U.S. Department of Labor

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

BRB No. 22-0279

JESSE ARMSTRONG Claimant-Petitioner v. DINAH LISBETH SOSA d/b/a TANKS PLUS and CLARENDON NATIONAL INSURANCE COMPANY (as successor in interest to SEABRIGHT INSURANCE COMPANY) Employer/Carrier-Respondents ALL*STAR CLEANING & PRESERVATION and COMMERCE AND INDUSTRY INSURANCE COMPANY/AIG Employer/Carrier-Respondents	)	DATE ISSUED: 01/11/2024 DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Susan Hoffman, Administrative Law Judge, Department of Labor.

Charles Robinowitz (Law Office of Charles Robinowitz), Portland, Oregon, for Claimant.

Dana O'Day-Senior (Holmes Weddle & Barcott, P.C.) Seattle, Washington, for Dinah Lisbeth Sosa d/b/a Tanks Plus and Clarendon National Insurance Company (as successor in interest to SeaBright Insurance Company).

Stephen E. Verotsky (SBH Legal) for All*Star Cleaning & Preservation and Commerce and Industry Insurance Company/AIG.

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

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Susan Hoffman's Decision and Order Denying Benefits (2015-LHC-01466; 2018-LHC-00143; 2019-LHC-00041) rendered on claims filed pursuant to the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq*. (LHWCA or Act). 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).

From 2002 to 2010, Claimant worked for All*Star Cleaning and Tanks Plus (Employers) as a tank cleaner, which involved kneeling, squatting, and lifting heavy equipment, including 90-pound hoses.[1] Hearing Transcript (HT) at 258-260. Claimant first alleged he sustained an injury to his knees after falling off a ladder in September 2008 while working for All*Star Cleaning.[2] HT at 263-264. He went to St. Joseph Hospital (PeaceHealth Center) on December 21, 2008, where, relevant to this appeal, he reported

[1] All*Star Cleaning is owned and managed by Juan Sosa, while Tanks Plus is operated by his daughter, Dinah Sosa. HT at 260-261; Cl. Brief at 1-2.

[2] This case arises within the jurisdiction of the United States Court of Appeals for the Ninth Circuit because Claimant sustained his alleged injuries in Bellingham, Washington, and Kodiak, Alaska. 33 U.S.C. 921(c); *see Roberts v. Custom Ship Interiors*, 35 BRBS 65, 67 n.2 (2001), *aff'd*, 300 F.3d 510, 36 BRBS 51(CRT) (4th Cir. 2002), *cert. denied*, 537 U.S. 1188 (2003); 20 C.F.R. 702.201(a).

left knee pain from a fall.[3] Joint Exhibit (JX) 6.62.[4] Nevertheless, Claimant continued to work and did not immediately file a claim for his injury because he did not feel he was injured to the degree necessary to miss work. HT at 321-322.

Claimant returned to St. Joseph Hospital and also went to Northwest Walk-In Health Clinic several times in 2009, complaining of pain in both knees. *See* JXs 6, 22. On September 11, 2009, Claimant saw Dr. Robert D. Cook, an orthopedic surgeon, who reviewed his MRI and recommended surgery. JX 8.77. On April 29, 2010, Claimant underwent a bilateral arthroscopy procedure on both knees. JX 8.82-83. Claimant thereafter returned to work for Tanks Plus where he performed lighter work.[5]

Approximately one month after his procedure, Claimant relocated to Kodiak, Alaska, to work as a dock worker for Tanks Plus, which entailed ensuring the functionality of pumps and pressure washers connected to hoses used for cleaning ships. HT at 269-270. Claimant alleged he was hit by a truck on June 21, 2010, while speaking on the phone to his boss, Juan Sosa, in the course of his work with Tanks Plus. HT at 272. He claimed his right knee hit the truck's bumper, his left knee hit the ground, and the battery to his phone was separated from the phone itself.[6] HT at 272-274. On June 28, 2010, Claimant went to the Providence Kodiak Medical Center, alleging he had back and leg pain from being hit by a truck. JX 9.119. He subsequently went to Portland, Oregon, to see Dr. Cook, who diagnosed him with chondromalacia malalignment along with a medial meniscus tear

---

[3] Claimant testified that he reported this injury to hospital staff as having occurred at work. HT 265. When questioned about why hospital records do not indicate a work injury, JX 6.62-63, Claimant testified, "I told them and why they didn't write any word down I don't know." HT at 319-320. He admitted, however, he provided hospital staff with a fake employer's name, "West Coast," as a "cover-up," because he did not want to get All*Star, the company's CEO Mr. Sosa, or himself in trouble. *Id.*

[4] Joint Exhibits are labeled and paginated as "X.X." As such, the citations to the joint exhibits will reflect this pagination.

[5] The hearing transcript and the record do not specify or describe the work Claimant performed when he transferred from All*Star to Tanks Plus while still in Bellingham, Washington.

[6] Mr. Sosa contradicted Claimant's testimony, stating Claimant said the truck "almost" hit him on the pier. He further claimed Claimant's phone did not disconnect at any point during the call at the time of the alleged incident. HT at 461-462.

in his left knee. JX 8.97. Dr. Cook performed an arthroscopy, partial meniscectomy, and distal extensor realignment on his left knee on September 23, 2010. JX 8.97.

In October 2010, Claimant fell in his home and immediately sought treatment. Dr. Cook referred him to Oregon Health Science University and to Dr. Grace Chen to further treat his leg and back pain. HT at 282-284. Claimant also sought mental health counseling from Anrey Wang after alleging he suffered from nightmares due to the truck incident in Kodiak, Alaska, in June. HT at 286-287. Later, complaining of continued pain, he had bilateral total knee replacements in 2012. JX 11.158; 11.161. Claimant last worked for Employers in June 2010, and did not return to work for either Employer following the 2012 procedures; instead, he began performing odd jobs for his sister, Kathryn Blue, at her adult care home in Portland, Oregon. HT at 82-85.

Claimant filed several claims alleging injuries. He first filed a Claim for Compensation (on an LS-203 form) against Tanks Plus on May 23, 2011, alleging injuries to his lower back and both knees on June 7, 2010. JX 2.9. Tanks Plus controverted the claim on May 19, 2011. JX 2.7. He filed another claim against Tanks Plus on February 9, 2017, alleging injuries to both knees and a low back strain due to the "cumulative trauma of the job." JX 3.15.[7] Subsequently, he filed a claim on December 12, 2017, against All*Star, alleging injuries to both of his knees, torn menisci, and development of arthritis because he fell off a ladder. JX 1.2. And, lastly, he filed a claim against All*Star on January 4, 2018, revising his December 2017 claim to include that he "fell off ladder on dry dock in September 2008 and [for] additional cumulative trauma to knees from on the job exposures afterwards." JX 1.3.

Following a two-day hearing on August 4 and 10, 2020, the ALJ issued a Decision and Order Denying Benefits on March 2, 2022. She reviewed Claimant's medical history, including his various visits to different emergency rooms seeking pain medications.[8]

---

[7] While Claimant named Tanks Plus on his LS-203 form, his post-hearing briefing indicated he intended it to apply to either Tanks Plus or All*Star, arguing either could have been responsible for his injuries because the last date of his employment as a tank cleaner is uncertain. Cl. Post Hearing Brief at 4; JX 3.14 (LS-18 Pre-Hearing Statement form stating he injured his knees due to "cumulative trauma of workplace").

[8] The ALJ identified several instances of Claimant's "drug-seeking behavior," and found it undermined the veracity of his self-reported symptoms. Decision and Order at 8, 22, 24-26, 70, 72, 83-84, 98, 105; *see* HT 290-291, 335-336; AXs 6.54-57, 9.71, 110, 16.219; JXs 8.103, 10.131, 13.401, 14.186, 19.263-264; TXs 9.108-109, 142, 152-153, 159, 11.184, 189, 197, 205, 209, 214, 230, 232, 20.645-646, 648.

Decision and Order (D&O) at 13-33. In addition, she considered the medical opinions of Drs. Cook, Chen, Ron Bowman, Tim Joslin, Guy E. Earle, James L. Baldwin, Houman Sabahi, and Paul S. Ciechanowski. D&O at 33-66. The ALJ determined Claimant's testimony was not credible based on instances of dishonesty, exaggeration, attempts to mislead, and inconsistencies in the record. *Id.* at 68.

The ALJ then considered each of Claimant's alleged injuries separately, dividing her opinion into five sections: his September 2008 knee injury; June 2010 left knee injury; cumulative trauma to both knees resulting from the June 21, 2010 incident; cumulative trauma to back and knees; and post-traumatic stress disorder (PTSD). D&O at 77. For each injury, the ALJ found Claimant entitled to the Section 20(a) presumption, 33 U.S.C. §920(a), because he established a prima facie case that the injuries were work-related. *Id.* at 77, 90, 93, 97, and 101. However, she also determined Employers presented sufficient evidence to rebut the presumption with respect to each claim and, after weighing the evidence related to each injury, determined none of Claimant's alleged injuries is work-related and denied benefits. *Id.* at 79-80, 91-92, 96, 107.

Claimant appeals the ALJ's decision. He contends the ALJ erred in determining All*Star and Tanks Plus rebutted the presumption that his knee condition was aggravated by cumulative work trauma over his 25-year career as a tank cleaner, resulting in bilateral knee replacement surgeries in 2012, and, if they did establish rebuttal, in weighing the evidence as a whole to deny his cumulative trauma knee injury claim. Cl. Brief at 10-11. Specifically, Claimant asserts Employers presented no evidence to show his cumulative work did not play any role in causing him pain or requiring his knee surgeries. All*Star responds, urging affirmance.[9] All*Star Brief at 15. Tanks Plus also urges affirmance.[10] Tanks Plus Brief at 2-3. Claimant filed a reply brief, again asserting neither Employer rebutted the presumption of a cumulative work-related bilateral knee injury.[11]

---

[9] All*Star alternatively argues if compensation is awarded then Tanks Plus should be solely liable as the last responsible employer.

[10] Tanks Plus also contends it is not the last employer responsible for Claimant's injuries because Claimant's work for it was not similar to his allegedly more strenuous work with All*Star.

[11] Claimant does not challenge the ALJ's findings related to, and the denial of benefits for, his alleged September 2008 left knee injury, June 2010 back or left knee injury, cumulative back injury, or June 2010 psychological injury. As such, we affirm those

Where, as here, if the Section 20(a) presumption is invoked, the burden shifts to the employer to produce substantial evidence that is "specific and comprehensive enough" to sever the connection between the claimant's condition and his employment.[12] *Hawaii Stevedores, Inc. v. Ogawa*, 608 F.3d 642, 44 BRBS 47(CRT) (9th Cir. 2010); *Duhagon v. Metro. Stevedore Co.*, 169 F.3d 615, 33 BRBS 1(CRT) (9th Cir. 1999); *see Noble Drilling Co. v. Drake*, 795 F.2d 478, 481 (5th Cir. 1986) (substantial evidence is that which a reasonable mind could accept to support a conclusion). If the employer successfully rebuts the presumption, the claimant is no longer entitled to it, and the issue of causation must be resolved on the evidence of the record as a whole, with the claimant bearing the burden of persuasion by a preponderance of the evidence. *Albina Engine & Machine v. Director, OWCP* [*McAllister*], 627 F.3d 1293, 44 BRBS 89(CRT) (9th Cir. 2010); *Duhagon*, 169 F.3d 615, 33 BRBS 1(CRT); *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 262, 31 BRBS 119, 124(CRT) (4th Cir. 1997); *Bolden v. G.A.T.X. Terminals Corp.*, 30 BRBS 71 (1996). If the employer fails to rebut the presumption, the injury is work-related as a matter of law. *Obadiaru v. ITT Corp.*, 45 BRBS 17 (2011).

When aggravation is raised, as in this case, the evidence the employer offers on rebuttal must address aggravation. *Parsons Corp. of California v. Director, OWCP,* 619 F.2d 38, 12 BRBS 234 (9th Cir. 1980). To rebut the presumption, the evidence must establish the work played no role in the claimant's condition; to say only that the work's role was "not significant" is insufficient. *Caudill v. Sea Tac Alaska Shipbuilding*, 25 BRBS 92 (1991), *aff'd mem. sub nom. Sea Tac Alaska Shipbuilding v. Director, OWCP*, 8 F.3d 29 (9th Cir. 1993). Rebuttal of an aggravation claim must cast doubt on whether working conditions worsen the underlying disease process or increase a claimant's symptoms or pain. *Fields*, 599 F.3d 47, 44 BRBS 13(CRT); *Duhagon*, 169 F.3d 615, 33 BRBS 1(CRT).

---

findings and conclusions as unchallenged. *See Scalio v. Ceres Marine Terminals, Inc.*, 41 BRBS 57 (2007).

[12] Rebuttal is an "objective test" which requires the ALJ to decide, as a legal matter, whether the employer produced the degree of evidence which could satisfy a reasonable factfinder that the claimant's injury is not work-related. *Bath Iron Works Corp. v. Fields*, 599 F.3d 47, 44 BRBS 13(CRT) (1st Cir. 2010); *Ogawa*, 608 F.3d 642, 44 BRBS 47(CRT).

The ALJ thoroughly reviewed Dr. Sabahi's reports and deposition.[13] D&O at 55-64; AXs 16, 22. In finding Dr. Sabahi's opinion rebutted the presumption linking Claimant's knee condition to his cumulative work, the ALJ stated:

> In rebuttal, [Employers] produce opinion evidence from Dr. Sabahi. The undersigned finds that [Employers] have produced substantial evidence specific and comprehensive enough to sever the potential connection between the alleged harm and the work environment. A reasonable fact-finder could conclude, on the basis of Dr. Sabahi's evidence, that Claimant's bilateral knee condition is not attributable in any way to cumulative work trauma.

D&O at 93.

Claimant contends Dr. Sabahi's opinion is insufficient to rebut the presumption. He asserts Dr. Sabahi addressed only whether his working conditions and injuries accelerated the underlying arthritis in his knees and did not consider his entire work history, including the possible impact on causing knee pain which then resulted in his needing the knee replacement surgeries. Contrary to Claimant's assertion, Dr. Sabahi addressed Claimant's cumulative work as well as his pain.

Dr. Sabahi specifically stated: "I have come to the conclusion that [Claimant] does not have an accelerated arthritic condition of his knees or cumulative work condition." AX 16.207. He also stated, with a reasonable degree of medical certainty, that Claimant's knee condition is "chronic and degenerative," as it is symmetrical, there is no accelerated arthritis, and his osteoarthritis is "average for his age." AX 16.209-210, 228; D&O at 58, 61. Moreover, he found there is no evidence to support a cumulative condition because Claimant's osteoarthritis is "very straightforward and age-appropriate" … "nothing more, nothing less. Nothing out of the ordinary." AX 16.229. Specifically, he explained: "[c]umulative trauma of the cartilage does cause it to degrade with 'wear and tear,' but the contribution of extrinsic or occupational factors are minor because cartilage is self-repairing. The real factor affecting wear and tear is primarily due to genetic factors…." AX 16.213; D&O at 58. He identified genetics as "the major determinant" and noted "a remarkable lack of good evidence establishing a significant causal relationship between occupation and degeneration." AX 16.216; D&O at 59.

[13] The record includes Dr. Sabahi's Addendum Report/Rebuttal, dated July 27, 2020, in response to Dr. Baldwin's supplemental report, AX 16.226-230, as well as his original report of July 8, 2020, and curriculum vitae, AX 16.183-225, and the transcript of his deposition, which took place after he wrote his Addendum Report. AX 22.475-554.

Dr. Sahabi further demonstrated an understanding of Claimant's work, as counsel specifically asked Dr. Sabahi questions about Claimant's work activities which included crawling on his knees, kneeling, walking, climbing ladders, and squatting. AX 22.525, 533. Also, Dr. Sabahi knew from reviewing a 2009 report from Dr. Cook that Claimant "worked in a shipyard maintaining ocean-going ships with frequent squatting, stooping, and climbing." AX 16.190. He also stated he read Claimant's deposition testimony describing his work. AX 22.525. When questioned whether Claimant's job duties would have caused a degenerative cumulative injury, Dr. Sabahi answered: "there's nothing in particular from the job duties that would accelerate or a (sic) cumulative, cause a worsening of his osteoarthritis." AX 22.525. He also stated: "The work activities can exacerbate the osteoarthritis. I mean, it can cause him some discomfort and pain, but it didn't pathologically worsen it because I don't see any progression on the x-ray study to confirm that there was pathologic worsening of the underlying osteoarthritis."[14] AX 22.535. Further, Dr. Sabahi stated it "made no sense" to say Claimant's work on his knees contributed to his condition because that would have affected his patellofemoral joints and those joints were "well-preserved." AX 16.216-217.

The ALJ reasonably found Dr. Sabahi's conclusion that there is no "cumulative" trauma included his consideration of the entirety of Claimant's work history as a tank cleaner. Nothing indicates the doctor or the ALJ limited the definition of "cumulative" to Claimant's post-2008 work. To the extent Dr. Sabahi considered only medical reports and images dating from 2008 and thereafter, AX 16, there are no pre-2008 medical reports in the record, and Claimant testified his knees were fine before then. HT 269-270; JX 19.262. We also note Claimant purportedly performed the same tank cleaner duties both before and after the alleged 2008 ladder incident and performed lighter duty work only after his 2010 arthroscopy. JX 19.262. Therefore, we reject Claimant's contention that Dr. Sabahi did not consider the physical requirements of his entire work history.

Additionally, we reject Claimant's assertion that Dr. Sabahi's opinion does not address pain caused by his work activities. First, it is clear Dr. Sabahi believed Claimant's knee condition and resulting surgeries were the result of his osteoarthritis and subjective pain, and he stated Claimant's work was not a factor in aggravating the underlying arthritic process as there had been no pathological progression.[15] AXs 16.218-220, 22.535.

---

[14] Dr. Sabahi differentiated between a temporary exacerbation and a permanent aggravation of the underlying process. AXs 16.218, 22.536.

[15] Dr. Sabahi opined Claimant has osteoarthritis, there is no evidence of acceleration of his arthritis, and the medical evidence was more indicative of a degenerative medial meniscal tear than a traumatic tear, so Claimant would still have needed bilateral knee

Therefore, Employers produced substantial evidence to rebut the presumption linking Claimant's cumulative work conditions to a worsening of his underlying osteoarthritis resulting in his surgeries. *Duhagon*, 169 F.3d 615, 618, 33 BRBS 1, 3(CRT); *O'Kelley v. Dep't of the Army/NAF,* 34 BRBS 39, 42 (2000); AX 16.208.

Second, Dr. Sabahi concluded Claimant's work activities can cause discomfort and pain, but stated any such exacerbation would be temporary. AX 22.535-536; D&O at 63-64. He acknowledged a patient's decision to undergo knee replacement surgery due to an osteoarthritic condition could vary based on the patient's symptoms and degree of pain, and he reasoned Claimant's decision to undergo his surgeries was likely due to his subjective pain which was at a lower threshold due to his chronic drug use and addiction. AX 16.219; D&O at 60; n.8, *supra*. We also note Claimant ceased working in 2010 and had his knee replacements in 2012. Even presuming he sustained some pain exacerbation while he was working, Dr. Sabahi stated any exacerbation would have resolved within a few weeks or months after he ceased working. AX 16.218. As Claimant complained of continued pain long after he stopped working, JX 14.186-187; D&O at 37, and only later underwent surgery in 2012, Dr. Sabahi's opinion that Claimant's need for surgery was due to pain from his genetic and chronic condition constitutes rebuttal evidence because any pain that might have been caused by a work exacerbation would not have continued to linger that long after he stopped working. AX 22.535-536. As Dr. Sabahi opined Claimant's overall work history did not cause a worsening of his underlying arthritic process, and any exacerbation causing pain would have been short-lived, Dr. Sabahi's opinion rebuts the presumption that Claimant's surgeries, performed two years after he stopped working for Employers, were related to his work.[16] *Ogawa*, 608 F.3d 642, 44

---

arthroplasties regardless of the alleged September 2008 or June 2010 incidents. AX 16.207, 16.219-220. In addition, Dr. Sabahi noted medial osteophytes, which he indicated are evidence Claimant's osteoarthritis produced degenerative effects which led to his surgeries. AX 16.208-209. Dr. Sabahi also relied on x-rays to conclude Claimant's pain was only a temporary worsening of his symptoms exacerbated by lower pain thresholds related to his history of opiate misuse. AX 16.219-220.

[16] Dr. Sabahi stated Claimant's genetics played a "major" or "primary" role in his condition, which Claimant construes as a conclusion that his work must have played a "minor" or "secondary" role and thus is insufficient to rebut the presumption of causation. *Caudill*, 25 BRBS at 96; *Fortier v. Gen. Dynamics Corp.*, 15 BRBS 4 (1982), *aff'd mem.*, 729 F.2d 1441 (2d Cir. 1983). However, Dr. Sabahi's unambiguous statements that Claimant's work did not aggravate his underlying condition and that any work-related exacerbation would have resolved within weeks or months of occurring demonstrates that any "minor" contribution from his work would have resolved or dissipated long before his

BRBS 47(CRT). We thus affirm the ALJ's finding that Dr. Sabahi's opinion rebuts the Section 20(a) presumption for Claimant's alleged cumulative knee condition.

Claimant next contends the ALJ erred in weighing the evidence by crediting Dr. Sabahi's opinion over his experts. This argument amounts to a request that the Board reweigh the evidence, which we are not permitted to do. *Sea-Land Services, Inc., v. Director, OWCP* [*Ceasar*], 949 F.3d 921, 54 BRBS 9(CRT) (5th Cir. 2020); *Miffleton v. Briggs Ice Cream Co.*, 12 BRBS 445 (1980), *aff'd*, 659 F.2d 252 (D.C. Cir. 1981) (table). As the factfinder, the ALJ is entitled to evaluate the credibility of all witnesses, including physicians, weigh the medical evidence, and draw her own inferences and conclusions from the record. *Cooper v. Offshore Pipelines Int'l, Inc.*, 33 BRBS 46 (1999). It is within her discretion to accept or reject all or any part of anyone's testimony according to her judgment. *Jones Stevedoring Co. v. Director, OWCP* [*Taylor*], 133 F.3d 683, 31 BRBS 178(CRT) (9th Cir. 1997). 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, 8 BRBS 744, 747 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979).

Contrary to Claimant's contentions, the ALJ rationally weighed the evidence and explained her conclusions. D&O at 93-96. She thoroughly reviewed Claimant's medical history (starting at page 13 of her Decision and Order) and of the medical opinions (at pages 33 to 66). Specifically, she accorded greater weight to Dr. Sabahi because she found his conclusions to be "well[-]reasoned, thoroughly explained, and supported by the objective medical evidence and relevant medical literature." D&O at 96; *see also* D&O at 85-88 (addressing Dr. Sabahi's general credibility). Conversely, she accorded less weight to Claimant's doctors, *id.* at 93-95; *see also id.* at 80-85, and determined Claimant's testimony was not credible due to his many inconsistencies and misrepresentations. *Id.* at

---

need for knee replacement surgery and would not have caused any pathological worsening of his underlying condition that led to his surgeries.

79-80. Claimant has not shown error in the ALJ's weighing of the evidence and, therefore, we affirm her conclusion that Claimant did not prove the work-relatedness of his knee condition by a preponderance of the evidence.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge