U.S. Department of Labor

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

BRB No. 23-0492

JULIE ANANIA (Widow of DONALD ANANIA) Claimant-Petitioner v. ELECTRIC BOAT CORPORATION Self-Insured Employer-Respondent	)	**NOT-PUBLISHED** DATE ISSUED: 04/30/2025 DECISION and ORDER

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

Robert P. Audette and Mary Ann Violette (Audette, Audette & Violette, L.L.C.), East Providence, Rhode Island, for Claimant.

Edward W. Murphy (Morrison Mahoney LLP), Boston, Massachusetts, for Self-Insured Employer.

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

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Jerry R. DeMaio's Decision and Order Denying Benefits (2021-LHC-00609) rendered on a claim filed pursuant to the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §§901-950 (Act). 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.[1] 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Donald Anania (Decedent) worked for Employer as a machinist from March 1983 until April 2014. CX 8, Dep. at 15, 48. His duties included drilling, machining, grinding, manufacturing, painting, and installing asbestos gaskets into components at Employer's facility. *Id.*, Dep. at 17, 20-28, 32-35, 41-42, 44. Decedent's work regularly exposed him to dust, fibers, and airborne particulates, including asbestos, though his exposures varied depending upon in which building he worked.[2] *Id.* He underwent annual respiratory physicals as part of Employer's asbestos monitoring program. CX 9 at 6. Following his 1997 physical, Employer's physician informed him he had pleural thickening of the lungs. CX 8, Dep. at 36. As a result, the physician recommended he see pulmonologist, Dr. Curtis Mello, and Employer reassigned him to its machine shop, Building 60, purportedly to avoid his having to work in a dusty, dirty environment. *Id.*; CX 8, Dep. at 36; CXs 6, 15.

Dr. Mello served as Decedent's attending pulmonologist from August 1997. He monitored Decedent's general pulmonary function, as well as his lung nodules and pleural thickening, and in his October 21, 2016 report he opined they "have been stable." CX 6. Meanwhile, in March 2014, Decedent was diagnosed with "metastatic adenocarcinoma of unknown primary" location. As a result of his cancer diagnosis, Decedent retired from employment on April 1, 2014.[3] CX 8, Dep. at 27; CX 9 at 7. Subsequent testing indicated

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[1] This case arises within the jurisdiction of the United States Court of Appeals for the First Circuit because Claimant sustained his injuries in North Kingstown, Rhode Island. 33 U.S.C. §921(c); *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); 20 C.F.R. §702.201(a).

[2] Decedent testified he initially worked outside but then moved around to various buildings within Employer's facility. CX 8, Dep. at 17-27; CX 9 at 6-7.

[3] Decedent filed a claim seeking benefits for his pulmonary condition, which encompassed an allegation that he suffered from lung cancer due to his work exposures. CX 9 at 5. At the hearing, he withdrew the lung cancer aspect of his claim and instead identified the claimed injury as occupational asthma and chronic obstructive pulmonary disease (COPD). *Id.* at 5, 7. The case progressed to the Office of Administrative Law Judges in 2016, where it was assigned to ALJ Colleen A. Geraghty. Following a formal hearing on March 28, 2017, ALJ Geraghty issued a decision on July 31, 2017, finding Decedent entitled to, and Employer liable for, "all reasonable, appropriate and necessary medical care and treatment as [his] work-related pleural plaques and pleural thickening may require pursuant to 33 U.S.C. §907." CX 9 at 27.

a small bowel primary adenocarcinoma with metastases to his liver, peripancreatic lymph nodes, and intrathoracic lymph nodes. CX 5 at 2, 5, 459, 465; EX 9, Dep. at 46-48. Beginning in March 2016, Decedent was treated primarily at the Dana-Farber Cancer Institute (DFCI) by oncologist Dr. Nadine Jackson McCleary. CXs 4, 5. He died on December 17, 2017; his death certificate listed small bowel adenocarcinoma (SBA) as the cause of death. CX 11.

Claimant, his widow, filed a claim for death benefits under 33 U.S.C. §909, asserting her husband's thirty-one years of harmful exposures, including the inhalation of asbestos, while working for Employer caused, contributed to, or hastened the SBA which caused his death. Employer controverted the claim, asserting Decedent's death was in no way related to his work. Both parties submitted medical opinion evidence supporting their respective positions. Claimant submitted treatment records from Decedent's oncologist, Dr. McCleary, his pulmonary specialist, Dr. Mello, and from Dr. Stephen Matarese, a board-certified physician in internal, pulmonary, and sleep medicine. CXs 1-7, 13, 15. Employer presented evidence from Dr. Michael Conway, who is board-certified in internal and pulmonary medicine, and Dr. Milo Pulde,[4] who is board-certified in internal medicine. EXs 1-6, 9. The case was referred to the Office of Administrative Law Judges and assigned to ALJ Jerry R. DeMaio (the ALJ).

