

U.S. Department of Labor

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



KWEHANGAANAH (DEZI) BUGABA

Claimant-Petitioner

v.

SOC-SMG INCORPORATED (SOC, LLC)

and

CONTINENTAL INSURANCE COMPANY
(CNA CASUALTY OF CALIFORNIA)

Employer/Carrier-
Respondents

JOSEPH SSEKAMATTE

Claimant-Petitioner

v.

CONSTELLIS GROUP/TRIPLE CANOPY,
INCORPORATED

and

CONTINENTAL INSURANCE COMPANY

Employer/Carrier-
Respondents

SAM KAGENDA

) BRB No. 23-0231
) and BRB No. 24-0042
)
)

) **NOT-PUBLISHED**
)

) DATE ISSUED: 02/07/2025
)
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) BRB No. 23-0232
) and BRB No. 23-0428
)
)

) BRB No. 23-0233
)

)	and BRB No. 23-0429
Claimant-Petitioner)	
)	
v.)	
)	
SOC, LLC)	
)	
and)	
)	
CONTINENTAL CASUALTY COMPANY)	
)	
Employer/Carrier-)	
Respondents)	DECISION and ORDER

Consolidated Appeals of the Order Denying Claimants' Motion to Disqualify and the Decisions and Orders Denying Benefits of Jonathan C. Calianos, Administrative Law Judge, United States Department of Labor.

Priscilla H. Perez, Anthony J. Shiuma, and Erik C. Bower (Attorneys Jo Ann Hoffman & Associates, P.A.), Lauderdale-By-The-Sea, Florida, for Claimants.

Krystal L. Layher, Carolina A. Phillips, and Rebecca R. Sonne (Brown Sims), Houston, Texas, for Employers and their Carriers.

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

PER CURIAM:

Claimants appeal Administrative Law Judge (ALJ) Jonathan C. Calianos's Order Denying Claimants' Motion to Disqualify and Decisions and Orders Denying Benefits (2021-LDA-03931, 2021-LDA-02273, and 2021-LDA-02523) rendered on claims 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 Order Denying Claimants' Motion to Disqualify unless it is arbitrary, capricious, an abuse of discretion, or not in accordance with law. 5 U.S.C. §556(c); *McCracken v. Spearin, Preston and Burrows, Inc.*, 36 BRBS 136, 138 (2002); *Jackson v. Universal Maritime Service Corp.*, 31 BRBS 103, 107 (1997); 20 C.F.R. §§702.338-702.339; 29 C.F.R. §18.16. As to the ALJ's Decisions and Orders on the merits, 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 applicable law. 33 U.S.C. §921(b)(3); *O’Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Factual and Procedural Background

The Claims

Claimant Joseph Ssekamatte worked as a security guard in Iraq for Constellis Group from June 2009 through December 2011. Ssekamatte Joint Exhibits (S-JXs) 9, 10 at 5-6. He filed a DBA claim on November 17, 2020, alleging work-related psychological issues (2021-LDA-02273). S-JX 1. Ssekamatte amended his claim on July 16, 2021, to include work-related hearing loss. S-JX 2. The claims were docketed with the Boston District Office of the Office of Administrative Law Judges (OALJ) on August 17, 2021, and were assigned to ALJ Calianos on February 7, 2022, to be decided upon the record without a formal hearing.¹ The parties submitted exhibits on July 1, 2022, and filed closing briefs on August 1, 2022.

Claimant Sam Kagenda worked as a security guard in Iraq for SOC, LLC, from April 2006 through May 2010. Kagenda Joint Exhibit (K-JX) 1 at 34, 64. He filed a DBA claim on February 20, 2020, alleging both work-related psychological issues and hearing loss (2021-LDA-02523). K-JX 2. Kagenda’s claim was docketed with the OALJ’s Boston District Office on August 16, 2021, and assigned to ALJ Calianos on February 7, 2022, to be decided upon the record without a formal hearing.² The parties submitted exhibits to the ALJ on July 1, 2022, and filed closing briefs on August 30, 2022.

Claimant Kwehangaanah (Dezi) Bugaba worked as a security guard in Iraq for SOC, LLC, from February through August 2006, and then from 2007 through 2010. Bugaba Joint Exhibit (B-JX) 1 at 35, 40-41. He filed a DBA claim on August 12, 2020, alleging work-related psychological issues (2021-LDA-03931). B-JX 2 at 1. Bugaba amended his

¹ This case arises within the jurisdiction of the United States Court of Appeals for the Second Circuit because the district director who filed the ALJ’s decision is located in New York. 33 U.S.C. §921(c); *McDonald v. Aecom Tech. Corp.*, 45 BRBS 45 (2011); *see also Global Linguist Solutions, L.L.C. v. Abdelmeged*, 913 F.3d 921 (9th Cir. 2019).

² This case also arises within the jurisdiction of the United States Court of Appeals for the Second Circuit because the district director who filed the ALJ’s decision is located in New York. 33 U.S.C. §921(c); *McDonald*, 45 BRBS at 45; *see also Abdelmeged*, 913 F.3d 921.

claim on March 16, 2021, to include work-related hearing loss. *Id.* at 5. The claims were docketed with the OALJ's Boston District Office on November 8, 2021, and assigned to ALJ Calianos on April 14, 2022, to be decided upon the record without a formal hearing.³ The parties submitted exhibits on December 1, 2022.

Order to Show Cause Proceedings

On December 22, 2022, the ALJ issued a single consolidated Order to Show Cause (OTSC) for these three claims. He explained that in reviewing the evidence before him in all three cases, he noticed Claimants, who were all represented by attorneys from Attorneys Jo Ann Hoffman & Associates, P.A. (Hoffman Firm), submitted virtually identical medical reports from their common primary medical provider, Psychiatric Clinical Officer Musuto Bwonya Alex (PCO Musuto). OTSC at 3. Further, he found these reports were "remarkably similar" to reports submitted in nine additional claims either pending before, or recently decided by, the OALJ's Boston District Office.⁴ *Id.* at 2-3.

Because of the similarities in PCO Musuto's reports in twelve unrelated claims, the ALJ stated "it certainly appear[ed] that [PCO Musuto]'s reports are false, misleading, make material factual misrepresentations to the triers of fact, and are a fraud upon the tribunal." OTSC at 4. Consequently, he ordered the Hoffman Firm to show cause why: 1) PCO Musuto's medical reports should not be stricken from each of these three claims; 2) he should not dismiss the three claims with prejudice; and 3) PCO Musuto should not be

³ This case arises within the jurisdiction of the United States Court of Appeals for the First Circuit because the district director who filed the ALJ's decision is located in Boston. 33 U.S.C. §921(c); *McDonald*, 45 BRBS at 45; *see also Abdelmeged*, 913 F.3d 921.

⁴ The ALJ took official notice of the reports in question from each of the twelve claims and attached them as exhibits to his OTSC, with his own markings and notations highlighting the reports' similarities and differences. OTSC at 3 n.2. Six of the identified claims were pending before other ALJs in the OALJ's Boston District Office. He had recently issued decisions on two of the other three claims (*Kiggundu v. SOC, LLC*, 2021-LDA-02148 (Mar. 10, 2022)); *Mutungi v. SOC, LLC*, 2021-LDA-00199 (Feb. 9, 2022)), and another ALJ in the Boston District Office had decided the third (*Higenyi v. Constellis*, 2020-LDA-00778 (Jun. 13, 2022)). OTSC at 3 n.1.

permanently barred from presenting any evidence in any case pending before him. *Id.* at 5. He invited but did not require Employers and their Carrier to respond.⁵ *Id.*

The Hoffman Firm responded on January 9, 2023. Claimants' Response to Order to Show Cause (Cls' OTSC Resp.). They argued against imposition of any of the proposed sanctions because there was no clear and convincing evidence of fraud, the authenticity of PCO Musuto's reports was not properly raised, debarment proceedings had not been properly initiated, and dismissal with prejudice was too harsh a sanction given that all three claims also alleged hearing loss. Attached to Claimants' response was an affidavit signed by PCO Musuto explaining his credentials, confirming each of the twelve claimants identified in the officially noticed medical reports was his patient, indicating his practice is to use a form template in preparing medical reports, and admitting to some "errors pertaining to copying and pasting certain sections of their reports," but denying fraud and/or intentional misrepresentation. Exhibit A to Cls' OTSC Resp.

Employers responded to the OTSC with evidence of an additional eighty-two cases⁶ involving their shared Carrier in which claimants represented by the Hoffman Firm submitted substantially similar medical reports from PCO Musuto in support of their claims. *See* Exhibit A to Respondents' Response to Order to Show Cause (Emps' OTSC Resp.). In addition, Employers included an index of the medical reports identifying the name of each claimant, the identity of each employer, the Office of Workers' Compensation Programs (OWCP) and OALJ case numbers, and the date of each medical report.⁷ Emps' OTSC Resp. at 4-8. Overall, Employers submitted more than 300 pages of exhibits consisting of the PCO Musuto medical reports from each of the additional eighty-two claims (Exhibit A), medical questionnaires completed by PCO Musuto in thirty-three additional claims (Exhibit B), and PCO Musuto medical reports from four additional claims in which the claimants were not represented by the Hoffman Firm (Exhibit C).

On January 13, 2023, Claimants filed an Objection and Motion to Strike the exhibits attached to Employers' OTSC Response. Employers filed a response, and Claimants filed

⁵ Although the Claimants worked for different Employers, their Employers were insured through the same Carrier.

⁶ Employer's Response to the OTSC identified eighty-three claims containing PCO Musuto's "recycled" report; however, it was later determined one of the cases identified was submitted twice. Emps' OTSC Resp. at 4; Respondents' Supplemental Response to Order to Show Cause (Emps' Supp. OTSC Resp.) at 4 n.2.

⁷ Although Employers indicated the index also identified each claimant's counsel, this information was not included.

a Motion for Leave to File a Reply. In an email dated January 25, 2023, the ALJ summarily denied Claimants' Motion to Strike and Motion for Leave to File a Reply.

On January 26, 2023, the ALJ issued an Order Denying Claimants' Motion to Strike, Requiring Supplemental Responses to the OTSC, Seeking A Position Statement from the Director, OWCP, and Setting Evidentiary Hearing (Supp. OTSC). Specifically, the ALJ clarified, "[t]o the extent that it was unclear in the [] OTSC," he intended to take official notice of PCO Musuto's medical reports filed in the nine additional cases from the OALJ's Boston District Office cited in the original OTSC. Supp. OTSC at 3-4. He indicated the parties would have an opportunity to address the admission of these reports in a supplemental response, at the March 15, 2023 evidentiary hearing on the OTSC, or both. *Id.* at 4, 10.

The ALJ denied Claimants' Motion to Strike the exhibits attached to Employers' Response to the OTSC, finding the evidence provided was "highly relevant and material to the issue of whether the [PCO Musuto] report[s] submitted in the three cases before [him are] false, misleading, or fraudulent, and whether... the Hoffman Law Firm violated the OALJ procedural rules by submitting and relying upon [them]." Supp. OTSC at 5. Thus, the ALJ admitted Employers' exhibits for the limited purpose of considering their similarities and differences, clarifying they would not be admitted for consideration of the underlying merits of the three claims, and noting that the ultimate weight to be given each exhibit would be determined following the evidentiary hearing. *Id.* He encouraged Claimants to respond to the evidence, or provide rebuttal evidence, in their supplemental response or at the scheduled evidentiary hearing. *Id.*

The ALJ agreed with Claimants that dismissing the three pending claims with prejudice was too harsh a sanction given the additional hearing loss allegations, which the PCO Musuto reports do not address, as well as the other evidence submitted in support of the alleged psychological issues. Supp. OTSC at 10. He further agreed debarment proceedings, if necessary, should be referred to the OWCP. *Id.* However, he requested both parties provide supplemental responses to the OTSC. He requested Employers provide the information missing from the index to Exhibit A included with its original response (i.e., the identity of the individual attorney representing each claimant) and provide the identity of the ALJ before whom each claim was pending. *Id.* at 9. Moreover, due to the additional evidence Employers provided, the ALJ ordered Claimants' Counsel to show why their submission of the "recycled" PCO Musuto medical report in *Bugaba*, *Ssekamatte*, and *Kagenda*, as well as their reliance on the reports in the closing briefs

submitted in *Ssekamatte* and *Kagenda*, did not violate the OALJ Rules of Practice and Procedure (OALJ Rules), 29 C.F.R. §§ 18.10-18.95.⁸ *Id.* at 8-9.

In response, Employers provided an updated index including the information requested by the ALJ, as well as an additional 400 pages of exhibits with documents they deemed “intriguing or irregular,” such as evidence of “egregious” errors within PCO Musuto’s medical reports, hospital records with irregular serial numbers, and evidence suggesting some claimants never met with PCO Musuto despite having a medical report in evidence.⁹ Respondents’ Supplemental Response to Order to Show Cause (Emps’ Supp. OTSC Resp.) at 8, 12-21. Claimants’ Counsel responded, arguing it was improper for the ALJ to request they defend themselves against alleged violations of the OALJ Rules absent a finding of fraud or intentional misrepresentation. Claimants’ Supplemental Response to Order to Show Cause (Cls’ Supp. OTSC Resp.) at 13. Regardless, Claimants’ Counsel maintained there was no evidence any violations had occurred. Claimants also argued it was improper for the ALJ to take official notice of PCO Musuto’s medical reports from other cases because the contents of the reports are in dispute, and the ALJ only had personal knowledge of the existence of the reports, as opposed to professional knowledge of them from cases within his territorial jurisdiction. *Id.* at 16-17. In conjunction with their response, Claimants filed a Motion to Disqualify (M/Disqualify) the ALJ.

On March 1, 2023, the Director, Office of Workers’ Compensation Programs (Director), filed a Position Statement (Dir. Statement) recommending the ALJ assess PCO Musuto’s medical reports for their credibility, and if he found them lacking, decline to rely on them in deciding the claims on the merits. Dir. Statement at 2, 5. The Director also

⁸ Specifically, the ALJ requested the Hoffman Firm address why it did not violate the following regulations: 1) 29 C.F.R. §18.22(c), requiring diligence and forthrightness when dealing with the parties and the ALJ, and adherence to the Florida Rules of Professional Conduct (because the Hoffman Firm is located in Florida); 2) 29 C.F.R. §18.22(d), prohibiting knowingly misleading a party, judge, or anyone participating in the proceeding; 3) 29 C.F.R. §18.35(b)(1), prohibiting the submission of documents for an improper purpose; and 4) 29 C.F.R. §18.35(b)(2), prohibiting the presentation of factual contentions without evidentiary support. Supp. OTSC at 8-9.

⁹ Claimants filed an Objection and Motion to Strike Employers’ Supplemental Response to the OTSC and additional exhibits. The ALJ orally denied the motion during the telephonic status conference held on March 9, 2023, but indicated he would not give Employers’ additional submissions any weight, as they were outside his limited request for information missing from Employers’ original response. Status Conference Transcript (Tr.) at 37.

recommended the ALJ determine whether Counsel violated any ethical provisions of the OALJ Rules but took no position on the issue. *Id.* at 2, 5-6.

