

U.S. Department of Labor

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



BRB No. 24-0427

CYNTHIA DUNN

Claimant-Petitioner

v.

VIRGINIA INTERNATIONAL
TERMINALS, LLC

and

SIGNAL MUTUAL INDEMNITY
ASSOCIATION, LIMITED

Employer/Carrier-
Respondents

NOT-PUBLISHED

DATE ISSUED: 08/20/2026

DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Monica Markley,
Administrative Law Judge, United States Department of Labor.

Charlene A. Morring (Morring Law, PLLC), Norfolk, Virginia, for Claimant.

Megan B. Caramore (Woods Rodgers Vandeventer Black), Norfolk,
Virginia, for Employer and its Carrier.

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

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Monica Markley's Decision and
Order Denying Benefits (2021-LHC-00760) rendered on a claim filed pursuant to the

Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §§901-950 (Act). The Benefits Review Board 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 a right knee injury while working for Employer on September 14, 2020, when she tripped over a rubber flap, struck her chest on a nearby bollard, and landed on her wrists and knees. Employer and its Carrier (Employer) stipulated Claimant fell and sustained chest and bilateral wrist injuries on September 14, 2020, and paid temporary partial disability (TPD) benefits from September 15, 2020, to September 27, 2020. However, Employer maintains Claimant did not injure her right knee when she fell and any right knee pain she has is unrelated to her employment. The ALJ found Claimant invoked the Section 20(a) presumption of compensability, 33 U.S.C. §920(a), linking her right knee injury to the work accident and found Employer rebutted the presumption. Weighing the evidence, the ALJ found Claimant failed to establish her right knee condition is work-related and denied medical benefits.

On appeal, Claimant argues the ALJ erred in finding Employer rebutted the presumption and in weighing the evidence.² Employer responds in support of the ALJ's findings.

The Act provides a form of workers' compensation to maritime employees. To state a claim for compensation, a claimant must at least "allege (1) an injury or death (2) that arose out of and in the course of (3) his maritime employment." *Newport News Shipbuilding & Dry Dock Co. v. Holiday*, 591 F.3d 219, 225 (4th Cir. 2009) (citing *Universal Mar. Corp. v. Moore*, 126 F.3d 256, 262 (4th Cir.1997)). Under the Act, "injury" can be either a new harm, or the aggravation of an existing condition. *See Holiday*, 591 F.3d at 225 (citing *Newport News Shipbuilding & Dry Dock Co. v. Fishel*, 694 F.2d 327, 329 (4th Cir.1982)); *see also* 33 U.S.C. §902(2).

¹ This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because Claimant sustained the injuries at issue in this case in 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 (4th Cir. 2002), *cert. denied*, 537 U.S. 1188 (2003); 20 C.F.R. §702.201(a).

² We affirm, as unchallenged on appeal, the ALJ's finding Claimant invoked the Section 20(a) presumption that her right knee condition is work-related. *See Scalio v. Ceres Marine Terminals, Inc.*, 41 BRBS 57, 58 (2007); Decision and Order Denying Benefits (D&O) at 15-16.

Section 20 (a) – Rebuttal

Once a claimant invokes the Section 20(a) presumption linking her injuries to her work, the burden shifts to the employer to produce substantial evidence that the claimant's condition is not work-related. *See Metro Machine Corp. v. Director, OWCP [Stephenson]*, 846 F.3d 680, 684 (4th Cir. 2017); *Rose v. Vectrus Sys. Corp.*, 56 BRBS 27, 31 (2022) (en banc), *appeal dismissed* (M.D. Fla. Aug. 24, 2023). An employer's burden on rebuttal is one of production, not persuasion. *Moore*, 126 F.3d at 262. The inquiry at rebuttal concerns whether the employer submitted evidence that could satisfy a reasonable factfinder that the claimant's injury is not work-related. *See Holiday*, 591 F.3d at 225-226. When aggravation is raised, the evidence the employer offers on rebuttal must address aggravation.³ *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 existing condition or increased a claimant's symptoms or pain. *See Holiday*, 591 F.3d at 225; *Duhagon v. Metro. Stevedore Co.*, 169 F.3d 615, 618 (9th Cir. 1999).

Employer relies on Claimant's treatment record and the opinions of Drs. Sheldon Cohn and Loel Payne to rebut the presumption.⁴ Employer's Exhibits (EXs) 13, 15, 16, 18, 19.

Claimant's treatment record showed she sought treatment for "only wrist pain" on three occasions in September 2020 and did not report right knee pain at any of those visits. EX 13 at 1-3. Claimant first complained of right knee pain on November 4, 2020, after her September 2020 fall at work, stating the pain started two weeks prior, but her provider, Dr. Domingo Solomon, noted no effusion, stated an x-ray of her right knee taken that same day

³ The ALJ identified the issues in this claim as "whether Claimant's right knee condition is causally related to [her] *work injury on September 14, 2020*" and whether Claimant's "ongoing medical treatment for [her] right knee is related to the *work injury of September 14, 2020*." D&O at 3 (emphasis added), accurately reflecting Claimant's Post-Hearing Brief at 1, 6-8, 13. In regard to what Claimant specifically raised in this claim regarding aggravation, the ALJ summarized Claimant's argument as whether her pre-existing knee condition "was aggravated due to the *work injury*" "on September 14, 2020." D&O at 3 (emphasis added). On appeal, Claimant also now contends for the first time that Employer's experts failed to address whether her working conditions aggravated her pre-existing knee arthritis upon her return to work in order to meet its burden on rebuttal. Claimant's Br. at 7, 15, 18-19, 25.

⁴ Both Drs. Cohn and Payne are board-certified orthopedic surgeons. EXs 16, 19.

was normal, and concluded he was “unable to correlate current symptoms [to the] previous injury.” *Id.* at 4, 7.

Dr. Cohn examined Claimant on December 22, 2020, noting she was “tender globally about her knee” with mild effusion. EX 15 at 2. He read a December 22, 2020 x-ray as showing medial joint space narrowing, some irregularity of the lateral joint space, and more significant patellofemoral changes. *Id.* Specifically, he diagnosed Claimant with pre-existing tricompartmental osteoarthritis and medial and lateral meniscus tears, and opined Claimant’s diagnosis and current symptoms are “personal in nature.” *Id.* He opined Claimant did not sustain “any injuries” to her right knee from the work accident and stated he did not believe “the injury exacerbated or aggravated her underlying medical condition.” *Id.* at 2-3. While he stated most of Claimant’s symptoms “are referable to her patellofemoral joint,” he found no evidence Claimant injured her patellofemoral joint when she fell as the “mechanism of injury is not consistent with injuries to the menisci.” *Id.* In regard to Claimant’s “personal” arthritis, he stated he believed Claimant could do her job but “most likely” would be uncomfortable doing so and it would be reasonable to put her on some restrictions for a “medical/non-work related reason” and if Claimant felt her job exacerbated her knee pain, it would be reasonable for her not to perform her job “due to her medical not work related” condition. *Id.* at 3.

Dr. Payne reviewed Claimant’s treatment record but did not evaluate Claimant in person. EX 18. Based on a December 7, 2020 magnetic resonance imaging (MRI) scan, he opined she had a complex tear of the posterior horn of the medial meniscus and a radial tear in the lateral meniscus with some cartilage wear in both the posterior medial and lateral compartments. *Id.* at 2. He agreed with Dr. Cohn that the mechanism of injury is inconsistent with a medial meniscus tear. *Id.* Further, he opined Claimant’s current symptoms are due to an exacerbation of her pre-existing arthritis, but he “cannot correlate the work [accident] to this exacerbation” given that Claimant did not report any knee pain for a month after the accident. *Id.* He concluded Claimant’s current symptoms are unrelated to the work accident and she may require some work restrictions due to her current knee pain and pre-existing knee arthritis. *Id.*

The ALJ found Employer produced substantial evidence to rebut the presumption that Claimant’s right knee condition is work-related because Claimant’s treatment record indicated, and both Drs. Cohn and Payne agreed, that Claimant’s knee condition was not caused or aggravated by the alleged work accident or injury. Decision and Order Denying Benefits (D&O) at 17.

Initially, Claimant contends for the first time on appeal that Employer’s experts did not address whether Claimant’s working conditions aggravated her pre-existing knee arthritis condition and symptoms once she returned to work after the September 14, 2020

accident. Claimant's Br. at 7, 15, 18-19, 25. But the only claim Claimant raised before the ALJ was her assertion that she suffered an alleged work-related knee injury on September 14, 2020, and that it aggravated her pre-existing knee arthritis condition. Claimant's Exhibit (CX) 5; Claimant's June 2022 Pretrial Statement; Claimant's Post-Hearing Br. at 1; EXs 1, 2. The record does not contain any claim or allegation raised before the ALJ that Claimant's working conditions aggravated her pre-existing condition, regardless of whether she had a work-related accident or not.

An aggravation claim can also be based on whether a claimant's working conditions aggravated a pre-existing condition, regardless of whether the claimant had a work-related accident causing an injury. But the ALJ and Employer's experts rationally limited their consideration to the relation between Claimant's September 14, 2020 accident at work and the knee injury Claimant alleged she suffered as a result on that day, and whether that alleged knee injury aggravated her pre-existing knee arthritis condition, as that is all that Claimant raised before the ALJ. Claimant did not raise before the ALJ that her general working conditions aggravated her pre-existing knee arthritis and symptoms.⁵ Because Section 20(a) "cannot apply to a claim that has never been made," *U.S. Indus./Fed. Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 613, 616 (1982), the Section 20(a) presumption does not require the ALJ "to address and the employer to rebut every conceivable theory of recovery." *Id.* at 614.

Contrary to Claimant's further contention, Employer's burden on rebuttal is one of production, not persuasion, and is not dependent on credibility. *Moore*, 126 F.3d at 262; *Rose*, 56 BRBS at 36; *Suarez v. Serv. Emps. Int'l, Inc.*, 50 BRBS 33, 36 n.4 (2016); *Cline v. Huntington Ingalls, Inc.*, 48 BRBS 5, 7 (2013); Claimant's Br. at 17-19. In addition, a medical opinion of non-causation rendered to a reasonable degree of medical certainty is sufficient to rebut the presumption. See *O'Kelley v. Dep't of the Army/NAF*, 34 BRBS 39, 41-42 (2000). As the evidence Employer submitted "could allow a reasonable factfinder to infer" Claimant's right knee condition is not work-related, it constitutes substantial evidence sufficient to rebut the Section 20(a) presumption. *Stephenson*, 846 F.3d at 684; see *Holiday*, 591 F.3d at 226; *Moore*, 126 F.3d at 263. Therefore, we affirm the ALJ's finding that Employer rebutted the presumption. D&O at 17; Claimant's Br. at 13-19.

Weighing the Evidence

Because Employer successfully rebutted the presumption, the ALJ must resolve the issue of causation based on the evidence of the whole record with Claimant bearing the

⁵ The Board will not address a factual issue raised for the first time on appeal. *Turk v. E. Shore R.R., Inc.*, 34 BRBS 27, 32 (2000).

burden of persuasion. *Moore*, 126 F.3d at 262; *Rose*, 56 BRBS at 39; *see generally Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 281 (1994); *Santoro v. Maher Terminals, Inc.*, 30 BRBS 171, 173-74 (1996). 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 Newport News Shipbuilding & Dry Dock Co. v. Cherry*, 326 F.3d 449, 452 (4th Cir. 2003); *Pittman Mech. Contractors, Inc. v. Director, OWCP* [*Simonds*], 35 F.3d 122, 127 (4th Cir. 1994). The ALJ must explain her rationale in reaching a decision on the evidence, *Kkunsu v. Constellis Grp./Triple Canopy, Inc.*, 59 BRBS 1, 4-5 (2025), and the 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 Newport News Shipbuilding & Dry Dock Co. v. Winn*, 326 F.3d 427, 430 (4th Cir. 2003); *Newport News Shipbuilding & Dry Dock Co. v. Director, OWCP* [*Brickhouse*], 315 F.3d 286, 294 (4th Cir. 2002).

The ALJ considered Claimant's testimony, the opinion of Dr. Arthur Wardell, one of Claimant's treating physicians, that Claimant's right knee injury is work-related, and the contrary opinions of Drs. Cohn and Payne that Claimant's right knee condition is not work-related.⁶ D&O at 17-22; CXs 10, 11; EXs 13, 15. The ALJ discredited Claimant's testimony because she was inconsistent regarding the onset of her knee symptoms. D&O at 17-19. Similarly, the ALJ gave "little weight" to Dr. Wardell's opinion because it was inadequately explained, and he relied primarily on Claimant's unreliable self-reports. *Id.* at 19-20. The ALJ gave "significant weight" to the opinions of Drs. Cohn and Payne as they were reasoned and documented. *Id.* at 20-21. Weighing the evidence as a whole, she found Claimant failed to establish a work-related injury by a preponderance of the evidence. *Id.* at 22.

Claimant generally asserts the ALJ erred in discrediting her testimony because it was "uncontradicted" and "adequately demonstrated conditions of employment sufficient to cause harm." Claimant's Br. at 19-21. Claimant testified she fell on her knees during the September 14, 2020 work accident and that she felt pain in her right knee immediately after, but it "just [was not] severe." Hearing Tr. at 22. She rated the pain as a 5 on a scale of 1 to 10. *Id.* at 23. However, at her initial treatment visit the day after the work accident, Claimant stated she fell on her wrists and knees but reported "only having wrist pain." EX13 at 1. Further, at her deposition, Claimant stated the "first time" she could recall having knee pain was "a few weeks after" the work accident, sometime in October. CX 10 at 17. She also stated she did not initially report a right knee injury because she did not

⁶ Dr. Wardell is a board-certified orthopedic surgeon. CX 12.

feel any pain at the time and it was only in October when she had “excruciating pain” while walking. *Id.* at 16-17.

The ALJ found Claimant’s testimony “in direct conflict” with the other evidence of record. D&O at 18. For example, the ALJ noted Claimant did not report any knee pain until November 4, 2020, when she claimed her right knee started hurting in October. *Id.* at 18; EX 13 at 4. But the ALJ recognized that on November 5, 2020, Claimant reported she felt pain in her right knee when it suddenly gave out while she was walking at a Walmart and said she had no knee pain before entering the Walmart and no prior instances of her knee giving way. D&O at 18. However, Claimant told Dr. Wardell she injured her right knee during the work accident and reported “slowly progressive pain” in her knee and other “giving way episodes” with “clicking and locking.” *Id.*; CX 7 at 1. In addition, despite Claimant stating she fell on both knees during the work accident, the ALJ observed Claimant did not report any knee injury in the incident report immediately after the work accident, but only that she twisted both her wrists. D&O at 18; CX 2 at 1. The ALJ determined the inconsistencies as to the onset of Claimant’s knee pain “significantly detract” from her credibility. D&O at 19.

The ALJ also observed Claimant testified she “jumped off” a moving forklift on May 24, 2021, and she “hurt [her] lower back, and [her] knee was agitated.” D&O at 19; Hearing Tr. at 28; CX 10 at 21-23. Claimant’s treatment record noted a May 24, 2021 x-ray that showed “[n]o acute findings in the knee but there is mild osteoarthritis.” EX 17 at 5. The ALJ recognized Claimant denied informing Dr. Wardell of this second accident and diagnosis despite still seeing him for treatment for “her right knee complaints at issue [in this case].” D&O at 19. Thus, the ALJ found Claimant’s decision to “withhold this information” from Dr. Wardell detracts from her reliability. *Id.* Additionally, the ALJ found Claimant attempted to “backtrack” from her previous statement that she “hurt [her] knee” during the May 24, 2021 incident, which the ALJ found “further detracts from her credibility.”⁷ D&O at 19 n.10; CX 10 at 21. Therefore, because Claimant provided an inconsistent account as to the onset of her right knee pain and failed to inform her treating provider of an additional work accident directly affecting her right knee, the ALJ found Claimant “not credible” and gave her statements little weight. D&O at 19. Given the discretion accorded ALJs in weighing the evidence, and as the ALJ fully explained her reasons for finding Claimant not credible, we affirm her credibility determination. *See Cherry*, 326 F.3d at 452; *Winn*, 326 F.3d at 430; *Kkunsu*, 59 BRBS at 4-5; D&O at 19.

⁷ The ALJ recognized that Claimant first stated she “hurt [her] knee” but when asked at the hearing whether she hurt her knee, she said her knee “was agitated.” D&O at 19; CX 10 at 21; Hearing Tr. at 28.

Turning to the medical opinion evidence, the ALJ considered that Dr. Wardell first examined Claimant on November 13, 2020, and noted mild effusion and medial and lateral patella facet and joint line tenderness. CX 7 at 1-2. He read Claimant's November 13, 2020 x-ray as showing no fracture, dislocation, or degenerative change.⁸ *Id.* at 2. Specifically, he diagnosed Claimant with a right knee contusion, traumatic plica of the right knee, and articular cartilage fracture of the right knee. *Id.* On December 7, 2020, Dr. Wardell ordered an MRI scan of Claimant's right knee due to her continued complaints of stiffness and pain. *Id.* at 8. He read the MRI scan as revealing a radial tear over the posterior horn of the medial meniscus, a large oblique tear of the medial meniscus, a small lateral meniscus posterior horn, and mild tricompartmental degeneration with patellar cartilage loss. *Id.* at 8; CX 11 at 7-8. At his deposition, Dr. Wardell opined that although Claimant has "some pre-existing arthritis" in her right knee, the cause of her current symptoms is related to her initial September 2020 work accident. CX 11 at 8-9. He stated Claimant's symptoms from her knee injury were "mitigated somewhat by the fact that she did not return to work immediately" due to the condition of her wrists. *Id.* at 10. Further, he explained Claimant started to have symptoms of pain and knee buckling only after she returned to work and her knee was placed under the "stresses that a line handler has." *Id.* The ALJ gave little weight to Dr. Wardell's opinion because it was based on the "faulty premise" of Claimant's unreliable self-reports, and he did not review Claimant's treatment record in diagnosing her condition. D&O at 19-20.

Initially, we reject Claimant's contention that the ALJ erred in not assigning greater weight to Dr. Wardell's opinion because he was her treating physician. Claimant's Br. at 8. When medical evidence conflicts, the ALJ is not required to give special weight to a treating physician's opinion. *Kkunsu*, 59 BRBS at 4. Instead, the ALJ must consider all relevant evidence, assess the weight and credibility of each opinion, and explain her rationale for reaching a decision. *Id.* at 4-5. Because the record contains conflicting reports from three physicians addressing whether Claimant has a work-related knee injury, the ALJ correctly refrained from simply deferring to the opinion of Claimant's treating physician. *See id.* at 5; D&O at 61-67.

Claimant asserts the ALJ erred in substituting her opinion for that of an expert when rejecting Dr. Wardell's opinion. Claimant's Br. at 29-34. We disagree. As the factfinder, the ALJ is entitled to evaluate the credibility of all witnesses, including physicians, weigh the medical evidence, and draw her own inferences and conclusions from the record. *See Cherry*, 326 F.3d at 452; *Simonds*, 35 F.3d at 127. In doing so, she may accept parts of a witness's testimony while rejecting other parts. *Banks v. Chi. Grain Trimmers Ass'n*, 390

⁸ The ALJ noted Dr. Wardell reviewed an x-ray dated November 10, 2020, but found this x-ray was not in the record. D&O at 6 n.3; CX 7 at 1.

U.S. 459, 467 (1968). The ALJ found Dr. Wardell's causation opinion "faulty" because it was based on his conclusion that Claimant's initial symptoms coincided with her return to work. D&O at 19-20; CX 11 at 10. However, as the ALJ noted, the parties stipulated Claimant returned to work on November 21, 2020, "well after the alleged onset of pain and buckling in mid-October." D&O at 20; Joint Exhibit (JX) 1; EX 4 at 2. In addition, the ALJ accurately noted Dr. Wardell based his understanding of the initial September 2020 work accident and his causative opinion on what Claimant reported to him. D&O at 19; CX 11 at 5. For example, Dr. Wardell said he believed Claimant "twisted" her knee in the work accident, CX 11 at 5, but the ALJ found nothing in the record indicating Claimant reported twisting her knee. D&O at 19; CXs 2, 3, 7, 10 at 10-11; EXs 15, 18. Further, Dr. Wardell conceded he did not review Claimant's treatment record but only reviewed Dr. Payne's "review of [her] records." CX 11 at 11. The ALJ found Dr. Wardell's opinion "undermined" by his reliance on Claimant's statements and concluded he "failed to adequately investigate Claimant's relevant medical history or consider alternative causes of her pain." D&O at 19 n.11 (citing *Perkins v. U.S.*, 626 F.Supp. 2d 587, 593-595 (E.D. Va. 2009) (the court discredited Dr. Wardell's opinion because he took the claimant's self-report at face value, did not develop an accurate medical history, and failed to consider alternative explanations for the claimant's injuries)).

Claimant's arguments amount to a request to reweigh the evidence, which we are not empowered to do.⁹ See *Winn*, 326 F.3d at 430; *Brickhouse*, 315 F.3d at 294; Claimant's Br. at 30-34. Therefore, as it is rational and supported by substantial evidence, we affirm the ALJ's discrediting of Dr. Wardell's opinion. See *Cherry*, 326 F.3d at 452; *Simonds*, 35 F.3d at 127; D&O at 20. Consequently, we affirm the ALJ's determination that Claimant failed to establish her right knee condition is related to the September 2020 accident and constitutes a compensable work-related injury by the preponderance of the evidence. See *Moore*, 126 F.3d at 262; *Ondecko*, 512 U.S. at 281; *Santoro*, 30 BRBS at 173-74; see also *Wendler v. Am. Nat'l Red Cross*, 23 BRBS 408, 414 (1990) (an award of

⁹ We are not persuaded by Claimant's reliance on *Pietruni v. Director, OWCP*, 119 F.3d 1035 (2d Cir. 1997), to generally assert the ALJ erred in her consideration of Dr. Wardell's opinion. Claimant's Br. at 32-34. In *Pietruni*, the United States Court of Appeals for the Second Circuit held the ALJ's "reason for dismissing the findings of [the treating psychiatrist] had no substantial evidentiary foundation" and the ALJ improperly substituted his own medical judgment for the "uncontroverted and unanimous [medical] evidence." 119 F.3d at 1042-1043. This case, unlike *Pietruni*, contains conflicting reports from three medical experts addressing whether Claimant has a work-related right knee injury; therefore, as stated above, the ALJ was obligated to review and weigh all the evidence, which she did. See *id.* at 1042; *Kkunsu*, 59 BRBS at 3-5; D&O at 17-22.

medical benefits is contingent upon other prerequisites related to the merits of claimant's compensation claim, such as a finding of causal relationship); D&O at 21-22.

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

SO ORDERED.

JONATHAN ROLFE, Acting Chief
Acting Chief Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

GLENN E. ULMER
Administrative Appeals Judge