilla but less than a preponderance—that would cause a reasonable person to accept the fact-finding." *Plaisance*, 683 F.3d at 228, 46 BRBS at 27(CRT). An employer's burden on rebuttal is one of production, not persuasion; thus, the United States Court of Appeals for the Fifth Circuit, within whose jurisdiction this case arises, held that to rebut the Section 20(a) presumption, the employer satisfies its burden by offering substantial evidence that "throws factual doubt" on the claimant's prima facie case. *Id.*, 683 F.3d at 231, 46 BRBS at 29(CRT). If an employer succeeds in rebutting the presumption, it falls out of the case and the claimant bears the burden of showing her injury was caused by her working conditions based on the record as a whole. *Meeks*, 819 F.3d 116, 50 BRBS 29(CRT). If, however, the employer does not present substantial evidence rebutting the presumption, the claimant's conditions are work-related as a matter of law. *See, e.g., Ramsey Scarlett & Co. v. Director, OWCP*, 806 F.3d 327, 49 BRBS 87(CRT) (5th Cir. 2015); *Obadiaru v. ITT Corp.*, 45 BRBS 17 (2011).

The administrative law judge found employer's evidence, Dr. Dare's November 2, 2016 report, insufficient to rebut the Section 20(a) presumption. Dr. Dare diagnosed resolved head trauma, restored dental injury, resolved shoulder sprain, resolved knee sprain, lumbar sprain which "could have" predated claimant's work accident, and "history" of cervical sprain. EX 11 at 2, 3, 23. He found "no particular diagnostic findings" to support claimant's "current subjective complaints of orthopedic pain" or "any objective medical basis" to support a "work-related orthopedic source" for that alleged pain. *Id.* at 4-5. When asked whether claimant's current medications were necessary to treat her orthopedic injuries, Dr. Dare stated he does not "believe that anything are [sic] related to" her work accident. *Id.* He concluded, however, that claimant's "orthopedic treatment to date has been reasonable and necessary and that the treatment has been related to her work

for employer." *Id.* The administrative law judge found that although Dr. Dare "appears" to state claimant's conditions are unrelated to her fall, he nevertheless opined that claimant's treatment of those injuries up to that date was necessary and related to her work injury. Decision and Order at 73; *see* EX 11. The administrative law judge, therefore, rationally concluded Dr. Dare's report fails to rebut the Section 20(a) presumption because it is "internally inconsistent," Decision and Order at 73, and it pre-dates claimant's ongoing treatment for her various conditions.

Furthermore, employer's contention that the administrative law judge erroneously weighed conflicting evidence in rejecting Dr. Dare's report at rebuttal is without merit. The administrative law judge permissibly found Dr. Dare's opinion flawed because it is not supported by his underlying reasoning and does not address the subsequent medical diagnoses. Thus, we affirm the administrative law judge's finding employer did not rebut the Section 20(a) presumption as rational and supported by substantial evidence. *Ramsey Scarlett*, 806 F.3d at 333, 49 BRBS at 89(CRT).

As the administrative law judge's findings that the Section 20(a) presumption was invoked and was not rebutted are supported by substantial evidence, we hold the administrative law judge erred in addressing causation on the record as a whole because claimant's orthopedic conditions are work-related as a matter of law. *See generally Louisiana Ins. Guar. Ass'n v. Bunol*, 211 F.3d 294, 34 BRBS 29(CRT) (5th Cir. 2000); *Obadiaru*, 45 BRBS 17. We therefore reverse the administrative law judge's denial of compensability of the claim for claimant's physical injuries. Decision and Order at 77. Employer is liable for reasonable and necessary medical care for claimant's work-related orthopedic injuries. 33 U.S.C. §907(a); *R.C.* [*Carter*] *v. Caleb Brett, LLC*, 43 BRBS 75 (2009); 20 C.F.R. §702.402. However, claimant is not entitled to disability compensation for her orthopedic injuries, as she does not contest the administrative law judge's conclusion that she is not disabled by those conditions. *Scalio v. Ceres Marine Terminals, Inc.*, 41 BRBS 57 (2007).

Onset Date – Psychological Disability

Employer contends the administrative law judge erred in awarding claimant temporary total disability benefits for her psychological injuries beginning on May 30,

2016, because there is no evidence she was unable to work due to her psychological condition until April 12, 2017.

It is a claimant's burden to establish her inability to return to her usual work due to her work injury.[6] *P&M Crane Co. v. Hayes*, 930 F.2d 424, 24 BRBS 116(CRT) (5th Cir. 1991); *New Orleans (Gulfwide) Stevedores v. Turner*, 661 F.2d 1031, 14 BRBS 156 (5th Cir. 1981). If the claimant is unable to work at all, she is totally disabled. *J.R.* [*Rodriguez*] *v. Bollinger Shipyard, Inc.*, 42 BRBS 95 (2008), *aff'd sub nom. Bollinger Shipyards, Inc. v. Director, OWCP*, 604 F.3d 864, 44 BRBS 19(CRT) (5th Cir. 2010). If she is unable to return to her usual work overseas due to her injury, she is totally disabled unless her employer establishes the availability of suitable alternate employment. *Service Employees Int'l, Inc. v. Director, OWCP [Barrios]*, 595 F.3d 447, 44 BRBS 1(CRT) (2d Cir. 2010); *Rice v. Service Employees Int'l, Inc.*, 44 BRBS 63 (2010).

The administrative law judge awarded claimant temporary total disability benefits commencing May 30, 2016, for the work-related aggravation of her pre-existing psychological injuries. Decision and Order at 92. On reconsideration, Judge Romero addressed at length employer's contention that claimant is not entitled to benefits for her psychological injury until April 12, 2017, the date a physician first imposed work restrictions due to those injuries. He found claimant's testimony and contemporaneous statements to her physicians established she had pre-existing psychological conditions, specifically anxiety, PTSD, and depression since 2009 or 2010, and her overseas work with employer through May 30, 2016, aggravated these pre-existing conditions, so she was totally disabled from returning to her former employment as a result of her psychological conditions as of that date. Order on Recon. at 14-18. Judge Romero thus found the administrative law judge did not err by determining claimant's temporary total disability benefits commenced on May 30, 2016, the date she left her overseas employment. *Id.* at 17.

Claimant testified she had pre-existing mental health conditions, but did not have many symptoms prior to the start of her second overseas tour in September 2015. HT at 72, 115. She stated her psychological symptoms became "a lot worse" as a result of her work for employer and began "pretty soon after" her return to the United States in May 2016. *Id.* at 139. She first sought treatment in October 2016 with Dr. Abdrabbo. *Id.* at 70. As Judge Romero found, claimant's testimony is supported by the opinions of Dr. Jolly,

[6]We affirm the administrative law judge's finding that claimant's psychological conditions are work-related as it is unchallenged on appeal. *Scalio v. Ceres Marine Terminals, Inc.*, 41 BRBS 57 (2007).

Dr. Ravichandran, Dr. Largen and Ms. Bloodworth,[7] that claimant's psychological injuries are related to and were aggravated by her experiences in her overseas work. Order on Recon. at 14-18; CX 14 at 4; CX 16; CX 17 at 1-2; CX 18 at 7. The administrative law judge was entitled to infer from this evidence that claimant's psychological condition prevented her from returning to her usual work as of May 30, 2016. *See generally Meeks*, 819 F.3d 116, 50 BRBS 29(CRT); *Pimpinella v. Universal Maritime Serv., Inc.*, 27 BRBS 154 (1993). Substantial evidence therefore supports the administrative law judge's finding claimant incapable of returning to her usual work with employer due to her psychological injuries as of May 30, 2016, and conclusion that claimant's total disability benefits commence from that date. *Rodriguez*, 42 BRBS 95; *see also generally Barrios*, 595 F.3d 447, 44 BRBS 1(CRT); *Rice*, 44 BRBS 63. Thus, we reject employer's contentions that this case is materially distinguishable from *Abdelmeged v. Global Linguist Solutions, LLC*, BRB No. 17-0001 (Aug. 14, 2017) (unpub.), *aff'd*, 913 F.3d 921, 52 BRBS 53(CRT) (9th Cir. 2019). In *Abdelmeged*, the finding of disability as of the date the claimant left overseas work was based on an explicit medical opinion indicating the claimant's inability to work since returning from her overseas employment. Here, the administrative law judge's finding is based on a reasonable, permissible inference drawn from both claimant's testimony and the medical evidence. We affirm the administrative law judge's finding claimant's entitlement to total disability benefits commenced on May 30, 2016. *Id.*

Suitable Alternate Employment

Employer next contends, contrary to the administrative law judge's findings, the parties' stipulation that claimant worked from June 12 to July 14, 2017, at PPG Software Specialists (PPG), from June 18 to October 9, 2017, at Concentrix, and from October 19, 2017, to January 16, 2018, at AR Sunrise, along with evidence of her earnings in those jobs is substantial evidence such work is suitable alternate employment. Employer thus contends the administrative law judge should have awarded claimant temporary partial rather than temporary total disability benefits from June 12, 2017, through January 16, 2018. In addition, employer contends it carried its burden to establish ongoing suitable alternate employment with evidence of claimant's successful performance of her job at AR Sunrise and her own testimony that she could return to that job "at any time."

Where, as in this case, a claimant establishes her inability to return to her usual work with her employer as a result of her work-related injury, the burden shifts to her employer to establish the availability of jobs within the geographic area where the claimant resides, which she is capable of performing considering her age, education, work experience, and

[7]Ms. Bloodworth is a Licensed Marriage and Family Therapist Associate with a Master's Degree in Psychology. CX 17.

physical restrictions, and which she could secure if she diligently tried. *See Turner*, 661 F.2d 1031, 14 BRBS 156. The employer may satisfy its burden by showing the claimant is actually working within her work restrictions. *Ezell v. Direct Labor, Inc.*, 33 BRBS 19 (1999). However, in order to establish the claimant is not totally disabled, the employer must show that any short-term post-injury job remains suitable and available. *See generally Carter v. General Elevator Co.*, 14 BRBS 90, 97 (1981). Where the claimant obtains a job after sustaining an injury, a finding of total disability during the period of employment may be made only if she works through extraordinary effort or is provided a position through beneficence. *See Everett v. Newport News Shipbuilding & Dry Dock Co.*, 23 BRBS 316 (1989); *see also Argonaut Ins. Co. v. Patterson*, 846 F.2d 715, 21 BRBS 51(CRT) (11th Cir. 1988). An award of total disability while the claimant is working is the exception rather than the rule. *Carter*, 14 BRBS at 97.

Employer's contentions require us to address two issues. First, are the post-injury jobs claimant held sufficient to meet employer's burden to show the ongoing availability of suitable alternate employment? Second, is claimant entitled to total disability benefits during these periods of post-injury employment?

On the first issue, the administrative law judge found claimant's actual post-injury jobs did not constitute suitable alternate employment because the record lacked evidence necessary for him to perform a comparative analysis between claimant's psychological limitations and the requirements of those jobs. Although the administrative law judge acknowledged the work restrictions Drs. Abdrabbo and Ravichandran imposed,[8] *see* Decision and Order at 84-85, he did not address them in finding claimant's post-injury employment insufficient to meet employer's burden. Nevertheless, in considering employer's motion for reconsideration, Judge Romero sufficiently considered these jobs and their requirements.

Specifically, Judge Romero found claimant quit PPG because it was too stressful, and she left Concentrix because she was overwhelmed by irate customers. Order on Recon. at 11. He also found that although part-time work may be sufficient to establish the availability of suitable alternate employment, the jobs claimant held were for contracted terms. Thus, Judge Romero found employer offered no evidence the three positions were anything but temporary, short-term, "sporadic job opportunities." Order on Recon. at 11-

[8]Dr. Abdrabbo opined, on April 12, 2017, from a psychological standpoint, claimant is capable of working 2-3 hours per day in a light-duty situation until her symptoms improve, and suggested she may try working 2-3 hours per day from home. CX 13 at 34. Dr. Ravichandran opined, on February 23, 2018, that claimant is totally disabled due to her psychological conditions. EX 16 at 8-10.

12. He rejected employer's argument that claimant could return to her AR Sunrise job at any time and concluded none of the jobs provided her any lasting wage-earning opportunities and "do not rise to the level of actual on-going suitable alternate employment." *Id.* Judge Romero also noted that as of February 23, 2018, Dr. Ravichandran opined claimant is totally disabled due to her psychological conditions. *See Rodriguez*, 42 BRBS 95; EX 16 at 8-10. He concluded employer is unable to rely on claimant's three post-injury employment positions as evidence of ongoing suitable alternate employment. Moreover, because employer did not offer any other evidence of suitable alternate employment, Judge Romero concluded the administrative law judge did not err in finding employer failed to meet its burden of establishing the reasonable availability of suitable jobs. We affirm Judge Romero's conclusion that employer did not establish the ongoing availability of suitable alternate employment as it is supported by substantial evidence and in accordance with law. *Carter*, 14 BRBS at 97; *see also Edwards v. Director, OWCP*, 999 F.2d 1374, 27 BRBS 81(CRT) (9th Cir. 1993), *cert. denied*, 511 U.S. 1031 (1994) (short-lived employment did not establish that suitable alternate employment was realistically and regularly available on the open market); *Mendez v. Nat'l Steel & Shipbuilding Co.*, 21 BRBS 22 (1988).

As for the second issue, there is no dispute claimant performed each of these three jobs for a specific period of time. HT at 77; EX 16, Dep. at 23; EX 8; *see also* Decision and Order at 3 (Joint Stipulation claimant "engaged in alternative employment"). On reconsideration, Judge Romero found that while claimant's testimony indicates her PPG and Concentrix jobs were an "ill fit" for her given her psychological diagnoses,[9] he found there is no compelling evidence claimant worked in those jobs, or the AR Sunrise job, "in spite of excruciating pain or only through extraordinary effort that rises to the levels" generally required for an award of total disability while working. Order on Recon. at 11; *Everett*, 23 BRBS at 319; *Carter*, 14 BRBS at 97. Given Judge Romero's explicitly finding no evidence shows claimant worked the jobs in spite of excruciating pain or only through extraordinary effort, we vacate his award of total disability benefits for the post-injury periods claimant actually worked in alternate employment. We remand the case for him to address claimant's entitlement to temporary partial disability benefits for those specific periods of time by comparing her average weekly wage and her adjusted post-injury wage-earning capacity in that employment. 33 U.S.C. §908(e), (h); *see Penrod Drilling Co. v.*

[9]Judge Romero acknowledged claimant had trouble concentrating in her job at AR Sunrise but did not specifically determine whether it, too, was an "ill fit" in light of her psychological condition. Order on Recon. at 5.

Johnson, 905 F.2d 84, 23 BRBS 108(CRT) (5th Cir. 1990); *Bass v. Broadway Maintenance*, 28 BRBS 11 (1994).

Permanence – Psychological Injury

Employer further contends the administrative law judge erred in finding claimant's psychological injury reached maximum medical improvement based on Dr. Ravichandran's opinion. Employer asserts one of Dr. Ravichandran's two letters dated May 11, 2018, in which he referenced claimant's SSA claim, indicates he based his opinion on SSA disability standards. Employer therefore contends the case should be remanded for further findings on the permanence of claimant's disability because evidence from an SSA disability claim is "relevant but not dispositive" under the Act.

A claimant has reached maximum medical improvement when she is no longer undergoing treatment with a view toward improving her condition, or her condition is of lasting and indefinite duration and beyond a normal healing period. *See Gulf Best Electric, Inc. v. Methe*, 396 F.3d 601, 38 BRBS 99(CRT) (5th Cir. 2004); *Louisiana Ins. Guaranty Ass'n v. Abbott*, 40 F.3d 122, 29 BRBS 22(CRT) (5th Cir. 1994); *Watson v. Gulf Stevedore Corp.*, 400 F.2d 649 (5th Cir. 1968), *cert. denied*, 394 U.S. 976 (1969). The record contains Dr. Ravichandran's treatment records, consisting of his initial evaluation of claimant on January 25, 2018, a work capacity evaluation form dated February 23, 2018, declaring claimant totally disabled, monthly progress notes dated February 23, 2018, March 22, 2018, and April 20, 2018, and two "to whom it may concern" letters dated May 11, 2018, stating claimant remains totally disabled. CX 16. The administrative law judge's decision accurately reflects that in his second letter Dr. Ravichandran opined: claimant "is totally and *permanently* disabled and cannot work in any occupation. Her disability is expected to last more than 12 months." *Id.* (emphasis added). That letter concludes with his statement, "[k]indly assist her with [the] Social Security Disability application process." *Id.* This second letter is the only record evidence addressing the permanence of claimant's psychological condition.

We reject employer's contention that the administrative law judge erred in relying on Dr. Ravichandran's opinion to find claimant's psychological condition is permanent. Employer does not substantiate, with evidence or legal analysis, its assertion that Dr. Ravichandran applied SSA disability standards in reaching his conclusion that claimant is "totally and permanently disabled." Moreover, Dr. Ravichandran's opinion that claimant is "permanently disabled" and "her disability is expected to last more than 12 months" reflects her psychological conditions are of a lasting and indefinite duration, beyond a

normal healing period, and thus evidence of permanence under the Act.[10] *See generally McCaskie v. Aalborg Ciserv Norfolk, Inc.*, 34 BRBS 9 (2000). As the permanent disability diagnosis of Dr. Ravichandran constitutes substantial evidence supporting the administrative law judge's finding that claimant's psychological conditions became permanent on May 11, 2018, we affirm the finding. *Abbott*, 40 F.3d at 126, 29 BRBS at 24-25(CRT); s*ee generally Misho v. Global Linguist Solutions*, 48 BRBS 13 (2014); *Beumer v. Navy Personnel Command/MWR*, 39 BRBS 98 (2005); *Ezell*, 33 BRBS 19.

In sum, we affirm the administrative law judge's findings that claimant is entitled to the Section 20(a) presumption that her orthopedic conditions are work-related and employer did not establish rebuttal of the presumption. Claimant's orthopedic conditions are work-related as a matter of law. We further affirm the findings that claimant's entitlement to total disability benefits commenced May 30, 2016, her psychological conditions became permanent on May 11, 2018, and the short-term jobs she held did not constitute ongoing suitable alternate employment. We vacate, however, the finding that claimant is entitled to temporary total disability benefits for the periods of her short-term employment and remand the case for consideration of claimant's entitlement to temporary partial disability benefits during that time.

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

[10]Even had employer substantiated its claim that Dr. Ravichandran's letter is an "SSA record," it concedes such evidence is nevertheless relevant to this claim.