U.S. Department of Labor

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

BRB No. 21-0565

DANIEL HILL	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
NORTHROP GRUMAN	)	
	)	DATE ISSUED: 12/29/2022
and	)	
	)	
INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA c/o AIG CLAIMS, INCORPORATED	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Dan C. Panagiotis, Administrative Law Judge, United States Department of Labor.

Callie J. Fixelle (Grossman Attorneys at Law), Boca Raton, Florida, for Claimant.

Billy J. Frey and Gabrielle V. McBee (Thomas Quinn, LLP), San Francisco, California, for Employer/Carrier.

Before: BOGGS, Chief Administrative Appeals Judge, GRESH and JONES, Administrative Appeals Judges.

GRESH and JONES, Administrative Appeals Judges:

Employer appeals Administrative Law Judge (ALJ) Dan C. Panagiotis's Decision and Order Awarding Benefits (2019-LDA-00113) rendered on a claim filed pursuant to the

Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (Act), as extended by the Defense Base Act, 42 U.S.C. §1651 *et seq*. (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 law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965). This case is before the Benefits Review Board for a second time.

Claimant worked for Employer as an aircraft maintenance liaison between 2012 and 2018 in Afghanistan, when he alleges he was exposed to dusty conditions, both indoors and outdoors, and to fumes from burn pits, which Employer eliminated in 2015. Tr. at 32-33, 39-40, 44-45. In 2014, he was diagnosed with benign fibrosis, mild emphysema, and edema within the lung bases; however, at that time, his treating physician, Dr. Randall Rigdon, provided a medical release for Claimant to return to work in Afghanistan.[1] CX 7 at 19-20, 21-23. In July 2018, Claimant experienced severe shortness of breath; he was diagnosed with interstitial lung disease (ILD) and was required to return to the United States. Tr. at 45-47; CX 4 at 8-9, 42, 45-46. He filed a claim for benefits on August 27, 2018, which Employer controverted on the ground there was no medical evidence that Claimant's respiratory condition is related to or caused by his employment in Afghanistan. *See generally Hill v. Northrup Grumman*, BRB No. 20-0064 (May 27, 2020) (unpub.), *recon. denied* (Aug. 12, 2020), slip op. at 2.

In his decision dated October 16, 2019, Administrative Law Judge J. Alick Henderson found Claimant entitled to the Section 20(a) presumption, 33 U.S.C. §920(a), that his working conditions in Afghanistan could have caused or contributed to his ILD, but that Employer established rebuttal of the presumption. Weighing the evidence as a whole, Judge Henderson concluded Claimant did not establish a work-related component to his lung disease. He therefore denied Claimant's claim.

Claimant appealed the denial of benefits, arguing Judge Henderson erroneously found Employer rebutted the Section 20(a) presumption. In its decision, the Board held Judge Henderson did not adequately address whether Employer rebutted the Section 20(a) presumption. *Hill*, slip op. at 6. It therefore vacated that finding and remanded the case for the ALJ to address whether Employer produced substantial evidence to rebut the Section 20(a) presumption that Claimant's occupational dust exposure in Afghanistan

[1] Dr. Rigdon based this release on his opinion that Claimant did not have an active inflammatory lung disorder and on Claimant's denial that he was experiencing respiratory symptoms. CX 7 at 21-23.

contributed to, aggravated, or hastened his ILD.[2] *Id.* On remand, the case was re-assigned to Administrative Law Judge Dan C. Panagiotis (the ALJ).

In his decision dated August 2, 2021 (D&O), the ALJ found Employer did not put forth substantial evidence to rebut the Section 20(a) presumption relating his ILD to occupational dust exposure; therefore, he found Claimant established he has a compensable injury (his work-related ILD). D&O at 14. Addressing the nature and extent of Claimant's disability, the ALJ found Claimant entitled to, and Employer liable for, temporary total disability benefits from August 6, 2018, through May 15, 2019, and ongoing permanent total disability benefits from May 16, 2019, as well as medical benefits. *Id.* at 25.

On appeal, Employer contends the ALJ's rebuttal analysis is in error. It requests the Board vacate the award of benefits, find it rebutted the Section 20(a) presumption, and remand the case for a weighing of the evidence as a whole and findings consistent with the law. Claimant responds, urging affirmance of the ALJ's award of benefits. Employer has filed a reply brief.

Employer contends it has been denied due process as Claimant never raised any aggravation theory relating to his claim; it was therefore erroneous to conclude he invoked the Section 20(a) presumption on that basis. It maintains the Board erred in its prior decision by "suggesting that Claimant raised the Section 20(a) presumption as to an *aggravation*" Emp. Br. at 4 (emphasis in original), and in affirming Judge Henderson's finding that Claimant is entitled to the Section 20(a) presumption. Employer further argues it was not afforded an opportunity to submit evidence regarding the aggravation claim post-hearing and before the ALJ issued his decision on remand. *Id.* at 3.

Alternatively, and assuming the presumption was invoked, Employer argues it produced sufficient evidence to rebut the presumption with Dr. Patricia Rosen's statement that she "*found no evidence of a work-related component to Claimant's injuries* after reviewing evidence of Claimant's working conditions." *Id.* at 27 (emphasis in original). It avers Dr. Rosen's "no work-related component" opinion included and encompassed "*any* aspect of Claimant's working conditions that could directly cause *or aggravate* Claimant's underlying [idiopathic pulmonary fibrosis]/ILD," *id.* (emphasis in original), so, in contrast to the ALJ's finding, her report is sufficient to rebut the presumption. Employer further

[2] The Board, however, affirmed as unchallenged Judge Henderson's findings that Employer rebutted the Section 20(a) presumption with regard to the claim based on Claimant's burn pit exposure and that Claimant did not establish a causal connection between his ILD and burn pit exposure based on the record as a whole. *Hill*, slip op. at 6 n.11.

contends the ALJ adequately addressed whether Claimant's inability to return to his usual work stems from his work-related aggravation of his pre-existing ILD, rather than to that non-work-related condition in and of itself.

Was Aggravation Raised?

In his decision, Judge Henderson found Claimant invoked the Section 20(a) presumption based on Claimant's testimony about his exposure to dust and burn pit fumes, the opinion of Dr. Richard Sneeringer that Claimant's burn pit fumes exposure could be a contributing factor to his pulmonary fibrosis, and the opinion of Dr. Lisa Lancaster that occupational dust exposure could be a risk factor for idiopathic pulmonary fibrosis (IPF).[3] Employer, in its response brief to Claimant's appeal of Judge Henderson's denial of benefits, challenged this finding, asserting, as it does now, Claimant did not raise an aggravation theory due to his occupational dust exposure and therefore cannot invoke the Section 20(a) presumption via this theory.

In its 2020 decision, the Board addressed Employer's contention, noting Claimant's attorney, in his opening statement, "linked Claimant's ILD to dust, sand, wind, and sandstorms, as well as to burn pit fumes." *Hill*, slip op. at 6 n.10 (citing Tr. at 15-16, 20). The Board further acknowledged Judge Henderson "afforded [E]mployer an opportunity to submit additional evidence after the hearing,"[4] "Employer submitted Dr. Rosen's supplemental report," and "Claimant's post-hearing brief also addressed the aggravation issue." *Id.* Thus, the Board rejected Employer's contention and, thereby, affirmed Judge Henderson's invocation of the Section 20(a) presumption.[5]

[3] Claimant was diagnosed with IPF at the Cleveland Clinic in Abu Dhabi in July 2018. CX 4 at 35.

[4] In particular, the Board noted "Employer was granted 30 days after the May 23, 2019 hearing to submit additional evidence in response to evidence [C]laimant submitted at the hearing." Employer responded by submitting Dr. Rosen's June 13, 2019 report in which she stated, "she reviewed Dr. Lancaster's May 16, 2019 work capacity evaluation and letter, and the intake survey from the National Jewish Health Center (CX 33) addressing dust exposure." *Hill*, slip op. at 5.

[5] Furthermore, on remand the ALJ again considered Employer's contention that it was not accorded sufficient notice of dust exposure as a theory for Claimant's claim for benefits. He reviewed the procedural history of the case, as well as the record evidence, including notably Dr. Lancaster's report which contained multiple references to Claimant's dust exposure in Afghanistan, Dr. Rosen's supplemental report specifically analyzing Dr. Lancaster's report, and Employer's post-hearing brief which explicitly mentioned Dr.

Therefore, these issues pertaining to Claimant raising an aggravation claim based on his dust exposure, Employer's allegation that it was not afforded an opportunity to respond to that specific claim, and Judge Henderson's invocation of the Section 20(a) invocation on this claim, were fully considered and resolved by the Board in the prior appeal of this case. As none of the exceptions to the law of the case doctrine is applicable,[6] we hold the Board's decision on these issues constitutes the law of the case, and we decline to address Employer's contentions. *See Schwirse v. Marine Terminals Corp*., 45 BRBS 53 (2011), *aff'd sub nom. Schwirse v. Director, OWCP*, 736 F.3d 1165, 47 BRBS 31(CRT) (9th Cir. 2013) (fully addressed issue is law of the case); *Irby v. Blackwater Security Consulting*, 44 BRBS 17 (2010); *Kirkpatrick v. B.B.I., Inc*., 39 BRBS 69 (2005); *Ravalli v. Pasha Maritime Services*, 36 BRBS 91 (2002), *denying recon. in* 36 BRBS 47 (2002).

We next review the ALJ's decision in terms of Employer's alternative arguments. To be entitled to the Section 20(a) presumption linking his injuries to his employment, a claimant must prove both: 1) he has sustained a harm; and 2) an accident occurred or working conditions existed which could have caused or aggravated the harm. *See, e.g.*, *Port Cooper/T. Smith Stevedoring Co. v. Hunter*, 227 F.3d 285, 34 BRBS 96(CRT) (5th Cir. 2000); *Brown v. I.T.T/Cont'l Baking Co.*, 921 F.2d 289, 24 BRBS 75(CRT) (D.C. Cir. 1990); *O'Kelley v. Dep't of the Army/NAF,* 34 BRBS 39 (2000). An "accidental injury" includes one occurring gradually as a result of continuing exposure to conditions of employment and is sufficient to sustain an award if the employment "aggravates the symptoms of the process." *Pittman v. Jeffboat, Inc.*, 18 BRBS 212 (1986); *Gardner v. Bath Iron Works Corp*., 11 BRBS 556 (1979), *aff'd sub nom. Gardner v. Director, OWCP*, 640 F.2d 1385, 13 BRBS 101 (1st Cir. 1981) (an aggravation or progression of an underlying condition is not necessary for there to be a compensable injury; an increase in symptoms resulting in disability is sufficient).

Where, as here, the Section 20(a) presumption is invoked, the burden shifts to the employer to rebut it by producing substantial evidence that the injury was not caused or aggravated by the claimant's working conditions. *Ceres Gulf, Inc. v. Director, OWCP*

Lancaster's risk factors included dust exposure, to find that the issue of dust was raised prior to and at the hearing in this case. Moreover, the ALJ reiterated that Judge Henderson "allowed additional time after the hearing for Employer's report to address any of the issues raised by Dr. Lancaster." ALJ Order dated May 5, 2021, at 6 (Order).

[6] No exception to the law of the case doctrine applies in this case, as there has not been a change in the underlying factual situation, there has been no intervening controlling case authority, nor has Employer demonstrated the Board's first decision was clearly erroneous. *See generally Kirkpatrick v. B.B.I., Inc*., 39 BRBS 69, 70 n.4 (2005).

[Plaisance], 683 F.3d 225, 46 BRBS 25(CRT) (5th Cir. 2012). The ALJ's task at rebuttal "is to decide, as a legal matter, whether the employer submitted evidence that could satisfy a reasonable factfinder that the claimant's injury was not work-related." *See generally Hawaii Stevedores, Inc. v. Ogawa*, 608 F.3d 642, 650-651, 44 BRBS 47, 50(CRT) (9th Cir. 2010). When, as in this case, aggravation is raised, the evidence the employer offers on rebuttal must address aggravation. *See Newport News Shipbuilding & Dry Dock Co. v. Holiday*, 591 F.3d 219, 43 BRBS 67(CRT) (4th Cir. 2009). In addressing rebuttal in *Brown v. Jacksonville Shipyards, Inc.*, 893 F.2d 294, 297, 23 BRBS 22, 24(CRT) (11th Cir. 1990), the United States Court of Appeals for the Eleventh Circuit, within whose jurisdiction this case arises, stated "[n]one of the physicians expressed an opinion ruling out the possibility that there was a causal connection between the accident and Brown's disability. Therefore, there was no direct concrete evidence sufficient to rebut the statutory presumption." The Board has held in cases arising in the Eleventh Circuit that the opinion of a physician that, to a reasonable degree of medical certainty, no relationship exists between an injury and the employment accident or exposures alleged to be the cause of the injury is sufficient to rebut the Section 20(a) presumption. *Jones v. Aluminum Co. of America*, 35 BRBS 37, 40 (2001); *O'Kelley*, 34 BRBS at 41-42 (2000).[7]

If an employer succeeds in rebutting the presumption, it falls out of the case, and the claimant bears the burden of showing his injury was caused by his working conditions based on the record as a whole by a preponderance of the evidence. *Bis Salamis, Inc. v. Director, OWCP [Meeks]*, 819 F.3d 116, 50 BRBS 29(CRT) (5th 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). If, however, the employer does not present substantial evidence rebutting the presumption, the claimant's condition is work-related as a matter of law. *See, e.g., Ramsey Scarlett & Co. v. Director, OWCP*, 806 F.3d 327, 49 BRBS 87(CRT) (5th Cir. 2015); *Obadiaru v. ITT Corp.*, 45 BRBS 17 (2011).

Dr. Rosen authored two reports, one dated April 11, 2018, and one dated July 13, 2019. In her April 2018 report, Dr. Rosen reviewed the records of Claimant's doctors,[8] CT

[7] An employer need not show proof of another agent of causation. *O'Kelley*, 34 BRBS at 41 (citing *Stevens v. Todd Pacific Shipyards*, 14 BRBS 626 (1982) (Kalaris, J., concurring and dissenting), *aff'd mem.*, 722 F.2d 747 (9th Cir. 1983), *cert. denied*, 467 U.S. 1243 (1984)).

[8] This included consideration of Dr. Lancaster's records, which the ALJ found, in discussing rebuttal, "specifically noted that environmental dust exposure could *aggravate* Claimant's lung disease." Order at 7 (emphasis in original).

scans, chest X-rays, pulmonary function tests, and general medical history. EX 3. Dr. Rosen diagnosed ILD, stated it is an "ordinary disease of life" which affects males more than females in later stages of life, and opined that Claimant's "illness is not work related." EX 3 at 2, 9. In her report summary, she noted Claimant's dust exposure, commenting Claimant "felt dust and burn pits contributed to his [respiratory] symptoms," that "there was also dust" in the area where Claimant resided overseas, and that while Claimant's tent had air conditioning, "dust came in the tents when they recycled." EX 3 at 3, 5, 6. In her July 13, 2019 supplemental report, upon review of additional records,[9] Dr. Rosen reiterated her conclusion that Claimant has ILD "without any evidence of a work related component." EX 6 at 2.

As noted above, the Board remanded this case for a determination as to whether Employer produced substantial evidence to rebut the Section 20(a) presumption that Claimant's dust exposure in Afghanistan aggravated, contributed to, or hastened his ILD. *Hill*, slip op. at 5. In his order, the ALJ rejected Employer's argument that it rebutted the Section 20(a) presumption with Dr. Rosen's conclusion that Claimant's ILD is not work-related. ALJ Order dated May 5, 2021 (Order), at 7. He found Dr. Rosen's opinion did not address dust or Claimant's dust exposure, while Dr. Lancaster's report links dust exposure, and more specifically environmental dust, to ILD/IPD and its aggravation. *Id*. Specifically, the ALJ found:

> Neither Employer nor Dr. Rosen . . . address whether environmental dust exposure, particularly in Claimant's living area in Afghanistan, aggravated Claimant's ILD. Dr. Rosen addressed the causation of ILD and explained that the cause is unknown, and has been associated with smoking reflux, wood dust, etc.; however, she did not address whether exposure to environmental dust or other particulates could aggravate the underlying lung disease. Employer has *not put forth any evidence, much less substantial evidence*, to rebut the presumption that dust exposure aggravated claimant's underlying ILD.

D&O at 7-8 (emphasis added). In addition, the ALJ noted the rebuttal evidence "must be specific and comprehensive" and evidence that is "silent" in addressing, in this case, aggravation is "inadequate rebuttal evidence." D&O at 8 n. 37 (citing *J. Frank Kelly, Inc. v. Swinton*, 554 F.2d 1075, 4 BRBS 466 (CRT) (D.C. Cir. 1976)); *Adams v. Gen. Dynamics Corp*., 17 BRBS 258 (1985)). Moreover, the ALJ noted where an employer fails to put

[9] Dr. Rosen's report involved a review of "additional submitted records" consisting of Dr. Lancaster's May 16, 2019 progress notes opining Claimant cannot return to his overseas employment because of his lung disease and Claimant's May 17, 2019 visit to the National Jewish Health Center for treatment options. CXs 9, 33.

forth "evidence that contradicted" a claimant's testimony (in this case, regarding his dust exposure), the claimant's testimony "was substantial evidence for the ALJ to conclude" the employer "did not rebut the presumption of a valid LHWCA claim because it did not provide factual doubt." *Id.* (citing *Ramsay Scarlett*, 806 F.3d 327, 333, 49 BRBS 87, 89(CRT)). Thus, the ALJ again rejected Employer's argument that Dr. Rosen's report constitutes substantial evidence to rebut the presumption. *Id.*

In this case, Dr. Rosen emphasized Claimant's disease is an "ordinary disease of life" that can develop absent any work-related dust exposure. EX 3 at 2, 9. But the question on rebuttal in this case is did Claimant's work-related dust exposure nevertheless aggravate his "ordinary disease of life?" After reviewing Dr. Rosen's opinion, the ALJ permissibly found she did not address this question. Specifically, the ALJ permissibly found Dr. Rosen did not address, let alone opine on, whether no relationship exists between Claimant's ILD/IPD and his work-related dust exposure.[10] *Jones*, 35 BRBS at 40; *O'Kelley*, 34 BRBS at 41-42. He therefore rationally concluded Employer did not produce "evidence specific and comprehensive enough to sever the potential connection between the disability and the work environment." *See generally Ramey v. Stevedoring Services of America*, 134 F.3d 954, 959, 31 BRBS 206, 210(CRT) (9th Cir. 1998). Consequently, we affirm the ALJ's finding as it is in accordance with law. *See generally Meeks*, 819 F.3d at 130, 50 BRBS at 37(CRT) (Board may not second-guess an ALJ's factual findings or disregard them merely because other inferences could have been drawn from the evidence); *Holiday*, 591 F.3d 219, 43 BRBS 67(CRT); *Brown*, 893 F.2d 294, 23 BRBS 22(CRT). Because Employer did not rebut the Section 20(a) presumption, Claimant's ILD/IPD is work-related as a matter of law. *See Obadiaru*, 45 BRBS at 20.

Extent of Disability

We next address Employer's contention that the ALJ erred in finding Claimant is incapable of returning to his usual employment and is therefore totally disabled. Emp. Br. at 22. Employer asserts Claimant has not shown his inability to return to his usual employment is specifically related to the aggravation of his ILD due to his dusty overseas work environment. *Id.* In this regard, Employer states that, although the medical report evidence may show Claimant cannot return to his overseas work due to his underlying ILD, it does not demonstrate his inability to return to that work due to dust-related aggravation of that condition. *Id.* at 26. Citing *Lamon v. A-Z Corp.*, 46 BRBS 27 (2012), *vacating on recon.* 45 BRBS 73 (2011), Employer asserts that, because the ALJ found Claimant

[10] The ALJ properly addressed the rebuttal evidence without considering its credibility or weight, as Employer's burden is one of production only. *Rainey v. Director, OWCP*, 517 F.3d 632, 42 BRBS 11(CRT) (2d Cir. 2008).

sustained a work-related aggravation of his ILD, he should have addressed the cause of Claimant's total disability in terms of that specific aggravation, rather than generally in terms of merely his ILD.[11]

Disability is defined under the Act as the "incapacity *because of injury* to earn wages which the employee was receiving at the time of the injury in the same or any other employment." 33 U.S.C. §902(10) (emphasis added). In order to establish a prima facie case of total disability, a claimant must prove he is unable to perform his usual duties due to the work injury. *See, e.g., Del Monte Fresh Produce v. Director, OWCP [Gates]*, 563 F.3d 1216, 43 BRBS 21(CRT) (11th Cir. 2009); *New Orleans* (*Gulfwide*) *Stevedores v. Turner*, 661 F.2d 1031, 14 BRBS 156 (5th Cir. 1981). Thus, there must be at least a partial causal relationship between the claimant's work injury and his disability. *See generally Director, OWCP v. Vessel Repair, Inc.*, 168 F.3d 190, 33 BRBS 65(CRT) (5th Cir. 1999). If a work-related injury contributes to, combines with, or aggravates a pre-existing condition, the entire resultant condition is compensable. *Independent Stevedore Co. v. O'Leary*, 357 F.2d 812 (9th Cir. 1966). This rule applies not only where the underlying condition worsens but also where the work incident causes the claimant's underlying condition to become symptomatic. *Gardner v. Director, OWCP*, 640 F.2d 1385, 13 BRBS 101 (1st Cir. 1981); *Pittman v. Jeffboat, Inc.*, 18 BRBS 212 (1986). However, as Employer notes, if the claimant's disability is due solely to the natural progression of a prior non-work-related injury or condition, the employer is not liable for the disabling condition. *See generally Lamon*, 46 BRBS 27. Only after a claimant has established a prima facie case of total disability does the employer bear the burden of establishing the availability of suitable alternate employment to show the claimant's disability is, at most, partial. *See generally Gacki v. Sea-Land Serv., Inc.*, 33 BRBS 127 (1998).

As the ALJ found Claimant's work exposure to dust beginning in 2014 aggravated or exacerbated Claimant's condition, thereby resulting in a compensable work-related injury,[12] D&O at 17, he then properly identified the issue as the nature and extent of Claimant's disability from that work-related aggravation of his underlying disease. *Id.*

[11] In essence, Employer asserts Claimant's total disability is due solely to the natural progression of his "ordinary" underlying ILD, rather than to any work-related aggravation of his ILD from dust exposure.

[12] Employer conflates the issue of causation with the nature and extent of disability. As the ALJ found, and we have affirmed, Claimant established a compensable work-related injury; his ILD was aggravated by his dust exposure encountered during his overseas work for Employer. He therefore properly next addressed whether that condition precluded Claimant from returning to his regular overseas work.

Specifically, he found Claimant established, through credible medical evidence,[13] that he is unable to return to his regular or usual employment in Afghanistan due to his respiratory injuries as aggravated by his work-related dust exposure as of July 18, 2018. D&O at 18. In reaching this conclusion, the ALJ accurately noted three doctors each deemed Claimant incapable of returning to his overseas employment because of his respiratory condition and "recommended Claimant avoid: temperature extremes, airborne particles, and gas/fumes." *Id*. He therefore concluded Claimant established a prima facie case of total disability in terms of his ILD. *Id.*

The ALJ reviewed the medical reports of Drs. Sneeringer, Lancaster, and Rigdon. CXs 5, 7, 8, 9, 10. In a work capacity evaluation dated January 29, 2019, Dr. Sneeringer opined Claimant has pulmonary fibrosis with impaired lung function. CX 5 at 117.[14] He further indicated Claimant is unable to perform an eight-hour workday even with restrictions and should not be exposed to temperature extremes, airborne particles, gas, or fumes. *Id.* Dr. Lancaster opined Claimant could not return to his overseas employment because of the overall condition of his lungs. CX 9. She recommended he not return to work at all, but specified if he was required to work, "it must be a completely sedentary position in an environment that is temperature controlled, free of respiratory irritants, and provides unfettered access to supplemental oxygen at all times." CX 9 at 138. Dr. Rigdon opined Claimant is unable to perform his usual job and cannot work an eight-hour day because of his worsening progressive respiratory weakness. June 10, 2021 Work Capacity Evaluation at 1 and 2.[15]

The Board may not second-guess an ALJ's factual findings or disregard them merely because other inferences could have been drawn from the evidence. *See generally Meeks*, 819 F.3d at 130, 50 BRBS at 37(CRT); *Mijangos v. Avondale Shipyards, Inc.*, 948

[13] The ALJ considered "Claimant's doctors' opinions regarding his functional capacity after the injury, the objective findings in their treatment notes and their opinions in the work capacity evaluations." D&O at 18.

[14] When referencing Dr. Rigdon's medical report, the ALJ referred to "CX 5" in his D&O. The record before the Board designates CX 5 as Dr. Sneeringer's medical records. For clarity, this decision will refer to Dr. Rigdon's records as: June 21, 2021 Work Capacity Evaluation; March 24, 2021 Dr. Rigdon Report; September 10, 2020 Dr. Rigdon Report; March 12, 2020 Dr. Rigdon Report; and December 12, 2019 Dr. Rigdon Report.

[15] Dr. Rigdon limited Claimant's work activities to less than one hour of reaching above his shoulder, pushing, pulling, lifting, and climbing, and less than two hours of walking. June 21, 2021 Work Capacity Evaluation at 1.

F.2d 941, 25 BRBS 78(CRT) (5th Cir. 1991). As noted above, Drs. Sneeringer, Lancaster, and Rigdon each opined Claimant is incapable of returning to his usual employment due to his work-related progressive ILD and recommended Claimant avoid, among other things, exposure to airborne particles.[16] This medical opinion evidence, credited by the ALJ, satisfies Claimant's burden of showing he cannot return to his usual overseas work for Employer due to his ILD, as aggravated by his work-related dust exposure. *Rice v. Service Employees Int'l, Inc.,* 44 BRBS 63 (2010). We therefore affirm the ALJ's finding that Claimant made a prima facie case of total disability because his inferences and conclusions are rational and supported by substantial evidence. *Ogawa*, 608 F.3d 642, 44 BRBS 47(CRT); *Hairston*, 849 F.2d 1194, 21 BRBS 122(CRT). Consequently, we affirm the ALJ's decision to award Claimant total disability benefits because the record establishes Employer has offered no evidence of suitable alternate employment.[17] *Louisiana Ins. Guar. Assoc. v. Director, OWCP [Harvey]*, 614 F.3d 179, 44 BRBS 53(CRT) (5th Cir. 2010); *Clophus v. Amoco Prod. Co.*, 21 BRBS 261 (1988).

[16] At a minimum, this indicates all three doctors believed a return to overseas work was contraindicated due to the likely recurrence of work-related exacerbations of Claimant's underlying condition from dust exposure. In this regard, we distinguish *Lamon*, 46 BRBS 27, because the ALJ has already rationally determined that Claimant's total disability is due, at least in part, to his overseas work exposures to dust. *Rice v. Service Employees Int'l, Inc.,* 44 BRBS 63 (2010).

[17] Furthermore, we affirm the ALJ's finding that Claimant's condition reached maximum medical improvement on May 16, 2019, as it is unchallenged on appeal. *See Scalio v. Ceres Marine Terminals, Inc.*, 41 BRBS 57 (2007).

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

SO ORDERED.

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

BOGGS, Chief Administrative Appeals Judge, concurring in part and dissenting in part:

I concur with my colleagues that we need not address Employer's contentions regarding invocation of the Section 20(a) presumption, 33 U.S.C. §920(a) because the Board's prior decision on this issue constitutes the law of the case. I also concur with their decision to affirm the ALJ's findings that Claimant made a prima facie case of total disability, and that Employer did not present any evidence of suitable alternate employment.

I respectfully dissent, however, from my colleagues' decision to affirm the ALJ's finding that Dr. Rosen's opinion does not rebut the Section 20(a). An employer rebuts the Section 20(a) presumption by producing substantial evidence of the absence of a causal relationship between the claimant's injury and his work. *Brown v. Jacksonville Shipyards, Inc.*, 893 F.2d 294, 23 BRBS 22(CRT) (11th Cir. 1990); *see Conoco, Inc. v. Director, OWCP*, 194 F.3d 684, 33 BRBS 187(CRT) (5th Cir. 1999). The relative weight of the relevant evidence is not assessed; rather, at rebuttal, the ALJ's task is to decide, as a legal matter, whether the employer submitted evidence that could satisfy a reasonable factfinder that the claimant's injury is not work-related. *Truczinskas v. Director, OWCP*, 699 F.3d 672, 46 BRBS 85(CRT) (1st Cir. 2012); *Hawaii Stevedores, Inc. v. Ogawa*, 608 F.3d 642, 44 BRBS 47(CRT) (9th Cir. 2010); *Brown*, 893 F.2d 294, 23 BRBS 22(CRT); *O'Kelley v. Dep't of the Army/NAF*, 34 BRBS 39 (2000).

I agree with Employer's position that Dr. Rosen's opinion may constitute substantial evidence to rebut the Section 20(a) presumption. *See generally O'Kelley*, 34 BRBS 39; *Rochester v. George Washington Univ.*, 30 BRBS 233 (1997). Therefore, the ALJ erred in

summarily dismissing it because "she does not address whether exposure to environmental dust or other particulates could *aggravate* the underlying lung disease." Order at 7 (emphasis in original). As the majority notes, Dr. Rosen opined there is *no* work-related component to Claimant's injury; this is in direct contradiction to Claimant's contention, and Dr. Lancaster's opinion, that his injury was aggravated by dust exposure. EXs 3, 6. Consequently, I would vacate the ALJ's finding that Employer did not put forth "any evidence" to rebut the Section 20(a) presumption and remand this case for him to reconsider whether Dr. Rosen's opinion constitutes substantial evidence which could satisfy a reasonable factfinder that Claimant's injury is not work-related. *Truczinskas*, 699 F.3d 672, 46 BRBS 85(CRT); *Ogawa*, 608 F.3d 642, 44 BRBS 47(CRT); *Brown*, 893 F.2d 294, 23 BRBS 22(CRT); *O'Kelley*, 34 BRBS 39. If, on remand, the ALJ finds Employer has rebutted the Section 20(a) presumption, it drops from the case, and he must weigh the relevant causation evidence on the record as a whole with Claimant bearing the burden of persuasion to establish that his ILD was caused or aggravated by his working conditions. *See generally Bis Salamis, Inc. v. Director, OWCP [Meeks]*, 819 F.3d 116, 50 BRBS 29(CRT) (5th Cir. 2016); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994); *Brown*, 893 F.2d 294, 23 BRBS 22(CRT); *O'Kelley*, 34 BRBS 39. Furthermore, if the ALJ concludes on remand that Dr. Rosen's opinion is insufficient to rebut the Section 20(a) presumption, or, weighing the evidence overall, he weighs the evidence in Claimant's favor and finds his condition is work-related, I would affirm the ALJ's decision to award Claimant total disability benefits. *Louisiana Ins. Guar. Assoc. v. Director, OWCP [Harvey]*, 614 F.3d 179, 44 BRBS 53(CRT) (5th Cir. 2010); *Clophus v. Amoco Prod. Co.*, 21 BRBS 261 (1988).

JUDITH S. BOGGS, Chief
Administrative Appeals Judge