



BRB No. 24-0276

JAMES M. CARROLL)
)
 Claimant-Petitioner)
)
 v.)
)
 VIRGINIA INTERNATIONAL)
 TERMINALS, LLC)
)
 and)
)
 SIGNAL MUTUAL INDEMNITY)
 ASSOCIATION, LTD. c/o SAGE)
 ADJUSTING, LLC)
)
 Employer/Carrier-)
 Respondents)

NOT-PUBLISHED

DATE ISSUED: 04/15/2026

DECISION and ORDER

Appeal of the Decision and Order Fixing Change in Date of Maximum Medical Improvement and Denying Additional Benefits of Paul C. Johnson, Jr., Administrative Law Judge, United States Department of Labor.

Gregory E. Camden (Kalfus & Nachman PC), Norfolk, Virginia, for Claimant.

Megan B. Caramore (Kalbaugh Pfund & Messersmith, P.C.), Norfolk, Virginia, for Employer and its Carrier.¹

¹ On August 1, 2025, Employer’s counsel, Megan B. Caramore, filed a second Notice of Appearance stating she changed firms but will continue to represent Employer and its Carrier.

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

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Paul C. Johnson, Jr.'s Decision and Order Fixing Change in Date of Maximum Medical Improvement and Denying Additional Benefits (2021-LHC-01371) 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.² 33 U.S.C. §921(b)(3); *O'Keefe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

Claimant worked as a crane operator for Employer at the time he experienced a workplace accident. Hearing Transcript (TR) at 17. On May 10, 2017, as he was removing a container from a ship, his crane shut off, causing the brakes to lock and the cab to rock. As a result, Claimant was thrown backward and forward in his seat and injured his neck. *Id.* Claimant went to Dr. Arthur Wardell, an orthopedic physician, on May 12, 2017, for initial treatment. Claimant's Exhibits (CXs) 2, 15, 17; Employer's Exhibit (EX) 2 at 1; TR at 17. Dr. Wardell diagnosed Claimant with a dorsal spine sprain and a cervical spine ligament injury, prescribed physical therapy, and kept Claimant out of work. EX 2 at 3. Dr. Bryan A. Fox, an orthopedic surgeon who examined Claimant on Employer's behalf, reported on October 12, 2017, he believed Claimant suffered a cervical strain and cervical radiculopathy secondary to a C6-C7 disc herniation. He recommended medication and a trigger point injection of steroid and local anesthetic. CX 1 at 2-3. On November 17, 2017, Dr. Wardell concurred with Dr. Fox's diagnosis and treatment recommendations, and he continued to treat Claimant. CX 2; EX 2 at 3-14.

Dr. Wardell referred Claimant to Dr. Paul B. Mitchell, a neurosurgeon, who saw him on August 28, 2018. EX 3 at 1-3. Dr. Mitchell diagnosed Claimant with a two-millimeter anterolisthesis at the C3-C4 and C4-C5 levels and disc changes at the C5-C6

² This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because Claimant sustained the injuries at issue in this case in Virginia. 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).

and C7 levels with mild disc space narrowing and marginal osteophytes. *Id.* at 3. He ordered Claimant to undergo a functional capacity evaluation (FCE), and its results led him to conclude Claimant was unable to return to his position as a crane operator. EX 3 at 6, EX 4 at 1-4. As Claimant decided against surgery, Dr. Mitchell assigned job restrictions based on the FCE and referred him back to Dr. Wardell on January 10, 2019. EX 3 at 15-16.

After keeping him out of work since the date of injury, Dr. Wardell determined Claimant's condition reached maximum medical improvement (MMI) and released him to return to light-duty work after May 12, 2019. EX 2 at 34-35. On June 16, 2020, at Employer's request, Dr. Grant A. Skidmore, a neurosurgeon, examined Claimant's neck and reviewed his medical records. CX 4. Dr. Skidmore diagnosed Claimant with chronic pain with mild radicular complaints and no structural abnormalities shown on his MRI scans. *Id.* at 2-3. He recommended a CT myelogram before placing Claimant at MMI. *Id.* On September 2, 2020, although Dr. Wardell had permitted Claimant to return to light-duty work from May 13, 2019, to September 1, 2020, he stated Claimant was permanently and totally disabled from all waterfront work. EX 2 at 73-75. On September 30, 2020, Dr. Wardell's physician's assistant (PA), Michael Ratanataya, reported that Claimant continued to be able to perform light-duty work. *Id.* at 76-77.

On November 3, 2020, due to Claimant's reported anxiety and depression episodes, PA Ratanataya recommended to Claimant a mental health referral. *Id.* at 78-79. On December 17, 2020, Claimant met with Dr. Laura F. Dabney, a psychiatrist. CX 9; EXs 5, 6. Based on her examination and records review, she diagnosed Claimant with adjustment disorder with mixed anxiety and depressed mood related to his workplace injury, and she recommended a three-month medication course with supportive therapy. EX 5 at 1-11. She further opined Claimant has no impairment or work restrictions from his psychiatric diagnosis, but she did not provide an opinion as to whether his psychological condition had reached MMI. *Id.* at 11.

On Dr. Wardell's referral, Claimant met with Dr. Erol Leibowitz, a psychologist, on March 4, 2021. CXs 11, 14; EX 7. She agreed with Dr. Dabney that Claimant has adjustment disorder due to his workplace injury and recommended skill-focused, rather than emotionally-focused, treatment. EX 7 at 2-3. Claimant continues to treat regularly with Dr. Leibowitz. TR at 23-24.

After Claimant filed his claim and Employer controverted it, the case was referred to the Office of Administrative Law Judges (OALJ) for a hearing. At the February 22, 2022 hearing, the parties stipulated Claimant sustained a work-related neck injury on May 10, 2017. Administrative Law Judge's Exhibit (ALJX) 1; Decision and Order (D&O) at 2. Employer voluntarily paid Claimant temporary total disability (TTD) benefits from May

11, 2017, to May 9, 2019, at a weekly compensation rate of \$1,436.48, for a total of \$149,599.13. ALJX 1; CX 4. Based on Dr. Wardell's opinion that Claimant's neck condition reached MMI, Employer converted its payments to permanent partial disability (PPD) benefits from May 10, 2019, to the present and continuing, at the same compensation rate. *Id.*; *see also* Emp.'s Post Hearing Br. at 2. It also paid Claimant \$28,270.07 in medical benefits. *Id.* The issues for the ALJ to resolve included when, if at all, Claimant reached MMI and the nature and extent of his disability after May 9, 2019.

On April 5, 2024, in his Decision and Order, the ALJ found Claimant's neck condition reached MMI and became permanent on May 10, 2019, pursuant to Dr. Wardell's medical opinion. Finding Employer established the availability of suitable alternate employment and Claimant did not undertake a diligent search for work, the ALJ found Claimant has been permanently and partially disabled since May 10, 2019, and is entitled to PPD benefits from that day. D&O at 13, 16-17. The ALJ denied any additional benefits.³

On appeal, Claimant contends the ALJ erred in finding his overall condition reached MMI on May 10, 2019. Specifically, he argues his psychological condition, with "continuity of care," continues to improve and, thus, has not reached MMI. Cl.'s Brief at 4-6. In addition, he asserts his neck condition reached MMI on July 23, 2020, when Dr. Wardell stated his condition improved to the extent he could work as a rail gantry crane operator, or on August 21, 2020, the date of the MRI following Dr. Skidmore's recommendation to undergo further testing before assessing MMI.⁴ Employer responds, urging affirmance of the ALJ's MMI finding.

A disability is considered permanent as of the date a claimant's condition reaches MMI, *SGS Control Servs. v. Dir., OWCP [Barrios]*, 86 F.3d 438 (5th Cir. 1996), or "when the injury has healed to the full extent possible." *La. Ins. Guaranty Ass'n v. Abbott*, 40 F.3d 122, 126 (5th Cir. 1994); *Watson v. Gulf Stevedore Corp.*, 400 F.2d 649, 654 (5th Cir. 1968), *cert. denied*, 394 U.S. 976 (1969) (permanent does not mean unchanging). A claimant is considered permanently disabled if he has any residual disability after reaching MMI, the date of which is determined by medical evidence and is not dependent on

³ The ALJ concluded: "Employer/Carrier has paid, and continues to pay, all required compensation to Claimant for his work-related cervical neck injury. Employer/Carrier likewise is providing necessary and reasonable medical treatment for those injuries. Accordingly, Claimant is entitled to no additional benefits." D&O at 16-17.

⁴ Dr. Skidmore suggested a myelogram, but Claimant underwent an MRI. EX 2 at 70.

economic factors. See *Devine v. Atl. Container Lines, G.I.E.*, 23 BRBS 279 (1990); *Price v. Dravo Corp.*, 20 BRBS 94 (1987); *Trask v. Lockheed Shipbuilding & Constr. Co.*, 17 BRBS 56, 60-61 (1985). An ALJ is entitled to weigh the evidence and draw his own inferences. See *Newport News Shipbuilding & Dry Dock Co. v. Cherry*, 326 F.3d 449, 452 (4th Cir. 2003); *Pittman Mech. Contractors, Inc. v. Dir., OWCP [Simonds]*, 35 F.3d 122, 127 (4th Cir. 1994). Moreover, questions of witness credibility are for the ALJ as the trier-of-fact. *Simonds*, 35 F.3d at 127. The Benefits Review Board may not reweigh the evidence but must affirm the ALJ's MMI decision if it is supported by substantial evidence and is in accordance with law. See *Newport News Shipbuilding & Dry Dock Co. v. Dir., OWCP [Brickhouse]*, 315 F.3d 286, 294 (4th Cir. 2002); *Ezell v. Direct Lab., Inc.*, 33 BRBS 19, 24 (1999); *Mason v. Bender Welding & Machine Co.*, 16 BRBS 307, 309 (1984).

Initially, we reject Claimant's argument that the ALJ should have found his neck condition reached MMI on a later date. Cl.'s Brief at 8. On July 23, 2020, Dr. Wardell reported that because Claimant had improved since he last saw him, he could return to work as a rail-mounted gantry remote operator, which is also referred to as the ROS position. EX 2 at 66. Dr. Wardell further approved the additional job description for the ROS position on July 29, 2020. *Id.* at 67-69. However, on September 2, 2020, Dr. Wardell amended his opinion, stating "[Claimant] was never able to do the ROS job which I signed off on." *Id.* at 73. Therefore, he opined Claimant is "totally and permanently disabled from waterfront work." *Id.* at 74. As Claimant had been released to light-duty work from May 13, 2019, to the present, *id.* at 73-77, and as MMI is a medical (not economic) concept, the full context of Dr. Wardell's records clarifies he did not change his opinion about when Claimant's condition reached MMI even though he changed his opinion about Claimant's ability to perform the ROS job. *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 763 (4th Cir. 1999) (physician's opinion must be evaluated "in the full context of his report"); *United States v. Hughes*, 716 F.2d 234, 240 (4th Cir. 1983) (evidence must viewed "together as a coordinated and interrelated whole").

We also disagree with Claimant's argument that Dr. Skidmore's June 16, 2020 examination constitutes evidence that Claimant's neck condition had not reached MMI in 2019. Cl.'s Brief at 8-9. Dr. Skidmore reasoned he was unable to make an MMI determination absent additional testing. CX 4 at 2-3. But he did not state Claimant's condition had not reached MMI, only that he would recommend updated diagnostic testing before making such a determination. *Id.* Thereafter, Claimant underwent an MRI which demonstrated a stable cervical spine when compared to the prior MRI from 2018. EX 2 at 70. As a result, Dr. Wardell continued Claimant's same work restrictions without discussing a change in MMI. *Id.* Dr. Skidmore's June 2020 report, after which he did no follow-up, does not constitute substantial or relevant evidence contradicting Dr. Wardell's opinion that Claimant's neck condition reached MMI in 2019. *Richardson v. Perales*, 402

U.S. 389, 401 (1971) (“substantial evidence” is “such *relevant* evidence as a reasonable mind might accept as adequate” to support a finding) (emphasis added); *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 477, (1951) (same).

Next, we reject Claimant’s assertion that his continuing psychological improvement overcomes the ALJ’s finding regarding the date Claimant’s neck condition reached MMI. The ALJ accurately stated: “Dr. Dabney determined that [Claimant] has no impairment and no work restrictions based on his psychological injury,” and Dr. Liebowitz “said nothing to the contrary. Accordingly, because [Claimant’s] psychological condition by itself has no effect on his ability to earn wages, there is no disability based on the psychological injury.” D&O 13; *Misho v. Glob. Linguist Sols.*, 48 BRBS 13, 15-16 (2014) (where a claimant has established an inability to perform usual work for an employer due to only one of several work-related conditions, rather than a combination of work-related injuries, the nature of the disabling condition governs the award of benefits).⁵ Claimant’s only work restrictions stem from his neck injury, not his psychological condition, as there is no evidence that Dr. Dabney or Dr. Liebowitz determined any restrictions are necessary due to his psychological condition. *See* CXs 9, 11. Thus, when Claimant’s psychological injury reached MMI has no impact on the outcome of this case. Furthermore, while the stated goal of Dr. Liebowitz’s recommended therapy was “reducing [the] impact of chronic pain on functional levels,” EX 7 at 3-5, and she was helping Claimant improve his coping skills to manage his pain behaviorally, *id.* at 8, this does not alter the fact that Claimant’s psychological condition had no impact on his ability to return to work or that Claimant’s neck condition became permanent in 2019.

Pursuant to the Board’s holding in *Misho*, the nature of Claimant’s disabling neck condition controls. *Misho*, 48 BRBS at 16. Therefore, the ALJ correctly concluded Claimant’s overall condition reached MMI when his neck condition reached MMI, and the nature of Claimant’s disabling neck injury governed his award of benefits. D&O at 13; *Misho*, 48 BRBS at 16. We therefore affirm the ALJ’s conclusion that Claimant’s condition reached MMI on May 10, 2019. *Ezell*, 33 BRBS at 24; *Mason*, 16 BRBS at 309. The ALJ reasonably relied on Dr. Wardell’s opinion to find Claimant’s neck injury became permanent as of May 10, 2019, and on Dr. Dabney’s and Dr. Liebowitz’s opinions to find his psychological condition caused no disability. *Cherry*, 326 F.3d at 452; *Simonds*, 35

⁵ In *Misho*, the claimant sustained work-related physical and psychological injuries, but her psychological injury alone rendered her incapable of returning to her former work. *Misho*, 48 BRBS at 15. The Board held the claimant was entitled to permanent total disability benefits as of the date her totally disabling psychological injury became permanent, even though her physical injuries had not yet reached permanence. *See id.* at 16.

F.3d at 127; D&O at 13; EX 2 at 34-35. As there was no time since that date when Dr. Wardell or any other doctor indicated Claimant's neck condition is no longer at MMI, Claimant's medical records support the ALJ's finding. *Abbott*, 40 F.3d at 126; *Stevens v. Director, OWCP*, 909 F.2d 1256, 1259 (9th Cir. 1990), *cert. denied*, 498 U.S. 1073 (1991).

Accordingly, we affirm the ALJ's Decision and Order Fixing Change in Date of Maximum Medical Improvement and Denying Additional Benefits.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

GLENN E. ULMER
Administrative Appeals Judge