On March 9, 2023, the ALJ held a telephonic status conference with Employers, the Hoffman Firm, and the Hoffman Firm's retained counsel, to decide whether an evidentiary hearing on the OTSC was necessary. Status Conference Transcript (Tr.) at 6, 13. The Hoffman Firm's counsel argued there was no evidence the Firm intentionally and fraudulently submitted the "recycled" PCO Musuto medical reports, and the Firm was not negligent in submitting the "recycled" PCO Musuto reports. *Id.* at 12. Regardless, the Hoffman Firm noted it did not intend to submit any other evidence in response to the OTSC proceedings, either on the record or at a hearing. *Id.* at 16-17. The ALJ denied the Motion to Disqualify on March 9, 2023.¹⁰ Order Denying Claimants' Motion to Disqualify (Order Denying M/Disqualify). He also canceled the evidentiary hearing set for March 15 and offered the Hoffman Firm an opportunity to submit a brief before he ruled on the OTSC. Tr. at 32-33, 38-39. By email dated March 10, 2023, the Claimants stated they would not submit a supplemental brief in response to the OTSC.

On June 13, 2023, the ALJ issued an Order Concluding Order to Show Cause Proceedings and Referring Matter to Chief Administrative Law Judge (OTSC Order). He found the Hoffman Firm was at least negligent in filing the "recycled" PCO Musuto medical reports in the three cases pending before him, thereby violating 29 C.F.R. §§18.22(c), 18.35(b), and Rule 4-1.3 of the Florida Rules of Professional Conduct. OTSC Order at 3, 15-16. Furthermore, based on evidence showing the "recycled" report had been submitted in at least ninety-four different claims,¹¹ the ALJ found the reports in the three cases pending before him are unreliable and concluded he would give them, and any other evidence PCO Musuto proffered, no weight. *Id.* at 3, 11. Finally, the ALJ referred the entire matter to Chief ALJ Stephen R. Henley "to conduct any further inquiry he deems appropriate and necessary regarding the Hoffman Firm" and PCO Musuto. *Id.* at 3, 16-17.

¹⁰ On April 4, 2023, each Claimant filed a Notice of Appeal with the Board, seeking review of the ALJ's interlocutory order denying the motion to disqualify (BRB Nos. 23-0231, 23-0232, 23-0233). The Benefits Review Board consolidated these appeals on June 6, 2023. However, before the Board issued an order, the ALJ issued decisions on the merits, which Claimants also appealed.

¹¹ The ninety-four claims include the three claims subject to these appeals, the six officially noticed claims pending in the OALJ's Boston District Office before other ALJs, the three officially noticed claims recently decided by ALJ Calianos and another ALJ from the OALJ's Boston District Office, and the additional eighty-two claims Employers identified in their Response to the OTSC.

Decisions and Orders on the Merits

The ALJ issued a Decision and Order Denying Benefits in *Kagenda* on July 7, 2023 (K-D&O), in *Ssekamatte* on July 10, 2023 (S-D&O), and in *Bugaba* on September 29, 2023 (B-D&O).¹² In each decision, the ALJ found the Claimants invoked the Section 20(a) presumption as to their psychological injuries, 33 U.S.C. §920(a), and Employers rebutted the presumption with the medical reports from their experts. K-D&O at 14-15; S-D&O at 16-17; B-D&O at 17-18. Weighing the evidence (but without any reliance on PCO Musuto's records), the ALJ found each Claimant was unable to prove he suffered a work-related psychological injury and, therefore, denied those claims. K-D&O at 15-17; S-D&O at 17-20; B-D&O at 18-20. The ALJ also denied Claimants' hearing loss claims.¹³

Claimants appeal each Decision and Order on the merits as well as the interlocutory Order Denying their Motion to Disqualify.¹⁴ They initially contend the ALJ abused his authority and erred in denying their Motion to Disqualify as he demonstrated bias and prejudice by: instituting the OTSC proceedings based on evidence not submitted into the record by any party; improperly taking official notice of extrinsic records; "threatening" debarment and misconduct proceedings; failing to apply the law equally to the parties; and improperly investigating on behalf of Employers. Ssekamatte's Petition for Review and Brief (S-PR) at 22-30; Kagenda's Petition for Review and Brief (K-PR) at 22-30; Bugaba's Petition for Review and Brief (B-PR) at 21-29. Thus, Claimants urge the Board to reverse

¹² On August 4, 2023, both Kagenda and Ssekamatte filed Notices of Appeal with the Board, seeking review of the Decisions and Orders Denying Benefits. The Board acknowledged these appeals on August 10, 2023 (BRB Nos. 23-0428 and 23-0429) and consolidated them with the pending interlocutory appeals of the ALJ's order denying the motion to disqualify on October 26, 2023. Bugaba filed a Notice of Appeal of the Order Denying Benefits on October 27, 2023. The Board acknowledged this appeal on December 15, 2023 (BRB No. 24-0042).

¹³ No party appeals the denials of hearing loss benefits; therefore, the Board affirms them as unchallenged. *Scalio v. Ceres Marine Terminals, Inc.*, 41 BRBS 57, 58 (2007).

¹⁴ Ssekamatte filed his Petition for Review on October 2, 2023 (S-PR), Kagenda filed his Petition for Review on October 11, 2023 (K-PR), and Bugaba filed his Petition for Review on November 6, 2023 (B-PR). The Petitions are substantively identical and make the same arguments on appeal, varying only with respect to certain dates and facts unique to each Claimant. On December 15, 2023, the Board issued an Order consolidating all six appeals (BRB Nos. 23-0231, 23-0232, 23-0233, 23-0428, 23-0429, and 24-0042).

the ALJ's Order Denying their Motion to Disqualify, vacate all subsequent orders (including the Order Concluding OTSC Proceedings and all three Decisions and Orders on the merits), and re-assign their claims to different ALJs. S-PR at 46; K-PR at 45; B-PR at 43. Alternatively, should the Board uphold the Order Denying Claimants' Motion to Disqualify, Claimants seek reversal of the denials of benefits, asserting the ALJ improperly weighed the medical evidence at the final stage of the Section 20(a) causation analysis. S-PR at 15-21, 31-41, 46; K-PR at 15-21; 31-40, 45; B-PR at 14-21, 29-38, 43. Employers respond, urging affirmance of the Order Denying Claimants' Motion to Disqualify and each of the three Decisions and Orders Denying Benefits.¹⁵

Appeals of the ALJ's Order Denying Claimants' Motion to Disqualify

We first address Claimants' contentions that the ALJ erred in not disqualifying himself from resolving these claims. Disqualification of an ALJ is governed by Section 556(b) of the Administrative Procedure Act (APA), 5 U.S.C. §556(b), which states in relevant part:

The functions of presiding employees and of employees participating in decisions in accordance with section 557 of this title shall be conducted in an impartial manner. A presiding or participating employee may at any time disqualify himself. On the filing in good faith of a timely and sufficient affidavit of personal bias or other disqualification of a presiding or participating employee, the agency shall determine the matter as a part of the record and decision in the case.

Under the OALJ Rules, a party seeking disqualification of an ALJ must "allege grounds for disqualification, and include any appropriate supporting affidavits, declarations or other documents." 29 C.F.R. §18.16(b).

Disqualification of an ALJ under the APA requires a showing of personal bias or other grounds for disqualification. 5 U.S.C. §556(b); *Codd v. Stevedoring Services of Am.*, 32 BRBS 143, 149 (1998). For evidence of judicial bias to be sufficient to justify disqualification, it must "stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case." *Nasem v. Singer Business Machines*, 13 BRBS 429, 431-432 (1981) (quoting *U.S. v. Grinnell Corp.*, 384 U.S. 563, 583 (1966)); see also *Reddy v. Commodity Futures Trading Com'n*, 191 F.3d 109, 119-120 (2d Cir. 1999) (quoting *Liteky v. United States*, 510 U.S.

¹⁵ Employers submitted three separate responses to the Claimants' Petitions for Review, although, substantively, they are identical. The Director has not filed any responses.