The ALJ held a hearing by video conference on February 15, 2022, and issued his Decision and Order Denying Benefits (D&O) on August 16, 2023. In his decision, the ALJ found Claimant invoked the Section 20(a) presumption, 33 U.S.C. §920(a), relating Decedent's death to his employment as his death was due to cancer (SBA), it was undisputed he experienced asbestos exposure at Employer's facility, and Dr. Matarese's opinion linked Decedent's SBA to asbestos exposure. D&O at 9. The ALJ then found Employer rebutted the Section 20(a) presumption with opinions from Drs. Conway and Pulde which stated Decedent's work at Employer's facility did not cause, contribute, or accelerate his SBA and resulting death. *Id.* at 10. Weighing the record as a whole, the ALJ found Dr. Pulde's opinion more convincing than Dr. Matarese's and concluded Claimant did not meet her burden to show, by a preponderance of the evidence, that Decedent's death was related to his work exposures. *Id.* at 10-16. Consequently, he denied Claimant's claim for death benefits. *Id.* at 21.

[4] The parties also submitted various medical articles which were attached to Dr. Pulde's deposition. EX 9 at 2.

On appeal, Claimant challenges the ALJ's denial of death benefits, asserting the ALJ's findings on rebuttal and in weighing the evidence as a whole are erroneous. Employer responds, urging affirmance of the ALJ's denial of Claimant's claim.

Claimant contends the ALJ erred in finding the opinions of Drs. Conway and Pulde rebutted the Section 20(a) presumption. She asserts Dr. Conway's opinion is insufficient because he examined Decedent only once, at a time when Decedent's adenocarcinoma was of unknown origin, he never reviewed any records of Decedent's oncological treatment at DFCI, and he never opined that Decedent's adenocarcinoma could not be caused by asbestos exposure. Claimant also asserts Dr. Pulde's opinion is inadequate to establish rebuttal because he never examined Decedent, he is the least qualified expert of record,[5] and he mischaracterized and misrepresented all the medical articles upon which he based his conclusion that Decedent's adenocarcinoma was not related to his work exposures to asbestos. For these reasons, Claimant asserts the Board should reverse the ALJ's rebuttal finding.

Where a claimant establishes a prima facie case, Section 20(a) applies to connect the decedent's death to his employment. *Rose v. Vectrus Sys. 2Corp.*, 56 BRBS 27, 37 (2022) (en banc), *appeal dismissed*, (M.D. Fla. Aug. 24, 2023); *see, e.g.*, *Bath Iron Works Corp. v. Fields*, 599 F.3d 47, 55 (1st Cir. 2010). 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 decedent's employment did not cause, contribute to, or hasten his death. *Carswell v. E. Pihl & Sons*, 999 F.3d 18, 30-31 (1st Cir. 2021), *cert. denied*, 142 S. Ct. 1110 (2022); *Fields*, 599 F.3d at 55; *Bath Iron Works Corp. v. Preston*, 380 F.3d 597, 602 (1st Cir. 2004); *Sprague v. Director, OWCP*, 688 F.2d 862, 865 (1st Cir. 1982); *Rose*, 56 BRBS at 38; *O'Kelly 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.[6] *See Truczinkas v.*

[5] Claimant asserts Dr. Pulde put forth contradictory testimony regarding his experience which directly and adversely impacts his credentials and credibility. Moreover, she asserts the doctrine of collateral estoppel should be applied to require the ALJ to follow ALJ Geraghty's prior consideration of Dr. Pulde's credentials, experience, and qualifications as a medical expert and her determination that Dr. Pulde offered the least qualified medical opinion.

[6] We reject Claimant's suggestion that the alleged questionable nature of Dr. Pulde's credentials alone, as reflected by ALJ Geraghty's prior discrediting of Dr. Pulde, renders his opinion insufficient to rebut the Section 20(a) presumption. Because credibility is not relevant to Employer's burden on rebuttal under the Section 20(a) presumption, we reject Claimant's position that collateral estoppel required the ALJ to abide by ALJ Geraghty's prior credibility determinations for purposes of determining whether Employer met its

Director, OWCP, 699 F.3d 672, 678 (1st Cir. 2012); *Fields*, 599 F.3d at 55; *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*, 50 BRBS at 36; *Cline v. Huntington Ingalls, Inc.*, 48 BRBS 5, 6-7 (2013); *O'Kelley*, 34 BRBS at 41-42.

The ALJ found Dr. Pulde's opinion sufficiently rebuts the Section 20(a) presumption. D&O at 10; see EX 1, 22-23, 32-33; *see* EXs 5 at 23, 6 at 18. We agree. As the ALJ determined, Dr. Pulde opined, to a reasonable degree of medical certainty, that Decedent's work for Employer did not cause, hasten, accelerate, or contribute to his death. EX 1 at 18; EX 9, Dep. at 34. In particular, he definitively stated "there's no evidence that [Decedent's] 1983 to 3/13/14 work-related exposures to asbestos or other agents in the workplace caused or contributed to his fully differentiated [SBA], influenced its natural history, affected his outcome, or aggravated this poorly differentiated [SBA], or accelerated his death of 12/17/17 of progressive metastatic poorly differentiated [SBA]." EX 1 at 2, 28-31; EX 9, Dep. at 32, 34-35, 71-72. Because Dr. Pulde's opinion directly contradicts the Section 20(a) presumption relating Decedent's death to his work exposures and is the kind of evidence "a reasonable mind might accept as adequate" to support that conclusion, it constitutes legally sufficient substantial rebuttal evidence. *Truczinkas*, 699 F.3d at 678; *Rose*, 56 BRBS at 35; *Cline v. Huntington Ingalls, Inc*., 48 BRBS at 6-7; *O'Kelley*, 34 BRBS at 41-42. Therefore, we affirm the ALJ's conclusion that Employer

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rebuttal burden in this case. *Truczinkas*, 699 F.3d at 678 ("At the presumption-rebuttal stage, the credibility of the witnesses is not in issue."). Moreover, we reject Claimant's assertion that collateral estoppel precluded the ALJ from assessing Dr. Pulde's credibility in weighing the evidence as a whole as it is only now being raised for the first time on appeal. *Z.S. v. Science Applications Int'l Corp.*, 42 BRBS 87, 89 (2008) (Board declined to address an issue raised for the first time on appeal); *Reposky v. Int'l Transp. Services*, 40 BRBS 65, 71 (2006) (same). Further, for collateral estoppel to apply, the issue must be the same as that decided in the previous case. The previous case involved an allegation of pulmonary impairment and Dr. Pulde's credentials were assessed in the context of his knowledge of such impairments (as compared to those of the other experts on pulmonary impairments in that case). This case involves an allegation of small bowel cancer; thus, Dr. Pulde's expertise as to cancer is being assessed, not his expertise as to assessing pulmonary impairment. Consequently, collateral estoppel would not apply. We note that in that case, ALJ Geraghty credited Dr. Pulde's opinion in establishing rebuttal and only gave it less weight than the other physicians based on comparative expertise. In any event, collateral estoppel is a discretionary doctrine, and the ALJ has the authority and discretion to weigh the evidence and to draw reasonable inferences. *Carswell*, 999 F.3d at 27-28.

rebutted the Section 20(a) presumption with Dr. Pulde's opinion.[7] *Rose*, 56 BRBS at 35; *O'Kelley*, 34 BRBS at 41-42.

If the employer successfully rebuts the presumption, as in this case, the claimant is no longer entitled to it, and the issue of causation must be resolved on the evidence of record as a whole with the claimant bearing the burden of persuasion by a preponderance of the evidence. *Truczinkas*, 699 F.3d at 678; *Fields*, 599 F.3d at 53*; Rose*, 56 BRBS at 38; *Santoro v. Maher Terminals, Inc*., 30 BRBS 171 (1996); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 276 (1994). The ALJ has the authority and discretion to weigh the evidence, accepting any medical opinion in whole or in part, and to draw reasonable inferences therefrom. *Carswell*, 999 F.3d at 27-28; *see generally Pietrunti v. Director, OWCP*, 119 F.3d 1035, 1042 (2nd Cir. 1997); *Sealand Terminals, Inc. v. Gasparic*, 7 F.3d 321, 323 (2d Cir. 1993). The Benefits Review 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; *Perini Corp. v. Hyde*, 306 F. Supp. 1321, 1325-1326 (D.R.I. 1969). If the ALJ's conclusion upon weighing the evidence is rational and supported by substantial evidence, it must be affirmed. *Carswell*, 999 F.3d at 27-28.

Claimant contends the ALJ erred in concluding she did not establish, by a preponderance of that evidence, Decedent's death was related to his work exposures. She asserts the accepted history of Decedent's extensive work exposures to asbestos, the objective, undisputed evidence of asbestos in his body, and the weight of the medical evidence, including Decedent's DFCI treatment records and the credible opinions of Drs. Matarese and Mello, establishes she has met the burden of proving Decedent's death is compensable.

On the other hand, Claimant maintains the opinions proffered by Drs. Conway and Pulde are insufficient to refute her position on causation. She argues Dr. Conway's opinion has no real probative value because he neither presented a definitive opinion on causation nor addressed Dr. Matarese's conclusions. Regarding Dr. Pulde, Claimant reiterates her Section 20(a) rebuttal position that collateral estoppel mandates the ALJ follow ALJ

[7] Given our affirmance of the ALJ's finding that Dr. Pulde's opinion satisfies Employer's burden, we need not address Claimant's assertion that Dr. Conway's opinion is insufficient to rebut the Section 20(a) presumption in this case.

Geraghty's prior rejection of his opinion as uncredible.[8] Alternatively, she asserts the ALJ erred in finding Dr. Pulde's opinion "well documented" as the ALJ never independently reviewed the medical literature upon which it was based. She additionally argues Dr. Pulde's opinion is flawed because he never examined Decedent, he has a misconceived notion regarding the extent of Decedent's harmful work exposures, he improperly inflated his credentials, and he mischaracterized and misrepresented the medical articles and studies upon which his opinion is based. For these reasons, Claimant asserts she has established Decedent's SBA, which directly resulted in his death, is related to his workplace exposures at Employer's facility, and she requests the Board reverse the ALJ's finding on causation. We decline to do so.

The ALJ resolved the conflicts in the record and his findings are within his discretion. The ALJ noted the relevant question is "whether [Decedent's] occupational exposures caused or contributed to the cancer and, in turn, whether they caused or hastened [his] death,"[9] and he addressed it by reviewing each of the parties' proffered medical opinions. D&O at 11. He first found the records, reports and opinions from Dr. Mello, as well as those from Dr. McCleary and other DFCI providers, are largely unhelpful because they do not sufficiently address the cause of Decedent's cancer, let alone tie his death to any work exposures.[10] *Id.* at 11-12. Next, the ALJ found Dr. Conway's statements "can

[8] Claimant states, at the very least, the ALJ should have drawn an adverse inference against Employer for its failure to submit Dr. Pulde's prior deposition into evidence relating to Decedent's *inter vivos* claim.

[9] In stating this, the ALJ recognized it is undisputed Decedent's work at Employer's facility exposed him to asbestos, and there is no question SBA is what "ultimately led to his death." D&O at 11. Contrary to Claimant's assertions, the two elements must be linked for there to be a compensable injury: a mere showing of significant occupational exposures to harmful substances and a cancer diagnosis which caused death do not, absent credible medical evidence linking the two together, constitute substantial evidence sufficient to meet the preponderance of the evidence burden. *Greenwich Collieries*, 512 U.S. at 271; *Truczinkas*, 699 F.3d at 678; *Fields*, 599 F.3d at 53; *Rose*, 56 BRBS at 38; *Santoro*, 30 BRBS at 173.

[10] The ALJ determined Dr. Mello's opinion on causation, in its entirety, is inconclusive because while he stated in 2016 that Decedent's "long exposure to asbestos cannot be excluded as a cause" of his adenocarcinoma, he subsequently admitted during his 2017 deposition that he did not "have enough information" to render an opinion on whether Decedent's metastatic adenocarcinoma was related to his work at Employer's facility. D&O at 11; CX 6; CX 15, Dep. at 41. Moreover, while the ALJ found Dr. McCleary's records and the DFCI's records are "informative and important," they are of

only be given moderate weight" because they are largely based on "literature review and only limited personal expert knowledge" and therefore "they mostly do not comprise an independent opinion." *Id.* at 12. While Dr. Matarese's opinion weighs in Claimant's favor, the ALJ gave it only "minimal weight," finding it is neither well-documented nor well-reasoned. *Id.* at 14. He noted Dr. Matarese is "not an oncologist," and his opinion only "speculates" as to how Decedent's small bowel could have been exposed to asbestos. The ALJ found Dr. Matarese did not offer any "medical analysis" beyond "what 'could have' happened," and his reports and testimony never solidified "the connection between the types of cancers in the cited studies and the type" Decedent suffered.[11] *Id.* at 13.

In contrast, the ALJ found Dr. Pulde's opinions well-documented, well-reasoned, and logical. D&O at 14. He determined Dr. Pulde "has a much greater basis of credibility" because: though not board-certified in oncology, he is on the medical oncology staff at DFCI; he has "40-plus years of practice" and "extensive experience" treating cancer patients as a physician at DFCI, including those with gastrointestinal cancer; his opinions are based on this experience, as well as "his clear and detailed readings of the medical literature" offering information into the causes of SBA; he noted research indicating non-occupational risk factors for Decedent's particular type of cancer, including obesity and tobacco; he "unequivocally" notes there are not occupational risk factors for Decedent's cancer; and he explained why Decedent's SBA "is not considered an asbestos-related cancer."[12] *Id.* at 14-15. Consequently, the ALJ found Dr. Pulde's opinions entitled to "great weight" and "more convincing" than those of Dr. Matarese.

"limited help in determining causation" because their focus was on treating Decedent's cancer; the records "did not opine on the causation" of Decedent's cancer nor "did Dr. McCleary suggest any potential connections" between Decedent's work exposures and his death. D&O at 12; CXs 4, 5.

[11] For example, the ALJ found that although Dr. Matarese cited a study about colorectal cancers, he admitted "they need more evidence" to come to conclusions. D&O at 14 (citing CX 2 at 19).

[12] Dr. Pulde's conclusions assumed Decedent had regular exposure to asbestos, as well as to other noxious substances, such as welding fumes, grinding dust, and paints. EX 9, Dep. at 31-32. He did not "challenge the fact that [Decedent] was exposed to asbestos" at Employer's facility. EX 9, Dep. at 71. Instead, he stated it is "biologically implausible that asbestos exposure can cause or contribute to a [SBA] or [Decedent's] small bowel cancer that was responsible for his 12/17/17 death." EX 9, Dep. at 34. He explained it is his belief that SBA is "*not an occupational cancer*, and we do know that it's not an asbestos-related cancer." *Id.*, Dep. at 44 (emphasis added). This, he states, is because

As stated above, Dr. Pulde opined "to a reasonable degree of medical certainty" no evidence suggests Decedent's work exposures "caused or contributed to his" SBA or otherwise affected the outcome, influenced the history, or aggravated/accelerated either his SBA or death. EX 1 at 2, 18, 28-31; EX 9, Dep. at 32, 34, 71-72. The ALJ thoroughly weighed the relevant evidence[13] and accorded the greatest weight to Dr. Pulde's opinions.

studies indicate any inhaled or ingested asbestos fibers "cannot penetrate the colon and likely small bowel mucosa so that it causes any damage, any effect" to those organs – "the stomach acid digests the fibers, leaches out the ions that cause any toxicity." EX 9, Dep. at 52-53, 57-59. Thus, he stated asbestos "isn't a carcinogen in the large intestines or the small intestines. So, it doesn't matter if it goes through the gut. It's not causing cancer." *Id.*, Dep. at 58. Consequently, we reject Claimant's assertion that Dr. Pulde's opinion is facially flawed due to his exhibiting an incorrect understanding of Decedent's work exposures.

[13] The ALJ explicitly stated he "reviewed" the "various medical articles" and "studies in the evidence," but he focused "on the experts' opinions as they relate to those studies." D&O at 8, 16. Additionally, although Dr. Pulde acknowledged SBA is a "relatively rare cancer" and admitted some of the medical literature suggests "further study is needed before one can determine whether there's an occupational risk," EX 9, Dep. at 11-12, he discussed the literature he reviewed and sufficiently explained its relevance in reaching his no-causation opinion, *id.*, Dep. at 21-42, 59-65. Therefore, we reject Claimant's assertions that the ALJ never independently reviewed, and/or that Dr. Pulde mischaracterized or misquoted, the medical literature accompanying his deposition testimony.

We affirm the ALJ's credibility determinations and findings as they are rational and supported by substantial evidence. *Carswell*, 999 F.3d at 27-28; *Santoro*, 30 BRBS at 173. Therefore, we affirm the ALJ's conclusion that Claimant has not met her burden to show by a preponderance of the evidence that Decedent's SBA, and consequently his death, was causally related to his employment. *Carswell*, 999 F.3d at 27-28; *Victorian v. Int'l-Matex Tank Terminals*, 52 BRBS 35, 42 (2018), *aff'd sub nom. Int'l-Matex Tank Terminals v. Director, OWCP*, 943 F.3d 278 (5th Cir. 2019); *Sistrunk v. Ingalls Shipbuilding, Inc.*, 35 BRBS 171, 174 (2001).

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