

U.S. Department of Labor

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



BRB No. 24-0320

JUSTUS KARAKIRE)
)
 Claimant-Petitioner)
)
 v.)
)
 SOC, LCC)
)
 and)
)
 CONTINENTAL INSURANCE COMPANY)
)
 Employer/Carrier-)
 Respondents)

NOT-PUBLISHED

DATE ISSUED: 04/22/2026

DECISION and ORDER

Appeal of the Decision and Order of Patrick M. Rosenow, District Chief Administrative Law Judge, United States Department of Labor.

Andrew Nyombi (KNA Pearl), Silver Spring, Maryland, for Claimant.

Lauren E. Wilson and Travis N. Gregory (Brown Sims), Houston, Texas, for Employer and its Carrier.

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

PER CURIAM:

Claimant appeals District Chief Administrative Law Judge (ALJ) Patrick M. Rosenow’s Decision and Order (2021-LDA-04019) 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 Decision and Order if it is 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 Assocs., Inc.*, 380 U.S. 359, 361-362 (1965).

Claimant allegedly sustained psychological injuries and hearing loss while working for Employer as a security guard in Iraq from July 28, 2006, until September 11, 2009. Joint Exhibits (JXs) 1, 17 at 18-24. The ALJ found that Claimant invoked the Section 20(a) presumption of compensability, 33 U.S.C. §920(a), for both his psychological injury and hearing loss and that Employer and its Carrier (Employer) rebutted the presumption as to both injuries. D&O at 10, 13-14. In weighing the evidence as a whole, the ALJ found Claimant failed to prove by a preponderance of the evidence that he sustained any work-related injuries and therefore denied benefits. *Id.* at 13-15.

On appeal, Claimant argues the ALJ erred in finding Employer rebutted the presumption regarding both injuries and in weighing the evidence.² Employer urges affirmance.

Section 20(a)

Rebuttal

Once a claimant invokes the Section 20(a) presumption linking his injuries to his work, the burden shifts to the employer to rebut it with substantial evidence that the claimant’s condition was not caused or aggravated by his employment. *Rainey v. Director, OWCP*, 517 F.3d 632, 634 (2d Cir. 2008); *Am. Stevedoring, Ltd. v. Marinelli*, 248 F.3d 54, 65 (2d Cir. 2001); *O’Kelley v. Dep’t of the Army/NAF*, 34 BRBS 39, 41 (2000). The inquiry at rebuttal is whether the employer submitted “such relevant evidence as a reasonable mind might accept as adequate” to support a finding that the claimant’s injury is not work-related. *Rainey*, 517 F.3d at 637. The employer’s burden on rebuttal is one of production, not persuasion. *Rose v. Vectrus Sys. Corp.*, 56 BRBS 27, 32 (2022) (Decision on Recon. en banc), *appeal dismissed* (M.D. Fla. Aug. 24, 2023); *Suarez v. Serv. Emps. Int’l, Inc.*, 50 BRBS 33, 36 n.4 (2016); *Cline v. Huntington Ingalls, Inc.*, 48 BRBS 5, 7 (2013). A

¹ This case arises within the jurisdiction of the United States Court of Appeals for the Second Circuit because the office of the district director who filed the ALJ’s decision is located in New York. 33 U.S.C. §921(c); *Glob. Linguist Sols., L.L.C. v. Abdelmeged*, 913 F.3d 921, 922 (9th Cir. 2019); *McDonald v. Aecom Tech. Corp.*, 45 BRBS 45, 47 (2011).

² We affirm, as unchallenged on appeal, the ALJ’s finding Claimant invoked the Section 20(a) presumption for his psychological injury and hearing loss. *See Scilio v. Ceres Marine Terminals, Inc.*, 41 BRBS 57, 58 (2007); D&O at 10, 13.

physician’s unequivocal opinion, rendered to a reasonable degree of medical certainty, that no relationship exists between the alleged injury and the claimant’s employment is sufficient to rebut the presumption. *See Suarez*, 50 BRBS at 36; *Cline*, 48 BRBS at 7.

Employer relies on board-certified psychologist Dr. Joshua A. Barras’s opinion to rebut the presumption that Claimant’s psychological injury is work-related and audiologist Dr. Laurie S. Hebert’s opinion to rebut the presumption as to his hearing loss. JXs 13-16. Dr. Barras interviewed Claimant, reviewed his treatment records, and administered psychological testing.³ JX 13. He opined Claimant received “markedly elevated scores on validity scales that assess symptom magnification or feigning of psychiatric symptoms, physical complaints, and cognitive/memory problems.” *Id.* at 8. Dr. Barras concluded there is “no reliable evidence” that Claimant suffers from any psychological injury. *Id.* at 5-8. The ALJ found Dr. Barras’s opinion “is not equivocal” and is the type of evidence that would cause a reasonable mind “to question the accuracy of the presumption,” and thus constitutes substantial evidence to rebut the presumption that Claimant’s psychological injury is work-related. D&O at 5-6, 10. *See Universal Camera Corp. v. NLRB*, 340 U.S. 474, 477 (1951) (substantial evidence is such evidence “that a reasonable mind would accept to support a conclusion”).

Turning to Claimant’s hearing loss, Dr. Hebert performed a peer review of the January 14, 2021 audiogram conducted by Clinical Officer (CO) Leonard Opio and reviewed Claimant’s treatment notes; Dr. Hebert concluded Claimant’s “hearing loss is not related to noise exposure during [his] employment.” JX 15 at 2. Dr. Hebert observed that Claimant’s hearing loss is atypical of noise exposure because noise exposure creates “symmetric hearing loss” and Claimant’s audiogram indicated his loss is “asymmetric,” with hearing loss in his left ear and normal hearing in his right ear. *Id.* She further stated noise exposure creates a sensorineural hearing loss pattern, but Claimant’s hearing loss pattern is unknown because bone conduction testing was not performed during the audiogram. *Id.* The ALJ found Dr. Hebert’s opinion sufficient to rebut the presumption because she specifically opined Claimant’s hearing loss is not related to his work for Employer “to a reasonable degree of medical certainty.” D&O at 6-7, 14.

³ Dr. Barras administered the following tests: Mental Status Examination (MSE); the Minnesota Multiphasic Personality Inventory-3 (MMPI-3); Clinician-Administered PTSD Scale-5 (CAPS-5); Generalized Anxiety Disorder Questionnaire-7 (GAD-7); Patient Health Questionnaire-9 (PHQ-9); Pain Disability Index (PDI); Modified Somatic Perception Questionnaire (MSPQ); PTSD Checklist for DSM-5 (PCL-5); and Inventory of Problems (IOP). JX 13 at 2.

Claimant asserts the ALJ erred in finding Employer rebutted the presumption as to both of his injuries. Claimant's Br. at 19-25, 45-47. We disagree. Because the opinions of Drs. Barras and Hebert directly contradict the presumption that Claimant has work-related injuries and are the kind of evidence "a reasonable mind" might accept as adequate to support those conclusions in Employer's favor, the ALJ accurately found they constitute substantial evidence legally sufficient to rebut the presumption. *See Rainey*, 517 F.3d at 637; *Suarez*, 50 BRBS at 36; *Cline*, 48 BRBS at 6-7; *O'Kelley*, 34 BRBS at 41-42; *see also Universal Camera Corp.*, 340 U.S. at 477; D&O at 10, 13-14. Claimant's assertion that the doctors' opinions are "defective" and unsupported goes to their weight, which is not an appropriate consideration at the rebuttal stage of the Section 20(a) analysis because Employer's burden at this stage is one of production, not persuasion. *See Rainey*, 517 F.3d at 637; *Rose*, 56 BRBS at 32; Claimant's Br. at 22-25, 45. Consequently, we affirm the ALJ's finding that Employer rebutted the Section 20(a) presumption regarding both alleged injuries.

Weighing the Evidence

Because Employer successfully rebutted the presumption, the issue of causation must be resolved on the evidence of the whole record with the claimant bearing the burden of persuasion by a preponderance of the evidence. *Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 271 (1994); *Rainey*, 517 F.3d at 634; *Santoro v. Maher Terminals, Inc.*, 30 BRBS 171, 174 (1996); *Rose*, 56 BRBS at 39. When weighing the evidence as a whole, the ALJ is entitled to evaluate the credibility of all witnesses, weigh the medical evidence, and draw his own inferences and conclusions from the record. *Pietrunti v. Director, OWCP*, 119 F.3d 1035, 1042 (2d Cir. 1997). In doing so, he may accept parts of a witness's testimony while rejecting others, *Banks v. Chi. Grain Trimmers Ass'n*, 390 U.S. 459, 467 (1968); *Pimpinella v. Universal Mar. Serv. Inc.*, 27 BRBS 154, 157 (1993), and may draw his own inferences and conclusions from the evidence. *Compton v. Avondale Indus., Inc.*, 33 BRBS 174, 176-177 (1999). 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. *See Sealand Terminals, Inc. v. Gasparic*, 7 F.3d 321, 323 (2d Cir. 1993); *Volpe v. Ne. Marine Terminals*, 671 F.2d 697, 700 (2d Cir. 1982).

Psychological Injury

In determining whether Claimant established a work-related psychological injury, the ALJ considered Claimant's testimony and the conflicting medical opinions of Senior Psychiatric Clinical Officer (PCO) Buhese Wilson and Dr. Barras. D&O at 4-6, 10-15. PCO Buhese diagnosed Claimant with PTSD and panic attacks, while Dr. Barras opined Claimant does not have a psychological condition. JXs 10, 13. The ALJ first found

Claimant's testimony was "minimally credible" and then discredited PCO Buhese's opinion for relying "exclusively" on Claimant's self-reporting. D&O at 11-13. Conversely, he gave more weight to Dr. Barras's opinion because it is reasoned and documented. *Id.* at 12-13. Weighing the evidence as a whole, the ALJ concluded Claimant failed to establish a work-related psychological injury. *Id.* at 13. Claimant challenges the ALJ's discrediting of his testimony and weighing of the medical opinions.⁴ Claimant's Br. at 27-41.

When asked about traumatic events he experienced, Claimant recounted witnessing a stray bullet hit his cousin and, while guarding the hospital, seeing people who had been injured, lost limbs, and killed by bombs. JX 17 at 24, 29-32. In addition, he testified that he collapsed upon witnessing a car explosion approximately 100 meters from where he was working and that he was brought to the hospital, where he received "some medicine" and was discharged after one day. *Id.* at 31-33. He stated he began experiencing psychological symptoms, including nightmares, loss of concentration, isolation, heart palpitations, trouble sleeping, and flashbacks while working for Employer. *Id.* at 24, 29. Ultimately, he sought treatment with PCO Buhese on July, 24, 2019, after his sister told him he needed to see a psychiatrist because he "was acting like a mentally unstable person."⁵ *Id.* at 35-38.

The ALJ determined Claimant's testimony was "minimally credible" because he provided inconsistent statements during his deposition and to Dr. Barras and PCO Buhese about his symptoms and treatment.⁶ D&O at 11. Specifically, the ALJ noted Claimant provided an inconsistent account of his psychological symptoms to PCO Buhese and Dr.

⁴ We are not persuaded by Claimant's contention that the ALJ erred in relying on Dr. Barras's "unsupported" assertion that Claimant provided inconsistent statements during his clinical interview, the testing, and at his deposition because Dr. Barras did not include his clinical interview transcript. Claimant's Br. at 28-30. We also reject the assertion that Dr. Barras's conclusions are "unsupported" because he did not provide copies of the psychological testing he conducted but merely summarized the results. *Id.* at 35-37. As discussed below, the ALJ acted within his discretion and fully weighed the evidence of record.

⁵ Upon returning home, Claimant first sought care for his symptoms from traditional healers. JX 17 at 38-39.

⁶ There is no dispute that Claimant experienced the traumatic events he described. The dispute lies in the effect those events had and whether and to what degree they resulted in psychological injury.

Barras, including telling Dr. Barras he experienced auditory and visual hallucinations multiple times per week, whereas PCO Buhese's treatment notes, over the course of two years, do not reflect that he experienced these symptoms. D&O at 11; JXs 10 at 1-17, 13 at 6. Relatedly, the ALJ also noted Claimant initially stated his hearing issues began in 2008 in Iraq but later stated he did not have hearing issues while in Iraq. D&O at 11; JX 17 at 28, 35. In addition, the ALJ found Claimant's statement that he does not help on his farm because his doctor "restricted [him] from doing anything" conflicted with his report to Dr. Barras that he milked the cows weekly and was inconsistent with PCO Buhese's more limited notes restricting him only from jobs that would require access to firearms or explosives and his recommendation that Claimant not return to a war zone or security-related jobs that would exacerbate his symptoms. D&O at 11; JXs 10 at 2, 17, 13 at 3, 17 at 53. Therefore, contrary to Claimant's contention, the ALJ permissibly found his testimony regarding his symptoms was not reliable because he provided inconsistent accounts of his symptoms and limitations. See *Cordero v. Triple A Mach. Shop*, 580 F.2d 1331, 1335 (9th Cir. 1978), cert. denied, 440 U.S. 911 (1979); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403, 405 (2d Cir. 1961); *Pietrunti*, 119 F.3d at 1042; D&O at 11; Claimant's Br. at 27-32.

Looking to the medical evidence, we initially reject Claimant's contention that the ALJ erred in not assigning "significant weight" to the medical opinion of PCO Buhese, Claimant's treating provider. Claimant's Br. at 40-41. When there is conflicting medical evidence, the ALJ is not required to give special weight to a treating physician's opinion. *Kkunsa v. Constellis Grp./Triple Canopy, Inc.*, 59 BRBS 1, 4 (2025). Instead, the ALJ 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. Because the record contains conflicting reports from two providers addressing whether Claimant has a work-related psychological injury, the ALJ was obligated to review and weigh the evidence. See *Pietrunti*, 119 F.3d at 1042; *Kkunsa*, 59 BRBS at 5. The ALJ permissibly did so and refrained from baldly deferring to the opinion of Claimant's treating provider. See *Kkunsa*, 59 BRBS at 5; D&O at 10-13.

Next, we address the ALJ's weighing of the medical opinions. PCO Buhese treated Claimant from July 24, 2019, until July 26, 2022, and noted Claimant's reported symptoms of amnesia, hyperarousal, flashbacks, intrusiveness, headaches, and withdrawal. JX 10 at 3, 17. In his July 15, 2021 medical report, PCO Buhese stated Claimant scored a "24 on the PHQ-9 and [a] 52 on the PCL-5" "during the assessment." *Id.* at 17. Based on Claimant's symptoms, he diagnosed Claimant with PTSD and panic attacks caused by his work for Employer. *Id.* at 1, 17.

The ALJ discredited PCO Buhese's opinion because it "appear[ed]" to be based exclusively on Claimant's unreliable self-reporting. D&O at 11-12. He observed PCO

Buhese did not explain what the PHQ-9 and the PCL-5 evaluate and did not explain whether Claimant's results supported a diagnosis of PTSD and panic attacks. *Id.* at 12. In addition, the ALJ noted PCO Buhese failed to document Claimant's medical and work histories and did not provide any explanation of how Claimant's symptoms supported his diagnosis. *Id.*

In contrast, Dr. Barras opined there is "no reliable evidence" from his evaluation or in Claimant's medical records to indicate he is suffering from PTSD, depression, or any other psychiatric condition. JX 13 at 8. He opined Claimant's testing results, which measured performance and symptom validity, showed a "strong likelihood" of exaggeration and malingering. *Id.* at 7, 9. Dr. Barras noted Claimant rated himself as moderately disabled in self-care, which was inconsistent with his accounting of his daily routine during the clinical interview. *Id.* at 7. Further, he stated Claimant's reports of hallucinations and paranoia were not credible because his thought process and behavior was "well organized" during the five-hour evaluation, and he showed "good emotional regulation with no evidence of major distress." *Id.* at 9-10.

The ALJ found Dr. Barras's opinion reasoned and documented because he fully recorded Claimant's background information, reviewed "relevant records," performed psychological testing, and adequately explained the basis of his opinion that Claimant does not have any psychological conditions. D&O at 12-13. In doing so, the ALJ rejected Claimant's assertion that Dr. Barras's opinion should be given minimal weight because he used an interpreter and psychological tests "not normed for Ugandan citizens." *Id.* at 13. He found Dr. Barras "acknowledged this issue" and "persuasively explained" that he relied on "multiple sources of information" in determining Claimant's current psychological status rather than "the results of a single test." *Id.*; JX 13 at 7, 10. Further, the ALJ noted Claimant offered no evidence of any "alternative local testing measures" used by PCO Buhese and otherwise stated he understood most of the questions asked of him before they were translated. D&O at 13; JX 17 at 15. Therefore, the ALJ gave "significantly more weight" to Dr. Barras's opinion than to PCO Buhese's opinion and determined Claimant failed to establish a work-related psychological injury. D&O at 13.

Although Claimant challenges the ALJ's discrediting of his testimony and assigning more evidentiary weight to Dr. Barras's opinion over PCO Buhese's opinion, it is not for the Board to reweigh the evidence or substitute its opinion for that of the ALJ even if it might find the evidence supports other inferences or conclusions. *Gasparic*, 7 F.3d at 323; *Volpe*, 671 F.2d at 700. Thus, as it is rational and supported by substantial evidence, we affirm the ALJ's finding that Claimant failed to establish a work-related psychological injury. *See Pietrunti*, 119 F.3d at 1042; *Gasparic*, 7 F.3d at 323; *Volpe*, 671 F.2d at 700; D&O at 13.

Hearing Loss

In determining whether Claimant established work-related hearing loss, the ALJ considered Claimant's "inconsistent" testimony, the January 14, 2021 audiogram conducted by CO Opio and his opinion that Claimant's hearing loss is work-related, and Dr. Hebert's contrary opinion.⁷ D&O at 6-7, 14-15; JXs 11, 15, 17.

On January 14, 2021, CO Opio conducted an audiogram, which measured hearing levels at 250 Hz, 500 Hz, 1000 Hz, 2000 Hz, 4000 Hz, and 8000 Hz. JX 11 at 1. Based on the results, CO Opio diagnosed "moderate sensorineural hearing loss on left ear" and recommended "hearing aids for [Claimant's] left [ear] and medication." *Id.* at 1-2. Claimant returned to CO Opio for treatment on four occasions, where he reported improvement but also complained of pain, discharge, itching, and buzzing. *Id.* at 3-7. The ALJ observed CO Opio's treatment notes are "partially illegible" but reflected Claimant "presented with h/o hearing loss on [sic] the left ears due to bomb blasts while he was working in its [sic] war zone." D&O at 5; JX 11 at 2.

At Employer's request, Dr. Hebert reviewed Claimant's January 14, 2021 audiogram and CO Opio's treatment notes. JX 15. She opined the audiogram results are "purely subjective[.]" and there were no objective tests to validate Claimant's voluntary responses. *Id.* at 3-4. In addition, she noted that the audiometer used by CO Opio during the audiogram lacked a calibration date, even though audiometers require annual calibration, and that CO Opio did not measure a hearing threshold for 3000 Hz, which is "required to compute hearing impairment using the American Medical Association guidelines." *Id.* at 3. She noted Claimant's left pure tone responses are consistent with a mild sloping to moderate hearing loss of an unknown type and his right pure tone responses are consistent with hearing within normal range, though the type of hearing loss could not be determined due to a lack of bone conduction testing. *Id.* at 2. Dr. Hebert observed that Claimant's asymmetrical hearing loss is atypical of noise exposure because noise exposure typically creates symmetric hearing loss. *Id.*

The ALJ found that although CO Opio is qualified to render an opinion, his opinion reflects he did not "obtain[] a comprehensive history from Claimant regarding his hearing loss" from alleged work-related noise exposure and offered no explanation for his diagnosis, treatment plan, or causative opinion. D&O at 14-15. He further observed CO Opio noted Claimant presented with a history of hearing loss due to bomb blasts in a war zone but found it unclear if this conclusory statement was CO Opio's medical opinion on

⁷ CO Opio has an advanced diploma in "Ear, Nose, and Throat," a certificate in audiology, and an annual practicing license. JX 12 at 12, 16.

causation or his notation of Claimant's self-reported work history. *Id.* at 15. In contrast, the ALJ credited Dr. Hebert's opinion because she clearly explained that Claimant's hearing loss is not related to noise exposure during his employment and persuasively explained there were "multiple deficiencies" in the audiogram and her concerns with CO Opio's opinion.⁸ *Id.* Although the ALJ found Dr. Hebert "could have more fully explained" her rationale, he gave her opinion "controlling weight" over CO Opio's conclusory opinion and the audiogram and determined Claimant failed to establish work-related hearing loss. *Id.* As it is rational and supported by substantial evidence, we affirm the ALJ's crediting of Dr. Hebert's opinion over CO Opio's opinion and his determination that Claimant failed to establish work-related hearing loss. *See Pietrunti*, 119 F.3d at 1042; *Gasparic*, 7 F.3d at 323; D&O at 15.

Claimant's arguments regarding the ALJ's weighing of the evidence as a whole amount to a request to reweigh the evidence, which we are not empowered to do. *See Gasparic*, 7 F.3d at 323; *Volpe*, 671 F.2d at 700; Claimant's Br. at 27-41, 47-50. Because the ALJ rationally determined Claimant failed to establish a compensable work-related psychological injury or work-related hearing loss by a preponderance of the evidence, *Ondecko*, 512 U.S. at 271; *Santoro*, 30 BRBS at 174, we affirm his denial of disability

⁸ The ALJ inferred from Dr. Hebert's opinion that she believed the audiogram was unreliable, but if considered, showed a pattern that was "atypical" of hearing loss caused by noise exposure. D&O at 14 n.57.

compensation and medical benefits.⁹ 33 U.S.C. §921(b)(3); *Sistrunk v. Ingalls Shipbuilding, Inc.*, 35 BRBS 171, 174 (2001); *Coffey v. Marine Terminals Corp.*, 34 BRBS 85, 87 (2000); D&O at 15-16.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

GLENN E. ULMER
Administrative Appeals Judge

⁹ As we have affirmed the ALJ's determination that Claimant's alleged psychological injury and hearing loss are not work-related, we need not address his remaining contentions. Claimant's Br. at 50-59.