

**U.S. Department of Labor**

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



BRB No. 23-0483

GEOFFREY ATUKWATSE

Claimant-Petitioner

v.

SOC, LLC

and

CONTINENTAL INSURANCE COMPANY  
(CNA)

Employer/Carrier-  
Respondents

**NOT-PUBLISHED**

DATE ISSUED: 04/30/2025

DECISION and ORDER

Appeal of Decision and Order of District Chief Patrick M. Rosenow,  
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.

Lauren E. Wilson and Juana E. Eburi (Brown Sims), Houston, Texas, for  
Employer and its Carrier.

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

PER CURIAM:

Claimant appeals District Chief Administrative Law Judge (ALJ) Patrick M. Rosenow's Decision and Order (2020-LDA-00623) 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).<sup>1</sup> 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 Uganda, worked for Employer as an armed security guard in Iraq from December 2009 to October 2011.<sup>2</sup> Decision and Order (D&O) at 4; Joint Exhibit (JX) at 15 at 13-14 (Transcript (Tr.) at 48, 51). Claimant testified he experienced several frightening incidents while working in Iraq. In January 2010 in an area of the base he had just left, a bomb attack killed three people; Claimant did not witness the explosion but heard it, took cover, and saw the aftermath, including dead bodies. D&O at 4; JX 15 at 16-17 (Tr. 58-63). In May 2010 approximately thirty to thirty-five bombs or missiles hit his camp, requiring him to take cover, JX 15 at 17-18 (Tr. 63-68); he did not witness the explosions but saw the damage afterward. *Id.* at 18 (Tr. 69). Claimant testified the "biggest" attack he experienced occurred on September 11, 2010, *Id.* at 19 (Tr. 71); he estimated about 120 bombs landed inside the camp, alarms went off all day, he took cover both on the ground and in a bunker, and he both heard and saw explosions. *Id.* at 19-20 (Tr. 71, 76-77). While these were the three "biggest" incidents Claimant experienced, he testified to experiencing almost constant bombings, rocket attacks, and missile strikes where he worked. *Id.* at 21 (Tr. 78-79). Claimant stated these attacks made him feel scared, terrified, and stressed, and he mentioned his heart pounded and raced after one incident. *Id.* at 16, 17, 19, 21 (Tr. 58, 64, 70, 72).

Claimant testified he began experiencing psychological symptoms while he was still in Iraq, but he did not take them seriously. JX 15 at 21 (Tr. 79-81). He did not seek medical help for his symptoms until May 2019, long after his return to Uganda, when he met with Senior Psychiatric Clinical Officer (PCO) Buhese Wilson. D&O at 5; JX 15 at 21 (Tr. 81); Claimant's Exhibit (CX) 3 at 1. PCO Wilson treated Claimant through September 2021, and his diagnoses included panic attacks, stress reactions, post-traumatic stress disorder (PTSD), and depression. D&O at 6; CX 3 at 1-14. On July 15, 2021, PCO Wilson issued

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<sup>1</sup> 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).

<sup>2</sup> Claimant worked as a security guard under two contracts for Employer in Iraq. D&O at 4; JX 15 at 13. The first contract ended on January 5, 2011, and was renewed on January 6, 2011. JX 15 at 13 (Tr. 48).

a report summarizing Claimant's symptoms and treatment.<sup>3</sup> D&O at 6; CX 3 at 13. He diagnosed Claimant with PTSD, panic attacks, and depression "following his exposure in the Iraq war to situations like: missile/bomb explosions, sandstorms, torture carrying heavy weights for long hours and environmental pollution." *Id.* He noted Claimant started receiving cognitive behavioral therapy (CBT) under the care of an unnamed clinical psychiatrist and advised Claimant to refrain from working in a war zone, with a security agency, or in "any other situation that is likely to exacerbate symptoms and or induce relapse." *Id.*

On April 10, 2021, at Employer's request, licensed psychologist Dr. Bahar Safaei-Far evaluated Claimant. D&O at 7; JX 7. Dr. Safaei-Far reviewed Claimant's medical records, conducted a clinical interview via video, and administered three tests.<sup>4</sup> D&O at 7; JX 7 at 1-3. She opined the testing results suggested intentional suboptimal effort, malingering, and exaggeration of symptoms, and the results were not consistent with any known clinical diagnosis. JX 7 at 7. She concluded Claimant failed to meet any diagnostic criteria for a mental disorder.<sup>5</sup> JX 7 at 7.

