

U.S. Department of Labor

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



BRB No. 22-0295

J. LARRY WILLIS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
VIRGINIA INTERNATIONAL	)	
TERMINALS LLC	)	
	)	DATE ISSUED: 8/10/2023
and	)	
	)	
SIGNAL MUTUAL INDEMNITY	)	
ASSOCIATION LIMITED	)	
	)	
Employer/Carrier-	)	
Respondents	)	DECISION and ORDER

Appeal of Decision and Order Denying Benefits of Monica Markley,  
Administrative Law Judge, Department of Labor

Matthew H. Kraft (Matthew H. Kraft, P.L.C.) Virginia Beach, Virginia, for  
Claimant

Lawrence P. Postol (Postol Law Firm, P.C.) McLean, Virginia, for Employer

Before: BOGGS, BUZZARD, and JONES, Administrative Appeals Judges

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Monica Markley’s Decision and  
Order Denying Benefits (2019-LHC-00655) rendered on a claim filed pursuant to the  
Longshore and Harbor Workers’ Compensation Act, as amended, 33 U.S.C. §901 *et seq.*

(Act). We must affirm the administrative law judge's findings of fact and conclusions of law if they are rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant worked as a longshoreman for Employer on the Virginia waterfront performing a variety of jobs since May 2015.<sup>1</sup> Hearing Transcript (HT) at 29. He alleged he injured his back from hitting a pothole while driving a transliifter on May 18, 2018. *Id.* at 36; Claimant's Exhibit (CX) 1. He reported his injury on Sunday, May 20, 2018, at which time he sought medical treatment at Patient First.<sup>2</sup> HT at 36-37; CXs 2, 21. Claimant was diagnosed with a "strain of muscle, fascia and tendon of the lower back," prescribed medication, and given light-duty work restrictions with an anticipated return to full-duty work as of May 27, 2018. *Id.* Claimant, however, did not return to light duty until July 19, 2018. HT at 38.

Claimant treated with Dr. Arthur W. Wardell beginning on June 19, 2018. CX 23. Dr. Wardell diagnosed Claimant with lumbar and sacroiliac sprains, referred him for physical therapy, and recommended he shift to light-duty work until August 20, 2018, when Dr. Wardell released him to return to full-duty work. *Id.* Thereafter, Dr. Wardell, in treating Claimant's continued complaints of back pain, removed him from work for several additional periods of time, but each time returned him to full-duty work.<sup>3</sup> *Id.* On February 18, 2019, Dr. Wardell opined, to a reasonable degree of medical certainty, that Claimant's

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<sup>1</sup> This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because Claimant sustained his injury in Norfolk, 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, 36 BRBS 51(CRT) (4th Cir. 2002), *cert. denied*, 537 U.S. 1188 (2003); 20 C.F.R. 702.201(a).

<sup>2</sup> During the November 18, 2020 hearing, Claimant alleged he went to Patient First for treatment between 9:00 and 10:00 a.m. HT at 37-38. However, evidence in the record indicates Claimant worked for his entire shift and was not seen at Patient First until 6:05 p.m. CXs 13, 21 at 1.

<sup>3</sup> In this regard, Dr. Wardell removed Claimant from full-duty work but then subsequently returned him to full-duty work for the following periods: August 27, 2018 through October 19, 2018, CX 23 at 1-5, 55; October 24 and 25, 2018, *id.* at 57; November 11, 2018 through March 18, 2019, *id.* at 64, 73, 101; and February 24 to 26, 2020, *id.* at 144.

ongoing L5-S1 radiculopathy and his L5-S1 disc herniation as exhibited on his September 2018 MRI are due to his May 2018 work accident. *Id.* at 98.

At Employer's request, Dr. David G. Goss examined Claimant and reviewed his medical history and Dr. Wardell's medical records. He opined that Claimant sustained a simple lumbar sprain/strain as a result of his work injury in May 2018. Employer's Exhibit (EX) 17 at 1. Dr. Goss stated Claimant should have reached maximum medical improvement (MMI) by 12 weeks after the accident and should be able to participate in full-duty activities. *Id.* Dr. Goss further opined Claimant has ongoing and long-term lumbar degenerative changes that are not work-related. *Id.* at 2.

Following notice of Claimant's injury, Employer voluntarily paid Claimant temporary partial disability (TPD) from May 20, 2018 to July 19, 2018, EX 3, as well as periods of temporary total disability (TTD) from July 20, 2018 to August 19, 2018, August 27, 2018 to November 4, 2018, and November 12, 2018 to December 9, 2018 when Dr. Wardell recommended he not work. EXs 4-5, 7-9. Based on the results from Dr. Goss's examination, Employer controverted further payments after December 9, 2018, alleging Claimant reached MMI and his ongoing back pain was not work-related. Claimant filed a claim for compensation on August 29, 2018, alleging he is entitled to TTD payments for his May 18, 2018, back injury from December 10, 2018 to March 17, 2019 and February 24 – 26, 2020.<sup>4</sup> CX 6; Cl. Brief at 2.

In her March 18, 2022 decision, the ALJ found Claimant entitled to the Section 20(a) presumption, 33 U.S.C. §920(a), connecting his injury to his work accident, as he established the harm and working conditions elements through his testimony and Dr. Wardell's medical evidence. Decision and Order (D&O) at 17-18. She next found Employer rebutted the presumption through Dr. Goss's medical testimony. *Id.* Weighing the evidence as a whole, the ALJ concluded Claimant did not establish his work injury caused his continued disability from December 10, 2018 to March 17, 2019, and from February 24 to 26 2020. *Id.* at 22. In reaching this conclusion, the ALJ accorded Dr. Goss's medical testimony greater weight than Dr. Wardell's, determining Dr. Wardell's initial diagnosis was based, in part, on Claimant's testimony that he did not have prior back pain while Dr. Goss's was based on a thorough examination of Claimant along with a more

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<sup>4</sup> Claimant also initially alleged he was entitled to TTD payments from September 13 to 18, 2020 and November 7 to 15, 2020. HT at 8. However, both parties agreed at the hearing to not bring these claims forward as they were alleged the day before the November 18, 2020 hearing. *Id.* at 8-11.

exhaustive review of Claimant's previous MRIs and history of lower back problems. *Id.* at 22. Accordingly, the ALJ denied Claimant's claim for benefits.

Claimant appeals, asserting the ALJ's decision to give greater weight to Dr. Goss's medical opinion than Dr. Wardell's was not rational or supported by credible evidence. Cl. Brief at 5. Alternatively, Claimant contends the ALJ violated the Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), by failing to address the absence of any intervening accident, injury, back problem, back complaint, or inability to perform his current full-duty work. *Id.* at 36-37. Employer responds, urging affirmance. Claimant asserts the ALJ erred in crediting Dr. Goss's causation opinion over that provided by his treating physician, Dr. Wardell. More specifically, he contends this error caused the ALJ to reach a flawed conclusion that his ongoing back pain is unrelated to his work injury. Cl. Brief at 27. Claimant further alleges the ALJ afforded irrational weight to Claimant's pre-injury back injuries. *Id.* Rather, Claimant asserts the ALJ's reliance on his 1996, 2011, and 2013 back problems in her decision is patently unreasonable and not rational because he has completely recovered from those injuries and has no history of injuries between 2013 and his May 18, 2018 injury. *Id.* at 28-31.

Once the Section 20(a) presumption relating a claimant's harm to his employment accident or working conditions has been invoked and rebutted, as here,<sup>5</sup> the presumption drops from the case, and the causation issue must be decided on the record as a whole. *See Ceres Marine Terminals, Inc. v. Director, OWCP [Jackson]*, 848 F.3d 115, 50 BRBS 91(CRT) (4th Cir. 2016); *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994). At this juncture, the claimant bears the burden of establishing, by a preponderance of the evidence, a causal relationship between his employment and his injury. *Moore*, 126 F.3d 256, 31 BRBS 119(CRT).

As the finder of fact, the ALJ is entitled to evaluate the credibility of all witnesses, weigh the medical evidence, and draw her own inferences and conclusions from the record. *See, e.g., Newport News Shipbuilding & Dry Dock Co. v. Cherry*, 326 F.3d 449, 37 BRBS 6(CRT) (4th Cir. 2003); *Cooper v. Offshore Pipelines Int'l, Inc.*, 33 BRBS 46 (1999). The Board may not reweigh the evidence or substitute its own views for those of the ALJ. *Newport News Shipbuilding & Dry Dock Co. v. Director, OWCP [Brickhouse]*, 315 F.3d 286, 36 BRBS 85(CRT) (4th Cir. 2002). Moreover, it will not interfere with an ALJ's credibility determinations unless they are inherently incredible or patently unreasonable.

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<sup>5</sup> We affirm the ALJ's findings that Claimant is entitled to the Section 20(a) presumption relating his back injury to his work and that Employer established rebuttal thereof, as they are unchallenged on appeal. *Scalio v. Ceres Marine Terminals, Inc.*, 41 BRBS 57 (2007).

*Newport News Shipbuilding & Dry Dock Co. v. Tann*, 841 F.2d 540, 543, 21 BRBS 10, 16(CRT) (4th Cir.1988); *see also John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961).

In this case, Claimant has not identified any basis in the record indicating the ALJ improperly weighed the evidence on causation. Rather, her decision is reasoned and based on a consideration of the entire record. In this regard, the ALJ extensively discussed the doctors' reports, deposition and hearing testimony, medical evidence, surveillance video, and union documents. D&O at 4-16. She provided a detailed analysis of her decision to accord greatest weight to Dr. Goss's medical opinion that Claimant's May 2018 work accident resulted in, at most, a temporary sprain/strain that should have completely resolved within 12 weeks of the incident and that Claimant's ongoing back pain and symptomology during the contested time periods in this case are entirely attributable to the degeneration and the natural progression of his pre-existing back condition. *Id.* at 19-22.

Similarly, she articulated her rationale for according less weight to Dr. Wardell's contrary opinion, finding his initial report lacked a complete picture of Claimant's history of back complaints, and his follow-up report lacked "any explanation" as to how the mechanism of the accident would have caused the multiple lumbar disc problems exhibited in the 2018 MRI or why Claimant's present condition was not a non-work-related advancement in the degeneration of his pre-existing condition as first documented by the 2013 MRI. *Id.* at 22.

Claimant asserts the ALJ irrationally gave greater weight to Dr. Goss's opinion, overemphasizing the continued impact of his prior medical history of back problems, and neglecting to account for Claimant's continued work between 2013 to 2018. Cl. Brief at 31-33. Claimant also suggests the ALJ's credibility findings with respect to his testimony are unreasonable and irrelevant because there is no evidence in the record of any injury between 2013 and 2018. *Id.* at 31-32. This is an inaccurate description of her ruling, however. The ALJ's credibility determinations were based on several factors, including Claimant's failure to disclose any of his prior back injuries to Drs. Wardell or Goss;<sup>6</sup> and the discrepancy between his testimony that on the date he reported his injury, May 20, 2018, he worked for only two hours and went to Patient First in the morning, when record evidence indicates he worked his entire shift that day and did not seek medical treatment until 6:05 p.m. D&O at 20-21. Additionally, the ALJ's discussion of Claimant's prior injuries is supported by the record evidence; she explained in detail Dr. Goss's reliance on

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<sup>6</sup> The ALJ found Claimant underwent "four prior lumbar spine x-rays, one prior lumbar spine MRI, and two courses of therapy related to his lower back" prior to the May 2018 work injury.

those injuries in conjunction with his examination and credited his opinion that Claimant's initial injury resolved within a maximum of 12 weeks and the subsequent ongoing back issues were degenerative in nature and not the result of the May 18, 2018 work-related accident. *Id.* at 22.

The ALJ properly weighed causation based on the record as a whole and her decision to credit Dr. Goss's opinion over that of Dr. Wardell is supported by substantial evidence. *Cherry*, 326 F.3d 449, 37 BRBS 6(CRT); *Brickhouse*, 315 F.3d 286, 36 BRBS 85(CRT); *Pisaturo v. Logistec, Inc.*, 49 BRBS 77 (2015). She discussed all the relevant evidence, reviewed the underlying bases for each doctor's opinion, and adequately explained the rationale for her credibility determinations, including her finding that Claimant's credibility is undermined by other evidence in the record. *Id.* As discussed, the ALJ's decision to discredit Claimant's testimony and the medical opinion of Dr. Wardell is neither inherently incredible nor patently unreasonable. *Id.*; *see also Newport News Shipbuilding & Dry Dock Co. v. Director, OWCP [Hess]*, 681 F.2d 938, 14 BRBS 1004 (4th Cir. 1982).

We also reject Claimant's contention that the ALJ violated the APA by failing to address the absence of an intervening injury from 2013 through May 18, 2018. Cl. Brief at 35. The APA requires every adjudicatory decision include "findings and conclusions and the reasons or basis therefor, on all material issues of fact, law or discretion presented in the record." 5 U.S.C. §557(c)(3)(A). Thus, the ALJ must adequately detail the rationale behind her decision and specify the evidence upon which she relies. *See v. Washington Metropolitan Area Transit Authority*, 36 F.3d 375, 28 BRBS 96(CRT) (4th Cir. 1994).

In this case, the ALJ acknowledged Claimant's contentions, D&O at 3, as well as his testimony that "[f]rom the time [he] returned to work following the 2013 injury to the date of the current injury, May 18, 2018, he was able to work full-duty and did not have any problems," *id.* at 5, 7, 19. She rationally found, however, the record "shows that before the injury at issue, Claimant certainly experienced problems with his lower back," as evidenced by his having had four lumbar spine x-rays, one lumbar spine MRI, and two courses of physical therapy related to his lower back prior to the May 2018 accident. *Id.* at 20. Further, Dr. Goss's explanation, which the ALJ permissibly credited, attributed the conditions identified by Claimant to degeneration unrelated to the work accident; hence, the Section 20(a) presumption was rebutted, and it was Claimant's burden to show, based on the evidence as a whole, that the accident at work caused his conditions. There was no need for Employer to show an intervening cause, as Claimant's argument assumes, because Dr. Goss's opinion of degeneration unrelated to the accident accounted for the occurrence of those conditions. Accordingly, because the ALJ adequately addressed Claimant's position and testimony regarding the absence of an intervening injury and provided a valid

basis for rejecting it, her decision does not violate the APA. *See Santoro v. Maher Terminals, Inc.*, 30 BRBS 171 (1996).

Having rejected Claimant's contentions, we affirm the ALJ's conclusion that he did not prove by a preponderance of the evidence that his work accident caused his condition from December 10, 2018 to March 17, 2019 and from February 24-26, 2020, and the corresponding denial of medical and disability benefits for those time periods, as well as the denial of continuing medical benefits. *Jackson*, 848 F.3d 115, 50 BRBS 91(CRT).

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

SO ORDERED.

JUDITH S. BOGGS  
Administrative Appeals Judge

GREG J. BUZZARD  
Administrative Appeals Judge

MELISSA LIN JONES  
Administrative Appeals Judge