U.S. Department of Labor

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

BRB No. 24-0072

RONALD E. COMPTON Claimant-Petitioner v. DYNCORP INTERNATIONAL and INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA/AIG Employer/Carrier-Respondents	)	**NOT-PUBLISHED** DATE ISSUED: 08/21/2025 DECISION and ORDER

Appeal of the Decision and Order Denying Modification of Steven B. Berlin, Administrative Law Judge, United States Department of Labor.

Scott J. Bloch and Connor M. Wilkinson (Law Offices of Scott J. Bloch, PA), Washington, D.C., for Claimant.

James M. Mesnard (Postol Law Firm, P.C.), McClean, Virginia, for Employer and its Carrier.

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

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Steven B. Berlin's Decision and Order Denying Modification (2017-LDA-00693) 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). This case involves a request for modification and is before the Benefits Review Board for a second time.[1] We must affirm the ALJ's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.[2] 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359, 361-362 (1965).

Claimant filed a claim seeking benefits for a heart condition and rheumatoid arthritis he allegedly sustained while working for Employer in Afghanistan as a solid waste supervisor from November 2009 to February 2011. Decision and Order (D&O) at 3. In a Decision Denying Claim dated May 1, 2013, ALJ Jennifer Gee found Claimant invoked the Section 20(a) presumption, 33 U.S.C. §920(a), linking his heart condition and rheumatoid arthritis to his work for Employer, and Employer rebutted it. Weighing the evidence, ALJ Gee found Claimant failed to establish his injuries were caused or aggravated by his employment. She therefore denied benefits.

The Board affirmed ALJ Gee's findings that Claimant invoked the Section 20(a) presumption with respect to his heart condition and rheumatoid arthritis, Employer rebutted the presumption, and Claimant failed to establish his heart condition and rheumatoid arthritis are work-related injuries. *Compton v. DynCorp Int'l.*, BRB No. 13-0388, slip op. at 2-6 (Mar. 26, 2014) (unpub.). In addition, the Board rejected Claimant's arguments that ALJ Gee erred in failing to apply the zone of special danger doctrine to this case[3] and in failing to address his purported claim for work-related chronic obstructive pulmonary disease (COPD) as an independent injury. *Id.* at 2 nn.1-2. Therefore, it affirmed the denial of benefits. *Id.* at 6.

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[1] We incorporate the procedural history of this case as set forth in *Compton v. DynCorp Int'l*, BRB No. 13-0388 (Mar. 26, 2014) (unpub.).

[2] This case arises within the jurisdiction of the United States Court of Appeals for the Ninth Circuit because the office of the district director who filed the ALJ's decision is located in San Francisco, California. 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).

[3] The Board held the zone of special danger doctrine is inapplicable because the issue in this case is not whether Claimant's injuries occurred in the course of his employment but whether his injuries were caused by his employment. *Compton*, BRB No. 13-0388, slip op. at 2 n.1; *see* 33 U.S.C. §902(2).

Claimant appealed the Board's decision to the United States Court of Appeals for the Ninth Circuit which denied his petition for review. *Compton v. DynCorp Int'l., Inc.*, 650 F. App'x 550, 553 (9th Cir. 2016) (unpub.). The court determined the Board did not err in affirming ALJ Gee's finding that Claimant did not establish his heart condition and rheumatoid arthritis are work-related injuries. *Id.* at 552-553. Further, the court agreed with the Board that the zone of special danger doctrine is "not relevant" to this case and that ALJ Gee did not err by considering Claimant's COPD as a symptom of his heart condition or rheumatoid arthritis rather than as an independent condition because Claimant had waived that claim. *Id.*

Claimant timely filed a motion for modification with the Office of Administrative Law Judges (OALJ) under Section 22 of the Act, 33 U.S.C. §922, based on a mistake in a determination of fact regarding his heart condition, rheumatoid arthritis, and COPD. The OALJ assigned the case to ALJ Berlin (the ALJ). In a Decision and Order Denying Modification dated October 19, 2023, the subject of the current appeal, the ALJ found Claimant failed to establish a mistake of fact regarding the work-relatedness of his heart condition and rheumatoid arthritis. D&O at 11-21. He also found Claimant failed to establish a mistake of fact with respect to his waived claim for COPD. *Id.* at 21-23. Therefore, the ALJ denied Claimant's motion for modification. *Id.* at 23.