Meanwhile, on September 15, 2020, Claimant presented to ENT Officer Kule Fredson Apollo in Uganda complaining of hearing loss, buzzing in his ears, dizziness, and headaches. D&O at 6; CX 3 at 18-21. Mr. Fredson Apollo diagnosed Claimant with "moderate to severe sensori-neuro hearing loss," and an audiogram obtained that same day showed "severe hearing loss." CX 3 at 18-19. He opined Claimant "could have acquired

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<sup>3</sup> Claimant's reported symptoms included flashbacks, panic, anxiety, hypervigilance, angry outbursts, difficulty sleeping, poor memory and concentration, isolation, recurrent intrusive thoughts, nightmares, low mood, reduced energy and libido, avoidance, and loss of interest in activities he previously enjoyed. CX 3 at 13. PCO Wilson indicated he administered the Patient Health Questionnaire (PHQ-9) and the PTSD Checklist for DSM-5 (PCL-5) and reported Claimant's scores on each test. *Id.*

<sup>4</sup> Dr. Safaei-Far administered the Miller Forensic Assessment of Symptoms (M-FAST), the Test of Memory Malingering (TOMM), and the Morel Emotional Numbing Test for PTSD (MENT). JX 7 at 3.

<sup>5</sup> Dr. Safaei-Far issued supplemental reports on November 15, 2021, and April 9, 2022, following review of Claimant's deposition and updated medical records. JX 7 at 11-17. Her opinions remained unchanged. *Id.* at 12, 16.

this problem” from working in an area “full of blasts/explosion, big and noisy generators, plus other heavy machines.” CX 3 at 18.<sup>6</sup>

On September 15, 2021, at Employer’s request, audiologist Dr. Laurie Hebert conducted a peer review of Claimant’s audiology records. D&O at 10-11; JX 8. She concluded Claimant’s hearing loss is “not related to noise exposure during employment.” JX 8 at 2. She explained that noise exposure causes a high-frequency sensorineural hearing loss between 2000-8000 Hz, but Claimant demonstrated hearing loss at lower frequencies. *Id.* Dr. Hebert also noted the 2020 audiogram did not measure bone conduction to determine whether the hearing loss is sensorineural, conductive, or mixed, and Claimant responded at two significantly different decibel levels for each frequency in the left ear, “suggesting an invalid audiogram with inconsistent responses.” *Id.*

After his first appointments with PCO Wilson, on July 19, 2019, Claimant filed a claim seeking benefits for work-related psychological injuries. JX 1 at 2. He amended his claim on February 22, 2021, to include an alleged work-related hearing loss. JX 2. The case was forwarded to the Office of Administrative Law Judges, CX 1 at 3, where the parties elected for the claim to be decided on the written record. D&O at 2. The parties each submitted evidence and briefs. *Id.*

On August 7, 2023, the ALJ issued his Decision and Order. He determined Claimant invoked the Section 20(a) presumption, 33 U.S.C. §920(a), for both the alleged psychological injury and the alleged hearing loss, and in each instance, Employer rebutted the presumption. D&O at 13-16. Upon weighing the evidence as a whole, the ALJ found Claimant did not prove he suffered a work-related psychological injury or compensable hearing loss. *Id.* at 14, 16. Consequently, the ALJ denied Claimant’s claim. *Id.* at 17.

Claimant appeals, challenging the ALJ’s weighing of the evidence and causation findings as to both his psychological injury and hearing loss claims. Employer responds, urging affirmance. Claimant first asserts the ALJ’s assessment of his credibility is not supported by substantial evidence. Claimant’s Petition for Review and Brief (Cl. PR) at 3. He contends the ALJ failed to acknowledge the instances in the record where he was consistent and failed to consider evidence supporting his credibility. *Id.* at 4.

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<sup>6</sup> Claimant returned to Mr. Fredson Apollo on June 25, 2021, and September 10, 2021. In the June report, Mr. Fredson Apollo noted Claimant continued to have “severe sensori-neuro hearing loss,” while in the September report he indicated “good improvements.” D&O at 7; CX 3 at 25-27.

Once the employer rebuts the Section 20(a) presumption, as in this case,<sup>7</sup> the issue of causation must be resolved based on the evidence in the record with the claimant bearing the burden of persuasion. *Rainey v. Director, OWCP*, 517 F.3d 632, 634 (2d Cir. 2008); *Santoro v. Maher Terminals, Inc.*, 30 BRBS 171, 175 (1996); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267 (1994).<sup>8</sup> 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, 405 (2d Cir. 1961). Questions of witness credibility are for the ALJ as the trier-of-fact. *Pietrunti*, 119 F.3d at 1042; *Gasparic*, 7 F.3d at 323; *Hughes*, 289 F.2d at 405. 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 found discrepancies in Claimant's inconsistent statements that called his credibility into question. D&O at 14. He rejected Claimant's argument that these discrepancies are "insignificant" and "fall within the expected range of variance." *Id.* Rather, he noted Claimant reported "retrograde amnesia" to PCO Wilson, but this alleged symptom was not "confirmed on any testing or in any diagnosis." D&O at 14; CX 3 at 2. He further found this alleged amnesia undermined by Claimant's "fairly accurate and full recollection of his personal history...back to 1978" during his deposition. D&O at 14; JX 15 at 6-10, (Tr. 20-34). The ALJ found Claimant's testimony only "minimally consistent" with medical reports, specifically noting he made no reference to attempted suicide or retrograde amnesia, both "severe symptoms" he reported to PCO Wilson and Dr. Safaei-Far. D&O at 14; JX 7 at 5; JX 9 at 2, 8; JX 15 at 11, 15-16, 25 (Tr. 38-39, 57-58, 94-95). As the ALJ's credibility finding is supported by the evidence, and considering the broad

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<sup>7</sup> To the extent Claimant is challenging the ALJ's rebuttal finding, we reject it. The burden on rebuttal is one of production, not persuasion, and the ALJ properly found Drs. Safaei-Far's and Hebert's reports sufficient to meet that burden. *Rose v. Vectrus Systems Corporation*, 56 BRBS 27, 36 (2022) (en banc), *appeal dismissed* (MDFL Aug. 24, 2023); D&O at 13-15; JXs 7, 8.

<sup>8</sup> 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 the Administrative Procedure Act, 5 U.S.C. §§556(d), 557(c)); *Santoro*, 30 BRBS at 175.

discretion accorded ALJs in assessing credibility, we affirm it. *Gasparic*, 7 F.3d at 323; *Volpe*, 671 F.2d at 700; *Hyde*, 306 F. Supp. at 1325-1326.

Claimant next asserts the ALJ improperly weighed the evidence by failing to give his treating physicians' opinions proper weight. Cl. PR at 6. He argues the ALJ improperly credited Dr. Safaei-Far's report because it was "longer," "more colorful," and "more reliable" than PCO Wilson's reports despite PCO Wilson's frequent meetings with Claimant and better understanding of the cultural issues surrounding mental health. *Id.* at 7. Regarding Claimant's hearing loss claim, he suggests Dr. Hebert's two-page peer review does not constitute "countervailing evidence" of the hearing loss established by the audiogram, its "substantiating report," and "multiple subsequent treatment records." *Id.* at 9.

As discussed above, the ALJ as the trier-of-fact determines witness credibility and may draw his own inferences and conclusions from the evidence. *Pietrunti*, 119 F.3d at 1042; *Gasparic*, 7 F.3d at 323; *Hughes*, 289 F.2d at 405. As such, the ALJ is not bound to accept the opinion or theory of any particular healthcare provider. *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741, 742 (5th Cir. 1962). A treating physician's opinion may deserve "special deference" when no substantial evidence in the record opposes it. *Amos v. Director, OWCP*, 153 F.3d 1051, 1054 (9th Cir. 1998); *Pietrunti*, 119 F.3d at 1042-1044. However, when there is conflicting medical evidence, as there is here, the ALJ is not required to give special weight to a treating physician's opinion. *Kkunsu v. Constellis Group/Triple Canopy, Inc.*, 59 BRBS 1, 4 (2025). Instead, he must consider all relevant evidence, assess the weight and credibility of each opinion, and explain his rationale for reaching a decision based on the evidence in the record. *Id.* at 4-5.

The ALJ here reviewed the medical evidence and opinions and determined Claimant's medical evidence was insufficient to support his claim for psychological injuries due to the "vague" description of his psychological symptoms. D&O at 14; *see Carswell v. E. Pihl & Sons*, 999 F.3d 18, 31-32 (1st Cir. 2021), *cert. denied*, 14 S. Ct. 1110 (2022) (It is reasonable for an ALJ to assign more weight to the employer's medical expert if the opinions of the claimant's treating physician are vague). He noted PCO Wilson's treatment records provided little indication of the "severity," "progression," or "frequency" of his symptoms or why they changed. D&O at 14; *see* CX 3. Further, the treatment records lacked mental health history, and PCO Wilson did not explain the tests he administered, what the scores indicated, or whether the tests in question were intended to be objective or based on Claimant's subjective reporting of symptoms. D&O at 14; CX 3 at 1-13. The ALJ found Claimant's provider's records provided minimal details about his work history, and his appointments with PCO Wilson focused less on treatment and more on his reported symptoms, which led to "unreasoned diagnoses and prescribed medication." *Id.* at 14.

Conversely, the ALJ found Dr. Safaei-Far's opinion supported by her evaluation and understanding of Claimant's history. D&O at 15; JX 7. The ALJ noted she found inconsistencies in his reporting regarding his post-Iraq employment<sup>9</sup> and psychological symptoms.<sup>10</sup> D&O at 15; JX 7 at 7. The ALJ concluded Dr. Safaei-Far's opinion is more persuasive because she provided a "full and rational explanation" and clearly articulated the "purpose and ordinary use" of the diagnostic tests she administered. D&O at 15; JX 7 at 7-10.

Likewise, the ALJ properly weighed the medical evidence regarding Claimant's hearing loss claim and rationally credited Dr. Hebert's report over the medical records of Mr. Fredson Apollo. *Kkunsu*, 59 BRBS at 7; *Gasparic*, 7 F.3d at 323. The ALJ found Claimant's audiogram to be "inherently unreliable and insufficient, noncompliant with the regulatory requirements to constitute presumptive evidence of a hearing loss, and lacking calibration information." D&O at 16.<sup>11</sup> In reaching his conclusion, the ALJ noted Dr. Hebert opined the audiogram was "incomplete" for the following reasons:

[I]t had no objective tests to validate the subjective responses, no calibration data, no speech reception threshold, no tympanometry, no acoustic reflex response, and no otoacoustic emission test.

*Id.*; JX 8 at 2-3.

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<sup>9</sup> Dr. Safaei-Far noted Claimant first stated he had not worked since returning from Iraq, but upon further questioning, he admitted doing "casual jobs" to earn money. JX 7 at 9.

<sup>10</sup> Claimant reported to Dr. Safaei-Far that he experienced daily auditory and visual hallucinations. JX 7 at 5, 7. He specifically described hearing "people calling [his] name" and seeing "people running" as well as "animals." *Id.* at 5. He reported a combination of symptoms, including some that Dr. Safaei-Far deemed rare and inconsistent with any recognized psychiatric disorder. *Id.* at 7.

<sup>11</sup> In support, the ALJ cited 20 C.F.R. §702.441(d), which requires the individual determining hearing loss to use the "most currently revised edition" of "criteria for measuring and calculating hearing impairment as published and modified from time-to-time by the American Medical Association in the *Guides to the Evaluation of Permanent Impairment*." See D&O at 16. The regulation also requires the audiometer used for testing be "calibrated according to current American National Standard Specifications for Audiometers." 20 C.F.R. §702.441(d).

Beyond the administration problems, Dr. Hebert noted the audiogram indicated inconsistent results, suggesting both moderate and severe to profound hearing loss, and the test results could not be used to determine the type of loss because the administrator did not record bone conduction thresholds. D&O at 16; EX 8 at 1. Dr. Hebert also opined the audiogram did not show patterns reflecting the expected high-frequency hearing loss associated with noise exposure. D&O at 16; EX 8 at 2. As the ALJ properly weighed all medical evidence and adequately explained his reasoning in accordance with the Administrative Procedure Act (APA),<sup>12</sup> 5 U.S.C. §§551-559, and as his conclusions are supported by substantial evidence, we affirm them.

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

SO ORDERED.

JUDITH S. BOGGS  
Administrative Appeals Judge

JONATHAN ROLFE  
Administrative Appeals Judge

MELISSA LIN JONES  
Administrative Appeals Judge

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<sup>12</sup> We reject Claimant's contention that the ALJ failed to make "sufficiently specific findings" based solely on the number of pages dedicated to his analysis. Cl. PR at 10-11. Rather, the ALJ adequately detailed the rationale behind his decision and specified the law and evidence upon which he relied in compliance with the APA. *See* 5 U.S.C. §557(c)(3)(A); *see also* 33 U.S.C. §919(d); *Gelinas v. Electric Boat Corp.*, 45 BRBS 69, 71 (2011); *Ballesteros v. Willamette W. Corp.*, 20 BRBS 184, 187 (1988).