

U.S. Department of Labor

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



BRB No. 23-0224

MALIK SALAAM	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	DATE ISSUED: 04/25/2024
CERES MARINE TERMINALS, INCOPORATED	)	
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of Decision and Order of Lystra A. Harris, Administrative Law Judge, United States Department of Labor.

Jonathan S. Beiser (Beiser Law Firm), Rockville, Maryland, for Claimant.

Lawrence P. Postol (Postol Law Firm, P.C.), McLean, Virginia for Employer.

Before: GRESH, Chief Administrative Appeals Judge, BOGGS and JONES, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Lystra A. Harris’s Decision and Order (2022-LHC-00044) rendered on a claim filed pursuant to the Longshore and Harbor Workers’ Compensation Act, as amended, 33 U.S.C. §§901-950 (Act). The Benefits Review Board must affirm the ALJ’s findings of fact and conclusions of law if they are

rational, supported by substantial evidence, and in accordance with law.<sup>1</sup> 33 U.S.C. §921(b)(3); *O’Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

On June 19, 2021, Claimant sustained injuries to his left hand, left knee, and left ankle when he slipped and fell while exiting a van used to transport workers onto ships. Hearing Transcript (HT) at 18-19. He immediately was taken to the Medstar Union Memorial Hospital Emergency Department, where he received treatment for his injuries and an x-ray of his left knee. *Id.* at 26; Joint Exhibits (JX) 8 at 82-84, 42. His hospital record noted the x-ray showed tricompartmental degenerative changes most prominent at the medial and patellofemoral joint with no acute fracture or dislocation. JX 42.

On June 23, 2021, Claimant sought treatment from Premier Orthopedics. JX 9. Dr. Michael Franchetti, an orthopedic physician, took x-rays of Claimant’s left hand and left ankle and opined the hand x-rays were normal but the ankle x-ray showed “degenerative changes in the medial aspect” and an “intact ankle mortise.” *Id.* at 3. Further, he noted Claimant had a significant limp on his left side, a surgical scar over the patella of his left knee, swelling over the anterior aspect of the patella, and left ankle swelling medially and laterally. *Id.* at 1-2. Dr. Franchetti diagnosed Claimant with a left knee sprain and strain with traumatic prepatellar bursitis, left middle and ring finger proximal interphalangeal (PIP) joint sprains, a mild left lower chest contusion, and a left ankle sprain. *Id.* at 3. On July 13, 2021, Claimant sought left knee treatment from Dr. Susan Liu,<sup>2</sup> who noted a transverse surgical scar of the patella, tenderness and mild diffuse swelling, and tenderness upon palpation in the medial and lateral joint line. *Id.* at 4. She diagnosed Claimant with a left knee medial meniscus tear, left hand sprain, and left ankle sprain. *Id.* at 7. After ordering a magnetic resonance imaging (MRI) scan of the left knee, which was obtained on July 23, 2021, she opined it showed radial tear posterior body and posterior horn of the medial meniscus, moderate size knee joint effusion, and mild to moderate patellofemoral osteoarthritis. *Id.*

---

<sup>1</sup> This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because the injury occurred in Baltimore, Maryland. 33 U.S.C. §921(c); 20 C.F.R. §702.201(a); *see Roberts v. Custom Ship Interiors*, 35 BRBS 65, 67 n.2 (2001), *aff’d*, 300 F.3d 510 (4th Cir. 2002), *cert. denied*, 537 U.S. 1188 (2003); Hearing Transcript (HT) at 18.

<sup>2</sup> Dr. Susan Liu is an orthopedic physician at Premier Orthopedics, but her qualifications are not in the record. Joint Exhibit (JX) 9 at 4-7.

On August 16, 2021, Claimant was examined by Dr. Timothy Frazier<sup>3</sup> who diagnosed Claimant with a left knee medial meniscus tear and chondromalacia, left hand sprain, third and fourth finger PIP joint sprain, and left ankle sprain, all related to the June 2021 workplace accident.<sup>4</sup> *Id.* at 8-9. Specifically, Dr. Frazier opined the workplace accident “significantly exacerbated [Claimant’s] pre-existing knee pathology,” eventually necessitating total left knee replacement surgery, which was performed on April 5, 2022, resulting in Claimant being off of work until August 8, 2022. HT at 34; *see* JXs 45 at 528, 49 at 26.

On October 25, 2021, Dr. Walter Roche, a physiatrist, examined Claimant at Employer’s request. JXs 30, 31, 39 at 6-7. He opined Claimant had chronic mechanical left knee pain secondary to tricompartmental osteoarthritis that was worse along the medial and patellofemoral compartments with degenerative meniscal tears. JX 30 at 5. He acknowledged the workplace accident probably caused a soft tissue injury that likely exacerbated Claimant’s left knee symptoms, but opined any exacerbation was temporary as his review of the imaging and his examination of Claimant indicated his knee condition was chronic and not due to an acute traumatic injury. JX 39 at 16-17. He concluded Claimant’s left knee condition was pre-existing and unrelated to the June 2021 work accident. JX 30 at 5.

On May 10, 2022, Dr. Gary Pushkin<sup>5</sup> examined Claimant at Employer’s request. JX 45 at 530. He diagnosed Claimant with left hand and left knee contusions and pre-existing degenerative arthritis in his left knee but noted evidence of symptom magnification. *Id.* Furthermore, he noted his review of Claimant’s left knee imaging indicated a degenerative condition, rather than traumatic injury. JX 47 at 30. He concluded Claimant could not work full duty without restriction due to his knee replacement surgery but opined the surgery was unrelated to the June 2021 work accident and was instead due to multiple previous knee injuries and the pre-existing diagnosis of osteoarthritis. JX 45 at 531.

Claimant filed a claim for compensation seeking temporary total disability (TTD) benefits for injuries to his left hand, left ankle, and left knee from June 19, 2021, through

---

<sup>3</sup> Dr. Timothy Frazier is an orthopedic surgeon at Premier Orthopedics. JXs 9 at 8-14, 44.

<sup>4</sup> Claimant also was examined by Dr. Frazier on October 15, 2021, December 10, 2021, and February 4, 2022; the doctor’s opinion after each appointment remained unchanged. *See* JX 9 at 10-14.

<sup>5</sup> Dr. Gary Pushkin is a board-certified orthopedic surgeon. JX 45.

his return to regular employment on January 19, 2022, and then from the date of his knee replacement surgery on April 5, 2022, through his return to work on August 8, 2022, as well as medical benefits. Decision and Order (D&O) at 3.

The ALJ found Claimant invoked the Section 20(a) presumption of compensability, 33 U.S.C. §920(a), with respect to his left hand, left ankle, left knee sprain, and left knee meniscus tear and found Employer successfully rebutted the presumption for the left knee meniscus tear with the opinions of Drs. Roche and Pushkin.<sup>6</sup> D&O at 23-27. Weighing the evidence as a whole, she found Claimant failed to prove by a preponderance of the evidence that his left knee meniscus tear is a work-related injury, crediting Dr. Pushkin's opinion over Dr. Frazier's. *Id.* at 29. As for the nature and extent of Claimant's compensable injuries, the ALJ found Claimant's left hand, left ankle, and left knee sprain injuries were temporary in nature, and he was able to return to unrestricted employment on July 31, 2021, after completing six weeks of treatment.<sup>7</sup> *Id.* at 32. As Employer produced no evidence of suitable alternate employment during this time period, the ALJ found it failed to rebut Claimant's prima facie case of total disability. *Id.* at 33. Therefore, the ALJ awarded TTD benefits from June 19 through July 31, 2021, based on the stipulated average weekly wage of \$1,361.15. *Id.* at 3, 35. The ALJ also awarded reasonable and necessary past, present, and future medical benefits for treatment of Claimant's left hand, left ankle, and left knee sprain injuries. *Id.* at 35, 37.

On appeal, Claimant contends the ALJ erred in finding his left knee meniscus tear injury was not causally related to the June 2021 work accident and, consequently, erred in denying disability and medical benefits for his left knee meniscus tear injury, including for the time off surrounding, and the cost of, his total knee replacement surgery. Employer

---

<sup>6</sup> The ALJ found Employer submitted no evidence to rebut the presumption for Claimant's left hand, left ankle, and left knee sprain injuries. Decision and Order (D&O) at 25-26. Thus, the ALJ properly found Claimant established these injuries are work-related as a matter of law. *See Obadiaru v. ITT Corp.*, 45 BRBS 17, 20 (2011); D&O at 26.

<sup>7</sup> The ALJ credited Dr. Roche's opinion that Claimant's left hand, left ankle, and left knee sprain injuries required "at most six weeks of treatment" and that Claimant could work without restrictions after that date. D&O at 32; *see* JX 30 at 5-6. Further, the ALJ found Claimant failed to show he was unable to perform his usual employment after his treatment ended on July 31, 2021. D&O at 32. We affirm the ALJ's findings as unchallenged on appeal. *See Scalio v. Ceres Marine Terminals, Inc.*, 41 BRBS 57, 58 (2007).

responds, urging the Board to affirm the ALJ's findings. Claimant filed a reply brief reiterating his arguments.

### **Section 20(a) – Weighing the Evidence as a Whole**

The ALJ concluded Employer successfully rebutted the Section 20(a) presumption of compensability as to only one of Claimant's claimed injuries – the torn meniscus in his left knee. D&O at 27. When, as here, the employer rebuts the Section 20(a) presumption, it no longer applies, and the issue of causation must be resolved on the evidence of record as a whole, with the claimant bearing the burden of persuasion. *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 262 (4th Cir. 1997); *Santoro v. Maher Terminal, Inc.*, 30 BRBS 171, 173-74 (1996); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 276 (1994). The ALJ is entitled to weigh the evidence and draw her own inferences from it; she has the discretion to determine which of the conflicting opinions is entitled to determinative weight, and the Board is not empowered to reweigh the evidence. *See, e.g., Newport News Shipbuilding & Dry Dock Co. v. Cherry*, 326 F.3d 449, 452 (4th Cir. 2003); *Pittman Mech. Contractors, Inc. v. Director, OWCP [Simonds]*, 35 F.3d 122, 127 (4th Cir. 1994).

In weighing the evidence as a whole, the ALJ considered the medical opinions of Drs. Frazier, Roche, and Pushkin, as well as Claimant's treatment records. D&O at 27-29. Dr. Frazier opined Claimant's June 2021 work accident exacerbated Claimant's pre-existing left knee condition, and the meniscal tear and subsequent knee replacement surgery were related to the June 2021 work accident. JX 49 at 26, 70, 74-76. Dr. Roche opined Claimant's left knee imaging showed "degenerative meniscal changes," and Claimant's June 2021 work accident caused a "temporary exacerbation" of his pre-existing degenerative and chronic left knee condition that had since resolved. JX 39 at 16-18. Dr. Pushkin believed Claimant's left knee meniscus tear was due to a pre-existing degenerative disease and was unrelated to the June 2021 work accident. JX 47 at 36. The ALJ credited the opinion of Dr. Pushkin, supported by the opinion of Dr. Roche, over Dr. Frazier's opinion. D&O at 27-28. Weighing the evidence as a whole, the ALJ found Claimant failed to establish his left knee meniscus tear is a work-related injury. *Id.*

Claimant argues the ALJ erred in crediting Dr. Pushkin's opinion because it is undermined by a February 2019 left knee MRI which showed Claimant did not have a left knee meniscus tear injury before the June 2021 work accident. Claimant's Brief (CB) at 10-11. We disagree.

The ALJ gave the "greatest probative weight" to Dr. Pushkin's opinion because he examined Claimant's left knee twice before the June 2021 work accident and once after

the work accident,<sup>8</sup> reviewed more of Claimant's imaging, and had "greater knowledge" of Claimant's left knee condition. *Id.* at 27-28. She also credited Dr. Pushkin's deposition testimony, during which he explained Claimant's x-rays and MRI scans showed "a degenerative picture" but not an "acute, traumatic picture," and meniscal tears could "commonly be found without that knee suffering from acute trauma." *Id.* at 28; *see* JX 47 at 30-31. Further, she noted Dr. Pushkin's opinion is corroborated by Dr. Roche's opinion, who likewise opined Claimant's left knee imaging depicted a chronic degenerative condition, rather than an acute injury. *Id.*; *see* JX 39 at 11-12, 18.

Conversely, the ALJ gave less weight to Dr. Frazier's opinion because he relied on Claimant's subjective reports of pain symptoms, which she found were not credible<sup>9</sup> and because he lacked knowledge of Claimant's specific pre-injury knee treatment history between 2010 and 2021.<sup>10</sup> D&O at 27. The ALJ noted Dr. Frazier acknowledged he was unaware of the specific treatment or imaging Claimant underwent for his pre-accident left knee injuries and admitted he had not reviewed the February 2019 left knee MRI, which

---

<sup>8</sup> Dr. Pushkin examined Claimant in January 2019 and April 2019 in connection with a separate and unrelated prior left knee injury and then again in May 2022, after the injury that is the subject of this claim. JXs 22, 29, 45.

<sup>9</sup> The ALJ concluded Claimant lacks credibility based on inconsistencies between his testimony and the medical records. D&O at 30-32. Specifically, she noted Claimant testified he had no left knee pain prior to the June 2021 work accident but observed the record showed Claimant visited MedStar Union Memorial Hospital with complaints of left knee pain in February 2021 and April 2021, as well as various other treatment records for left knee pain management from March through June 2021. *Id.*; *see* JX 32-34, 37. Further, the ALJ noted Claimant's treatment record from MedStar Union Memorial Hospital indicated his pain was "out of proportion to exam," and Dr. Roche opined Claimant reacted dramatically to a soft touch during his examination. D&O at 32; *see* JXs 8 at 82-83, 30.

<sup>10</sup> In 1995, Claimant underwent surgery to repair a fractured patella in his left knee as a result of a car accident. JX 36 at 5. In 1998, Claimant allegedly injured his left knee after being thrown from a window while a passenger in a garbage truck. JX 10 at 103. In September 2009, July 2014, and January 2019, Claimant sought treatment for his left knee after being involved in work-related car accidents. JXs 17, 20, 21. In April 2019 and February 2021, Claimant presented to Medstar Union Memorial Hospital with complaints of bilateral knee pain. JX 8 at 13, 34. He continued to present to medical providers with left knee pain intermittently in March, April, May, and June 2021, and received a cortisone injection to his left knee on June 17, 2021, just two days prior to the work accident. JXs 32-34, 37.

he testified, would have provided the best view of Claimant's knee condition prior to the June 2021 workplace accident. *Id.* at 28; *see* JX 49 at 41, 61-62. For these reasons, the ALJ found Dr. Pushkin's opinion outweighed Dr. Frazier's medical opinion. *Id.* at 27-29. Because the ALJ is authorized to determine which opinions are entitled to determinative weight based on their reasoning, and because her conclusions are supported by substantial evidence, we affirm the ALJ's decision to rely on Dr. Pushkin's opinion that Claimant's left knee meniscus tear is not a work-related injury. *See, e.g., Burns v. Director, OWCP*, 41 F.3d 1555, 1562 (D.C. Cir. 1994) (the Board may not "second-guess" the ALJ's findings if those findings are supported by substantial evidence); *Pisaturo v. Logistec, Inc.*, 49 BRBS 77, 81 (2015) (affirming the crediting of the employer's medical expert over the claimant's treating physician as the latter's opinion was not well reasoned); *see also Grizzle v. Pickands Mather & Co.*, 994 F.2d 1093, 1097 (4th Cir. 1993); D&O at 28-29.

We also reject Claimant's argument that the ALJ erred in not considering the medical opinions of Dr. Liu and Dr. Douglas Batey,<sup>11</sup> who both related his left knee problems to his June 2021 work accident.<sup>12</sup> CB at 11. Dr. Liu, who practices in the same office as Dr. Frazier, and who only saw Claimant once after the workplace accident, diagnosed him with a left knee meniscal tear based on his July 2021 MRI scan and opined it was related to his June 2021 work accident. JX 9 at 7. Dr. Batey's first evaluation of Claimant also occurred after the workplace accident, on June 29, 2021. JX 24 at 2. He diagnosed Claimant with a left knee contusion causally related to the workplace accident, but he did not address whether Claimant suffered a left knee meniscus tear. *Id.* at 1-3. The ALJ found that to the extent Claimant required left knee replacement surgery due to his osteoarthritis, the preponderance of the medical evidence, including the treatment records from Premier Orthopedics, Advance Total Health, Chiropractic Works, and University Physicians, show his osteoarthritis existed prior the June 2021 work accident. Weighing the medical evidence as a whole, the ALJ permissibly determined the preponderance of the evidence does not support a finding that Claimant's left knee meniscus tear is causally related to the June 2021 work accident.<sup>13</sup> *Burns*, 41 F.3d at 1562; *Ceres Marine Terminals*,

---

<sup>11</sup> Dr. Douglas Batey is a chiropractor at Jarrett Chiropractic and Rehab, but his qualifications are not in the record. JX 24.

<sup>12</sup> Claimant does not challenge the ALJ's weighing of the opinions of Drs. Frazier and Roche, and therefore we affirm it. *See Scilio*, 41 BRBS at 58.

<sup>13</sup> To the extent the ALJ erred in not specifically discussing the opinions of Drs. Liu and Batey as to the cause of Claimant's meniscus tear, we consider her error to be harmless because her reasons for giving less weight to Dr. Frazier – his reliance on Claimant's subjective complaints and his ignorance as to the full extent of Claimant's pre-existing knee condition – apply equally, if not more so, to the opinions of Drs. Liu and Batey,

*Inc. v. Director, OWCP [Jackson]*, 848 F.3d 115, 120 (4th Cir. 2016) (the Board is not permitted to overturn the ALJ's conclusions merely because alternative inferences could have been drawn based on a different review of the evidence); *Coffey v. Marine Terminals Corp.*, 34 BRBS 85, 87 (2000); D&O at 29.

Because the ALJ's credibility determinations are not inherently incredible or patently unreasonable, and her factual findings are rational and supported by substantial evidence in the record, we affirm the ALJ's weighing of the relevant record evidence as a whole. *Newport News Shipbuilding & Dry Dock Co. v. Director, OWCP [Brickhouse]*, 315 F.3d 286, 294 (4th Cir. 2002); D&O at 29. As we affirm the ALJ's conclusion that Claimant did not establish his left knee meniscus tear is a work-related injury, we also affirm her denial of disability and medical benefits for that injury. *See Wendler v. Am. Nat'l Red Cross*, 23 BRBS 408, 414 (1990) ("An award of medical benefits, however, is contingent upon other prerequisites related to the merits of claimant's compensation claim,

---

neither of whom provided explanations for their causation opinions. Further, Dr. Batey was unaware of the meniscal tear because he provided his opinion before it was diagnosed. Moreover, the ALJ's overall conclusion is supported by substantial evidence. *See Youghiogheny & Ohio Coal Co. v. Webb*, 49 F.3d 244, 249 (6th Cir. 1995) ("If the outcome of a remand is foreordained, we need not order one."); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); D&O at 27-28; JX 30 at 5; JX 39 at 11-12, 16-18; JX 47 at 30-31.



such as a finding of causal relationship”); *see generally Gacki v. Sea-Land Serv., Inc.*, 33 BRBS 127, 128 (1998); D&O at 29.

Accordingly, we affirm the ALJ’s Decision and Order.

SO ORDERED.

DANIEL T. GRESH, Chief  
Administrative Appeals Judge

JUDITH S. BOGGS  
Administrative Appeals Judge

MELISSA LIN JONES  
Administrative Appeals Judge