U.S. Department of Labor

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

BRB No. 23-0409

VICTOR BYOBUSINGYE	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	**NOT-PUBLISHED**
	)	
AEGIS DEFENSE SERVICES, LLC	)	
	)	
and	)	DATE ISSUED: 04/15/2025
	)	
INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA	)	
	)	
Employer/Carrier-Respondents	)	
	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Jerry R. DeMaio, Administrative Law Judge, United States Department of Labor.

Christopher A. O'Brien (Attorneys Jo Ann Hoffman & Associates, P.A.), Lauderdale-By-The-Sea, Florida, for Claimant.

Delos E. Flint, Jr. and Paul W. Freese (Lugenbuhl, Wheaton, Peck, Rankin & Hubbard), New Orleans, Louisiana, for Employer and its Carrier.

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

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Jerry R. DeMaio's Decision and Order (2021-LDA-00045) rendered on a claim filed pursuant to the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §§901-950 (Act), as extended by the

Defense Base Act, 42 U.S.C. §§1651-1655 (DBA).[1] We must affirm the ALJ's findings of fact and conclusions of law if they are rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant worked as a security guard for Employer in Afghanistan from March 2017 through May 2019.[2] He was terminated in May 2019 because Employer lost the contract under which he was employed, and he returned home to Uganda. EX 5 at 38-40. Since his employment with Employer was terminated, he has done small scale poultry farming but otherwise has not been formally employed. *Id.* He attributes his inability to work to his stress, depression, nightmares, and flashbacks which he alleges are caused by the experiences he had while working for Employer in Afghanistan.[3] *Id.* at 42, 44, 52-53, 55-56.

On June 26, 2019, Claimant began seeing Musuto Bwonya Alex at the China Uganda Friendship Hospital.[4] CX 3 at 1-3. Mr. Musuto diagnosed post-traumatic stress disorder (PTSD) and depression and prescribed medication. EX 5 at 42-43, 49; *see generally* CX 3. Claimant later attended a psychiatric evaluation with Kuteesa Hillary at Northpark Specialist Hospital in Uganda. CX 3 at 12-14. Mr. Hillary diagnosed PTSD and major depressive disorder "caused by repeated exposure to life threatening events" while Claimant worked in Afghanistan. *Id.* at 14. He recommended medication and

[1] This case arises within the jurisdiction of the United States Court of Appeals for the Second Circuit because the office of the district director who filed the ALJ's decision is located in New York. 33 U.S.C. §921(c); *McDonald v. Aecom Tech. Corp.*, 45 BRBS 45 (2011); *see also Global Linguist Solutions, L.L.C. v. Abdelmeged*, 913 F.3d 921 (9th Cir. 2019).

[2] Claimant previously worked in Iraq as an armed security guard for another employer from December 2009 to November 2011. EX 5 at 21, 28-29, 36.

[3] During his employment, Claimant stated he witnessed a colleague fall from a watch tower and other colleagues being stoned or shot at. EX 5 at 31-35, 60-63. He recalled one occasion when a missile was fired into the base and landed near him while he was at the sleeping camp. *Id.* at 33-35, 60. While he testified no one was injured by the missile, he stated that he started feeling scared after the incident. *Id.* at 35.

[4] Claimant initially sought care for his symptoms from traditional healers, herbalists, and his church before ultimately seeking medical treatment. EX 5 at 36-37, 47-48.

psychotherapy and told Claimant he should wait to return to work in a war zone. *Id.*; EX 5 at 43-44.

On October 20, 2021, Claimant participated in a video telehealth medical evaluation with Employer's psychologist, Jake Epker, Ph.D. Based on diagnostic criteria, Claimant's self-reporting, his performance on symptom validity measures, and treatment notes, Dr. Epker opined there is no reliable data to support a diagnosis of PTSD or any other psychological condition related to his employment with Employer in Afghanistan.[5] EX 7 at 8-12.

On May 13, 2020, Claimant filed a claim under the Act for psychological conditions allegedly related to his employment with Employer, and Employer controverted the claim.[6] CX 1 at 3, 6; EX 9 at 6, 25-28. On June 22, 2023, the ALJ issued a decision and order (D&O) based on the parties' written evidence and arguments. 20 C.F.R. §702.346.

In his decision, the ALJ found Claimant invoked the Section 20(a) presumption of causation, 33 U.S.C. §920(a), and Employer rebutted that presumption with substantial evidence of non-causation. D&O at 20-21. Upon weighing the evidence as a whole, the ALJ determined Claimant failed to show by a preponderance of the evidence that his psychological conditions arose out of his employment with Employer in Afghanistan. He, therefore, denied Claimant's claim for benefits under the Act. *Id.* at 21-24.

[5] Dr. Epker noted that Claimant's self-reported symptoms of stress, depressed mood, and irritability, "to the extent they exist," are related to the loss of his overseas job and his inability to provide financially for his family but are not attributable to his experiences while working in Afghanistan. He added that Claimant's self-reports about non-work-related symptoms "must be questioned" due to inconsistencies between his reports and medical records and his performance on symptom validity measures. EX 7 at 12.

[6] On May 10, 2022, Claimant filed an amended Form LS-203 to correct his last name, his date of birth, and the location of his alleged work-related injury. CX 1 at 9-10. This allowed Employer to locate Claimant's personnel records and confirm an employer-employee relationship existed at the time and place of his alleged psychological injury. *Id.* at 6; EX 9 at 25.

On appeal, Claimant contends the ALJ erred in weighing the evidence as a whole. Employer responds, urging affirmance of the denial of benefits.[7]

Once the employer rebuts the Section 20(a) presumption, it no longer applies and, as in this case, the issue of causation must be resolved on the evidence of record as a whole with the claimant bearing the burden of persuasion. *Rainey v. Director, OWCP*, 517 F.3d 632, 634 (2d Cir. 2008); *American Stevedoring, Ltd. v. Marinelli*, 248 F.3d 54, 65 (2d Cir. 2001); *Santoro v. Maher Terminal, Inc.*, 30 BRBS 171 (1996); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 276 (1994).

When weighing the evidence, the ALJ is entitled to evaluate the credibility of the witnesses, *Pietrunti v. Director, OWCP*, 119 F.3d 1035, 1042 (2d Cir. 1997); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403, 405 (2d Cir. 1961), accept parts of a witness's testimony while rejecting others, *Banks v. Chicago Grain Trimmers Ass'n*, 390 U.S. 459, 467 (1968); *Pimpinella v. Universal Mar. Serv. Inc.*, 27 BRBS 154, 157 (1993), and draw his own inferences and conclusions from the evidence. *Sealand Terminals, Inc. v. Gasparic*, 7 F.3d 321, 323 (2d Cir. 1993); *Compton v. Avondale Indus., Inc.*, 33 BRBS 174, 176-177 (1999). The Board will not interfere with credibility determinations unless they are "inherently incredible or patently unreasonable." *Cordero v. Triple A Mach. Shop*, 580 F.2d 1331, 1335 (9th Cir. 1978). If the ALJ's conclusion upon weighing the evidence is rational and supported by substantial evidence, it must be affirmed. 33 U.S.C. §921(b)(3); *Gasparic*, 7 F.3d at 323; *Carswell v. E. Pihl & Sons*, 999 F.3d 18, 27 (1st Cir. 2021).

Claimant first contends the ALJ's assessment of his credibility is patently unreasonable and improper. He asserts the ALJ's finding that Claimant is "mostly" but "not entirely credible" is without explanation and not supported by substantial evidence in the record. In this regard, Claimant argues the ALJ incorrectly assumed Claimant referred to his treating provider inconsistently throughout the record, apparently as a reason to diminish his credibility and support the denial of benefits. He further asserts the ALJ ignored evidence in the record that supports his credibility and impermissibly relied on Employer's expert's credibility assessment in lieu of the ALJ's own discretion.

Contrary to Claimant's contentions, the ALJ's determination that Claimant is "mostly, though not entirely, credible" is adequately explained and is neither patently unreasonable nor improper. The ALJ did not ignore consistencies in Claimant's self-

[7] We affirm the ALJ's determination that Employer rebutted the Section 20(a) presumption as unchallenged on appeal. *Scalio v. Ceres Marine Terminals, Inc*., 41 BRBS 57, 58 (2007).

reporting.[8] In fact, the ALJ thoroughly discussed the relevant evidence and acknowledged Claimant was "generally consistent, with only minor inconsistencies" in terms of his symptom reporting and recounting of traumatic events. D&O at 16-18. The ALJ reasonably noted there was "some concern" because Claimant referred to his treating provider inconsistently throughout the record.[9] *Id.* at 17-18. While Claimant argues it "appears" the ALJ discredited him in part because he inconsistently referred to the name of his treating provider, Claimant concedes such a conclusion is not apparent. Regardless, even if the ALJ discredited Claimant to some minor degree on that basis, any error would be harmless because his overall evaluation of Claimant's credibility, on the basis of inconsistencies in Claimant's reporting of his symptoms and his recollection of the traumatic events he experienced, as well as the results of the symptom validity tests, remains reasonable and is supported by substantial evidence in the record. *American Stevedoring Ltd. v. Marinelli*, 248 F.3d 54, 65-66 (2d Cir. 2001) (error in discrediting physician's statement was harmless because ALJ discounted physician's opinion for several other reasons); *see also Hawaii Stevedores, Inc. v. Ogawa*, 608 F.3d 642, 650 (9th Cir. 2010) (error in decertifying physician was harmless because ALJ discredited physician's opinion on grounds supported by substantial evidence).

We likewise see no error in the ALJ's reliance on Dr. Epker's interpretation of the symptom validity measures to support his credibility assessment of Claimant.[10] The ALJ rationally explained the measures are not "'lie detector' tests," but "they do give some indication as to whether symptoms are being exaggerated or fabricated given the diagnoses alleged, and particularly in light of the secondary gain potentially available under the Act

[8] Claimant states the ALJ failed to consider or summarize employment documents in the record, which he asserts support his credibility. However, he does not point to the specific documents or evidence which he is referring to or explain how the employment documents support his assertion of error.

[9] During his deposition, Claimant referred to his treating provider as "Mbonye Alex" and "Alex." EX 5 at 43. He referred to him as "Abonye Alex" to Employer's vocational expert, EX 6 at 3, and as "Alex Mbonye" to Dr. Epker, EX 7 at 3. Mr. Musuto's credentials list his name as "Musuto Bwonya Alex." CX 4 at 5-12; EX 8 at 153-158.

[10] Dr. Epker opined Claimant's symptom validity measures indicate Claimant's presentation is not credible and he is "exaggerating or fabricating" the presence of PTSD symptoms. EX 7 at 6-7, 11.

for a valid diagnosis."[11] D&O at 18. Despite finding this evidence "significant enough to cause at least some concern," he nevertheless determined it was "not enough to entirely discount" Claimant's testimony, but only that it would cause him to look at Claimant's testimony and self-reporting "with a more critical eye" and "question" the experts' reporting "more deeply." *Id.* at 17-18.

Claimant next contends his treating provider is entitled to "considerable and special weight," and the ALJ's reasons for not affording Claimant's treating provider such weight are legally insufficient. We disagree. Where there are conflicting medical opinions regarding causation, as in this case, the ALJ has a duty to review and weigh the evidence on causation in its entirety. In doing so, he may consider a provider's status as the treating provider, but he is under no obligation to give special weight to the treating provider's opinion. *Pietrunti*, 119 F.3d at 1042; *Carswell*, 999 F.3d at 31-32; *Sea-Land Services, Inc. v. Director, OWCP* [*Ceasar*], 949 F.3d 921, 925 (5th Cir. 2020); *Kkunsa v. Constellis Group*, 59 BRBS 1, 4 (2025). Because the ALJ's rationale for affording Mr. Musuto no weight is reasonable and adequately explained, we reject Claimant's contention.

Finally, we reject Claimant's assertions that the ALJ improperly weighed the medical evidence in the record and that his analysis of the evidence is legally insufficient under the Administrative Procedure Act (APA). Contrary to Claimant's argument, the ALJ thoroughly discussed and weighed the relevant evidence in the record. In doing so, he permissibly afforded no weight to Claimant's treatment notes because of both their form and content.[12] D&O at 21-22; *see also* CX 3 at 1, 4-11, 15-17. He afforded no weight to the June 26, 2019 questionnaire because there is no information specific to Claimant's individual psychological condition, employment conditions, and personal history,[13] no explanation regarding the context of the questionnaire, and no indication that objective testing was done or diagnostic criteria was considered. D&O at 22; *see also* CX 3 at 2-3. Further, he gave minimal weight to Mr. Hillary's opinion because his report contains no

[11] The ALJ also noted Dr. Epker shared the ALJ's concerns about the reliability of Claimant's treatment notes. D&O at 24.

[12] The ALJ found the China-Uganda Friendship Hospital notes illegible and lacking conclusive authorship. He found that where legible, the notes contain no explanation for the diagnoses and medication prescribed and no discussion regarding Claimant's treatment plan. D&O at 21-22; CX 3 at 1, 4-11, 15-17.

[13] The ALJ found the content of the questionnaire "devoid of reasoning and explanation" and the answers contained in the questionnaire "vague" and at times "nonsensical." D&O at 22.

explanation or details regarding the objective tests that were administered, no discussion of how Claimant's symptoms and condition are related to his employment "other than the conclusory statement that they are related," and "little, if any reasoning … to lead one from the background to the conclusions or recommended treatment." D&O at 23; *see also* CX 3 at 12-14.

By contrast, the ALJ afforded significant weight to Dr. Epker's opinion of no work-related psychological injury. He found Dr. Epker's opinion well-documented and well-reasoned because Dr. Epker based his opinion on Claimant's employment and treatment records, his personal interview of Claimant, applicable diagnostic criteria, and symptom validity testing and provided a comprehensive and "logically sound" explanation for his conclusion that there is no reliable data to support Claimant's allegation of a work-related psychological condition. D&O at 23-24; *see also* EX 7. Having given Dr. Epker's opinion controlling weight, the ALJ concluded Claimant failed to establish a work-related psychological condition by a preponderance of the evidence.

As the factfinder, the ALJ "is exclusively entitled to assess both the weight of the evidence and the credibility of witnesses," and when substantial evidence, meaning such relevant evidence "that would cause a reasonable person to accept the fact finding," supports the ALJ's conclusion, we may not substitute our judgement for that of the ALJ. *Ceasar*, 949 F.3d at 926 (quoting *Ceres Gulf, Inc. v. Director, OWCP*, 683 F.3d 225, 228 (5th Cir. 2012)). In this case, the ALJ addressed the relevant evidence in the record, specified the evidence upon which he relied, and adequately explained his rationale in a manner that conforms with the requirements of the APA. 5 U.S.C. §557(c)(3)(A);[14] *Marinelli v. American Stevedoring, Ltd.*, 34 BRBS 112, 118 (2000), *aff'd*, 248 F.3d 54 (2d Cir. 2001); *Ballesteros v. Willamette Western Corp.*, 20 BRBS 184, 187-188 (1988). The evidence supports his conclusions. Moreover, his credibility determinations are not "inherently incredible or patently unreasonable," *Cordero*, 580 F.2d at 1335, and his factual findings are rational and supported by substantial evidence in the record. Therefore, we decline to disturb his conclusion that Claimant failed to establish a work-related psychological condition and affirm the denial of disability compensation and medical

[14] Section 557(c)(3)(A) does not establish a duty of verbosity. Rather, it provides an ALJ's decision must include "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record." 5 U.S.C. §557(c)(3)(A). As we can discern his findings, conclusions, and reasonings, and the bases for them, we reject Claimant's assertion that the ALJ did not explain enough.

benefits. 33 U.S.C. §921(b)(3); *Pietrunti*, 119 F.3d at 1042; *Gasparic*, 7 F.3d at 323; *Hughes*, 289 F.2d at 409; *Carswell*, 999 F.3d at 31-33; *Ceasar*, 949 F.3d at 926.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge