U.S. Department of Labor

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

BRB No. 24-0080

JASON SULLIVAN Claimant-Respondent v. AEGIS DEFENSE SERVICE, LLC and ARCH INSURANCE COMPANY Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Respondent	)	**NOT-PUBLISHED** DATE ISSUED: 08/11/2025 DECISION and ORDER

Appeal of the Decision and Order Granting Benefits of Stewart F. Alford, Administrative Law Judge, United States Department of Labor.

Lara D. Merrigan and Zoe Liebeskind (Merrigan Legal), Campbell, California, and Nina H. Sellers (Hogan Sellers, PLLC), Pinehurst, North Carolina, for Claimant.

Keith L. Flicker and Ian A. Massar (Flicker, Garelick & Associates, LLP), New York, New York, for Employer and its Carrier.

Amanda Torres (Jonathan Snare, Deputy Solicitor of Labor; Jennifer Feldman Jones, Acting Associate Solicitor; William M. Bush, Acting

Counsel for Administrative Appeals), Washington, D.C., for the Acting Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Stewart F. Alford's Decision and Order Granting Benefits (2021-LDA-00662) 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, 361-62 (1965).

Claimant alleges his work for Employer as a course instructor in Kathleen, Georgia, from October 28, 2019, to November 17, 2019, aggravated his pre-existing autoimmune disease.[2] Hearing Transcript (HT) at 97, 108, 112-19. He testified he lived in an Employer-provided apartment unit that had sticky floors, flies, cockroaches, an overflowing sink, and a cabinet under the sink containing dirty towels, hair, and possible fecal matter. *Id.* at 102-03. Further, he testified he found sheets and towels that had turned brown and smelled of mildew in the washing machine, and he saw a thick particulate ring in the bathtub and brackish, dirty water in the toilet of his bathroom. *Id.* at 104-105. In addition, he described

[1] 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., LLC v. Abdelmeged*, 913 F.3d 921, 922 (9th Cir. 2019); *McDonald v. Aecom Tech. Corp.*, 45 BRBS 45, 47 (2011).

[2] Claimant testified he previously experienced symptoms of sinus issues, severe headaches, stiff joints, fever, chills, and night sweats in 1998, 2005, and 2018. Hearing Transcript (HT) at 50-53, 61-63, 93. He also testified he experienced symptoms of intense chest pain and fevers in 2001, 2002, 2006, and 2009, but did not receive a diagnosis. *Id.* at 61-62; Employer's Exhibit (EX) 3 at 7, 8, 12, 14.

finding plastic bags outside the apartment filled with dirty linens that looked like they were used to clean up a sewage spill and had leaked onto the concrete. *Id.* at 111.

Claimant testified that around November 13, 2019, he began feeling flu-like symptoms.[3] *Id.* at 112, 114. He testified that, shortly thereafter, he returned to Southern California, where his symptoms progressed and, despite seeking treatment, he did not receive a diagnosis.[4] *Id.* at 121-25; CX 9. Claimant further testified he soon began feeling pressure behind his eyes, had blurry vision and redness, and hearing issues. HT at 121, 125-26. In addition, he began struggling to walk without support and lost about seventy pounds in one month.[5] HT at 133.

On February 27, 2020, Claimant began seeing Dr. Fawad Aslam, a rheumatologist, who diagnosed him with Cogan syndrome and vasculitis based on his symptoms of bilateral sensory neural hearing loss, labyrinthitis, severe joint pain, rash, weight loss, and medium vessel vasculitis. CXs 22 at 1-2, 27 at 2. At his deposition, Dr. Aslam stated it is possible Claimant had Cogan syndrome before he was exposed to raw sewage during his work for Employer. *Id.* at 36-37. He testified that Claimant's exposure to raw sewage could have triggered, worsened, or aggravated a preexisting condition in Claimant, but he could not say there is a connection "based on medical knowledge." *Id.* at 50-51.

---

[3] Claimant went to Houston Medical Center in Warner Robins, Georgia, complaining of chills, body aches, excessive sweating, lack of appetite, abdominal pain, diarrhea, vomiting, and nausea. Claimant's Exhibit (CX) 3.

[4] Claimant testified that around November 28, 2019, he went to the Los Alamitos Hospital and, after he received blood tests and abdominal, leg, and lung scans, his doctors discharged him on December 12, 2019, because they could not determine the cause of his condition. CX 9; HT at 122-25.

[5] Claimant testified Los Alamitos Hospital referred him to the Mayo Clinic. HT at 136-37. On January 9, 2020,he underwent a Level 4 eye exam at the Eye Treatment Center in Long Beach, California, which revealed he had episcleritis and vision loss in both eyes. Claimant Exhibit (CX) at 8. On January 20, 2020, Claimant saw Dr. Elizabeth Windgassen at the Mayo Clinic in Scottsdale, Arizona, where he was admitted for weight loss, fever, night sweats, dizziness, myalgia, arthralgias, generalized weakness, and acute bilateral hearing loss. HT at 138; CXs 14, 26. Claimant testified he underwent extensive testing, relearned basic tasks, received help for his walking, and his eyesight issues resolved. HT at 142-43; CX 14 at 20-22, 30-33. However, he lost his hearing on January 2, 2020. HT at 129.

On October 30, 2021, Dr. Fisher, a rheumatologist, examined Claimant's medical records at Employer's request. EX 2. He opined Claimant's underlying autoimmune condition, and not his exposure to sewage, is more likely the cause of his Cogan syndrome. *Id.* at 72. In addition, Dr. Fisher concluded "it is impossible to say" whether exposure to sewage caused or aggravated Claimant's condition. *Id.*; EX 3 at 2. Because Claimant has a history of recurring symptoms which appear to be autoimmune in etiology, the doctor believed Claimant's Cogan syndrome is a "continuum" of his underlying autoimmune disease. EX 3 at 2-3.

The ALJ found Claimant invoked the Section 20(a) presumption of compensability, 33 U.S.C. §920(a), as the parties stipulated to Claimant's injury, Cogan syndrome, and the ALJ found Claimant offered sufficient evidence to show his injury could possibly be causally related to his workplace conditions. Decision and Order (D&O) at 35-36. Next, the ALJ found Employer rebutted the presumption as to whether Claimant's exposure to sewage caused his injury, but Employer did not offer sufficient evidence to rebut the presumption that Claimant's exposure aggravated or accelerated his underlying autoimmune disorder. *Id.* at 36, 41. Thus, he determined Claimant suffered a compensable aggravation injury as a matter of law.[6] *Id*. at 41.

On appeal, Employer contends the ALJ erred in finding Claimant invoked the Section 20(a) presumption and in finding it did not rebut the presumption as to an aggravation injury. Claimant responds in support of the award of benefits. The Acting Director, Office of Workers' Compensation Programs (the Director), filed a brief urging rejection of Employer's arguments. Employer filed a reply brief reiterating its arguments on appeal.

Section 20(a) Presumption

Invocation

To be entitled to the Section 20(a) presumption linking his injuries to his employment, a claimant must sufficiently allege: 1) he has 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) (en banc), *appeal dismissed*

[6] The ALJ made additional findings regarding the nature and extent of Claimant's disability, his entitlement to medical benefits under Section 7 of the Act, 33 U.S.C. §907, and Employer's entitlement to relief under Section 8(f), 33 U.S.C. §908(f). He awarded Claimant ongoing temporary total disability benefits beginning November 17, 2019, as well as reasonable and necessary injury-related medical benefits, and denied Employer's application for Section 8(f) relief, 33 U.S.C. §908(f). Decision and Order (D&O) at 48.

(M.D. Fla. Aug. 24, 2023); *see, e.g., Hawaii Stevedores, Inc. v. Ogawa*, 608 F.3d 642, 651 (9th Cir. 2010); *O'Kelley v. Dep't of the Army/NAF*, 34 BRBS 39, 41 (2000). The claimant bears an initial burden of production to invoke the presumption. *Rose*, 56 BRBS at 36. Credibility can play no role in addressing whether a claimant has established a prima facie case. *Id.* at 37. In this regard, the Section 20(a) invocation analysis "does not require examination of the entire record, an independent assessment of witness' credibility, or weighing of the evidence." *Id.* Instead, the claimant need only "present some evidence or allegation that if true would state a claim under the Act." *Id.* Consequently, if the claimant produces some evidence to support his prima facie case, he is entitled to the presumption that his injury is work-related and compensable. *Id.*

The ALJ found Claimant established both elements necessary to invoke the presumption. D&O at 32-36. As Employer does not dispute Claimant sustained an injury, thereby establishing the harm element, we affirm it. *See Scalio v. Ceres Marine Terminals, Inc*., 41 BRBS 57, 58 (2007); D&O at 32; Director's Brief (DB) at 5 n.4. The ALJ then found Claimant established the working conditions element through Claimant's testimony and Dr. Aslam's medical opinion. D&O at 32-35.

Claimant testified he saw an overflowing sink and cabinet under the sink with dirty towels, hair, and possible fecal matter in the apartment, and submitted video of feces and unclean areas of the apartment. HT at 102-03; CXs 15, 16. He also submitted a letter from a previous occupant describing the overflow of sewage in the apartment and the testimony of a coworker stating he was warned to stay away from the apartment because the sewage had not been properly cleaned. CXs 4, 48 at 40. In addition, Dr. Aslam opined environmental exposures can play a role in "instigating" a rheumatic disease and "it is plausible" that Claimant's exposure to sewage may have caused his development of Cogan syndrome. CXs 20, 23 at 50. In addition, he testified Cogan syndrome could be triggered, rather than caused, by outside factors, such as viral infections, vaccinations, environmental exposures, and medications. CX 23 at 20, 49-52. He opined it is possible that Claimant's exposure to sewage is a trigger or accelerating factor for his Cogan syndrome. *Id.* at 50-51. Therefore, the ALJ correctly found Claimant produced "some evidence" of the requisite working conditions necessary to establish a prima facie case. *See Albina Engine & Machine v. Director, OWCP* [*McAllister*], 627 F.3d 1293, 1298 (9th Cir. 2010); *Brown v. I.T.T./Cont'l Baking Co. & Ins. Co. of N. Am.*, 921 F.2d 289, 296 n.6, (D.C. Cir. 1990) (a claimant need only adduce "some" evidence to establish a prima facie case); *Rose*, 56 BRBS at 36; D&O at 35-36.

Employer argues the ALJ erred in invoking the presumption because Dr. Aslam's opinion is "highly speculative." Employer's Brief (EB) at 19-22. Contrary to Employer's argument, invocation does not require the ALJ to assess a physician's credibility or weigh the evidence; rather Claimant need only present "some evidence" to support his prima facie

case that his compensable injury is work-related. *Rose*, 56 BRBS at 37. In this case, substantial evidence supports the ALJ's finding that working conditions could have caused Claimant's injury, thereby satisfying his prima facie case. *Rose*, 56 BRBS at 36; D&O at 35-36.

We also reject Employer's contention that the ALJ's finding of invocation is an abuse of discretion because "neither science nor medicine can establish any causal relationship" given the rarity of Cogan syndrome. EB at 19-20. Contrary to Employer's characterization, although Dr. Aslam recognized the medical science of Cogan syndrome is limited due to its rarity, he opined Claimant's exposure to raw sewage "possibly" could have aggravated his pre-existing condition because environmental exposures can play a role in worsening rheumatic diseases. CX 23 at 50-51; EB at 19-22; DB at 4-5. Thus, Dr. Aslam's opinion is beyond "mere fancy" and sufficient to establish Claimant's prima facie case. *See Stevens v. Tacoma Boatbuilding Co.*, 23 BRBS 191, 193-94 (1990); CXs 20, 22, 23. As it is supported by substantial evidence, we affirm the ALJ's finding that Claimant invoked the presumption linking his injury to his work. *See Ogawa*, 608 F.3d at 651; *Rose*, 56 BRBS at 36; *O'Kelley*, 34 BRBS at 41; D&O at 35-36.

Rebuttal

Once a claimant invokes the presumption linking his injuries to his work, the burden shifts to the employer to rebut the presumption with substantial evidence that the claimant's injuries were not caused, aggravated, or accelerated by the conditions of his employment. *Ogawa*, 608 F.3d at 651; *Rose*, 56 BRBS at 31; *Duhagon v. Metro. Stevedore Co*., 169 F.3d 615, 618 (9th Cir. 1999). An employer's burden on rebuttal is to produce "evidence specific and comprehensive enough to sever the potential connection between the disability and the work environment." *Ramey v. Stevedoring Servs. of Am.*, 134 F.3d 954, 959 (9th Cir. 1998) (internal citation omitted); *Caudill v. Sea Tac Alaska Shipbuilding*, 25 BRBS 92, 95-96 (1991), *aff'd mem. sub nom. Sea Tac Alaska Shipbuilding v. Director, OWCP*, 8 F.3d 29 (9th Cir. 1993). The inquiry at rebuttal concerns "whether the employer submitted evidence that could satisfy a reasonable fact finder that the claimant's injury was not work-related," *Ogawa*, 608 F.3d at 651, and it is a burden of production only. The weighing of conflicting evidence or of the credibility of evidence "has no proper place in determining whether [employer] met its burden of production." *Id.*

When aggravation is raised, as in this case, the evidence the employer offers on rebuttal must address aggravation. *Parsons Corp. of Cal. v. Director, OWCP* [*Gunter*], 619 F.2d 38, 41-42 (9th Cir. 1980). Rebuttal of an aggravation claim must cast doubt on whether working conditions worsened the underlying disease process or increased a claimant's symptoms or pain. *Bath Iron Works Corp. v. Fields*, 599 F.3d 47, 54 (1st Cir. 2010); *Duhagon*, 169 F.3d at 618.

Employer produced the medical opinion of Dr. Fisher to rebut the presumption. EXs 2, 3. Dr. Fisher acknowledged Claimant has symptoms of fatigue, difficulty walking without support, recurring rashes on his legs, numbness and tingling in his legs, decreased appetite, altered taste, and severe hearing loss. EX 2 at 72. He also acknowledged Claimant's history of recurring rheumatologic episodes, beginning in his mid-20s. *Id.* In addition, he conceded Claimant's diagnosis of Cogan syndrome and vasculitis and that Claimant's exposure to raw sewage was related to his employment.[7] *Id.* Dr. Fisher opined, however, "it is impossible to say with reasonable medical certainty that this caused or aggravated his condition." *Id.* He also opined Claimant's underlying autoimmune condition is "more likely the cause of the Cogan syndrome," and his current condition is "just a continuum of this unusual manifestation of this autoimmunity." *Id.* In his supplemental opinion, Dr. Fisher stated his opinion remained unchanged. EX 3.

Despite having found Employer rebutted the presumption as to causing Claimant's Cogan syndrome, the ALJ found Dr. Fisher's opinion equivocal and does not preclude the possibility that Claimant's exposure aggravated or accelerated the progression of his pre-existing and underlying condition. D&O at 37-39. As Dr. Fisher did "not go on to say, one way or another, that exposure was *not*" an aggravating factor, the ALJ determined Dr. Fisher's opinion is insufficient to rebut the presumption as to aggravation. *See Caudill*, 25 BRBS at 96; D&O at 37-41.

We reject Employer's argument that the ALJ applied an impermissible legal standard by requiring it to "rule out" all possible causal connections between Claimant's injury and employment conditions. EB at 22-35. The ALJ correctly stated Employer's burden is to provide substantial evidence that Claimant's injury was not caused, aggravated, or accelerated by the conditions of his employment. *See Ogawa*, 608 F.3d at 651; *Rose*, 56 BRBS at 31; *Gunter*, 619 F.2d at 41-42; D&O at 36. As the Director accurately asserts, Dr. Fisher's opinion that he could not say whether Claimant's exposure to raw sewage aggravated his condition is insufficient to satisfy Employer's burden to cast

---

[7] Dr. Fisher specifically stated:

> [I]t is my opinion that this syndrome did not develop as a result of his exposure to noxious agents while he was sleeping and living in an apartment that had been exposed to raw sewage spill. There is a two-week hiatus between his exposure and the onset of his illness.

EX 2 at 72. The ALJ found this statement successfully rebutted the presumption with respect to causation. D&O at 36.

doubt on whether Claimant's work played any role in his condition.[8] *See Fields*, 599 F.3d at 54; *Caudill*, 25 BRBS at 96; DB at 2; EXs 2, 3. As substantial evidence supports the

[8] We reject Employer's contention that the ALJ erred in failing to objectively consider the opinions of Drs. Aslam and Fisher on invocation and rebuttal. Employer's Brief (EB) at 39-41. The ALJ found Employer offered evidence to support its argument that "it is more likely Claimant's disease progression was natural" rather than aggravated by his sewage exposure. D&O at 40. However, the ALJ properly found Employer cannot rebut the presumption with "hypothetical probabilities," but rather must come forward with substantial evidence that the work played no role in Claimant's condition. D&O at 37-41; *see Caudill v. Sea Tac Alaska Shipbuilding*, 25 BRBS 92, 96 (1991), *aff'd mem. sub nom. Sea Tac Alaska Shipbuilding v. Director, OWCP*, 8 F.3d 29 (9th Cir. 1993); *Bath Iron Works Corp. v. Fields*, 599 F.3d 47, 54 (1st Cir. 2010); *Damiano v. Glob. Terminal & Container Serv.*, 32 BRBS 261, 262-63 (1998).

ALJ's findings, we affirm them.[9] *See Ogawa*, 608 F.3d at 651; *Rose*, 56 BRBS at 31; *Caudill*, 25 BRBS at 96; D&O at 39; EB at 42-44.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

GLENN E. ULMER
Acting Administrative Appeals Judge

[9] As Employer does not challenge either the ALJ's findings on the nature and extent of Claimant's disability or his entitlement to medical benefits, or the ALJ's denial of Section 8(f) relief, we affirm them. *See Scalio v. Ceres Marine Terminals, Inc*., 41 BRBS 57, 58 (2007); D&O at 48.