U.S. Department of Labor

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

BRB No. 22-0216

JAIME DAVID TENORIO RODRIGUEZ	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
SOC, LLC; TRIPLE CANOPY, INCORPORATED	)	
	)	
	)	DATE ISSUED: 4/14/2023
and	)	
	)	
CONTINENTAL INSURANCE COMPANY	)	
	)	
Employers/Carrier-Respondents	)	
	)	
	)	DECISION and ORDER

Appeal of Decision and Order on the Record Denying Claim of Christopher Larsen, Administrative Law Judge, United States Department of Labor.

Jaime David Tenorio Rodriguez, East Windsor, New Jersey.

Michelle K. Dougherty and Christian A. Rivera Santos (Brown Sims), Houston, Texas, for Employers/Carrier.

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

PER CURIAM:

Claimant, without representation, appeals Administrative Law Judge (ALJ) Christopher Larsen's Decision and Order on the Record Denying Claim (2020-LDA-01869; 2021-LDA-00453) rendered on claims filed pursuant to the Longshore and Harbor

Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (Act), as extended by the Defense Base Act, 42 U.S.C. §1651 *et seq*. (DBA). On appeal, Claimant generally challenges the ALJ's denial of benefits, therefore, the Benefits Review Board will review the findings adverse to him and address whether substantial evidence supports the Decision and Order below. *See Pierce v. Elec. Boat Corp.*, 54 BRBS 27 (2020); 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965) (Board must affirm the Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law).

Claimant, a Peruvian national living in the United States, worked as a security guard for Employer Triple Canopy, Incorporated (Triple Canopy) in Iraq from 2008 until 2011 and subsequently worked for Employer SOC, LLC (SOC) in Jordan for four months in 2011.[1] While employed with Triple Canopy, Claimant worked in an active warzone where he was exposed to enemy activity, mortar attacks, and fatalities. In Jordan, where it was a peaceful environment, he underwent five weeks of training but then remained at the hotel and was not required to work; thereafter, SOC returned him to Peru. Since returning to Peru, Claimant was gainfully employed as a moto-taxi driver; he also applied for, but was unable to secure, a security job with another company to work in Afghanistan in 2014. Cl. Dep. 54:15-20. At some point thereafter, he moved to the United States where he has worked in numerous miscellaneous jobs.

Claimant began noticing psychological symptoms in 2011.[2] On December 11, 2019, Ms. Carmen Ciuffardi Montoya evaluated Claimant and diagnosed him with "Unspecified Trauma Disorder." CX 23 at 2. Claimant was then seen by Dr. Enrique Galli in 2020 on the following dates: January 6, February 10, July 14, September 14, and November 19. CX 23. Dr. Galli also diagnosed Claimant with "Unspecified Trauma Disorder," with non-severe symptoms, as a result of his work in Iraq and prescribed medication. CX 23 at 17. Claimant next saw Dr. Julian Valderrama on June 15, 2021, and August 2, 2021. CX 23 at 52. Dr. Valderrama diagnosed Claimant with Post Traumatic Stress Disorder (PTSD) as a "sequal [sic] of war after working in the country of Iraq." CX

[1] This case arises within the jurisdiction of the United States Court of Appeals for the Second Circuit. *McDonald v. Aecom Technology Corp*., 45 BRBS 45 (2011); *see also Global Linguist Solutions, L.L.C. v. Abdelmeged*, 913 F.3d 921, 52 BRBS 53(CRT) (9th Cir. 2019).

[2] Claimant described suffering from irritability, trouble communicating, isolation, fear, loneliness, sleep problems and nightmares, impatience, suspicion of people, recurring memories of Iraq, and confusion upon hearing sirens or strange sounds. Triple Canopy Exhibit 4 (TCX) at 15.

23 at 51. Dr. Valderrama stated Claimant "is able to work if he does a great physical and mental effort because the symptoms are exacerbated by social interaction," he "has the medical indication not to work again in a warzone," and he "must avoid working in vigilance or as a security guard, and jobs that are organized in a military, para-military, and/or police way." CX 23 at 51-52.

Claimant filed two claims for compensation (LS-203 form) on March 16, 2020, seeking benefits under the DBA. CXs 1, 2. SOC filed a notice of controversion on April 2, 2020, and Triple Canopy filed a notice of controversion on April 17, 2020. CXs 7, 5. At Triple Canopy's request, Claimant attended a psychological examination on September 16, 2021, with Dr. Gloria Morote. In her report, she opined:

> "Mr. Tenorio Rodriguez does not suffer from any mental illness that has been caused, aggravated, or exacerbated by his employment with Triple Canopy."
>
> "[T]here is [no] objective, reliable, or substantive data to support that Mr. Tenorio Rodriguez suffers from Post-Traumatic Stress Disorder."
>
> "There are some indications that he may struggle with mood dysregulation, but overall, there is little to no evidence to support that Mr. Tenorio Rodriguez has a psychiatric disorder or meets criteria for a DSM-IV diagnosis."
>
> "[T]here is no substantive data to support that Mr. Tenorio Rodriguez suffers from any of the Somatoform Disorders, Personality Disorders, or Factitious Disorders."
>
> "Clearly, Mr. Tenorio Rodriguez sought mental health services for the purpose and in the context of seeking financial benefits. He has not been compliant with treatment. Claims that he suffers from PTSD, or any other psychiatric or psychological injury or disorder, are not supported by objective, reliable, or substantive data."

TCX 4 at 16-18.

On January 26, 2022, the ALJ issued his decision denying Claimant benefits. The ALJ found Claimant invoked the Section 20(a) presumption, 33 U.S.C. §920(a), and established a prima facie case as to Triple Canopy based on his exposure "to hazards in a war zone during his employment with Triple Canopy, Inc., in Iraq," Claimant's testimony about his psychological symptoms, and the diagnoses of Dr. Galli and Ms. Ciuffardi. D&O at 14. However, he found Claimant did not invoke the Section 20(a) presumption as to psychological injuries related to his employment by SOC because his work for SOC "did not take place in a combat zone, but in an environment he acknowledges was 'peaceful.'

He experienced no attacks there." *Id.* The ALJ then found Triple Canopy rebutted the Section 20(a) presumption with Dr. Morote's opinion that Claimant does not have a work-related psychological condition.[3] On the record as a whole, the ALJ found Claimant did not establish a work injury by the preponderance of the evidence, and he denied benefits.[4]

Claimant, without representation, appeals the ALJ's decision. SOC/Carrier filed a response brief. Triple Canopy did not separately respond.[5]

In order to invoke the Section 20(a) presumption, a claimant bears an initial burden to produce some evidence that: 1) he sustained a harm; and 2) an accident occurred or working conditions existed which could have caused or aggravated the harm. *Rose v. Vectrus Systems Corp.*, 56 BRBS 27 (2022) (Decision on Recon. en banc). In this case, the ALJ found Claimant did not invoke the Section 20(a) presumption against SOC because he found there were no working conditions which could have existed that caused Claimant's psychological harm and none of his medical providers related his condition to his employment in Jordan. D&O at 14; Triple Canopy EX. 4 at 23. This ruling is rational and supported by the evidence as Claimant stated during his deposition that, at the time he was employed by SOC, he was in Jordan where it was peaceful, with no mortar or rocket attacks, and he stayed at a hotel before returning to Peru without ever having been deployed to a duty station. Cl. Dep. at 48: 16-25. The ALJ reasonably found these were not working conditions which could cause or aggravate Claimant's described psychological symptoms, and he rationally concluded Claimant did not invoke the presumption as to SOC.[6] *See Sanders v. Alabama Dry Dock & Shipbuilding Co.*, 22 BRBS 340 (1989) (decision on remand).

Once the Section 20(a) presumption, 33 U.S.C. §920(a), has been invoked, as here against Triple Canopy, an employer can rebut the Section 20(a) presumption by producing

[3] SOC relied on Dr. Morote's opinion, and the ALJ found it would serve as rebuttal evidence for SOC also. D&O at 15.

[4] The ALJ also denied the claim because he found it was untimely filed under Section 13. 33 U.S.C. §913.

[5] Both Employers are insured by the same carrier.

[6] Moreover, even had the ALJ erred, it would be harmless because, as discussed, the ALJ found Dr. Morote's opinion, submitted by Triple Canopy, also rebuts the Section 20(a) presumption with respect to SOC and, on weighing the evidence as a whole, found Claimant did not establish a work-related psychological injury.

substantial evidence that it did not expose claimant to an injurious environment or that the exposure was not harmful. *Rainey v. Director, OWCP*, 517 F.3d 632, 42 BRBS 11(CRT) (2d Cir. 2008); *Rochester v. George Washington Univ.*, 30 BRBS 233 (1997). If an employer succeeds in rebutting the presumption, as Triple Canopy has done with Dr. Morote's opinion that Claimant does not have a work-related psychological condition, the presumption falls out of the case, and the claimant bears the burden of showing his injury was caused by his working conditions based on the record as a whole by a preponderance of the evidence. *Id*. The ALJ has the authority and discretion to weigh, credit, and draw his own inferences from the evidence of record; he is not bound to accept the opinion or theory of any particular expert. *Ceres Gulf, Inc. v. Director, OWCP [Plaisance]*, 683 F.3d 225, 46 BRBS 25(CRT) (5th Cir. 2012); *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); *Perini Corp. v. Heyde*, 306 F. Supp. 1321 (D.R.I. 1969).

The ALJ reviewed the evidence in the record as a whole. He gave Dr. Morote's "better documented" report greater evidentiary weight, finding she spent a considerable amount of time interviewing Claimant and administering multiple diagnostic exams. D&O at 15-16. While the ALJ found Drs. Galli and Valderrama and Ms. Ciuffardi are qualified professionals, he concluded their opinions are not as thorough as Dr. Morote's opinion, and they relied solely on Claimant's subjective complaints. *Id*. at 15.

Dr. Morote reviewed the records of Drs. Galli and Valderrama, Ms. Ciuffardi's report, Claimant's pre-deployment health assessment and physical examination, and the attorney's referral letter. TCX 14 at 2. She opined Claimant did not suffer from any DSM-IV psychological disorder and his "[c]laims that he suffers from PTSD, or any other psychiatric or psychological injury or disorder, are not supported by objective, reliable, or substantive data." TCX 14 at 18. Dr. Morote conducted a diagnostic clinical interview and administered the Trauma Symptom Inventory-2 (TSI-2), the Minnesota Multiphasic Personality Inventory-2 (MMPI-2), the Minnesota Multiphasic Personality Inventory-2-Restructured Format (MMPI-2-RF), and the Inventory of Problems (IOP). TCX 14 at 2.[7] Although she found Claimant's TSI-2 subscales "signal[] mild to moderate struggles with anger, anxiety, and insecurities and attachment issues," the "four global, substantive TSI-

[7] The TSI-2 is a broad-spectrum test for trauma-related symptoms. It also tests for PTSD and includes validity scales to assess overreporting of PTSD symptoms. The MMPI-2 and MMPI-2-RF provide quantitative evidence regarding emotional and personality functions as well as validity scales to ensure the data is a reasonable reflection of an examinee's functioning. The IOP measures the credibility of subjective symptoms reflected in a statistical value called the False Disorder Probability Score (FDS). The higher the FDS score the higher the probability of feigned responses. TCX 14 at 12.

2 factors are in the normal range" including for Self-Disturbance, Post Traumatic Stress, Somatization, and Externalization. TXC 14 at 13. Dr. Morote also reported Claimant's IOP test "that focuses on the credibility of symptom presentation" yielded a False Disorder Probability Score (FDS) of 0.47, meaning "there is a 47% probability that his score arose from credible presentation." *Id*. at 12. Finally, she found Claimant's MMPI-2 score "signals some difficulties with mood and behavioral regulation," but his MMPI-2-RF's validity scales raised concern about "inconsistent responding, over-reporting, and under-reporting on the validity of this measure, though not to the degree as to invalidate the data." *Id*. at 14. Thus, based on this data, Dr. Morote concluded "there are some indications [Claimant] may struggle with mood dysregulation, but overall, there is little to no evidence to support that [he] has a psychiatric disorder or meets criteria for a DSM-IV diagnosis," nor is there "objective, reliable, or substantive data to support" his claims that he "suffers from PTSD, or any other psychiatric or psychological injury or disorder[.]" *Id.*

The Board may not second-guess an ALJ's factual findings or disregard them merely because other inferences could have been drawn from the evidence. *Mijangos v. Avondale Shipyards, Inc.*, 948 F.2d 941, 25 BRBS 78(CRT) (5th Cir. 1991). The Board also may not reweigh the evidence. *Miffleton v. Briggs Ice Cream Co.*, 12 BRBS 445 (1980), *aff'd*, 659 F.2d 252 (D.C. Cir. 1981) (table). We affirm the ALJ's rational weighing of the evidence and decision to give more weight to Dr. Morote's opinion as well-explained and objectively supported. His conclusion that Claimant has not established a work-related injury is thus supported by substantial evidence. *Carswell v. E. Pihl & Sons*, 999 F.3d 18, 55 BRBS 27(CRT) (1st Cir. 2021), *cert. denied*, 142 S.Ct. 1110 (2022); *Victorian v. International-Matex Tank Terminals*, 52 BRBS 35 (2018), *aff'd sub nom. International-Matex Tank Terminals v. Director, OWCP*, 943 F.3d 278, 53 BRBS 79(CRT) (5th Cir. 2019).

Accordingly, we affirm the ALJ's Decision and Order Denying Benefits.[8]

SO ORDERED.

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

[8] In light of our decision, we need not address the ALJ's findings regarding whether Claimant's claim was timely filed.