U.S. Department of Labor

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

BRB No. 23-0457

PAUL ZAPATA CORONADO Claimant-Petitioner v. CONSTELLIS GROUP/TRIPLE CANOPY, INCORPORATED and CONTINENTAL INSURANCE COMPANY Employer/Carrier-Respondents	)	**NOT-PUBLISHED** DATE ISSUED: 04/11/2025 DECISION and ORDER

Appeal of Decision and Order Denying Benefits of Christopher Larsen, Administrative Law Judge, United States Department of Labor.

Allison T. Graber and Jacob S. Garn (Attorneys Jo Ann Hoffman & Associates, P.A.), Lauderdale-By-The-Sea, Florida, for Claimant.

Sherman W. Jones, III, and Sergio A. Reynoso (Brown Sims), Houston, Texas, for Employers and Carrier.

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

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Christopher Larsen's Decision and Order Denying Benefits (2021-LDA-03070) 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, a native of Peru, worked for Employer as an armed security guard in Iraq from October 15, 2005, to November 16, 2006. Decision and Order (D&O) at 3-4; Employer's Exhibit (EX) 14 at 8. During his employment, Claimant stated he experienced or witnessed a car bomb explosion, constant mortar attacks, and other traumatic events which caused him constant fear.[2] D&O at 3-4; EX 14 at 49.

Because of this, Claimant declined Employer's offer to renew his employment contract. D&O at 4; EX 14 at 69. Upon its expiration, he returned to Peru, as he could not tolerate working in Iraq any longer and wanted "to be in a safer area, quieter, not seen by other people." D&O at 4; EX 14 at 69. He obtained work once back in Peru, and he has remained employed since returning from Iraq, albeit at numerous different jobs.[3] D&O at 6.

In January 2017, Claimant met with psychologist Dr. Carmen Ciuffardi Montoya, who diagnosed him with post-traumatic stress disorder (PTSD). D&O at 5-6; Claimant's Exhibit (CX) 25 at 2. Dr. Ciuffardi Montoya recommended Claimant continue therapy with her and that he see a psychiatrist for medication. D&O at 5; CX 25 at 2; EX 14 at 75. Stating he could not afford continued treatment, Claimant did not seek treatment again until

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[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 recalled the car bomb was approximately 300 meters away, but it knocked him down and caused buzzing in his ears. Other traumatic events included: a mortar attack that nearly hit a van of security guards; a bullet that came through a roof and hit the table at which he was sitting and eating; an Iraqi employee injured when a bullet bounced off the ground and hit the man's leg after spectators at a soccer match started firing guns into the air following the match; and a mortar hitting through a car's window. D&O at 3-4; EX 14 at 50, 55, 56, 60, 61, 63.

[3] After returning from Iraq, Claimant worked as a taxi driver, a controller, a barber, and a fisherman. EX 13 at 4-5; EX 14 at 42-46.

2020 when he met with psychiatrist Dr. Julian Valderrama Escalante. D&O at 5; CX 27 at 2; EX 14 at 77. *Id.* Dr. Valderrama Escalante diagnosed Claimant with PTSD based on his employment in Iraq.[4] CX 27 at 2.

On March 23, 2022, at Employer's request, Dr. Anna Mazur evaluated Claimant and administered several tests. D&O at 7; EX 8 at 1-2. She opined Claimant does not have a psychological condition.[5] D&O at 8; EX 8 at 16. On June 22, 2022, Claimant met with Dr. Gustavo R. Benejam.[6] D&O at 9; CX 28 at 1. Dr. Benejam reviewed the medical records of Drs. Ciuffardi Montoya, Valderrama Escalante, and Mazur, evaluated Claimant, and administered nine tests. D&O at 9; CX 28 at 2. From these, he diagnosed Claimant with PTSD, Major Depressive Disorder, and Anxiety. D&O at 10; CX 20 at 10.[7]

Meanwhile, on May 5, 2021, Claimant went to Dr. Delia Chumpitaz for hearing issues. D&O at 6, 11. Dr. Chumpitaz's audiogram indicated Claimant has bilateral hearing loss. D&O at 6, 11, CX 23. On November 11, 2022, Dr. Laurie Hebert wrote a report regarding Claimant's hearing loss complaint. After reviewing Dr. Chumpitaz's audiogram, and other documents, she concluded Claimant's hearing loss is not related to noise exposure during his employment. D&O at 11; EX 11 at 1-5.

On September 4, 2020, Claimant filed his claim seeking benefits for work-related psychological injuries. CX 1. He amended his claim on November 22, 2021, to include an alleged work-related hearing loss. CX 3. Employer controverted both claims, EXs 3, 6, and the case was forwarded to the Office of Administrative Law Judges, CX 7, where the parties opted for the claim to be adjudicated by submission of the evidence in lieu of

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[4] Dr. Valderrama Escalante saw Claimant approximately eighteen times, until Claimant had to stop treatment in July 2021 for financial reasons. D&O at 5; EX 14 at 80. Over that period, Claimant states the cost of his visits tripled in price, and the cost of his prescriptions nearly doubled in price. D&O at 5; EX 14 at 81-82.

[5] Dr. Mazur further opined the validity tests showed Claimant is "feigning and exaggerating his symptoms." D&O at 8; EX 8 at 10, 16. She noted if Claimant was experiencing all the symptoms he reported, he would demonstrate signs of a "psychiatric disturbance," which he did not. D&O at 8; EX 8 at 14.

[6] The ALJ mistakenly refers to Dr. Benejam as "Dr. Benjamin."

[7] Dr. Mazur submitted an addendum challenging Dr. Benejam's diagnoses, and Dr. Benejam responded with his own addendum. EX 9; CX 29. Both doctors reiterated their positions. *Id.*

an in-person hearing. D&O at 2. The parties each submitted evidence and briefs. *Id.* On July 25, 2023, the ALJ issued his Decision and Order Denying Benefits.

The ALJ determined Claimant invoked the Section 20(a) presumption, 33 U.S.C. §920(a), that his psychological injury and hearing loss are related to his work in Iraq for Employer and that, for each, Employer rebutted the presumption. D&O at 14, 16. Weighing the evidence as a whole, the ALJ found Claimant did not suffer any work-related psychological injury or compensable hearing loss. D&O at 20-21. He therefore denied Claimant's claim. *Id.* at 20-21.

Claimant appeals, challenging the ALJ's causation findings as to his psychological injury.[8] Employer responds, urging affirmance. Claimant filed a reply brief, reiterating his argument.

Claimant first asserts the ALJ violated his due process rights because his Section 20(a) causation analysis focused solely on whether Claimant has PTSD related to his work, rather than fully addressing Claimant's other alleged psychological conditions of depression and anxiety. He maintains the ALJ's silence in terms of his work-related depression and anxiety does not comport with the Administrative Procedure Act, 5 U.S.C. §557(c)(3)(A), so the Benefits Review Board should reverse his conclusion that Claimant does not have a compensable psychological injury.

To invoke the Section 20(a) presumption, a claimant must establish 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), *appeal dismissed* (MDFL Aug. 24, 2023); *see also American Stevedoring Ltd. v. Marinelli*, 248 F.3d 54, 64-65 (2d Cir. 2001). Once the presumption is invoked, as in this case, the burden shifts to the employer to rebut the presumption by producing substantial evidence that the claimant's injuries were not caused, contributed to, or aggravated by his employment. *Rainey v. Director, OWCP*, 517 F.3d 632, 637 (2d Cir. 2008); *O'Kelley v. Dep't of the Army/NAF*, 34 BRBS 39, 41 (2000). The employer's burden at this stage is one of production, not persuasion. *Rainey*, 517 F.3d at 637; *Rose*, 56 BRBS at 35; *Suarez v. Serv. Employees Int'l, Inc.*, 50 BRBS 33, 36 (2016). A physician's unequivocal opinion that no relationship exists between the employee's injury or death and his employment is sufficient to rebut the presumption. *See generally Suarez*,

[8] We affirm the ALJ's findings related to Claimant's hearing loss and resulting denial of benefits for that alleged injury as unchallenged on appeal. *Scalio v. Ceres Marine Terminals, Inc.*, 41 BRBS 57, 58 (2007).

50 BRBS at 36; *Cline v. Huntington Ingalls, Inc.*, 48 BRBS 5, 6-7 (2013); *O'Kelley*, 34 BRBS at 41-42.

Relying on Claimant's testimony, as well as the diagnoses of Drs. Ciuffardi Montoya, Valderrama Escalante, and Benejam, the ALJ found Claimant established a prima facie case that "he suffered [a] psychological harm" related to his exposures "to war hazards while working for Employer." D&O at 15. Therefore, he found Claimant entitled to the Section 20(a) presumption that his psychological harm is work-related. *Id.* The ALJ next found Dr. Mazur's opinion, that "Claimant is not diagnosed with any specific psychiatric or psychological disorder" and "does not suffer from any specific mental health condition," EX 8 at 16, 17, sufficient to rebut the Section 20(a) presumption "because it suggests [Claimant] does not have a psychological impairment."[9] D&O at 16.

The ALJ's acknowledgement of Claimant's anxiety and depressive symptoms in his discussion of the medical evidence, *id.* at 6, 7, 10, and use of the phrases "psychological harm" and "psychological impairment" in his Section 20(a) invocation and rebuttal analyses, *id.* at 15, 16, reflects he considered all alleged psychological injuries, and not just PTSD, when addressing causation.[10] This is further supported by Dr. Mazur's opinion, that Claimant does not have "PTSD or *any other medical health disorder*,"[11] EX 8 at 16-17 (emphasis added), which necessarily encompasses a conclusion that she does not believe Claimant suffers from any work-related anxiety or depression.[12] Finally, the ALJ framed

[9] We affirm the ALJ's finding that Employer rebutted the Section 20(a) presumption both because it is unchallenged on appeal, *Scalio*, 41 BRBS at 58, and because Dr. Mazur's opinion constitutes substantial evidence that a reasonable mind could find adequate to support a finding that Claimant does not have any psychological condition. *Rainey*, 517 F.3d at 637; *Suarez*, 50 BRBS at 36; *Cline*, 48 BRBS at 6-7; *O'Kelley*, 34 BRBS at 41-42.

[10] The ALJ's use of "PTSD" in the headings of his causation discussion is harmless error. *See generally Suarez*, 50 BRBS at 37.

[11] Moreover, although Drs. Ciuffardi Montoya and Valderrama Escalante each noted Claimant expressed symptoms of anxiety and/or depression, CX 25 at 2; CX 27 at 2, 7, they both ultimately diagnosed Claimant with only work-related PTSD. CX 25 at 2; CX 27 at 2, 7, 5, 13, 18, 23, 28, 33, 38, 43, 48. While Dr. Benejam diagnosed him with "PTSD-Major Depressive Disorder and Generalized Anxiety Disorder" caused by the "traumatic experiences as part of his work overseas," CX 28 at 17-18, his opinion, as the ALJ rationally found, was rebutted by Dr. Mazur's opinion.

[12] As Claimant suggests, Dr. Mazur stated Claimant's list of his symptoms revealed he experienced moderate to severe anxiety and depression. EX 8 at 8. Nevertheless, based

his conclusion in terms of whether Claimant "met his burden to establish he has a compensable work-related psychological injury," establishing his analysis encompassed more than just PTSD. D&O at 20. Therefore, we reject Claimant's contentions that the ALJ too narrowly focused his analysis on Claimant's alleged PTSD rather than his alleged psychological conditions in general. The ALJ's decision does not violate Claimant's due process rights[13] or the APA's requirements.[14]

Claimant next asserts the ALJ erred in concluding he did not prove a work-related psychological injury by a preponderance of the evidence. He maintains the ALJ's decision to credit Dr. Mazur's opinion over Dr. Benejam's "simply" because she discussed Claimant's post-injury work history is not supported by substantial evidence. Further, he contends his testimony, in conjunction with other evidence which he asserts the ALJ never weighed in resolving causation,[15] meets his burden to establish he sustained work-related

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on her "current evaluation," Dr. Mazur determined Claimant had "exaggerated and overreported his psychological symptoms" and concluded the reported symptoms "are not considered reliable or valid." *Id.* at 16.

[13] Due process requires a party be given notice of the proceedings and opportunity to be heard at a reasonable time and in a reasonable manner. *Goldberg v. Kelly*, 397 U.S. 254 (1970). Additionally, the right to procedural due process in an administrative proceeding encompasses a party's "meaningful opportunity to present [its] case." *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976); *see also Goldberg v. Kelly*, 397 U.S. 254 (1970). Claimant unquestionably was afforded both notice and an opportunity to be meaningfully heard in front of the ALJ, satisfying due process requirements. And, at the end of that process, the ALJ adequately resolved the conflicts in the evidence and fulfilled his duty of explanation under the APA.

[14] As the APA requires, the ALJ carefully reviewed and considered all the relevant evidence and detailed the rationale behind his causation findings. D&O 2-20; *see* 5 U.S.C. §557(c)(3)(A); *Santoro v. Maher Terminals, Inc.*, 30 BRBS 171, 172 (1996); *Cotton v. Newport News Shipbuilding & Dry Dock Co.*, 23 BRBS 380 (1990); *Cairns v. Matson Terminals, Inc.*, 21 BRBS 252 (1988). His decision, therefore, accords with the APA's requirements.

[15] Claimant states the ALJ erred by not addressing submitted evidence consisting of photographs, employment certificates and documents, discovery responses, and filings with the Department of Labor. Contrary to Claimant's contention, the ALJ acknowledged the written record, which included Claimant's Exhibits 1 through 33 and Employer's Exhibits 1 through 14, and explicitly stated he "carefully considered *all the evidence* before me in reaching" his decision. D&O at 2 (emphasis added). Moreover, Claimant fails to

psychological injuries and a resulting disability by a preponderance of the evidence.

If the employer rebuts the Section 20(a) presumption, as in this case, it no longer applies, and the issue of causation must be resolved based on the evidence in the record, with the claimant bearing the burden of persuasion. *Rainey*, 517 F.3d at 634; *Marinelli*, 248 F.3d at 65; *Santoro*, 30 BRBS at 175; *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267 (1994).[16] The ALJ is entitled to weigh the evidence, and to draw his own inferences from it; he is not bound to accept the opinion or theory of any particular expert. *See Pietrunti v. Director, OWCP*, 119 F.3d 1035, 1042 (2d Cir. 1997); *Sealand Terminals, Inc. v. Gasparic*, 7 F.3d 321, 323 (2d Cir. 1993); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961). And, the Board is not free to re-weigh the evidence or make credibility determinations but must affirm the ALJ's findings if they are rational and supported by substantial evidence. *Gasparic*, 7 F.3d at 323; *Volpe v. Northeast Marine Terminals*, 671 F.2d 697, 700 (2d Cir. 1982); *Perini Corp. v. Hyde*, 306 F. Supp. 1321, 1325-1326 (D.R.I. 1969).

The ALJ initially accorded diminished weight to the opinions rendered by Drs. Valderrama Escalante and Ciuffardi Montoya because their records were "not as comprehensive" as those put forth by Drs. Benejam and Mazur.[17] In weighing the opinions of Drs. Benejam and Mazur, he stated "the weight of the evidence is close;" nevertheless, he determined Dr. Mazur's opinion "preponderates" over Dr. Benejam's opinion. D&O at 20. In reaching this conclusion, the ALJ found Dr. Mazur's opinion well-documented, as it was based on her interview with Claimant, objective diagnostic testing, and the Diagnostic and Statistical Manuel of Mental Disorder (DSM-V), and well-reasoned because her findings supported her conclusions. *Id.* at 19. He also found Dr. Mazur's

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explain how the purportedly unconsidered documents are relevant to the causation issue in this case. *See Montoya v. Navy Exch. Serv. Command*, 49 BRBS 51, 52 n.1 (2015); *Plappert v. Marine Corps Exch.*, 31 BRBS 109, 111 (1997).

[16] We reject Claimant's suggestion that all doubtful questions of fact should be resolved in his favor as it represents an incorrect statement of the law. *Director, OWCP v. Greenwich Collieries*, 512 U.S. 267 (1994) (the "true doubt" rule violates Section 7(c) of the Administrative Procedure Act, 5 U.S.C. §556(d)); *Santoro*, 30 BRBS at 175.

[17] We affirm the ALJ's decision to accord limited weight to the opinions proffered by Drs. Valderrama Escalante and Ciuffardi Montoya on causation as those findings are unchallenged on appeal. *Scalio*, 41 BRBS at 58.

opinion on the validity test results was clear and consistent.[18] *Id.* In contrast, the ALJ found Dr. Benejam's opinion was not as well-documented because he did not obtain a detailed description of Claimant's work history after returning to Peru, which undermined his assessment of Claimant's ability to work. *Id.* at 18. Furthermore, although the ALJ found Claimant mostly credible, he rationally found Claimant's failure to disclose his alcohol use to the medical professionals slightly undermined his credibility.[19] *Id.* Because the ALJ's weighing of the evidence as a whole and decision to credit Dr. Mazur's opinion over Dr. Benejam's are rational and supported by substantial evidence in the record, *Pietrunti*, 119 F.3d at 1042; *Gasparic*, 7 F.3d at 323; *Hughes*, 289 F.2d at 405; *Pisaturo*, 49 BRBS at 81, we affirm the ALJ's finding that Claimant's alleged psychological condition is not work-related. *Sistrunk v. Ingalls Shipbuilding, Inc.*, 35 BRBS 171, 174

[18] The ALJ credited Dr. Mazur's opinion that Claimant's test scores indicated he was overreporting as his actual symptoms and behavior were not as severe as either the symptoms he reported or his self-reported daily functioning. D&O at 20.

[19] In this regard, the ALJ found Claimant's testimony that he began drinking heavily after his return from Iraq, EX 14 at 70, rendered his statements to Drs. Benejam, Mazur and Valderrama Escalante that he had no history of problematic alcohol use to be "untruthful." D&O at 17.

(2001); *Coffey v. Marine Terminals Corp.*, 34 BRBS 85, 87 (2000); *see also Burns v. Director, OWCP*, 41 F.3d 1555, 1564 (D.C. Cir. 1994); *Mijangos v. Avondale Shipyards, Inc.*, 948 F.2d 941, 945 (5th Cir. 1991) (the choice among reasonable inferences is left to the ALJ).

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge