U.S. Department of Labor

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

BRB No. 24-0330

MOHAMMAD FAHIM	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	**NOT-PUBLISHED**
	)	
ENVIRONMENTAL CHEMICAL CORPORPORATION	)	
	)	DATE ISSUED: 04/20/2026
and	)	
	)	
INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA	)	
	)	
Employer/Carrier-Respondents	)	
	)	DECISION and ORDER

Appeal of the Decision and Order of John M. Herke, Administrative Law Judge, United States Department of Labor.

John D. Hafemann (Hafemann, Magee, Thomas, LLC), Pooler, Georgia, for Claimant.

Edwin B. Barnes and William L. Pardue (Thomas Quinn, L.L.P.), San Francisco, California, for Employer and its Carrier.

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

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) John M. Herke's Decision and Order (2021-LDA-04240) 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.[1] 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

From September 2013 to May 2014, Claimant worked for Employer at Camp Commando in Afghanistan as a security assistant coordinator (driver). Hearing Transcript (Tr.) at 12-14, 16, Administrative Law Judge Exhibit (ALJX) 1 at 2. His responsibilities included contacting local security forces, providing security information to all contractors working for Employer, driving Employer's management outside of the base, and procuring food supplies for Employer's management. Tr. at 14-15. He testified his job was particularly dangerous because as a native Afghani citizen, he was putting himself and his family at risk every time he entered or left the base, as local terrorist organizations would target individuals working with Americans. *Id.* at 18-20, 29-34. In addition, he described experiencing several traumatic incidents, including being shot at while following an American convoy in an unarmored car, witnessing a bus of government employees getting blown up, and having an AK-47 pointed at him while trying to transport a South African employee to another base for medical help. *Id.* at 22-23, 25, 28, 38-40. Claimant testified that after his work for Employer ended, he went into hiding for about a year and a half before obtaining a Special Immigrant Visa, enabling him to move his family to the United States in June 2015. ALJX 1 at 1; Tr. at 51-53, 67, 72.

Claimant attended college in Afghanistan and obtained a bachelor's degree in English to become a professional translator. Tr. at 50-51, 68. Prior to his work for Employer, he worked at the same base for a different employer as a translator and cultural advisor. *Id.* at 31. After moving to the United States in 2015, Claimant has held steady employment. ALJX 1 at 2. Since 2018, Claimant has worked for Envoy Air in Dallas, Texas. ALJX 1 at 2; Tr. at 80. He currently works as a support ramp specialist, a management-level position that requires him to work with a team to move airplanes around airport facilities. *Id.* at 81-85. He also works part-time as a rideshare driver for Uber and Lyft. ALJX 1 at 3; Tr. at 86.

[1] This case arises within the jurisdiction of the United States Court of Appeals for the Fifth Circuit because the office of the district director who filed the ALJ's decision is located in Houston, Texas. 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).

On April 3, 2021, Claimant was evaluated via videoconference by clinical psychologist Brett Valette, Ph.D., for symptoms including recurring headaches, nightmares, anger issues, depression, crying episodes, sleep impairments, intrusive memories, overeating, suicidal thoughts, trouble concentrating, and hypervigilance. Joint Exhibit (JX) 9 at 5-7; Tr. at 45-47. Dr. Valette concluded Claimant was exposed to "multiple trauma stressors" while working for Employer and diagnosed him with post-traumatic stress disorder (PTSD). JX 9 at 3, 7-9.

Employer sent Claimant to neuropsychologist Kate Glywasky, Psy.D., for an evaluation, which occurred on November 29, 2021. JX 2; JX 11. Dr. Glywasky reviewed Claimant's employment records and Dr. Valette's report, conducted an in-person interview, and administered several psychological tests.[2] JX 11 at 1-6. In a report dated January 3, 2022, Dr. Glywasky concluded Claimant neither has nor had any psychological condition "associated with" his employment with Employer. *Id.* at 6. She noted that his high scores on anxiety measures and poor performance on cognitive tests were incompatible with his clinical presentation, as he was able to maintain focus for several hours, was fully oriented, and exhibited no signs of hypervigilance or restlessness. *Id.* at 6. Moreover, she determined his scores on validity testing "equated to extreme exaggeration and possible malingering of psychological symptoms." *Id.* at 6, 9-10. Finally, she concluded his ability to perform and hold a "safety-sensitive position" with Envoy Air since 2018, without any documentation of a decline in work performance, failed to support the existence of any functional impairment. *Id.* at 7.

On January 6, 2022, Claimant was evaluated via videoconference by psychologist Robert M. Gordon, Ph.D. JX 10; Tr. at 97. Dr. Gordon interviewed Claimant, reviewed Drs. Vallette's and Glywasky's reports, and administered psychological tests.[3] JX 10 at 13-14. He diagnosed Claimant with PTSD as a result of his employment in a war zone and opined Claimant was unable to work in his pre-injury employment. *Id.* at 25, 27. He found no indications of malingering or exaggeration, either in presentation or in testing. JX 10 at 21, 25; Tr. at 105. Further, he criticized Dr. Glywasky's report, opining she misinterpreted test scores and misunderstood "issues with language and culture." *Id.* at 16.

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[2] Dr. Glywasky administered the following tests: the PCL-5, the ATR-Scale, the MMSE, the IOP-29, the VSVT, the MSPQ, the Zung Depression, and the Zung Anxiety. JX 11 at 5-6.

[3] Dr. Gordon administered the following tests: the Brief Psychiatric Rating Scale (BRPS); the Beck Depression Inventory II (BDI-II); the Beck Anxiety Inventory (BAI); the Clinician-Administered PTSD Scale for DSM-5 (CAPS-5); the International Trauma Questionnaire; and the M-FAST. JX 10 at 13-14.

He concluded none of the tests she administered indicated malingering; rather, the failed validity tests were more likely the result of false positives common in patients with severe PTSD who suffer from confusion and concentration issues. *Id.* at 17-21.

On January 20, 2022, Dr. Glywasky issued an addendum report responding to Dr. Gordon's criticisms. JX 12. She noted most of the studies he cited were outdated, that he only performed one validity test (the M-FAST) compared to her three, and that he inconsistently relied on cultural and language factors to invalidate her testing but used a language-based validity measure in his own testing. *Id.* at 1-2, 4. In addition, she questioned his assertion that Claimant failed validity testing because of PTSD-related cognitive issues, as Claimant's "clinical presentation, supplied records, occupational status, biopsychosocial history, and MMSE score" do not support cognitive deficiencies that would permit him to succeed in his current employment. *Id.* at 4. She reiterated her conclusion that Claimant failed to demonstrate a psychological disorder associated with his employment with Employer. *Id.* at 5.

Claimant filed a claim seeking benefits for an employment-related psychological injury.[4] JX 1. Following a formal hearing on May 11, 2022, and the parties' submission of post-hearing briefs, the ALJ issued a Decision and Order (D&O) on May 24, 2024. He found Claimant's testimony and the medical evidence sufficient to invoke the Section 20(a) presumption of compensability, 33 U.S.C. §920(a), and found Dr. Glywasky's determination that Claimant is not suffering from any psychological condition sufficient to carry Employer's burden on rebuttal. D&O at 11-12. Weighing the evidence as a whole, the ALJ found Claimant failed to carry his burden of proving, by a preponderance of the evidence, that he suffered a work-related psychological injury and therefore denied his claim. *Id.* at 12-21. Claimant appeals, arguing the ALJ erred in finding Dr. Glywasky's reports sufficient to rebut the Section 20(a) presumption.[5] Employer responds, urging affirmance.

[4] Claimant initially sought both disability and medical benefits under the Act but subsequently withdrew his claim for disability compensation. Decision and Order (D&O) at 3 n.4. Consequently, the only issue before the ALJ was Claimant's entitlement to medical benefits under Section 7 of the Act, 33 U.S.C. §907.

[5] Claimant's appeal is limited to whether the ALJ erred in finding Employer rebutted the Section 20(a) presumption. *See* Cl.'s Br. at 1, 3 (unpaginated). Consequently, we need not address whether the ALJ adequately weighed the evidence at the final stage of the Section 20(a) analysis, as that issue is unchallenged on appeal. 20 C.F.R. §802.211(b); *Scalio v. Ceres Marine Terminals, Inc.*, 41 BRBS 57, 58 (2007).

Once a claimant invokes the Section 20(a) presumption, as here, the burden shifts to the employer to rebut the presumption by producing substantial evidence of the lack of a causal nexus. *Ortco Contractors, Inc. v. Charpentier*, 332 F.3d 283, 287 (5th Cir. 2003); *Conoco, Inc. v. Director, OWCP,* 194 F.3d 684, 687-688 (5th Cir. 1999). Employer's burden is one of production; once the employer produces substantial evidence of the absence of a causal relationship, the Section 20(a) presumption is rebutted. *Conoco*, 194 F.3d at 690.

Claimant first asserts Dr. Glywasky's opinion is insufficient to rebut the Section 20(a) presumption because she concluded there was no psychological injury, not that there was no connection between Claimant's alleged injury and his employment. Brief in Support of Claimant's Petition for Review (Cl.'s Br.) at 4 (unpaginated). According to Claimant, Section 20(a)'s presumption does not apply to the fact of an injury, but to whether the injury was caused by the claimant's employment. *Id*. As Dr. Glywasky did not address causation, Claimant contends her opinion cannot rebut the Section 20(a) presumption. *Id.* We reject this argument, as we have previously held that a physician's unequivocal opinion that the claimant does not suffer from the alleged injury is sufficient to rebut the presumption. *Sylejmani v. Fluor Conops, Ltd.*, 57 BRBS 25, 31 (2023).

Claimant next asserts the ALJ erred in finding Dr. Glywasky's opinion sufficient to rebut the presumption because it cannot constitute substantial evidence. Cl.'s Br. at 5 (unpaginated). Claimant maintains Dr. Glywasky did not affirmatively conclude Claimant does not have a psychological injury; rather, by not performing any diagnostic testing and instead relying on Claimant's failed validity tests, she was unable to make any diagnosis at all. *Id.* at 5-6. Thus, Claimant contends Dr. Glywasky's inability to diagnose Claimant due to credibility issues cannot constitute substantial evidence sufficient to rebut the Section 20(a) presumption. *Id.* at 6.

We disagree. To be substantial, rebuttal evidence must consist of facts, not speculation, and must be "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Rainey v. Director, OWCP*, 517 F.3d 632, 637 (2d Cir. 2008) (quoting *Richardson v. Perales*, 402 U.S. 389, 401 (1971)); *see also Conoco*, 194 F.3d at 687-688. The United States Court of Appeals for the Fifth Circuit, within whose jurisdiction this claim arises, has held the substantial evidence standard is met when the employer "advance[s] evidence to throw factual doubt on the prima facie case." *Ceres Gulf, Inc. v. Director, OWCP* [*Plaisance*], 683 F.3d 225, 231 (5th Cir. 2012); *see also Ramsay Scarlett & Co. v. Director, OWCP*, 806 F.3d 327, 332-333 (5th Cir. 2015); *Victorian v. Int'l-Matex Tank Terminals*, 52 BRBS 35, 41 (2018), *aff'd sub nom. Int'l Matex-Tank Terminals v. Director, OWCP*, 943 F.3d 278 (5th Cir. 2019); *Cline v. Huntington Ingalls, Inc.,* 48 BRBS 5, 7 (2013). Here, Dr. Glywasky's opinion casts "factual doubt" on the compensability of Claimant's claim because she opined no injury

exists. *Plaisance*, 683 F.3d at 231. Claimant's attempt to undermine the basis of Dr. Glywasky's opinion goes to its weight, but Employer's burden on rebuttal is one of production, not persuasion. *Conoco*, 194 F.3d at 690; *Cline*, 48 BRBS at 7. As Dr. Glywasky's opinion rebuts the Section 20(a) presumption by concluding there is no harm, we reject Claimant's argument and affirm the ALJ's finding.

Accordingly, we affirm the ALJ's Decision and Order.[6]

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

GLENN E. ULMER
Administrative Appeals Judge

[6] This case arises in the Fifth Circuit, which requires appeals of the Board's DBA decisions to be filed first with the appropriate United States District Court. Therefore, in the event a party appeals the Board's decision in this case, the Board requests notification of any appeal that is filed from the petitioner, as the district courts often do not provide such notice to the Board.