

U.S. Department of Labor

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



BRB No. 24-0294

ALVARO CASTIBLANCO ALVAREZ)
)
 Claimant-Petitioner)
)
 v.)
)
 BLACKWATER SECURITY)
 CONSULTING, LLC)
)
 and)
)
 CONTINENTAL INSURANCE COMPANY)
)
 Employer/Carrier-)
 Respondents)

NOT-PUBLISHED

DATE ISSUED: 04/20/2026

DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Jonathan C. Calianos, 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.

Javier A. Valencia and Christian J. Berchild (Thomas Quinn, LLP), San Francisco, California, for Employer and Carrier.

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

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Jonathan C. Calianos’s Decision

and Order Denying Benefits (2021-LDA-03073 and 2022-LDA-00941)¹ 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). 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 for Employer as an armed security guard in Iraq from September 2005 to June 2006. Decision and Order (D&O) at 3; Employer's Exhibit (EX) 17 at 7-8. During his employment, Claimant reported he experienced three primary traumatic incidents: a mortar attack in October 2005 (which he described as his most traumatic experience);³ another mortar attack with gunfire in March 2006 that made him fear for his life; and a false-positive indication during a K-9 unit inspection of a vehicle for explosives at the U.S. Embassy checkpoint, after which the vehicle was cleared. D&O at 3-4; EX 17 at 10-12. He stated these incidents were disturbing and made him fearful, causing anguish and a fear of death. EX 17 at 10-12, 26. While in Iraq his symptoms included irritability, defensiveness, and difficulty sleeping. *Id.* at 20. Claimant left Iraq in 2006 and returned to his home in Colombia. EX 17 at 13. Since returning home he has worked as a driver for various employers and remains a driver. *Id.* He claimed he has continued experiencing irritability, defensiveness, and difficulty sleeping. EX 17 at 17, 21. A friend advised him to go to a doctor because of his symptoms. *Id.* at 22.

¹ Claimant filed claims against Blackwater Security Consulting, LLC (2021-LDA-03073) (for psychological and hearing loss injuries) and Greystone, Ltd (2022-LDA-00941) (for a psychological injury), the predecessor to Blackwater. CX 1 at 1, 5; CX 8. On November 22, 2022, the ALJ granted Employer's unopposed motion to dismiss Greystone from the matter. CX 8.

² 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); *Glob. Linguist Sols., LLC v. Abdelmeged*, 913 F.3d 921, 922 (9th Cir. 2019); *McDonald v. Aecom Tech. Corp.*, 45 BRBS 45, 47 (2011).

³ According to Claimant, during the attack he witnessed shrapnel hit an American coworker's leg, the coworker was bleeding, asked for help and for Claimant to pray for his family, and Claimant was unable to help him. D&O 3; EX 17 at 10. Claimant stated he felt guilty, desperate, and terrified, and as five or six other mortar attacks occurred that day, Claimant thought he would die and described the event as "the longest and most disturbing night of [his] life." D&O at 3; EX 17 at 10-12.

On June 10, 2020, Claimant met with psychologist Sandra D’Luyz Ortega and described the two mortar attacks he experienced. D&O at 4; Claimant’s Exhibit (CX) 23. Dr. D’Luyz Ortega noted Claimant’s complaints of symptoms of paranoia, irritability, defensiveness, hyper-alertness, and fear of loud noises. D&O at 4; CX 23 at 3. Specifically, Dr. D’Luyz Ortega diagnosed Claimant with Post-Traumatic Stress Disorder (PTSD) and Primary Insomnia due to his employment in Iraq. *Id.* She based her diagnoses on Claimant’s interview, his account of events in Iraq, clinical history, applied tests (projective and personality tests), and the therapies he attends. D&O at 4-5; CX 23 at 3.

Between July 28, 2020, and November 9, 2021, Claimant attended multiple virtual appointments with psychiatrists at the Nuestra Señora De La Paz Clinic.⁴ D&O at 5; CXs 21, 25, 29, 31, 35. During this period, Dr. Doris Lorena Tellez Cruz provided Claimant with treatment on five occasions, while other psychiatrists at the clinic treated Claimant just once.⁵ *Id.* Claimant’s treatment records from the various psychiatrists contained diagnoses of PTSD, Generalized Anxiety Disorder, and Cluster B Personality Traits. CX 25 at 16; CX 29 at 2; CX 35 at 43.

On February 4, 2022, at Employer’s request, Dr. Thomas Nguyen, a clinical neuropsychologist, evaluated Claimant virtually with the assistance of an interpreter, reviewed his treatment records, and administered several tests.⁶ D&O at 7; EX 1. Claimant

⁴ At his initial appointment on July 28, 2020, Claimant stated his psychologist had referred him to “psychiatry.” CX 35 at 17. During his sessions, he underwent a mental examination, provided a patient and family history, and received a treatment plan. CXs 21, 25, 29, 31, 35.

⁵ Dr. Tellez Cruz treated Claimant on July 28, 2020, August 24, 2020, October 8, 2020, November 6, 2020, and January 8, 2021. CX 35 at 15-56. Claimant was also treated by Dr. Ana Maria Paez Jimenez on December 7, 2020, Dr. Paola Andrea Ramirez Lana on February 19, 2021, Dr. Luz Marina Martinez Gil on July 15, 2021, and Dr. Luisa Fernanda Alarcon Rivera on November 9, 2021. CXs 21, 25, 29, 31.

⁶ Dr. Nguyen administered the following assessments: the Beck Anxiety Inventory (BAI), the Beck Depression Inventory, 2nd edition (BDI-II), the Clinician Administered PTSD Scale-5 (CAPS-5), Dot Counting Test (DCT), the Minnesota Multiphasic Personality Inventory – 2 Restructured Form (MMPI-2-RF), the Neurobehavioral Symptom Inventory (NSI), the Patient Competency Rating Scale (PCRS), the PTSD Checklist for DSM-5 (PCL-5), the Structured Inventory of Malingered Symptomatology (SIMS), Test of Memory and Malingered (TOMM), and the World Health Organization Disability Assessment Schedule 2.0 (WHODAS 2.0). EX 1 at 7.

reported to Dr. Nguyen about the October 2005 mortar attack he experienced and stated that when he returned home from Iraq in 2006, he was aggressive, irritable, and isolated himself from family and friends. D&O 7-8; EX 1 at 3-4. He described his symptoms as anger, anxiety, irritability, flashbacks, trouble sleeping, and sensitivity to loud noises that startled and distressed him. D&O 8; EX 1 at 4.⁷

On the TOMM and DCT performance validity testing,⁸ Dr. Nguyen stated Claimant's TOMM score was in the valid range, but his DCT score was in the invalid range. D&O at 8; EX 1 at 8. On the SIMS symptom validity testing, Dr. Nguyen originally stated Claimant's SIMS score exceeded the manual cut-off score but fell within the valid range; however, in his deposition, he stated Claimant's SIMS score fell in the "probably invalid" range based on more recent studies. D&O at 8; EX 8 at 10. He also stated Claimant scored in the valid range on the NSI embedded measure of validity but in the invalid range for the MMPI-2-RF, and the results showed infrequent responses and overreporting of psychopathology, somatic and cognitive complaints, and memory symptoms. D&O at 8; EX 1 at 8.

On the self-report assessments, Dr. Nguyen stated Claimant endorsed symptoms of moderate anxiety, severe depression, and elevated PTSD. D&O at 8; EX 1 at 8-9. Because of Claimant's "highly unusual" reported symptoms, his continuing to work after his reported symptom onset in October 2005, continuing to work since returning home, and "some evidence of non-credible cognitive and psychiatric profile as evidenced by embedded and formal measures of performance and symptom validity," Dr. Nguyen concluded Claimant's evaluation did "not support the presence of a psychological and/or psychiatric diagnosis." D&O at 9; EX 1 at 9-10.

On September 14, 2022, Claimant met with psychologist Dr. Gustavo Benejam. D&O at 6; CX 36. Dr. Benejam interviewed Claimant, reviewed Claimant's treatment records and Dr. Nguyen's report, and administered psychological testing.⁹ D&O at 6; CX

⁷ Dr. Nguyen reported Claimant's assessment that his symptoms were worse four years before the evaluation, ranking 95 out of a scale of 100, whereas at the evaluation, he ranked his current symptom severity at 65 out of 100. EX 1 at 4.

⁸ Performance validity testing helps assess the "veracity of complaints" and detects feigning. EX 8 at 8. It is also "strongly recommended to ensure validity of the Claimant's reported symptoms and overall clinical presentation." EX 1 at 12.

⁹ Dr. Benejam administered the following tests: the Folstein Mini-Mental State Exam (MMSE), the Beck Depression Inventory-II (BDI), the Beck Anxiety Inventory (BAI), the Paranoia Worries Questionnaire (PWQ), the PTSD Checklist-5 (PCL), the

36 at 8. Dr. Benejam concluded Claimant's psychological test results support diagnoses of PTSD and Major Depressive Disorder, Recurrent, Moderate, with anxious distress. D&O at 7; CX 36 at 19. He reported Claimant's validity test results on the SIMS and M-FAST indicated no evidence of malingering. D&O at 7; CX 36 at 10.

Meanwhile, on July 14, 2020, Claimant was treated by audiologist Monica Andrea Orjuela R. for hearing issues. D&O at 6; CX 27. The audiogram showed light bilateral neurosensory hearing loss. CX 27 at 2. At Employer's request, Dr. Luz Nelly Tobar Bonilla, an otolaryngologist, evaluated Claimant's hearing. D&O at 9; EX 9. At that evaluation, Claimant reported he was exposed to gunshots and explosions in Iraq and has had bilateral hearing loss for six years. D&O at 9; EX 9 at 1. Dr. Tobar Bonilla conducted two audiometric tests on February 3, 2022, each indicating bilateral sensorineural hearing loss; however, she determined the responses obtained from the two assessments were inconsistent.¹⁰ *Id.* In her report dated February 4, 2022, Dr. Tobar Bonilla described the inconsistencies between the tests results as reflecting that the tests are subjective and susceptible to manipulation. She also stated the Steady-State Auditory Evoked Potentials she conducted on February 3, 2022, revealed Claimant's hearing was "within normal limits, normal electrophysiological auditory thresholds at 500, 1000, 2000, and 4000 Hz frequencies bilaterally (objective evaluation)." Dr. Tobar Bonilla concluded Claimant has normal hearing.¹¹ D&O at 9-10; EX 9 at 1, 9.

Clinician-Administered PTSD Scale for DSM-5 (CAPS 5) – Past Month Version, the WHODAS 2.0, the Structured Inventory of Malingering Symptomatology (SIMS), and the Miller Forensic Assessment of Symptoms Test (M-FAST). CX 36 at 8.

¹⁰ Dr. Tobar Bonilla identified the following inconsistencies: audiometric test one reported a "pure-tone average of 81 decibels in the right ear and 62 decibels in the left ear," whereas audiometric test two showed "pure-tone average of 56 decibels in the right ear and 60 decibels in the left ear." EX 9 at 1, 8. Additionally, logo audiometry in the first test demonstrated "90% recognition at 90 decibels for the left ear and 80% at 90 decibels in the right ear," while the second test indicated "70% recognition at 60 decibels bilaterally (subjective evaluation)." *Id.*

¹¹ In answer to the written question of whether Claimant was credible with his test responses, Dr. Tobar Bonilla stated: "NO, audiometric tests are inconsistent, and this suggests that they are simulated responses. These are subjective evaluations that the claimant can manipulate while steady-state auditory evoked potentials are normal, and these are objective evaluations not subject to manipulation by the claimant." EX 9 at 9.

On August 14, 2020, Claimant filed a claim for compensation alleging psychological issues and hearing loss as a result of his employment with Employer. D&O at 2; CX 1. The case was referred to the Office of Administrative Law Judges (OALJ), and the parties opted for the claim to be adjudicated on the record in lieu of an in-person hearing. D&O at 2; CX 4. On April 3, 2024, the ALJ issued a Decision and Order Denying Benefits. D&O 1-19.

The ALJ determined Claimant invoked the Section 20(a) presumption that his psychological injury and his hearing loss are both related to his work in Iraq for Employer. D&O at 11, 13; *see* 33 U.S.C. §920(a). He further found Employer provided sufficient evidence to rebut the presumption as to both claimed injuries. *Id.* Weighing the evidence as a whole, the ALJ found Claimant did not establish he suffered either alleged injury by a preponderance of the evidence. *Id.* at 11-19. He therefore denied Claimant's claim. *Id.* at 19.

Claimant appeals, challenging the ALJ's causation findings as to his psychological injury and hearing loss. Employer responds, urging affirmance. Claimant filed a reply brief, reiterating his arguments.

Rebuttal

Claimant first asserts the ALJ improperly found Employer rebutted the Section 20(a) presumption as it relates to both his alleged psychological injuries and his hearing loss. Claimant's Petition for Review and Brief (Cl. PR) at 4. Particularly, he argues the ALJ erred in finding Dr. Nguyen's and Dr. Tobar Bonilla's reports constitute substantial evidence to rebut the presumption for each respective injury. *Id.* at 5.

To invoke the Section 20(a) presumption, a claimant must first establish (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 Sys. Corp.*, 56 BRBS 27, 36 (2022) (Decision on Recon. en banc), *appeal dismissed* (MDFL Aug. 24, 2023); *see also Am. 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 it 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. Emps. Int'l, Inc.*, 50 BRBS 33, 36 (2016). The inquiry at rebuttal concerns whether the employer submitted evidence that could satisfy a reasonable fact finder that the claimant's injuries are not work-related. *See Marinelli*, 248 F.3d at 65; *see also Newport News Shipbuilding & Dry Dock Co. v. Holiday*, 591 F.3d 219, 225-226 (4th Cir. 2009). A physician's unequivocal opinion that the employee does not suffer from

the alleged injury or that no relationship exists between the employee's injury and his employment is sufficient to rebut the presumption. *Sylejmani v. Fluor Conops, Ltd.*, 57 BRBS 25, 31 (2023); *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. Nguyen's report sufficient to rebut the Section 20(a) presumption as to Claimant's alleged psychological injuries. D&O at 13; EX 1. Dr. Nguyen concluded Claimant's evaluation did not support "a psychological and/or psychiatric diagnosis." D&O at 13; EX 1 at 9-12. He based his opinion on the results of Claimant's symptom and performance validity tests, as well as inconsistencies with his reported symptoms, objective measures, and medical records.¹² D&O at 10; EX 8 at 4-6. As the ALJ correctly found, Dr. Nguyen's unequivocal medical opinion that Claimant does not have a psychological injury is sufficient to satisfy Employer's burden of production on rebuttal. Therefore, we affirm the ALJ's finding that Employer rebutted the Section 20(a) presumption as to Claimant's psychological injury.¹³ *Suarez*, 50 BRBS at 36; *Cline*, 48

¹² In Dr. Nguyen's deposition, he testified that Claimant's scores on his MMPI-2-RF were representative of a person who is in a "severe level of psychiatric distress" that "require[s] inpatient hospitalization." EX 8 at 6. But when assessing validity on the MMPI-2, Dr. Nguyen testified Claimant was above the rate used to minimize false positive errors, making his scores "remarkably" invalid. *Id.* Additionally, in Claimant's self-report, Dr. Nguyen testified that "taken at face value," his results indicated he should be "in severe psychiatric distress," exhibiting signs of delusions, psychosis, and disorganized thinking, which are commonly associated with schizophrenia. However, according to Dr. Nguyen, Claimant's behavioral presentation displayed no evidence of these symptoms, and during his evaluation he actively answered questions. *Id.* at 5, 7. In addition, Dr. Nguyen testified Claimant's reported symptoms were inconsistent with the fact that he had been gainfully employed for the past nine or ten years. *Id.* at 7. Furthermore, Claimant's inconsistencies included describing only one traumatic event to Dr. Nguyen but describing three different events in his deposition; reporting to Dr. Nguyen that he started having symptoms when he returned home in 2006 but stating in his deposition that he began experiencing symptoms in 2020 when he was diagnosed with PTSD; and during his deposition he reported having headaches and hearing issues, but he told Dr. Nguyen he was not having any current physical symptoms, issues, or complaints. EX 5 at 3-4.

¹³ We reject Claimant's assertion that the ALJ's use of the word "sufficient" somehow meant he did not require Employer to produce "substantial evidence" on rebuttal. To the contrary, the ALJ's use of the term meant that Dr. Nguyen's opinion met Employer's burden of production and was the type of evidence that could satisfy a reasonable fact finder that Claimant's injury is not work-related. Thus, it was "sufficient to rebut."

BRBS at 6-7; *O'Kelley*, 34 BRBS at 41-42; *see* D&O at 13.

Additionally, the ALJ found Employer rebutted Claimant's hearing loss claim with Dr. Tobar Bonilla's report. D&O at 11. Dr. Tobar Bonilla conducted two audiograms on February 3, 2022, and concluded there was no hearing loss or tinnitus. D&O at 11; EX 9 at 7. Dr. Tobar Bonilla opined Claimant's two audiometric tests presented inconsistent results. EX 9 at 9. Although she found both results facially showed Claimant has bilateral hearing loss, she concluded the results were inconsistent because they showed "simulated responses" in subjective evaluations that can be manipulated. D&O at 11; EX 9 at 9. Dr. Tobar Bonilla also conducted the Steady-State Auditory Evoked Potentials test, an objective evaluation, which showed hearing results within normal limits. D&O at 11; EX 9 at 1. As Dr. Tobar Bonilla opined Claimant has no hearing loss, the ALJ rationally found Employer met the burden of production and rebutted the Section 20(a) presumption. D&O at 11; EX 9 at 7. We therefore affirm the ALJ's finding that Employer rebutted the Section 20(a) presumption regarding Claimant's alleged hearing loss. *Suarez*, 50 BRBS at 36; *Cline*, 48 BRBS at 6-7; *O'Kelley*, 34 BRBS at 41-42.

Weighing of the Evidence

Claimant next asserts the ALJ erred at the weighing stage of the causation analysis for his claimed psychological injury.¹⁴ Cl. PR at 16. 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 v. Maher Terminals, Inc.*, 30 BRBS 171, 175 (1996); *see also Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267 (1994). 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). The Benefits Review Board may not reweigh the evidence or substitute its opinion for that of the ALJ even if the evidence could support other inferences or conclusions, as long as substantial evidence supports the ALJ's findings. *Gasparic*, 7 F.3d at 323; *Volpe v. Ne. Marine Terminals*, 671 F.2d 697, 700 (2d Cir. 1982); *Perini Corp. v. Heyde*, 306 F. Supp. 1321, 1325-1326 (D.R.I. 1969).

¹⁴ We affirm, as unchallenged on appeal, the ALJ's finding that Claimant did not establish a work-related hearing loss upon a weighing of the evidence. *Scalio v. Ceres Marine Terminals, Inc.*, 41 BRBS 57, 58 (2007); D&O at 11-13.

Initially, Claimant asserts the ALJ erred in assessing his credibility because the ALJ focused on the differences rather than the similarities between Claimant's testimony and his explanation of the October 2005 attack described in Drs. Benejam's and Nguyen's reports. Cl. PR at 22. While the ALJ determined Claimant was generally consistent in describing his symptoms, he found numerous inconsistencies in Claimant's accounts of the October 2005 attack which affected his reliability. D&O at 14-16. For example, the ALJ stated Claimant testified in his deposition that he was guarding the Embassy gate when the attack began but told Dr. Benejam and Nguyen he was resting in his room. D&O at 16; EX 17 at 12; EX 1 at 3; CX 36 at 5. He also told Dr. D'Luyz Ortega he was treated by a medic during the October 2005 attack and given a tranquilizer to help him calm down yet he denied visiting the medic during his deposition. D&O at 16; CX 23 at 2; EX 17 at 12. In addition, he reported in some, but not all, of his accounts that the injured American coworker he saw unresponsive on the floor during the attack died. D&O at 16; CX 36 at 5; EX 1 at 3.

The ALJ found these inconsistencies, and others, undermined Claimant's credibility regarding the events that caused his alleged psychological condition. D&O at 16. In weighing the evidence as a whole, the ALJ permissibly determined Claimant had credibility issues. D&O at 16. As the ALJ's finding is supported by the evidence, we affirm it. *Gasparic*, 7 F.3d at 323; *Volpe*, 671 F.2d at 700; *Heyde*, 306 F. Supp. at 1325-1326. As stated above, the Board may not reweigh the evidence or substitute its opinion for that of the ALJ even if the evidence could support other reasonable inferences or conclusions. *Gasparic*, 7 F.3d at 323; *Volpe*, 671 F.2d at 700; *Heyde*, 306 F. Supp. At 1325-1326.

For the psychological injury claim, Claimant argues the ALJ improperly weighed the medical experts' opinions and relied on several factual mistakes.¹⁵ Cl. PR at 5-6, 17. Claimant asserts the ALJ's findings, which give greater weight to Dr. Nguyen's opinion over Dr. Benejam's, are not supported by substantial evidence. *Id.* at 17.

In evaluating the evidence, the ALJ did not give any significant weight to Claimant's treatment records. D&O at 18. We reject Claimant's argument that the ALJ

¹⁵ We reject Claimant's allegation that the ALJ made a factual error by failing to consider whether Dr. Nguyen's evaluation was "independent or impartial." Cl. PR at 17. Although characterizing his report as "independent" may not be accurate, we find it to be harmless error, as there is no confusion, either from the parties' arguments or the record, that Dr. Nguyen's evaluation and report were generated at Employer's request. *See generally Suarez*, 50 BRBS at 37.

erred by failing to give his treating physicians' opinions "considerable and special weight." Cl. PR at 16. Where there are conflicting medical opinions, as here, the ALJ is not required to automatically give "special weight" to the treating physicians' opinions. *Kkunsa v. Constellis Grp./Triple Canopy, Inc.*, 59 BRBS 1, 4 (2025). Rather, he must consider all relevant evidence, assess the weight and credibility of each opinion, and explain his rationale in reaching a decision on the evidence. *Id.* at 4-5. Here, the ALJ noted Claimant's treatment providers did not identify the criteria for their diagnoses and relied primarily on Claimant's "subjective reports of his symptoms and experiences," which the ALJ permissibly found significantly diminishes the probative value of their reports.¹⁶ *Id.* at 17; see *Kkunsa*, 59 BRBS at 4-5.

The ALJ gave Dr. Benejam's opinion "some weight," and while he acknowledged Dr. Benejam conducted psychological testing, obtained educational, employment, family, and psychological histories, and cited medical literature, the ALJ nevertheless found his conclusions unreliable because Dr. Benejam relied primarily on Claimant's reported symptoms and failed to consider Claimant's "inconsistencies or omissions" in the record. *Id.* at 18. Furthermore, the ALJ found Dr. Benejam did not explain how Claimant met the criteria for PTSD and Major Depressive Disorder. *Id.* As an example, the ALJ stated that Dr. Benejam indicated Claimant met the criteria of "significant distress and impairment in social and occupational areas" but did not address the conflict between Claimant's reported symptoms on the WHODAS and his continued employment and strong family relationships. *Id.*; CX 36 at 7, 9, 13.

Conversely, the ALJ gave the most weight to Dr. Nguyen's report, finding his opinion well-reasoned and supported by the record. D&O at 18; EXs 1, 5, 8. The ALJ noted that Claimant endorsed symptoms consistent with PTSD, depression, and anxiety; however, Dr. Nguyen clarified that the tests conducted relied solely on self-reporting and did not assess the validity of the results. D&O at 18; EX 5 at 1. Accordingly, he opined the self-reported data should be interpreted alongside validity testing outcomes. EX 5 at

¹⁶ The ALJ determined Claimant's inconsistencies – even as to the very traumatic events he claims caused his problems – "significantly detract[ed] from his credibility." D&O at 16-17. Consequently, because his treating physicians relied primarily on his statements, and their diagnoses were not supported by either objective testing or explanation, the ALJ did not give Claimant's treatment records "any significant weight." *Id.* at 17. He also found that although Dr. D'Luyz Ortega mentioned she conducted some testing, she did not identify the tests or explain the results or their significance. *Id.*, n.14; CX 21.

1. Given that validity testing¹⁷ suggested potential non-credible symptom reporting, Dr. Nguyen concluded the self-reported assessments were unreliable.¹⁸ D&O at 18; EX 5 at 1. As the ALJ weighed all the evidence of record and substantial evidence supports his findings, we affirm his weighing of the expert medical opinions.¹⁹ *Carswell*, 999 F.3d at

¹⁷ We reject Claimant’s argument that Dr. Nguyen failed to disclose the details of the validity tests and ascribed no weight to Claimant’s performance on the TOMM, SIMS, and NSI tests measuring validity. Cl. PR at 18. While Dr. Nguyen found some of Claimant’s validity test results were in the valid range, he testified that “just because someone has a valid performance test, does not mean that they are not attempting to feign” and that failure on validity testing is more significant than a passing score. D&O at 8; EX 8 at 7. He further explained the validity tests, stating the TOMM generally has nonverbal questions that can be administered to anyone, the SIMS is a 75-question test that requires a true or false answer, and the NSI is not a standalone test and has an embedded measure to detect overreporting. EX 8 at 9-10. Moreover, the Board cannot reweigh the evidence; rather, if the ALJ’s conclusion upon weighing the evidence is rational and supported by substantial evidence, as it is here, it must be affirmed. *Carswell v. E. Pihl & Sons*, 999 F.3d at 18, 32 (1st Cir. 2021).

¹⁸ Dr. Nguyen stated that although Claimant scored “just below” the cutoff to reduce the number of false positives on the SIMS, a recent article reviewing several different studies on the SIMS indicated “his score fell in the probably invalid range.” EX 8 at 6. Specifically, Dr. Nguyen conducted two performance validity tests and while Claimant passed the TOMM, his elevated results on the DCT indicated feigning. *Id.* at 8. Dr. Nguyen reiterated the importance of a failed validity test and how it is more significant than a passing score. *Id.*

¹⁹ Claimant asserts the ALJ improperly ignored evidence, but we reject his reliance on two cases arising under the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2018), *Mitchell v. Island Creek Kentucky Mining & Dir.*, OWCP, BRB No. 19-0313 BLA (May 29, 2020) (unpub.), and *Johnson v. Royal Coal Co.*, 326 F.3d 421 (4th Cir. 2003). Neither decision is persuasive. First, *Mitchell* involved an ALJ’s failure to provide adequate explanation for his conclusions, not a failure to consider evidence. *Mitchell*, slip op. at 5-6 (Board held the ALJ failed to adequately explain his conclusion that the x-ray evidence as a whole did not support the existence of pneumoconiosis); Cl. PR at 27 nn.164, 166. Second, the United States Court of Appeals for the Fourth Circuit in *Johnson* held the ALJ erred in not addressing the claimant’s argument that the employer’s silence on certain requests for admissions constituted an admission that the claimant was entitled to Black Lung benefits, here, none of the admissions Claimant requested would establish Claimant’s entitlement to benefits. The ALJ is not bound by common-law or statutory rules of evidence or procedure but may conduct the hearing “in such manner as to best ascertain

27; *Gasparic*, 7 F.3d at 323; *Volpe*, 671 F.2d at 700; *Heyde*, 306 F. Supp. at 1325-1326.

In sum, because substantial evidence in the record as a whole supports the ALJ's conclusion, *Pietrunti*, 119 F.3d at 1042; *Gasparic*, 7 F.3d at 323; *Hughes*, 289 F.2d at 405; *Pisaturo v. Logistec, Inc.*, 49 BRBS 77, 81 (2015), we affirm the ALJ's finding that Claimant's alleged psychological condition is not work-related.²⁰ *Sistrunk v. Ingalls Shipbuilding, Inc.*, 35 BRBS 171, 174 (2001); *Coffey v. Marine Terminals Corp.*, 34 BRBS 85, 87 (2000).

the rights of the parties.” 33 U.S.C. §923(a); 20 C.F.R. §702.339. Moreover, “29 C.F.R. §18.[63] does not require a determination that Employer is liable for claimant's disability compensation, as it does not bind an [ALJ] from drawing a legal conclusion based on facts admitted.” *Weber v. S.C. Loveland Co.*, 35 BRBS 75, 81 n.7 (2001); *see also Ede v. ICTSCI Or., Inc.*, 58 BRBS 23, 27 (2024) (discovery cannot be used to compel an admission of a legal conclusion).

²⁰ 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. Cl. PR. at 4; *Ondecko*, 512 U.S. at 281 (the “true doubt” rule violates Section 7(c) of the Administrative Procedure Act (APA) requiring the burden of proof remain with the claimant, 5 U.S.C. §556(d)); *Santoro*, 30 BRBS at 175. We also reject Claimant's contention that the ALJ violated the APA, 5 U.S.C. §557, in analyzing causation or by failing to weigh multiple pieces of evidence when determining whether Claimant was entitled to benefits. The ALJ carefully reviewed and considered all the relevant evidence and detailed the rationale behind his causation findings. D&O 2-27; *see Santoro*, 30 BRBS at 172; *Cotton v. Newport News Shipbuilding & Dry Dock Co.*, 23 BRBS 380 (1990); *Cairns v. Matson Terminals, Inc.*, 21 BRBS 252 (1988). Thus, the ALJ's decision accords with the APA's requirements. *See* 5 U.S.C. §557(c)(3)(A). Additionally, Claimant has not explained the relevance of the purportedly ignored documents to the analysis or why the ALJ's consideration of them could have led to a different outcome. *Montoya v. Navy Exch. Serv. Command*, 49 BRBS 51, 52 n.1 (2015); *Plappert v. Marine Corps Exch.*, 31 BRBS 109, 111 (1997); *see also Poole v. Nat'l Steel & Shipbuilding Co.*, 11 BRBS 390 (1979) (it is solely within the discretion of the ALJ to accept or reject all or any part of any testimony according to his judgment).

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

GLENN E. ULMER
Administrative Appeals Judge