On appeal, Claimant argues the ALJ erred in denying his motion for modification. Employer and its Carrier (Employer) respond, urging affirmance. Claimant filed a reply reiterating his arguments on appeal.

Modification pursuant to Section 22 of the Act, 33 U.S.C. §922, is permitted if the petitioning party demonstrates a mistake in a determination of fact, *Banks v. Chi. Grain Trimmers Ass'n*, 390 U.S. 459, 464 (1968), or a change in the claimant's physical or economic condition, *Metro. Stevedore Co. v. Rambo* [*Rambo I*], 515 U.S. 291, 298 (1995). Under Section 22, the ALJ has broad discretion to correct mistakes of fact, whether demonstrated by new evidence, cumulative evidence, or further reflection on the evidence initially submitted. *Dobson v. Todd Pac. Shipyards Corp.*, 21 BRBS 174, 175-176 (1988). The party seeking modification bears the burden of demonstrating there was a mistake in a determination of fact. *Wheeler v. Newport News Shipbuilding & Dry Dock Co.*, 37 BRBS 107, 109 (2003); *Delay v. Jones Wash. Stevedoring Co.*, 31 BRBS 197, 204 (1998).

Initially, the ALJ found the parties do not dispute that Claimant invoked the Section 20(a) presumption regarding his heart condition and rheumatoid arthritis and that Employer rebutted the presumption.[4] D&O at 10. The ALJ then weighed the evidence to determine

[4] With respect to rebuttal of the Section 20(a) presumption and the zone of special danger, as Claimant has not introduced evidence to establish a mistake of fact or a change

whether Claimant carried his burden for demonstrating a basis for modification under the Act. *Id.*

Claimant relies on the opinions of Dr. Lee Goldberg and Dr. Berchman Vaz to show his working conditions aggravated his heart condition and rheumatoid arthritis, respectively. Claimant's Exhibits (CXs) 1, 3. The ALJ found their opinions unpersuasive and insufficient to establish a basis for modification. D&O at 11-21. Claimant argues the ALJ erred in finding the newly submitted opinions of Drs. Goldberg and Vaz are insufficient to establish modification.[5] Claimant's Brief (Cl. Brief) at 31-35. We disagree.

When an employer succeeds in rebutting the Section 20(a) presumption, the presumption falls out of the case, and the ALJ must weigh the record as a whole to assess whether the claimant's injury is work-related. *Haw. Stevedores, Inc. v. Ogawa*, 608 F.3d 642, 651 (9th Cir. 2010). This determination is a question of fact with the claimant bearing the burden of showing by a preponderance of the evidence that his injuries were caused or aggravated by his working conditions. *Id.*; *see also Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 281 (1994). The ALJ, as the factfinder, is entitled to evaluate the credibility of all witnesses, including physicians, weigh the medical evidence, and draw his own inferences and conclusions from the record. *See Ogawa*, 608 F.3d at 652-53. Moreover, the ALJ is not bound to accept the opinion or theory of any particular medical examiner. *Walker v. Rothschild Int'l Stevedoring Co.*, 526 F.2d 1137, 1140-1141 (9th Cir. 1975). The Board may not reweigh the evidence, draw other inferences from the record, or substitute its views for those of the ALJ. *Rhine v. Stevedoring Servs. of Am.*, 596 F.3d 1161, 1165 (9th Cir. 2010); *Sestich v. Long Beach Container Terminal*, 289 F.3d 1157, 1159 (9th Cir. 2002).

Regarding Claimant's heart condition, Dr. Goldberg opined Claimant was in "excellent health" when he went to work for Employer. CX at 1. He stated Claimant had a "mildly sclerotic and myxomatous mitral valve" when he suffered an acute chordal rupture in Afghanistan, and he concluded the "severe physical stress" of Claimant's work "caused or contributed" to his acute chordal rupture and subsequent mitral regurgitation

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in condition, we affirm the ALJ's findings on these issues. *See Wheeler v. Newport News Shipbuilding & Dry Dock Co.*, 37 BRBS 107, 109 (2003); *Delay v. Jones Wash. Stevedoring Co.*, 31 BRBS 197, 204 (1998).

[5] Contrary to Claimant's contention, the ALJ correctly recognized Claimant has the burden to establish a mistake in a determination of fact or a change in his physical or economic condition. D&O at 9-10 (citing *Metro. Stevedore Co. v. Rambo* [*Rambo II*], 521 U.S. 121, 138 (1997)); Cl. Brief at 8-12; Cl. Reply at 2-3.

and congestive heart failure.[6] *Id.* at 2. The ALJ found Dr. Goldberg failed to explain how severe physical stress caused or contributed to Claimant's heart condition as Claimant spent 80 to 90 percent of his work at a desk in an office.[7] D&O at 14-15, 18-19; Employer's Exhibit (EX) 29 at 1. In addition, the ALJ found Dr. Goldberg failed to explain how Claimant was in "excellent health" before he went to work for Employer when Claimant had repeated abnormal EKGs in his 20s and again during his pre-employment examination with Employer. D&O at 15. Therefore, the ALJ permissibly found Dr. Goldberg's opinion unpersuasive and not sufficient to establish a basis for modification as to the cause of Claimant's heart condition.[8] *See Ogawa*, 608 F.3d at 652-653; D&O at 19.

Regarding Claimant's rheumatoid arthritis, Dr. Vaz opined Claimant "suffered significant stressors while [working for Employer] including heat and exhaustion which likely exacerbated his autoimmune disease." CX 3. The ALJ found Dr. Vaz's new opinion inconsistent with his prior opinion that he could not opine whether stress associated with Claimant's work for Employer was a cause for his symptoms. D&O at 21; *see* Decision Den. Claim at 28 n.20; CX 14. Therefore, the ALJ found Dr. Vaz failed to explain the

[6] Dr. Goldberg submitted four academic articles he relied on to support his opinion. *See* CX 1 at 4-16. The ALJ accurately summarized these articles which stated chordal rupture from vigorous physical activity is "very rare" and no reports have shown a mitral valve rupture from even extreme exercise, such as bench pressing 440 pounds. D&O at 14; *see* CX 1 at 8. He also noted blunt force trauma, such as a high-speed motor vehicle crash, rarely caused mitral valve ruptures. Rather, it is caused by a degenerative disease. D&O at 14; *see* CX 1 at 15. The ALJ found these articles do not support Dr. Goldberg's opinion or assist Claimant's position. D&O at 14-15.

[7] The ALJ acknowledged Claimant "infrequent[ly]" traveled to other bases in Afghanistan and, on those occasions, he would carry up to sixty-two pounds for no more than two miles while wearing thirty-five pounds of protective equipment. D&O at 18-19; JX 1 at 91, 180. While the ALJ recognized such travel is "certainly physical exertion," he found it is "considerably less" than bench pressing 440 pounds as referenced in the article Dr. Goldberg included with his opinion. D&O at 19.

[8] The ALJ also discredited Claimant's testimony that he suffered blunt force trauma to his chest causing or aggravating his mitral valve rupture. D&O at 17. Specifically, the ALJ found Claimant's testimony that he fell three or four feet onto his chest and face inconsistent with his previous testimony before ALJ Gee that he fell on his hands and then his face and chest. *Id.* at 17; *see* Hearing Transcript at 52; JX 1 at 110-111. Further, the ALJ found Claimant did not report this fall to Employer thereby supporting the ALJ's finding the fall was insubstantial and did not result in any injury. *Id.*

change in his "newly offered opinion." D&O at 21. Consequently, as Dr. Vaz's "newly offered opinion" does not establish the work-relatedness of Claimant's rheumatoid arthritis, the ALJ permissibly discredited Dr. Vaz's opinion.[9] *See Ogawa*, 608 F.3d at 652-53; D&O at 21.

Claimant's general arguments regarding the medical opinions amount to a request for the Board to reweigh the evidence which we are not empowered to do. *Rhine*, 596 F.3d at 1165; *Sestich*, 289 F.3d at 1159; Cl. Brief at 35-45. Because the ALJ's credibility determinations are not "inherently incredible or patently unreasonable," *Cordero v. Triple A Mach. Shop*, 580 F.2d 1331, 1335 (9th Cir. 1978), and his factual findings are rational and supported by substantial evidence in the record, *Carswell v. E. Pihl & Sons*, 999 F.3d 18, 55 (1st Cir. 2021), *cert. denied*, 142 S. Ct. 1110 (2022), we affirm the ALJ's conclusion that Claimant failed to establish a mistake in a determination of fact or a change in condition with respect to his heart condition and rheumatoid arthritis. *See Dobson*, 21 BRBS at 175-176; D&O at 21-23.

The ALJ then considered Claimant's alleged claim for COPD. D&O at 21-23. As he observed, the Board previously affirmed ALJ Gee's determination that Claimant did not allege COPD in his claim for benefits, and the Ninth Circuit held the Board "correctly concluded" ALJ Gee did not err in finding Claimant's COPD is a symptom of his heart condition or rheumatoid arthritis rather than an independent claim. *Compton*, 650 F. App'x at 552; *see Compton*, BRB No. 13-0388, slip op. at 3; D&O at 21-23. Additionally, the Ninth Circuit affirmed the Board's decision and concluded Claimant waived an independent claim for COPD because he did not identify COPD as a basis for his claim in his initial application, described COPD "only as a related condition," and briefed COPD "as a condition related to his heart condition." *Compton*, 650 F. App'x at 553; *see also Compton*, BRB No. 13-0388, slip op. at 3 n.2. As Claimant has not offered any evidence establishing any error as to the waiver of his COPD claim, the ALJ properly found Claimant

[9] Claimant contends the ALJ failed to address the opinion of Dr. James Hess, a rheumatologist, that Claimant's work for Employer aggravated his pre-existing condition. CB at 32. Contrary to Claimant's contention, the ALJ acknowledged Dr. Hess diagnosed Claimant with seropositive rheumatoid arthritis but accurately noted Dr. Hess previously opined the condition is not work-related. D&O at 7-8; *see* Decision Den. Claim at 29. Therefore, the ALJ permissibly determined Dr. Hess's opinion does not assist Claimant in establishing a basis for modification. *See Haw. Stevedores, Inc. v. Ogawa*, 608 F.3d 642, 652-653 (9th Cir. 2010); D&O at 21.

has not established a basis for modification on this issue.[10] D&O at 23; *see Dobson*, 21 BRBS at 175-176. In fact, he cannot modify a decision on a claim that was not made.[11]

Having considered Claimant's contentions and evidence, we hold the ALJ did not abuse his discretion in finding Claimant failed to establish the prior decision should be modified. *See Kinlaw v. Stevens Shipping & Terminal Co.*, 33 BRBS 68, 72-73 (1999); D&O at 23.

[10] Claimant contends he filed an amended Claim for Compensation (LS-203 Form) for COPD as an independent injury, contrary to ALJ Gee's original finding. CB 11-12. He asserts the ALJ must rule on that claim without relying on the Ninth Circuit's holding because of this factual mistake. *Id.* We disagree. "[A] claim shall be filed with the deputy commissioner in the compensation district in which [the] injury or death occurred." 33 U.S.C. §913(a); *see* 20 C.F.R. §702.221(a). There is no record that Claimant *filed* an amended LS-203 Form with the district director. The record shows Claimant attempted to admit an amended LS-203 Form dated March 20, 2018, as Claimant's Exhibit 7, but the ALJ excluded it. *See* Order Admitting Exs. and Excluding Claimant's Ex. 7 at 2-3. Claimant may not effectuate an amended claim by submitting an amended LS-203 Form to the ALJ as evidence. Regardless, the Ninth Circuit held Claimant "waived an independent claim for COPD," and we are bound to the court's mandate. *Compton v. DynCorp Int'l., Inc.*, 650 F. App'x 550, 553 (9th Cir. 2016) (unpub.); *see Milliken*, 200 F.3d at 950; *Nguyen*, 792 F.2d at 1502; n.11, *infra*.

[11] Given the nature of modification, the law of the case doctrine is generally not applicable. Rather, courts have routinely held the "'principle of finality' just does not apply to Longshore Act and black lung claims as it does in ordinary lawsuits." *Jessee v. Director, OWCP*, 5 F.3d 723, 725 (4th Cir. 1993) (citing *Banks v. Chi. Grain Trimmers Ass'n*, 390 U.S. 459, 461-465 (1968)). However, an appellate court's mandate "forecloses a lower court or an agency only from revisiting issues that the appellate court actually decided." *Youghiogheny & Ohio Coal Co. v. Milliken*, 200 F.3d 942, 950 (6th Cir. 1999); *see Nguyen v. United States*, 792 F.2d 1500, 1502 (9th Cir. 1986). Therefore, because the Ninth Circuit "actually decided" Claimant waived his COPD claim, neither the ALJ nor the Board may modify that result. *See Milliken*, 200 F.3d at 950; *Compton*, 650 F. App'x at 553.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

GLENN E. ULMER
Acting Administrative Appeals Judge