540, 555 (1994) (“Whether a trier is impartial depends upon whether there was either an extrajudicial source of bias or a bias that demonstrates ‘a deep-seated favoritism or antagonism that would make [a] fair judgment impossible.’”). Evidence of adverse rulings against a litigant is not enough to justify disqualification. *Swain v. Bath Iron Works Corp.*, 17 BRBS 145, 147 (1985).

In denying the motion to disqualify, the ALJ did not address the motion’s timeliness and only summarily commented on Claimants’ supporting affidavit.¹⁶ Order Denying M/Disqualify at 11. Instead, he defended the OTSC proceedings, citing a mandatory duty as an ALJ to act if he becomes aware of information suggesting a substantial likelihood that an attorney has violated a rule of professional conduct¹⁷ and declaring the proceedings were authorized under 29 C.F.R §18.35(c)(3).¹⁸ *Id.* at 8-9. He further found that by

¹⁶ Claimants attached an affidavit to their motion signed by five attorneys with the Hoffman Firm. *See* Exhibit O to Claimants’ M/Disqualify. They included no facts demonstrating bias in the affidavit; instead, the affiants attested the motion is based on facts “to the best of the attorneys’ knowledge, information, and beliefs,” is timely, and is not being filed with intent to harass, cause delay, increase costs, or in response to an adverse ruling. *Id.* The ALJ noted the “one affidavit attached as Exhibit O is...devoid of any specific facts in support of the motion.” Order Denying M/Disqualify at 11.

¹⁷ The ALJ relied on Rule 2.15(D) of the American Bar Association Model Code of Judicial Conduct, which states:

A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct shall take appropriate action.

¹⁸ 29 C.F.R. §18.35 states, in relevant part:

(b) *Representations to the judge.* By presenting to the judge a written motion or other paper—whether by signing, filing, submitting, or later advocating it—the representative or unrepresented party certified that to the best of the person’s knowledge, information, and belief, formed after inquiry reasonable under the circumstances:

(1) It is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of the proceedings;

initiating these proceedings pursuant to 29 C.F.R. §18.35(c)(3), he had ensured due process by allowing the parties multiple opportunities to respond. *Id.* at 9. He rejected Claimants' contention that his supplemental order requesting Employers submit an amended index of its Exhibit A constituted an improper investigation on Employers' behalf, as he was not asking Employers to provide new information but rather information they said they had provided but inadvertently had omitted. *Id.* at 10. Finally, he concluded his denial of several interlocutory orders was insufficient to constitute bias, and his knowledge of the similar PCO Musuto medical reports was not from his "personal" knowledge but was acquired through his actions as an ALJ and therefore subject to official notice. *Id.* at 10-11.

The ALJ permissibly found Claimants failed to demonstrate he exhibited personal bias or prejudice that required disqualification and re-assignment of the claims to different ALJs. Contrary to Claimants' arguments, the ALJ had the requisite authority to institute the OTSC proceedings. According to Section 23(a) of the Act, an ALJ "shall not be bound by common law or statutory rules of evidence or by technical or formal rules of

(2) The claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) The factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

(c) *Sanctions*—

(3) *On the judge's initiative.* On his or her own, the judge may order a representative, law firm, or party to show cause why conduct specifically described in the order has not violated paragraph (b) of this section.

procedure...but may make such investigation or inquiry or conduct such hearing in a manner as to best ascertain the rights of the parties.” 33 U.S.C. §923(a); *see also* 33 U.S.C. §927(a); 20 C.F.R. §702.339. Coupled with this authority is the mandatory duty to “inquire fully into the matters at issue and...receive in evidence...any documents which are relevant and material to such matter.” 20 C.F.R. §702.338. Pursuant to this duty, the ALJ may reopen the record for receipt of additional evidence at any time prior to issuance of the compensation order, *id.*, and, on his own initiative, raise an issue not raised by the parties as long as he gives them notice and the opportunity to respond, 20 C.F.R. §702.336(a). *Cornell Univ. v. Velez*, 856 F.2d 402, 404-405 (1st Cir. 1988); *Olsen v. Triple A Mach. Shops, Inc.*, 25 BRBS 40, 44 (1991), *aff’d mem. sub nom. Olsen v. Director, OWCP*, 996 F.2d 1226 (9th Cir. 1993); *Cowart v. Nicklos Drilling Co.*, 23 BRBS 42, 47 (1989), *rev’d on other grounds*, 907 F.2d 1552 (5th Cir. 1990), *aff’d*, 927 F.2d 828 (5th Cir. 1991) (en banc), *aff’d*, 505 U.S. 469 (1992); *Bukovac v. Vince Steel Erection Co., Inc.*, 17 BRBS 122, 123 (1985).

Here, after submission of the briefs in *Ssekamatte* and *Kagenda*, and after the parties filed exhibits in *Bugaba*, the ALJ became aware of a potential issue not raised by any party: the validity and reliability of medical reports from a single medical provider submitted as evidence in all three claims.¹⁹ Order Denying M/Disqualify at 3. As he found these medical reports to be “virtually identical,” despite their purportedly describing treatment for different patients, the ALJ became concerned they constituted material factual misrepresentations and fraud upon the tribunal; therefore, he instituted OTSC proceedings requesting Claimants’ attorneys demonstrate why he should not order one or more of several enumerated sanctions. OTSC at 3-5. In other words, through his adjudication of these three claims, the ALJ discovered an issue, notified the parties he was raising the issue and re-opening the record for submission of additional evidence, notified the parties of the potential consequences following his consideration of the issue, and gave the parties the opportunity to respond – all of which are actions within the authority granted to him under the Act and its implementing regulations. 33 U.S.C. §§923(a), 927(a); 20 C.F.R. §§

¹⁹ We will address the ALJ’s consideration of extrinsic evidence below, as we believe his discovery of substantially similar medical records in the three cases pending before him was sufficient, on its own and without the nine other OALJ Boston District Office claims, to institute OTSC proceedings. In other words, we do not believe his reliance on the medical reports from outside of the record in the other nine Boston claims or attempts to take official notice of the reports in those claims, demonstrated personal bias warranting disqualification. He could have instituted the OTSC proceedings based on his awareness of the evidence in the three claims before him, the subjects of these appeals, and he provided Claimants, and all parties, with notice and the opportunity to respond.

702.336, 702.338, 702.339; 29 C.F.R. §18.35(c)(3); *Velez*, 856 F.2d at 404-405; *Olsen*, 25 BRBS at 40; *Cowart*, 23 BRBS at 47; *Bukovac*, 17 BRBS at 123.

Moreover, the ALJ followed this procedure not once, but twice, issuing a supplemental OTSC after receipt of Employers' responsive evidence which demonstrated numerous other claims where the claimants had submitted the same "virtually identical" medical reports. Supp. OTSC. Once again, he identified the issue, re-opened the record for submission of responsive evidence, indicated the contemplated potential consequences, and provided all parties the opportunity to respond in writing, through a transcribed status conference and by scheduling an evidentiary hearing. The only reason he canceled the evidentiary hearing was because Claimants indicated they had no intention of responding or submitting additional evidence on the matter. We see no evidence of partiality or generalized personal bias in the ALJ's institution of the OTSC proceedings; rather, the ALJ properly dealt with a potentially delicate and difficult situation and acted within the boundaries of his authority to address the issue before him while preserving the parties' due process rights.²⁰ *Codd*, 32 BRBS at 149; Order Denying M/Disqualify at 9. Consequently, we reject Claimants' assertions that institution of the OTSC proceedings demonstrates prejudice or bias against them.

We also reject Claimants' allegations of more specific evidence of bias. The ALJ did not threaten Claimants' Counsel with debarment and criminal sanctions but simply notified all parties of *potential* sanctions available to him under 29 C.F.R. §18.35(c)(4)²¹ at the conclusion of the OTSC proceedings. Order Denying M/Disqualify at 9. Likewise, the ALJ did not treat Claimants' Counsel differently than he treated Employers and their counsel. Rather, he ordered Claimants' Counsel to respond and show cause because they

²⁰ It is unnecessary to address Employer's assertion that Claimants, as foreign nationals, have no constitutional right to due process. Employers' Briefs at 31-32. Pursuant to the hearing provisions of the Administrative Procedure Act that are applicable to these proceedings, Claimants are entitled to a fair hearing. 5 U.S.C. §§554-556; 33 U.S.C. 919(d); 20 C.F.R. §§702.332-702.333.

²¹ 29 C.F.R. §18.35(c)(4) states:

Nature of a sanction. A sanction imposed under this section may include, but is not limited to, striking part or all of the offending document, forbidding the filing of any further documents, excluding related evidence, admonishment, referral of counsel misconduct to the appropriate licensing authority, and including the sanctioned activity in assessing the quality of the representation when determining an appropriate hourly rate and billable hours when adjudicating attorney fees.

had presented duplicative medical records. He permitted Employers also to respond. As there is no evidence Employers submitted similarly duplicative medical records, this is a reasonable action. Order Denying M/Disqualify at 10. Finally, in requesting Employers to supplement their index to Exhibit A of their response to the initial OTSC, the ALJ did not “deputize” Employers to investigate on his behalf; he sought only that they provide information indicated as present, but missing, from their original response. He later gave no weight to their supplemental submission of substantial records that were beyond the scope of his request. Tr. at 37. As Claimants have failed to demonstrate the ALJ’s denial of their motion to disqualify was arbitrary, capricious, an abuse of discretion, or not in accordance with law, we affirm the ALJ’s Order Denying Claimants’ Motion to Disqualify and decline to vacate his subsequent decisions and orders.

Decisions and Orders Denying Benefits

Given our resolution of the disqualification issue, we now address Claimants’ contentions challenging the ALJ’s denials of benefits. For all three Claimants, the ALJ applied the Act’s Section 20(a) analysis to determine whether they suffered a work-related psychological injury. 33 U.S.C. §920(a); K-D&O at 11-12, 14-17; S-D&O at 13-14, 16-20; B-D&O at 12-13; 17-20. He found all three Claimants invoked the Section 20(a) presumption based on their testimony describing their psychological symptoms and working conditions in Iraq that could have caused psychological injury. K-D&O at 14; S-D&O at 16-17; B-D&O at 17; *see Rose v. Vectrus Systems Corp.*, 56 BRBS 27 (2022) (Decision on Recon. en banc), *appeal dismissed* (MDFL Aug. 24, 2023); *see also Rainey v. Director*, OWCP, 517 F.3d 632, 634 (2d Cir. 2008). The ALJ then found Employers rebutted the presumption in all three cases with separate medical opinions stating Claimants do not suffer from any diagnosable psychological impairments or disorders.²²

²² Neuropsychologist Anna Mazur, Ph.D., evaluated Kagenda in Uganda on November 22, 2021, with assistance from an interpreter. K-D&O at 8; K-JX 10 at 1-2. She interviewed him, reviewed his medical records, and conducted psychological testing. K-D&O at 8; K-JX 10 at 1-4. Dr. Mazur noted Kagenda’s self-reporting of his symptoms suggested severe depression, mild anxiety, and post-traumatic stress disorder (PTSD). K-D&O at 9; K-JX 10 at 6-7. However, validity measures indicated over-reporting of symptoms and inconsistent reporting. K-D&O at 9-10; K-JX 10 at 9-13. Based on elevated scores on general over-reporting scales, as well as inconsistencies between Kagenda’s reporting, presentation, and medical records, Dr. Mazur deemed Kagenda’s self-reporting unreliable and concluded he did not suffer from any diagnosable psychiatric disorder. K-D&O at 10; K-JX 10 at 11.

K-D&O at 15; S-D&O at 17; B-D&O at 17; *see Bath Iron Works Corp. v. Fields*, 599 F.3d 47, 55 (1st Cir. 2010); *American Stevedoring Ltd. v. Marinelli*, 248 F.3d 54, 65 (2d. Cir. 2001).

Once an employer rebuts the presumption, the issue of causation must be resolved on the evidence as a whole with the claimant bearing the burden of persuasion by a preponderance of the evidence. *Rainey*, 517 F.3d at 634; *Marinelli*, 248 F.3d at 65; *Santoro v. Maher Terminals, Inc.*, 30 BRBS 171, 175 (1996). After determining he would not give any weight to PCO Musuto’s medical records, noting there are no other Claimants’ experts and finding Claimants lacked credibility, the ALJ gave greater weight to Employers’ experts’ opinions and denied all three claims. K-D&O at 15-17; S-D&O at 17-20; B-D&O at 18-20.

Claimants challenge the ALJ’s weighing analysis on appeal,²³ particularly with respect to his decision to assign no weight to PCO Musuto’s records. K-PR at 31-32; S-PR at 31-32; B-PR at 29-30. They argue the ALJ failed to accord PCO Musuto’s opinions the “special and considerable weight” they deserve due to his status as Claimants’ treating

Forensic psychologist Sandra Michel, Ph.D., conducted a virtual evaluation of Ssekamatte on March 19, 2022, with assistance from an interpreter. S-D&O at 10; S-EX 1 at 1. She reviewed Ssekamatte’s medical records and administered psychological testing which demonstrated invalid responses and “feigned impairment.” S-D&O at 10; S-EX 1 at 1-2, 7-9. Based on her interview of Ssekamatte, the testing results, and inconsistencies between the two, Dr. Michel concluded Ssekamatte did not meet any criteria for psychological disorder. S-D&O at 11-13; S-EX 1 at 11.

Psychologist Jessica Groberio, Ph.D., “conducted a psychodiagnostics interview” of Bugaba on March 22, 2022, with the assistance of an interpreter. B-D&O at 9; B-JX 12 at 1-6. Dr. Groberio also reviewed Bugaba’s medical records and administered several psychological tests. B-D&O at 9-10; B-JX 12 at 1-2, 7. Testing based on Bugaba’s self-reporting of his symptoms revealed mild anxiety and neurobehavioral symptoms. B-D&O at 11; B-JX 12 at 7-8. However, his validity testing scores suggested symptom exaggeration and over-reporting. B-D&O at 11; B-JX 12 at 7. Dr. Groberio also noted Bugaba met only three out of the five criteria for establishing PTSD. B-D&O at 11; B-JX 12 at 8. Based on the testing results, as well as inconsistencies between Bugaba’s self-reporting and both the test results and medical records, Dr. Groberio concluded Bugaba did not suffer from any psychiatric disorder. B-D&O at 11; B-JX 12 at 8-9.

²³ They do not challenge the ALJ’s rebuttal findings; therefore, we affirm those findings as unchallenged. *Scalio*, 41 BRBS at 58.

physician, failed to provide adequate explanation or support for his credibility assessment with respect to PCO Musuto, and improperly based his credibility assessment on evidence outside of the record. K-PR at 31-40; S-PR at 31-42; B-PR at 30-38. In each of the three Decisions and Orders Denying Benefits, the ALJ gave no weight to PCO Musuto's records based on his credibility determination after the OTSC proceedings, which he summarized as follows:

In my [OTSC] Order, I determined that the recycled report by Alex^[24] is unreliable and not credible, and as such, any evidence from Alex would be given no weight. Accordingly, for purposes of this decision on the merits, I attribute no weight to the typed report filed by Alex in this matter or the handwritten notes that Claimant alleges were prepared by Alex. As I give no weight to Alex's report and treatment records, these records will not be discussed any further herein, and my decision will focus on the remaining evidence presented by Claimant in support of his claim.

K-D&O at 2; S-D&O at 3; B-D&O at 2-3.²⁵

Claimants argue the ALJ failed to give PCO Musuto's records the "special and considerable weight" they deserve due to his status as their treating physician. K-PR at 31; S-PR at 31; B-PR at 30 (citing *Pietrunti*, 119 F.3d 1035; *Amos v. Director, OWCP*, 153

²⁴ The ALJ referred to PCO Musuto as "Alex."

²⁵ The ALJ incorporated the OTSC proceedings into the record by taking official notice "[t]o the extent necessary...of any document filed in the Official OALJ file, which is entirely electronic." K-D&O at 2; S-D&O at 2; B-D&O at 2. Claimants argue this attempt at official notice is procedurally defective and deprived them of due process, as it is unclear from this statement exactly what documents the ALJ incorporated into the record. K-PR at 17; S-PR at 17; B-PR at 16. Even assuming the ALJ's statement is improperly vague, any error is harmless. All pleadings filed, documents submitted, and orders issued in conjunction with the OTSC proceedings are automatically incorporated into the "exclusive record" by virtue of Section 556(e) of the APA. 5 U.S.C. §556(e) (the "exclusive record" before an ALJ is "[t]he transcript of testimony and exhibits, **together with all papers and requests filed in the proceeding.**") (emphasis added); *see also Shinseki v. Sanders*, 556 U.S. 396, 406 (2009). There is no reason to take official notice of items already in the record and, consequently, the "exclusive records" in these cases include the index identifying eighty-two other claims where the claimants submitted substantially similar medical reports from PCO Musuto (Emps' OTSC Response at 4-8), as well as the copies of the medical reports themselves, attached to Employers' OTSC Response as Exhibit A.

F.3d 1051 (9th Cir. 1998), *amended*, 164 F.3d 489 (9th Cir. 1999), *cert. denied*, 528 U.S. 809 (1999); *Rivera v. Harris*, 623 F.2d 212, 216 (2d Cir. 1980)). However, where there are conflicting medical opinions, as here, the ALJ is not required to give “special weight” to the treating physician’s opinion. *Kkunsu v. Constellis Group/Triple Canopy, Inc.*, ___ BRBS ___, BRB No. 24-0001, slip op. at 8 (Feb. 5, 2025). Rather, he must consider all relevant evidence, assess the weight and credibility of each opinion, and explain his rationale in reaching a decision on the evidence. *Id.*, slip op. at 8-9. Therefore, the ALJ did not err by not giving “special weight” to PCO Musuto’s opinions due to his status as Claimants’ treating physician.

Claimants also maintain the ALJ failed to properly explain why he would be giving no weight to PCO Musuto’s records, arguing the “single paragraph” referencing the OTSC proceedings and summarizing his conclusion improperly amounts to a conclusory finding without explanation or comment on the relevant legal and evidentiary basis for his decision. K-PR at 38-39; S-PR at 39; B-PR at 35-36. Specifically, Claimants contend the single paragraph within the ALJ’s Decisions and Orders violates the APA because it fails to cite evidence in support of his conclusions, fails to properly evaluate the medical evidence, and fails to specify what evidence he relied upon in reaching his determination. K-PR at 31; S-PR at 31; B-PR at 30. Contrary to Claimants’ assertions, however, the ALJ explained and supported his decision to give no weight to PCO Musuto’s records in his OTSC Order, which is part of the record in all three claims pursuant to Section 556(e) of the APA and which the ALJ referenced in each of his decisions. 5 U.S.C. §556(e). In the OTSC Order, he specifically explained “the content of [PCO Musuto’s] report in the three cases pending before me is unreliable” based on evidence that the same report had been filed by Claimants’ Counsel “in what appears to be 94 instances—twelve in Boston and 82 across

other OALJ districts.”²⁶ OTSC Order at 3. He noted the similarities between the reports:²⁷ each Claimant presented with identical symptoms;²⁸ PCO Musuto’s observations of each

²⁶ Claimants argue the ALJ improperly relied on evidence outside of the record in assessing PCO Musuto’s credibility because his medical reports from other claims are not subject to official notice. K-PR at 15-21; S-PR at 15-21; B-PR at 14-21. While an ALJ cannot consider evidence outside of the record in making a decision regarding the claims before him, he can supplement the record *sua sponte* by taking official notice of a material and adjudicative fact “or other matter subject to judicial notice” as long as he notifies the parties and provides an opportunity to respond. 29 C.F.R. §18.84; 5 U.S.C. §556(e); *Lindsay v. Bethlehem Steel Corp.*, 16 BRBS 20, 22 (1986).

We have already established that PCO Musuto’s reports from eighty-two other cases, which Employer submitted in response to the OTSC, were incorporated into each case’s record by virtue of Employers’ submissions and, therefore, it was not necessary for the ALJ to take official notice of those reports in order to consider them. *See* 5 U.S.C. §556(e). Moreover, we hold the ALJ properly took official notice of the reports in each of the three cases before him that are the subjects of these appeals, as well as the reports in the two cases he previously decided (*Kiggundu*, 2021-LDA-02148, and *Mutungi*, 2021-LDA-00199), as his knowledge of them was adjudicatory in nature (rather than personal), his notice was limited to what the reports stated (not their truth or authenticity), and he gave the parties notice and ample opportunities to respond by issuing two OTSCs, scheduling a hearing, and keeping the record open to allow Claimants additional time to submit responsive documents. OTSC at 3 n.2; Supp. OTSC at 3-4; Tr. at 38; *see Staehr v. Hartford Financial Services Group, Inc.*, 547 F.3d 406, 425 (2d Cir. 2008); *U.S. V. Bellow*, 194 F.3d 18, 23 (1st Cir. 1999); *Liberty Mut. Ins. Co. v. Rotches Pork Packers, Inc.*, 969 F.2d 1384, 1388-1389 (2d Cir. 1992); *Kramer v. Time Warner, Inc.*, 937 F.2d 767, 774 (2d Cir. 1991) (“judicial notice of public documents is allowed not to prove the truth of those documents but only to determine what the documents stated and what is contained within them”); *Jordan v. James G. Davis Constr. Co.*, 9 BRBS 528, 529-530 (1978) (the “primary test” for whether an ALJ’s taking official notice is proper is whether his reliance on the extrinsic information deprived a party of a fair hearing).

Because we hold the ALJ properly considered and incorporated into the record the reports from eighty-seven total cases in assessing PCO Musuto’s credibility, we need not decide whether his official notice of reports from cases pending before other ALJs at the OALJ Boston District Office was proper, especially as his credibility assessment was not dependent solely on consideration of those cases. OTSC Order at 11.

²⁷ Although the ALJ indicated he considered the similarities between the medical reports filed in twelve cases pending in or recently decided by the OALJ's Boston District Office, we declined to address whether he properly took official notice of seven of those cases, note 26, *supra*. Therefore, we will focus on the five of which he properly took official notice – the three cases subject to these appeals and the two cases he previously decided (*Kiggundu*, 2021-LDA-02148, and *Mutungi*, 2021-LDA-00199).

²⁸ PCO Musuto's lists of the patient's complaints for Kagenda, Ssekamatte, and Bugaba were identical:

[S]leep, sweating, palpitations, constant headaches, having constant worries/fear, isolating himself from people, very unstable with anger outburst, frightened, difficult to concentrate, feeling sad and hopeless, feeling loss of interest in the pleasurable activities, night mares [sic], flashbacks, feeling upset and negative feelings, tension and intrusive thoughts.

K-JX 6 at 11; Ssekamatte Claimant's Exhibit (S-CX) 1 at 10; B-JX 6 at 12. We note PCO Musuto's reports for Kiggundu and Mutungi were likewise identical, with the added symptoms of "difficult breathing with chest pain" for Kiggundu and "traumas, sweating and smelling alcohol" for Mutungi. OTSC, Exs. 11, 12.

of the Claimants was identical;²⁹ all Claimants admitted to hitting their children;³⁰ all Claimants described identical experiences while in Iraq;³¹ and several of the medical

²⁹ PCO Musuto's observations of Kagenda, Ssekamatte, Bugaba, Kiggundu, and Mutungi were largely identical:

Appeared of his age, he looks scared, was restless, sensitive to noise out of the clinical room and kept checking through the window. Palpitations, hyperventilation's [sic], complained of disagreement with his wife due to poor libido was oriented in time and date, well nourished. Self-regret of having gone to Iraq.

K-JX 6 at 13; S-CX 1 at 12; B-JX 6 at 14; OTSC, Exs. 11, 12. Ssekamatte's report differed with one additional observation: "low mood with occasional tearing," S-CX 1 at 12, and Kiggundu's report included "difficult[y] in breathing with chest pain." OTSC, Ex. 11.

³⁰ PCO Musuto's notes regarding each patient's interpersonal relationship is also identical:

He reports having difficulty in interacting with people at home, excessive anger and at times he finds himself hitting children. Does not want to hear noise hence he keeps alone in the [house], avoids public places and crowds, he regrets living with people who do not understand him and at times becomes aggressive towards his spouse. He also complains of having reduced sexual desire which is causing a lot of misunderstanding in his marriage.

K-JX 6 at 12; S-CX 1 at 11; B-JX 6 at 13; OTSC, Exs. 11, 12. Once again, Ssekamatte's report differed only slightly where, after "marriage" PCO Musuto added "Hence leading separation with the wife." S-CX 1 at 11.

³¹ PCO Musuto noted identical experiences for Kagenda, Ssekamatte, Bugaba, Kiggundu, and Mutungi while they were in Iraq:

He reports during his employment in Iraq he witnessed people who died in the war, he could see dead bodies of people who died of bomb blasts and have been disturbing him ever since he came backs [sic] and keeps him scared.

K-JX 6 at 12; S-CX 1 at 11; B-JX 6 at 12-13; OTSC, Exs. 11, 12.

reports included the same typographical error (“hose” instead of “house”).³² *Id.* at 5-6; *see also* K-JX 6 at 11-13; S-CX 1 at 10-12; B-JX 6 at 12-14.

Moreover, the ALJ did not base his reliability and credibility determinations on the “recycled” report alone. He also documented discrepancies between PCO Musuto’s records and the deposition testimony of the three Claimants herein.³³ OTSC Order at 7-10. The ALJ concluded:

³² PCO Musuto’s reports for Ssekamatte, Bugaba, Kiggundu, and Mutungi contain this error (“hose” instead of “house”), but Kagenda’s report correctly states “house.” S-CX 1 at 11; B-JX 6 at 12; K-JX 6 at 13; OTSC, Exs. 11, 12.

³³ For Bugaba, the ALJ found PCO Musuto’s June 8, 2021 medical report indicated he was fifty years old, had a poor relationship with his eight siblings, found himself hitting his children and becoming aggressive, began experiencing psychological symptoms about two months after returning from Iraq in 2011 (but also that symptoms began while he was still in Iraq), was hearing voices and experiencing hallucinations, had chest and back pain, heart palpitations, and suicidal ideations. OTSC Order at 7-8; B-JX 6 at 12-13. However, when Bugaba was deposed on July 27, 2022, he testified to being fifty-three years old, described a good relationship with his siblings and five adult children, said he started experiencing psychological symptoms in 2009 and stopped working for SOC in 2010, and did not mention symptoms of hallucinations, suicidal thoughts, chest or back pain, and heart palpitations. OTSC Order at 7-8; B-JX 1 at 7, 9, 11-15, 27-28, 49, 75.

For Ssekamatte, the ALJ found PCO Musuto’s medical report of July 24, 2021, indicated his flashbacks started when he returned from Iraq, he was hearing voices and experiencing hallucinations, chest and back pain, and heart palpitations, he was having suicidal thoughts but had not attempted suicide (but also that he had attempted suicide twice), he found himself hitting his children, and he had tried both traditional and spiritual healing. OTSC Order at 8-9; S-CX 1 at 10-11. However, upon being deposed on January 4, 2022, Ssekamatte testified his flashbacks did not begin until 2019, he made no mention of hallucinations, chest and back pain, or heart palpitations, he denied suicidal thoughts, he testified to a very good relationship with his children and that he had not sought treatment from traditional healers due to his religious beliefs. OTSC Order at 8-9; S-JX 10 at 4, 11, 13, 15.

For Kagenda, the ALJ found PCO Musuto’s July 25, 2021 medical report noted he experienced excessive anger, regretted living with people who did not understand him, became aggressive with his spouse, and found himself hitting his children. PCO Musuto indicated his symptoms included back pain, chest pain, heart palpitations, hallucinations

Not only is the recycled Alex [PCO Musuto's] report unreliable on its face given that it is substantively the same for each claimant, it is completely undermined when considering each claimant's contrary deposition testimony.

OTSC Order at 11. As a result, the ALJ concluded PCO Musuto's records were unreliable and not credible; therefore, he would not give any weight to them in deciding the merits of the three cases before him. *Id.* at 3, 16.

If the employer rebuts the Section 20(a) presumption, it drops out of the analysis, and the issue of causation must be resolved based on the evidence of record as a whole, with the claimant bearing the burden of persuasion. *Rainey*, 517 F.3d at 634; *Marinelli*, 248 F.3d at 65; *Santoro*, 30 BRBS at 175; *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267 (1994). The ALJ is accorded broad discretion in making credibility determinations. *Sealand Terminals v. Gasparic*, 7 F.3d 321, 323 (2d Cir. 1993); *Volpe v. Northeast Marine Terminals*, 671 F.2d 697, 700 (2d Cir. 1982); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403, 405 (2d Cir. 1961). He has the authority to evaluate the credibility of the witnesses, *Pietrunti v. Director, OWCP*, 119 F.3d 1035, 1042 (2d Cir. 1997); *Hughes*, 289 F.2d at 405, accept parts of a witness's testimony while rejecting others, *Banks v. Chicago Grain Trimmers Ass'n*, 390 U.S. 459, 467 (1968); *Pimpinella v. Universal Mar. Serv. Inc.*, 27 BRBS 154, 157 (1993), and draw his own inferences and conclusions from the evidence, *Compton v. Avondale Indus., Inc.*, 33 BRBS 174, 176-177 (1999). The Board will not interfere with credibility determinations unless they are "inherently incredible or patently unreasonable." *Cordero v. Triple A Mach. Shop*, 580 F.2d 1331, 1335 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). Nor may the Board re-weigh the evidence; rather, if the ALJ's conclusion upon weighing the evidence is rational and supported by substantial evidence, it must be affirmed. *Carswell v. E. Pihl & Sons*, 999 F.3d 18 (1st Cir. 2021), *cert. denied*, 142 S.Ct. 1110 (2022).

and voices. OTSC Order at 9; K-JX at 11-13. Kagenda was deposed on October 26, 2021. He testified he had separated from his wife in 2016, at which time his daughters had moved in with his sister, and he only saw them once per month. He reported symptoms of nightmares, fear, confusion, reduced concentration, anger, stress, and headaches, but denied all other symptoms. OTSC Order at 9; K-JX 1 at 10, 12-14, 70-71.

The ALJ also noted the location indicated in PCO Musuto's medical reports from his evaluation of these three Claimants was different than their testimony as to where they resided. OTSC Order at 7-9; B-JX 1 at 9; B-JX 6 at 12; S-JX 10 at 3; S-CX 1 at 10; K-JX 1 at 9; K-JX 6 at 11.

The ALJ gave no weight to PCO Musuto's records due to the similarities between the medical reports submitted in these three claims and in eighty-two other claims Employers identified and also due to the discrepancies between the reports and each Claimant's deposition testimony. As these credibility determinations are rational, supported by substantial evidence of record, and not "inherently incredible or patently unreasonable," we affirm. *Gasparic*, 7 F.3d at 323; *Cordero*, 580 F.2d at 1335.

Even absent consideration of PCO Musuto's records, Claimants argue the ALJ erred in failing to credit their own testimony. Bugaba argues the ALJ failed to adequately explain why he lacked credibility, especially considering the symptoms identified in his medical records matched those he described in his testimony. B-PR at 37-38. Kagenda and Ssekamatte argue the ALJ erred in crediting Employers' experts' opinions over their own testimony due to inconsistencies between the experts' documentation of their symptoms and experiences and the symptoms and experiences each described at their depositions. K-PR at 36-37; S-PR at 36-37. They maintain it is "unfair" to compare sworn testimony to a physicians' summary completed several days after they were evaluated and that their sworn testimony should take precedence.³⁴ *Id.*

In determining whether Bugaba established a work-related psychological injury, the ALJ permissibly weighed his testimony and Dr. Jessica Groberio's expert report. B-D&O at 18-20. Initially, the ALJ found Dr. Groberio well-qualified to provide an opinion as to Bugaba's psychological condition due to her education and experience, her detailed interview of Bugaba, her review of his records, and her administration of psychological testing. *Id.* at 18. He found Dr. Groberio noted "internal inconsistencies" within Bugaba's self-reporting to her and test results indicating potential overreporting of symptoms. *Id.*; B-JX 12 at 5, 7, 9, 12. Further, the ALJ found that, regardless of the validity of Bugaba's symptoms, Dr. Groberio opined Bugaba did not endorse enough symptoms to meet the criteria for PTSD. B-D&O at 18-19; B-JX 12 at 8-9.

In *Ssekamatte*, the ALJ found Employer's expert psychologist, Dr. Sandra Michel, well-qualified to provide an opinion as to Ssekamatte's psychological condition based on her education, experience, review of records, and interview and testing of Claimant. S-D&O at 18. Dr. Michel indicated that Ssekamatte demonstrated malingering in several of the validity tests she administered and that several times his answers to these tests did

³⁴ Claimants provide no legal support for this assertion. Rather, well-settled law provides that, at the weighing stage of the Section 20(a) analysis, the ALJ must consider all relevant evidence including opinions from non-treating physicians, assess the weight and credibility of each opinion, and explain his rationale before reaching a decision on the evidence as a whole. *Kkunsu v. Constellis Group/Triple Canopy, Inc.*, ___ BRBS ___, BRB No. 24-0001, slip op. at 8-9 (Feb. 5, 2025).

not correlate to his responses when interviewed. S-D&O at 18; S-JX 1 at 11. Overall, she found his self-reporting unreliable and concluded he did not satisfy the criteria for a psychological injury diagnosis. S-D&O at 18; S-JX at 11-16.

Likewise, in *Kagenda*, the ALJ found Employer's expert neuropsychologist, Dr. Anna Mazur, well-qualified to opine as to Kagenda's psychological condition due to her experience, education, review of medical records, interview of Kagenda, and administration of psychological testing. K-D&O at 15. Dr. Mazur found Kagenda's testing results indicated malingering or overreporting of symptoms, and she also noted inconsistencies between what he reported to her and his medical records. K-D&O at 15-16; K-JX 10 at 9-13. Overall, she concluded these inconsistencies, as well as the invalid testing results, precluded her from diagnosing Kagenda with any psychological condition. K-D&O at 16; K-JX 10 at 14-17.

Moreover, the ALJ found none of the three Claimants to be credible, based on each expert's validity testing and discrepancies between each Claimant's testimony and his reporting to Employers' experts.³⁵ K-D&O at 16-17; S-D&O at 18-19; B-D&O at 19. The

³⁵ For instance, Kagenda testified to a traumatic experience in Iraq when he searched for and discovered the dead body of an American soldier who had committed suicide, but then testified he was not part of the group that searched for and found the soldier. K-D&O at 16; K-JX 1 at 103-104; K-JX 10 at 3. Kagenda told Dr. Mazur in November 2021 that he was experiencing hallucinations but had not considered suicide since 2019 or early 2021; however, when he was deposed in October 2021, he did not mention hallucinations and testified he continued to have suicidal thoughts. K-D&O at 16; K-JX 1 at 94-95; K-JX 10 at 5-6.

Ssekamatte testified he worked in a hardware store for five years prior to his employment in Iraq, but he told Dr. Michel he spent only eight months working at the hardware store. S-D&O at 18-19; S-JX 10 at 5; Ssekamatte Employer's Exhibit (S-EX) 1 at 6. He testified he has worked construction jobs since returning from Iraq but told Dr. Michel he has not worked at all. S-D&O at 19; S-JX 10 at 6; S-EX 1 at 5. Finally, Ssekamatte testified he was not sure why he did not get selected for security job positions, but told Dr. Michel he did not get these jobs because he told the prospective employers he was taking medications (even though he had not yet been prescribed the medication when he applied). S-D&O at 19; S-JX 10 at 7, 9; S-EX 1 at 5.

The ALJ noted Bugaba testified he did not complete his first contract with Employer because his supervisor accused him of conspiring to take military vehicles without permission, but he told Dr. Groberio his contract ended prematurely because he asked to return home to care for his sick father. B-D&O at 19; B-JX 1 at 43; B-JX 12 at 3. He

ALJ rejected Ssekamatte's argument that these discrepancies were insignificant or fell "within the expected range of variance," noting instead they pertained to his work history and the onset and nature of his symptoms. S-D&O at 19. Likewise, he found Kagenda's testimony inconsistent with respect to his experiences in Iraq and his psychological symptoms, which directly pertained to Kagenda's underlying claim. K-D&O at 16. He further found Bugaba's testimony vague as to his psychological symptoms, noted he provided "little to no testimony as to the severity, progression or the frequency of his symptoms in the decade plus since his return home from Iraq, or how these symptoms interfered with his daily functioning and ability to work," and found the absence of testimony explaining the three-year gap between Bugaba's return from Iraq and his alleged onset of symptoms was significant. *Id.* at 20.

The ALJ also considered Claimants' various objections to each of Employers' expert reports and explained his reasoning for rejecting them. K-D&O at 16 n.7; S-D&O at 19; B-D&O at 19 n.13. Ultimately, the ALJ found none of the three Claimants carried their burden of proving they suffered a work-related psychological injury, based primarily on their unreliable testimony. K-D&O at 16-17; S-D&O at 20; B-D&O at 20. We affirm the ALJ's conclusions as they are rational, supported by substantial evidence, and based on credibility determinations that are neither inherently incredible nor patently unreasonable. *See Pietrunti*, 119 F.3d 1042; *Gasparic*, 7 F.3d at 323.

noted Bugaba testified his employment was terminated for eating at the dining facility while on duty, but he told Dr. Groberio he was fired for not having the code of conduct on his person. B-D&O at 19; B-JX 1 at 44; B-JX 12 at 3. The ALJ also found Bugaba described to Dr. Groberio a significant hallucinatory event and complained of suicidal thoughts, as well as both auditory and visual hallucinations, but did not mention this event or these symptoms in his deposition. B-D&O at 19; B-JX 12 at 3-5.

Accordingly, we affirm the ALJ's Order Denying the Claimants' Motion to Disqualify (BRB Nos. 23-0231, 23-0232, and 23-0233) and all three of the Decisions and Orders Denying Benefits (BRB Nos. 23-0428, 23-0429, and 24-0042).

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge