U.S. Department of Labor

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

BRB No. 21-0629

OMAR MULTHINO VILLANUEVA ZUNIGA	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
TRIPLE CANOPY, INCORPORATED	)	
	)	
and	)	
	)	
CONTINENTAL INSURANCE COMPANY	)	DATE ISSUED: 02/08/2023
	)	
Employer/Carrier-Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	
	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Larry W. Price, Administrative Law Judge, United States Department of Labor.

Lara D. Merrigan (Merrigan Legal), Sausalito, California, and Ronald Padron (Jo Ann Hoffman & Associates, P.A.), Lauderdale-By-The-Sea, Florida, for Claimant.

Sherman W. Jones, III and Sergio A. Reynoso (Brown Sims), Houston, Texas, for Employer/Carrier.

Ann Marie Scarpino (Seema Nanda, Solicitor of Labor; Barry H. Joyner, Associate Solicitor; Mark A. Reinhalter, Counsel for Longshore), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

ROLFE and GRESH, Administrative Appeals Judges:

Claimant appeals Administrative Law Judge (ALJ) Larry W. Price's Decision and Order Denying Benefits (2020-LDA-01035) rendered on a claim filed pursuant to the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.*, as extended by the Defense Base Act (DBA), 42 U.S.C. §1651 *et seq.* (Act). We must affirm the administrative law judge's findings of fact and conclusions of law if they are rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant, a citizen of Peru, allegedly sustained a hearing loss and a psychological injury as a result of his exposures while working for Employer as a security guard in Iraq from October 2005 to November 2006. He stated he stopped working at the end of his contract due to family issues. JX 6, Dep. at 10, 33. Upon his return to Peru, his then partner noticed he was having difficulty hearing, *id.*, Dep. at 35, while Claimant himself noticed "something wrong was going on" as he "was very aggressive" and his behavior was "weird."[1] JX 6, Dep. at 12-13, 34. As a result of these "health issues," his relationship with his first partner "broke down," and she moved out with their daughter. *Id.*, Dep. at 11. Claimant, finding it "difficult to adapt," moved to Chile to live with his brother and sister-in-law in 2007. During this time, he stated he was financially dependent on them for support, and he opted not to seek employment because of his psychological symptoms. *Id.*, Dep. at 12, 42-44. He returned to Peru in 2012.

Meanwhile, from 2012 to the present, Claimant worked sporadically, including briefly holding several jobs in security. JX 5. He stated he had some "working experience," but those opportunities did not last because he "couldn't get along with my [work] partners." JX 6, Dep. at 14. While he stated he really "tried to work," he said he could not because of his "very weird behavior." *Id.*, Dep. at 15.

[1] Claimant stated at this time, he "had a lot of nightmares," "felt paranoid" and "was upset." JX 6, Dep. at 34.

Claimant first sought treatment on October 31, 2019, with a psychiatrist, Dr. Julian Valderrama Escalante. JX 3; JX 6. Dr. Escalante noted an onset of symptoms dating to 2007, including nightmares, insomnia, anxiety, depression, and irritability, diagnosed Claimant with post-traumatic stress disorder (PTSD), and prescribed medications and biweekly psychiatric controls to manage his symptoms; Dr. Escalante treated Claimant through June 2021.[2] *Id.* At Employer's request, on November 15, 2020, psychiatrist Dr. Moises Ponce Malaver performed a psychiatric assessment of Claimant. Dr. Malaver concluded Claimant does not present diagnostic criteria for PTSD related to his work in the Middle East and opined that Claimant's symptoms, instead, correspond to an "adjustment disorder – anxiety and depression mixed reaction" which he similarly opined was not related to his work in the Middle East. JX 7. On November 5, 2019, Claimant underwent an audiogram and hearing loss evaluation by Dr. Sonia Pena Galindo. At that time, Dr. Galindo diagnosed Claimant with slight bilateral neurosensory hypoacusis, which originated as a result of his work activities performed abroad. JX 3.

On December 4, 2019, Claimant filed his claim seeking benefits for a work-related psychological condition and hearing loss. JX 1. Employer received notice from the district director by letter dated December 10, 2019. *Id.* It thereafter controverted the claim, and the case was forwarded to the Office of Administrative Law Judges (OALJ), where the parties opted for a trial by submission. The parties submitted joint exhibits and filed briefs.

In his decision dated August 24, 2021, the ALJ initially found Claimant did not provide Employer timely notice of his psychological condition under Section 12(a) of the Act, 33 U.S.C §912(a), and his claim was untimely filed pursuant to Section 13(b), 33 U.S.C. §913(b). Decision and Order Denying Benefits (D&O) at 7-10. He therefore found Claimant's PTSD claim time-barred. *Id.* at 10. Nevertheless, the ALJ alternatively addressed the merits of the psychological injury claim, ultimately concluding Claimant has not established his psychological symptoms are connected to his work for Employer.[3] *Id.*, at 10-16. Next, the ALJ found that although Claimant's hearing loss claim is timely, he did not establish a prima facie case of hearing loss through credible evidence. *Id.* at 14. Thus, the ALJ found Claimant did not invoke the Section 20(a) presumption linking his

[2] Claimant stated the treatment with Dr. Escalante has resulted in him having fewer nightmares and feeling behaviorally less aggressive. JX 6, Dep. at 39

[3] In terms of causation, the ALJ found Claimant did not invoke the Section 20(a) presumption, 20 C.F.R. §920(a), but that even if he had, Employer rebutted it, and Claimant did not, upon a weighing of the evidence as a whole, establish his psychological symptoms were connected to his work for Employer. D&O at 10-16.

hearing loss to his work with Employer. *Id.* Accordingly, the ALJ denied Claimant's claim for benefits relating to both his psychological condition and hearing loss.

On appeal, Claimant challenges the ALJ's denials of his psychological injury claim as untimely filed and not work-related and of his hearing loss claim because he did not invoke the Section 20(a) presumption that his hearing loss is work-related. Employer responds, urging affirmance of the ALJ's decision. The Director, Office of Workers' Compensation Programs (the Director), responds only to the hearing loss adjudication, urging the Board to reverse the ALJ's finding that Claimant is not entitled to the Section 20(a) presumption and, because Employer did not rebut the presumption, hold Claimant is entitled to an award of benefits for his hearing loss

Sections 12 and 13 - Timeliness

Claimant contends the ALJ erred in finding his psychological injury claim time-barred as he did not provide Claimant the benefit of the Section 20(b) presumption, 33 U.S.C. §920(b), or apply the proper standard for determining "awareness" under Sections 12 and 13 of the Act. He contends the ALJ also misapplied the prejudice test by holding that the untimeliness of the notice alone satisfied Employer's burden under Section 12(d)(2). Thus, Claimant asserts the ALJ's timeliness findings should be reversed because there is no evidence that he had a complete understanding of the true nature of his PTSD prior to his seeking treatment in October 2019 with Dr. Escalante.

Section 20(b) of the Act provides a claimant with a presumption that his notice of injury and claim were timely filed. 33 U.S.C. §920(b); *Shaller v. Cramp Shipbuilding & Dry Dock Co.*, 23 BRBS 140 (1989). Section 12(a) of the Act requires a notice of injury, in a case involving an occupational disease which does not immediately result in disability, to be filed within one year after the employee becomes aware "or in the exercise of reasonable diligence or by reason of medical advice" should have been aware of the relationship between the employment, the disease, and the disability. 33 U.S.C. §912(a). Under Section 12(d), untimely notice will not bar the claim if: (1) the employer had actual knowledge of the injury or death; (2) the employer was not prejudiced by the claimant's late notice; or (3) the district director excuses the untimely filing. 33 U.S.C. §912(d); 20 C.F.R. §702.216.

To rebut the Section 20(b) presumption, an employer must establish it had no knowledge of the injury and was prejudiced by the late notice. *Bustillo v. Southwest Marine, Inc.*, 33 BRBS 15 (1999). Section 13(b)(2), which governs the filing of claims involving occupational diseases that do not immediately result in disability, states the claim shall be timely "if filed within two years after the employee or claimant becomes aware, or in the exercise of reasonable diligence or by reason of medical advice should have been

aware, of the relationship between the employment, the disease, and the death or disability, or within one year of the date of the last payment of compensation, whichever is later." 33 U.S.C. §913(b)(2).

Having found Claimant's alleged psychological injury is an occupational disease, the ALJ stated the resolution of the timeliness issue involves answering two questions:

> 1. When was Claimant aware, or when should Claimant have been aware, of his injury and its relationship to his work with Employer?
>
> 2. Did Claimant provide notice within one year of that date?

D&O at 9. Relying on Claimant's testimony that he began having psychological symptoms immediately upon his return from Iraq in 2006, which remained constant up through the time he was first treated by Dr. Escalante, the ALJ found "Claimant knew or should have known that his symptoms were connected to his work for Employer at least one year before he notified Employer, though likely far earlier." *Id.* He then found Claimant's "miss[ing] the deadline by several years" prejudiced Employer in this matter. *Id.* at 10. Consequently, the ALJ found Claimant's notice to Employer and the filing of his claim, in terms of his alleged psychological injury, were untimely. *Id.* at 8-10.

The ALJ's analysis of Claimant's "awareness" for purposes of Sections 12(a) and 13(b)(2) conflicts with applicable law.[4] The time limitations do not begin to run until the claimant is aware of the full character, extent, and impact of the harm done to him. *See Newport News Shipbuilding & Dry Dock Co. v. Parker*, 935 F.2d 20, 24 BRBS 98(CRT) (4th Cir. 1991); *see also generally Dyncorp Int'l v. Director, OWCP [Mechler]*, 658 F.3d 133, 45 BRBS 61(CRT) (2d Cir. 2011); *Suarez v. Service Employees Int'l, Inc.*, 50 BRBS 33 (2016). This includes determining when the claimant knows or should know his work-related injury is likely to impair his capacity to earn wages. *Id.* Absent from the ALJ's timeliness discussion is consideration of when Claimant knew or when he should have known his work-related psychological injury impaired his earning power.

The ALJ's finding that Employer was prejudiced under Section 12(d)(2) is likewise flawed as it appears he did not account for the Section 20(b) presumption in his analysis, nor did he cite any specific evidence or sufficiently explain what evidence supports his conclusion. *Wilson v. Boeing Co.*, 52 BRBS 7 (2018); *Dodd v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 245 (1989). Mere conclusory allegations of prejudice or of an

[4] We affirm the ALJ's findings that Claimant's hearing loss notice and claim were timely filed, as they are unchallenged on appeal. *Scalio v. Ceres Marine Terminals, Inc.*, 41 BRBS 57 (2007).

inability to investigate the claim when it was fresh are insufficient to render Section 12(d)(2) applicable. *ITO Corp. v. Director, OWCP [Aples]*, 883 F.2d 422, 22 BRBS 126(CRT) (5th Cir. 1989) (Court rejects an employer's general claim that it was prejudiced by lack of timely notice of injury by an inability to investigate the claim when fresh, finding such a conclusory claim unpersuasive); *Bustillo*, 33 BRBS 15 (A conclusory allegation of prejudice or of an inability to investigate the claim when it was fresh is insufficient to meet employer's burden).

In light of these errors, we hold the ALJ erred in his consideration of Claimant's "awareness" under Sections 12(a) and 13(b)(2), his finding that Employer was prejudiced by Claimant's late notice under Section 12(d)(2), and his denial of Claimant's psychological injury claim as time-barred. Nevertheless, we hold the ALJ's error is harmless as he otherwise addressed the merits of Claimant's claim because he concluded the claim was timely.

Section 20(a) - Causation

Invocation – Hearing Loss Claim

Claimant and the Director each contend the ALJ applied an improper standard and improperly weighed the evidence in addressing Section 20(a) invocation for Claimant's hearing loss claim. Because Claimant's evidence satisfactorily demonstrates the harm and working elements of his prima facie case, they both urge the Benefits Review Board to reverse the ALJ's finding and hold Claimant is entitled to the Section 20(a) presumption that his hearing loss is work-related as a matter of law. Moreover, because Employer did not put forth any rebuttal evidence, they request the Board hold Claimant's work-related hearing loss is compensable as a matter of law and, therefore, hold Claimant is entitled to benefits with regard to his hearing loss claim.

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 Systems Corporation*, 56 BRBS 27 (2022) (Decision on Recon. en banc); *see also Newport News Shipbuilding & Dry Dock Co. v. Holiday*, 591 F.3d 219, 43 BRBS 67(CRT) (4th Cir. 2009);[5] *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31

[5] Because the ALJ's decision was filed by the district director in Newport News, Virginia, the case arises under the jurisdiction of the United States Court of Appeals for the Fourth Circuit. 33 U.S.C. §921(c); *McDonald v. Aecom Technology Corp*., 45 BRBS 45 (2011); *see also Global Linguist Solutions, L.L.C. v. Abdelmeged*, 913 F.3d 921, 52 BRBS 53(CRT) (9th Cir. 2019).

BRBS 119(CRT) (4th Cir. 1997); *O'Kelley v. Dep't of the Army/NAF,* 34 BRBS 39 (2000). The claimant bears an initial burden of production in order to invoke the Section 20(a) presumption.[6] *Rose,* 56 BRBS at 36. Credibility can play no role in addressing whether a claimant has established a prima facie case. *Id.,* 56 BRBS 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."[7] *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 incorrectly held Claimant to a burden of persuasion rather than production at invocation, and he improperly relied on credibility determinations he made regarding Claimant's testimony and Dr. Galindo's opinion in determining Claimant did not establish the requisite harm element. For these reasons, the ALJ's finding that Claimant did not establish a harm sufficient to invoke the 20(a) presumption with regard to his hearing loss cannot stand.

As Claimant and the Director each maintain, Claimant produced sufficient evidence to support his allegations regarding both elements of his prima facie case. He established the harm element through Dr. Galindo's diagnosis of "slight bilateral neurosensory hypoacusis," and the working conditions element through his testimony regarding noise exposure during the course of his work with Employer in Iraq. This constitutes evidence "that if true would state a claim under the Act," *Rose,* 56 BRBS at 37, and therefore is sufficient to invoke the Section 20(a) presumption. Consequently, we reverse the ALJ's finding that Claimant did not establish a prima facie case in terms of his hearing loss claim. We hold Claimant satisfied his initial burden of production under Section 20(a) as a matter of law and, therefore, is entitled to invoke the Section 20(a) presumption that his hearing loss is work-related. *See Rose*, 56 BRBS at 39; *see also Holiday,* 591 F.3d 219, 43 BRBS 67(CRT); *see U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631 (1982). As Employer has not put forth any rebuttal evidence,[8] we further

---

[6] "The burden of production or 'some evidence' standard which we have set forth here is a light burden – being no greater than an employer's burden on rebuttal – meant to give the claimant the benefit of the statutory framework." *Rose,* 56 BRBS at 38.

[7] "Whether the claimant's evidence fails or carries the day is a matter to be resolved at step three when weighing the evidence, not at step one invocation." *Rose*, 56 BRBS at 38.

[8] Before the ALJ, Employer primarily asserted Claimant did not provide credible evidence that he sustained any hearing loss, and he provided "no record that his injury is

hold, as a matter of law, that Claimant's hearing loss is work-related. *Bass v. Broadway Maint.*, 28 BRBS 11 (1994); *Willis v. Titan Contractors, Inc.*, 20 BRBS 11 (1987). We therefore remand this case to the ALJ for entry of an award of benefits on that claim and a determination as to the extent of Claimant's hearing loss. 33 U.S.C. §908(c)(13).

Rebuttal – Psychological Injury Claim

The ALJ applied an equally flawed analysis in finding Claimant did not invoke the Section 20(a) presumption in terms of his psychological injury claim. *Rose*, 56 BRBS at 38-39; JXs 3, 4; JX 6, Dep. at 18-32. Nevertheless, because the ALJ issued alternative findings for that claim, his failure to invoke is harmless error, and we shall look to the remainder of the ALJ's analysis. Claimant contends Dr. Malaver's opinion is insufficient to rebut the Section 20(a) presumption because it lacks any underlying rational basis, and his diagnosis of an adjustment disorder does not address the underlying causal component of what happened to him in Iraq. He further maintains the non-work-related causes Dr. Malaver lists for Claimant's current psychiatric condition are symptoms caused by the underlying condition rather than a cause separate and apart from his work experiences in Iraq.

Where the claimant invokes the Section 20(a) presumption that his injury is work-related, the burden shifts to the employer to produce substantial evidence that the claimant's injury is not work-related. *See Metro Machine Corp. v. Director, OWCP [Stephenson]*, 846 F.3d 680, 50 BRBS 81(CRT) (4th Cir. 2017); *Ceres Marine Terminals v. Director, OWCP [Jackson]*, 848 F.3d 115, 120-121, 50 BRBS 91, 93-94(CRT) (4th Cir. 2016). An employer's burden on rebuttal is one of production, not persuasion. *Moore*, 126 F.3d at 262, 31 BRBS at 123(CRT). Employer must "put forward as much relevant

---

related to his work for Employer." Emp. Br. on Submission of Evidence at 22-26. Alternatively, Employer asserted it provided substantial evidence to rebut the Section 20(a) presumption. *Id.* at 26-27. However, as the Director points out, Employer never identified or submitted any specific rebuttal evidence; rather, it stated only that Claimant's evidence is "questionable" at best because there are no incident reports showing Claimant was involved in any events that could have caused his alleged hearing loss. *Id.* at 27. Employer's contentions below do not constitute substantial evidence demonstrating the absence of a causal connection. *Newport News Shipbuilding & Dry Dock Co. v. Holiday*, 591 F.3d 219, 225, 43 BRBS 67, 69(CRT) (4th Cir. 2009) (Employer must "put forward as much relevant factual matter as a reasonable mind would need to accept, as one rational conclusion, that the employee's injury did not arise out of his employment."). On appeal, Employer's contentions were limited to supporting the ALJ's finding that Claimant did not present a prima facie case of a hearing loss. Emp's Br. at 25-27.

factual matter as a reasonable mind would need to accept, as one rational conclusion, that the employee's injury did not arise out of his employment." *Holiday*, 591 F.3d at 225, 43 BRBS at 69(CRT).

In this case, the ALJ found Dr. Malaver's opinion, concluding Claimant did not have PTSD and that his psychological symptoms are unrelated to his work for Employer, represents "one rational conclusion for Claimant's symptoms," D&O at 15, and therefore rebuts the Section 20(a) presumption. Dr. Malaver opined that from an "assessment of the claim motive, psychobiography, study of the medical documents sent, results of specific psychometric tests and after the psychopathological or mental assessment," Claimant does not present diagnostic criteria for PTSD related to his work for Employer in Iraq. JX 7. He stated Claimant's symptoms "correspond to an Adjustment Disorder – Anxiety and Depression Mixed Reaction" as "a consequence of conflicts with his co-workers, problems with his partner and with his daughter and not adapting to the new situation of his way of live in Peru." *Id.* He further opined Claimant's disorder "is not related to his work abroad." *Id.*

Thus, in contrast to Claimant's contentions, Dr. Malaver explicitly indicated Claimant's psychological conditions and ongoing symptoms are not related to his overseas work with Employer. *Id.* Dr. Malaver's opinion therefore constitutes substantial evidence that would rebut the presumption, as it supports the ALJ's finding that Claimant does not have PTSD and that his present symptoms of anxiety and depression are "specifically not [related] to his work for Employer," D&O at 15. *Holiday*, 591 F.3d at 226, 43 BRBS at 69(CRT); *Moore*, 126 F.3d 256, 31 BRBS 119(CRT); *Cline v. Huntington Ingalls, Inc.*, 48 BRBS 5 (2013). We therefore affirm the ALJ's alternate finding that Employer rebutted the Section 20(a) presumption relating Claimant's psychological conditions to his work. *Id.*

Weighing the Record as a Whole on Causation – Psychological Injury

Claimant asserts the ALJ's single paragraph analysis of the evidence is legally insufficient. He states the ALJ's failure to articulate the relevant evidentiary or legal basis for his findings violates the Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A),and precludes proper appellate review. Specifically, he maintains the ALJ's discussion does not adequately address Dr. Malaver's opinion, its shortcomings and inconsistencies,[9] or its underlying reasoning. He further contends it was unreasonable for

[9] Claimant states Dr. Malaver's opinion does not sufficiently explain how his conclusion, that Claimant's present condition was caused by symptoms as opposed to his overseas work, makes sense.

the ALJ to criticize Dr. Escalante for not conducting testing or having "objective" evidence or "data" given his treating physician status in this case, which Claimant states entitles his diagnosis of work-related PTSD to greater weight.

The APA requires an ALJ to adequately detail the rationale behind his decision, analyze and discuss the relevant evidence of record, and explicitly set forth the reasons for his acceptance or rejection of such evidence. 5 U.S.C. §557(c)(3)(A); *see Santoro*, 30 BRBS 171; *Cotton v. Newport News Shipbuilding & Dry Dock Co.*, 23 BRBS 380 (1990); *Cairns v. Matson Terminals, Inc.*, 21 BRBS 252 (1988). The ALJ's summary of the evidence in the instant case comports with the APA as he set out all of the relevant evidence of record, D&O at 3-7, and discussed the weight afforded to it., *id.*, 11-15.[10] Moreover, he articulated the correct legal standard for assessing causation based on the record as a whole and rendered findings, in accordance with his prior weighing of the evidence, consistent with that standard. *Id.*, at 15.

As Employer rebutted the Section 20(a) presumption, it no longer controls, and the issue of causation must be resolved on the evidence of record as a whole, with Claimant bearing the burden of persuasion. *See Moore*, 126 F.3d 256, 31 BRBS 119(CRT). The ALJ is entitled to weigh the evidence and draw his own inferences from it; he has the discretion to determine which of the conflicting opinions is entitled to determinative weight and the Board is not empowered to reweigh the evidence. *See, e.g., Newport News Shipbuilding & Dry Dock Co. v. Cherry*, 326 F.3d 449, 37 BRBS 6(CRT) (4th Cir. 2003); *Pittman Mech. Contractors, Inc. v. Director, OWCP [Simonds]*, 35 F.3d 122, 28 BRBS 89(CRT) (4th Cir. 1994).

In weighing the evidence, the ALJ found Dr. Escalante's PTSD diagnosis entitled to little weight due to the undocumented and unreasoned nature of his opinion,[11] and the

[10] Although the ALJ's weighing of the evidence and credibility determinations are inappropriate for purposes of the Section 20(a) invocation analysis, they nevertheless are relevant to his weighing of the evidence on causation in addressing the record as a whole. In this regard, he incorporated his credibility determinations into his causation analysis and relied on them in concluding Claimant did not establish his psychological symptoms are connected to his overseas work with Employer.

[11] The ALJ's review of Dr. Escalante's one-page conclusory opinion accurately reflects that he "appeared to rely heavily, if not exclusively, on Claimant's own reporting of symptoms" in making his diagnosis as he did not refer to any administered testing, data, or literature which led him to diagnose Claimant with PTSD. D&O at 14; *see also* JX 3 at

lack of evidence as to his qualifications.[12] D&O at 14. In contrast, the ALJ found the record sets forth Dr. Malaver's extensive qualifications,[13] *id.*, at 6, n.3, and his report is supported and reasoned, as he relied on Claimant's self-reporting in conjunction with the objective testing he conducted, and he explained why the results of that testing led to his conclusion that Claimant did not have PTSD.[14] D&O at 14; *see also* JX 7. Additionally, the ALJ found that although Dr. Malaver diagnosed Claimant with an adjustment disorder, he opined that condition and Claimant's resulting anxiety and depression symptoms were "not causally related to his work in the Middle East" but instead resulted from issues he faced after his return to Peru, including "conflicts with his co-workers, relationship problems" and "economic problems." JX 7 at 16. The ALJ is entitled to determine which opinions are entitled to determinative weight based on their reasoning.[15] *See, e.g., Pisaturo*

---

9. Additionally, he found Dr. Escalante did not explain why Claimant's self-reported symptoms are indicative of PTSD. D&O at 14.

[12] The ALJ correctly stated that the only reference to Dr. Escalante's qualifications is the notation on the header of his report indicating he is a psychiatric physician. D&O at 5, n.2; *see also* JX 3 at 9.

[13] The record contains an extensive listing of Dr. Malaver's education, including his having a bachelor's degree in Medicine, with a specialization in psychiatry and legal medicine, and a master's degree in forensic medicine, as well as his teaching experience, professional/institutional activities and numerous distinctions and awards he has received over the course of his twenty-five years as a psychiatrist. D&O at 6, n.3; JX 8.

[14] Dr. Malaver's seventeen-page report contains specific information on the testing he conducted as well as explanations for how the results correspond to his diagnoses. JX 7.

[15] Contrary to Claimant's contention, the ALJ need not give Dr. Escalante's opinion "special weight" merely because of his treating physician status, as this case involves weighing varying diagnoses instead of treatment options. *See generally Amos v. Director, OWCP*, 153 F.3d 1051 (9th Cir. 1998), *amended*, 164 F.3d 480, 32 BRBS 144(CRT) (9th Cir.), *cert. denied*, 528 U.S. 809 (1999) (ALJ should give determinative weight to treating physician regarding treatment options in absence of evidence that treatment was unnecessary or inappropriate). Rather, under the circumstances of this case, the ALJ is entitled to determine the weight to be accorded to the treating physician's opinion in view of other evidence of record. *Pietrunti v. Director, OWCP*, 119 F.3d 1035, 31 BRBS 84(CRT) (2d Cir. 1997); *see Jackson v. Ceres Marine Terminals, Inc.*, 48 BRBS 71 (2014), *aff'd sub nom. Ceres Marine Terminals, Inc. v. Director, OWCP*, 848 F.3d 115, 50 BRBS 92(CRT) (4th Cir. 2016).

v. Logistec, Inc., 49 BRBS 77 (2015) (affirming the crediting of the employer's medical expert over claimant's treating physician as the latter's opinion was not well reasoned); *see also Grizzle v. Pickands Mather & Co.*, 994 F.2d 1093, 1097, (4th Cir. 1993). Thus, contrary to Claimant's contentions, the ALJ adequately discussed all the relevant evidence and rationally concluded, based on Dr. Malaver's opinion, that Claimant's psychological symptoms are not work-related. We affirm the ALJ's rational conclusion that Claimant has not established a compensable injury as it is supported by substantial evidence. *Simonds*, 35 F.3d 122, 28 BRBS 89(CRT); *see also Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT).

Accordingly, we reverse the ALJ's denial of benefits relating to Claimant's work-related hearing loss and remand this case for further consideration consistent with this opinion. We affirm the ALJ's alternate findings and his denial of benefits for Claimant's psychological condition claim.

SO ORDERED.

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

BOGGS, Chief Administrative Appeals Judge, concurring:

I concur in the majority's decision. I write separately to express my views regarding the ALJ's Section 20(a) invocation analysis. For the reasons expressed in my dissent in *Rose v. Vectrus Systems Corporation*, 56 BRBS 27, 42 (2022) (Decision on Recon. en banc), I would hold the ALJ permissibly found Claimant failed to establish an essential element of his prima facie case in terms of both his claimed hearing loss and psychological injury. Accordingly, I would affirm the ALJ's denial of benefits on both claims because Claimant did not invoke the Section 20(a) presumption as to either injury. Nevertheless, as *Rose* is controlling precedent on this issue, I join the majority and, therefore, concur with their decisions to reverse the ALJ's denial of benefits relating to Claimant's work-related hearing loss and to remand this case for further consideration. I also concur with

the majority's decision to affirm the ALJ's denial of benefits relating to Claimant's claimed psychological condition.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge