



BRB No. 24-0169

DARKO GLIGOROV)
)
 Claimant-Petitioner)
)
 v.)
)
 SERVICE EMPLOYEES)
 INTERNATIONAL, INCORPORATED)
)
 and)
)
 INSURANCE COMPANY OF THE STATE)
 OF PENNSYLVANIA)
)
 Employer/Carrier-)
 Respondents)

NOT-PUBLISHED

DATE ISSUED: 01/13/2026

DECISION and ORDER

Appeal of the Decision and Order of Patrick M. Rosenow, District Chief Administrative Law Judge, United States Department of Labor.

Giselle Garcia and Matthew J. Rolla (Garfinkel Schwartz, P.A.), Maitland, Florida, for Claimant.

Lawrence P. Postol (Postol Law Firm, P.C.), McClean, Virginia, for Employer and its Carrier.

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

PER CURIAM:

Claimant appeals District Chief Administrative Law Judge (ALJ) Patrick M. Rosenow's Decision and Order (2017-LDA-00787) rendered on a claim 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).¹ We must affirm the ALJ's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.² 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359, 361-362 (1965).

Claimant allegedly sustained psychological injuries working for Employer as an auto mechanic in Afghanistan from 1995 to 2001. He testified he witnessed explosions and gunshots, and had a gun pointed at his face. The ALJ found Claimant invoked the Section 20(a) presumption of compensability, 33 U.S.C. §920(a), and Employer and its Carrier (Employer) rebutted it. Weighing the evidence, the ALJ found Claimant failed to establish a work-related psychological injury and, therefore, denied benefits.

On appeal, Claimant contends the ALJ erred in weighing the evidence.³ Employer responds in support of the ALJ's findings. Claimant filed a reply, reiterating his arguments on appeal.

If the Benefits Review Board affirms the ALJ's findings on invocation and rebuttal of the Section 20(a) presumption, as here, 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. *Director, OWCP v. Greenwich Collieries [Ondecko]*, 512

¹ On September 17, 2024, the Benefits Review Board dismissed Claimant's appeal as abandoned because he failed to file a petition for review after more than 150 days. *Gligorov v. Serv. Emps. Int'l, Inc.*, BRB No. 24-0169, slip op. at 2 (Sept. 17, 2024). On November 8, 2024, however, the Board granted Claimant's unopposed motion for reconsideration and reinstated his appeal because he explained two of his former attorneys took unexpected medical leave which resulted in his petition for review being delayed. *Gligorov v. Serv. Emps. Int'l, Inc.*, BRB No. 24-0169, slip op. at 2 (Nov. 8, 2024).

² This case arises within the jurisdiction of the United States Court of Appeals for the Second Circuit because the office of the district director who filed the ALJ's decision is located in New York. 33 U.S.C. §921(c); *Glob. Linguist Sols., LLC v. Abdelmeged*, 913 F.3d 921, 922 (9th Cir. 2019); *see also McDonald v. Aecom Tech. Corp.*, 45 BRBS 45, 47 (2011).

³ We affirm, as unchallenged on appeal, the ALJ's findings that Claimant invoked the Section 20(a) presumption, and Employer rebutted it. *See Scilio v. Ceres Marine Terminals, Inc.*, 41 BRBS 57, 58 (2007); D&O at 7-10.

U.S. 267, 271 (1994); *Rainey v. Director, OWCP*, 517 F.3d 632, 634 (2d Cir. 2008); *Rose v. Vectrus Sys. Corp.*, 56 BRBS 27, 39 (2022) (Decision on Recon. en banc), *appeal dismissed* (M.D. Fla. Aug. 24, 2023). When weighing the evidence as a whole, the ALJ is entitled to evaluate the credibility of all witnesses, weigh the medical evidence, and draw his own inferences and conclusions from the record. *Pietrunti v. Director, OWCP*, 119 F.3d 1035, 1042 (2d Cir. 1997). The Board may not reweigh the evidence or substitute its opinion for that of the ALJ even if the evidence could support other inferences or conclusions. *See Sealand Terminals, Inc. v. Gasparic*, 7 F.3d 321, 323 (2d Cir. 1993); *Volpe v. Ne. Marine Terminals*, 671 F.2d 697, 700 (2d Cir. 1982).

The ALJ considered the medical opinions of Drs. Lindja Manasievska, Tanja Risteska, Kristina Lazarevska, Geoff Isaacs, and Aaron Hervey.⁴ Decision and Order (D&O) at 9-13. Drs. Manasievska, Risteska, and Lazarevska opined Claimant has post-traumatic stress disorder (PTSD) caused by his work for Employer. Joint Exhibits (JXs) 9, 10, 20. In contrast, both Drs. Isaacs and Hervey opined Claimant does not have PTSD. But their paths diverged there: Dr. Isaacs took the further position Claimant does not suffer from any psychological injury at all; Dr. Hervey opined Claimant has an “anxiety disorder” caused by his work for Employer. JXs 14, 21, 23, 25. After interrelating aspects of Claimant’s and Dr. Isaacs’s testimony with the documentary evidence, the ALJ purported to give “probative weight” to both Drs. Isaacs’s and Hervey’s reports and concluded Claimant failed to establish any psychological injury. D&O at 13.

Claimant contends the ALJ erred in summarizing Dr. Hervey’s opinion and in concluding it does not support a finding of a work-related psychological condition. Claimant’s Br. at 6-10. We agree with Claimant that the ALJ misconstrued Dr. Hervey’s opinion and that it tainted his weighing of the evidence. We therefore vacate the ALJ’s findings in their entirety and remand this case for the ALJ to reweigh the evidence with an accurate understanding of Dr. Hervey’s opinion.

As a threshold matter, Dr. Hervey credited Claimant’s self-reported symptoms after clinically testing their veracity. He administered both standalone and embedded “instruments of validity” to Claimant and acknowledged Claimant “produced passing scores on five of seven measures.” JX 21 at 5. Dr. Hervey further reasoned that Claimant’s “response pattern across all measures did not indicate clear symptom overreporting,” although it did “raise concern” over the “possibility.” *Id.* While Dr. Hervey noted several specific instances where he thought Claimant might have been inconsistent, he nevertheless

⁴ Drs. Manasievska and Lazarevska are psychologists. JXs 9 at 2, 20 at 54. Drs. Risteska and Isaacs are psychiatrists. JXs 10 at 2, 14 at 1-2. Dr. Hervey is a clinical neuropsychologist. JX 21 at 1.

reiterated in his summary that Claimant “passed most measures of validity,” and he did not further question Claimant’s credibility beyond his original suggestion of a possibility of overreporting. *Id.* at 8 (emphasis added).

Dr. Hervey then unambiguously diagnosed Claimant with an anxiety disorder caused by working in a war zone. After summarizing his clinical findings, he plainly concluded that while Claimant “does not have PTSD,” he “likely has an anxiety disorder (Other Specified Anxiety Disorder) that, more likely than not, was caused by working conditions in Afghanistan.” *Id.* He further categorically stated Claimant “would likely benefit from treatment to address his anxiety in the form of psychotherapy and medication by providers trained in delivering treatment supported by peer-reviewed research.”⁵ *Id.* at 7.

Indeed, in response to his admissions, even Employer seemingly sought to minimize the conclusions of its own expert, acknowledging Dr. Hervey’s “diagnosis of an anxiety disorder” but asking Dr. Hervey that “if the Judge in this matter finds the Claimant not credible,” should he “discount your opinion?” While Dr. Hervey suggested that would be “a logical conclusion,” JX 23, it is indisputable Dr. Hervey neither retracted nor revised his conclusions.

Therefore, we are unable to discern why the ALJ credited Dr. Hervey’s opinion that Claimant has a work-related anxiety disorder but simultaneously concluded Claimant failed to establish a work-related injury. D&O at 9-13. Further, as Claimant asserts, we are unable to determine why the ALJ discredited the opinions of Drs. Manasievska, Risteska, and Lazarevska for relying on Claimant’s subjective complaints and further found Claimant’s testimony not credible, in part, based on Dr. Hervey’s opinion, when Dr. Hervey relied on Claimant’s subjective complaints and found Claimant passed validity tests. D&O at 10-11; Claimant’s Br. at 6-10. We are not bound to accept an ultimate finding or inference if the decision discloses that it was reached in an invalid manner, *Howell v. Einbinder*, 350 F.2d 442, 444 (D.C. Cir. 1965), or if we are unable to conscientiously conclude that the decision is supported by substantial evidence. *Goins v. Noble Drilling Corp.*, 397 F.2d 392, 394 (5th Cir. 1968). A finding lacking the support of

⁵ As the ALJ himself recognized, “the ultimate question is whether the totality of the evidence demonstrates that it is more likely than not that Claimant suffers from a psychological injury because of his employment.” D&O at 13. Given Dr. Hervey unambiguously answered that verbatim question with an almost unqualified affirmative response, and the ALJ found his opinion “probative,” the ALJ’s use of Dr. Hervey’s report to discredit Claimant’s testimony and his treating doctors’ reports for relying on Claimant’s self-reported symptoms is inconsistent and puzzling. *Id.*

substantial evidence is not in accordance with law and must be set aside. *Director, OWCP v. Gen. Dynamics Corp. [Fantucchio]*, 787 F.2d 723, 725 (1st Cir. 1986). Therefore, we vacate the ALJ's finding that Claimant does not have a work-related psychological injury and his denial of benefits. We remand the case for further consideration.

On remand, the ALJ must reweigh the evidence, including Claimant's credibility, and address whether it establishes Claimant has a work-related psychological condition with an accurate understanding of Dr. Hervey's opinion. *Rainey*, 517 F.3d at 634; *Am. Stevedoring Ltd. v. Marinelli*, 248 F.3d 54, 65 (2d Cir. 2001); *Santoro v. Maher Terminals, Inc.*, 30 BRBS 171, 174 (1996). The ALJ must resolve the conflict in the medical opinion evidence by addressing the physicians' comparative credentials, the explanations for their conclusions, the documentation underlying their medical judgments, and the sophistication of, and bases for, their diagnoses. *See Pietrunti*, 119 F.3d at 1042; *John W. McGrath Corp. v. Hughes*, 289 F.2d 403, 405 (2d Cir. 1961). Further, the ALJ must consider all the relevant evidence in reaching his determinations. *See Addison v. Ryan-Walsh Stevedoring Co.*, 22 BRBS 32, 36 (1989) (ALJ must consider all relevant evidence); *Frazier v. Nashville Bridge Co.*, 13 BRBS 436, 437 (1983) (same). And he must set forth his findings in detail, including the underlying rationale for his decision, as the Administrative Procedure Act (APA) requires.⁶ *Island Creek Coal Co. v. Blankenship*, 123 F.4th 684, 691 (4th Cir. 2024); *See v. Wash. Metro. Area Transit Auth.*, 36 F.3d 375, 384 (4th Cir. 1994).

⁶ The Administrative Procedure Act, 5 U.S.C. §§500-591, provides that every adjudicatory decision must include "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented[.]" 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 33 U.S.C. §919(d).

Accordingly, we affirm in part and vacate in part the ALJ's Decision and Order and remand the case to the ALJ for further consideration consistent with this opinion.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

GLENN E. ULMER
Acting Administrative Appeals Judge