

U.S. Department of Labor

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



BRB No. 24-0200

DARWIN GOMEZ SERRANO)

Claimant-Petitioner)

v.)

GREEN GROUP GLOBAL, LLC)

and)

AMERICAN HOME ASSURANCE)
COMPANY)

Employer/Carrier-)
Respondents)

NOT-PUBLISHED

DATE ISSUED: 01/30/2026

DECISION and ORDER

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

Allison T. Graber and Jacob S. Garn (Attorneys Jo Ann Hoffman &
Associates, P.A.), Lauderdale-By-The-Sea, Florida, for Claimant.

Dana Ladner (Schouest, Bamdas, Soshea, BenMaier & Eastham), Houston,
Texas, for Employer and Carrier.

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

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Susan Hoffman’s Decision and
Order Denying Benefits (2021-LDA-01987) 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). 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.¹ 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

Claimant worked for Employer as an armed security guard in Iraq from December 2009 to December 2012.² Decision and Order (D&O) at 3-4; Employer's Exhibit (EX) 15 at 8. During his employment, Claimant stated he experienced several traumatic events but did not witness gunfire or dead bodies and did not personally know anyone who was injured. D&O 4; EX 15 at 9-10. Nonetheless, Claimant specifically recalled two car bombs exploding three to four kilometers away from him and five rockets exploding 300 to 400 meters away from him. He also stated several other explosions occurred almost every day. *Id.*

Upon his return home to Honduras in 2012, Claimant was unemployed for seven months until he obtained work as a security guard at a mall, where he worked for about three-and-a-half years. D&O at 4; EX 15 at 10. He then worked as a restaurant waiter for approximately two years, and from 2018 to the time of his deposition in 2022, he was working as a store security guard. D&O at 4; EX 15 at 11.

On May 27, 2020, Claimant came under the care of psychologist Dr. Iris Danarieza Nunez. D&O at 7; Claimant's Exhibit (CX) 21 at 2. Dr. Danarieza Nunez diagnosed Claimant with mild to moderate post-traumatic stress disorder (PTSD); she recommended he see a psychiatrist and start psychotherapeutic treatment. D&O at 7; CX 21 at 3. Claimant subsequently came under the care of psychiatrist Dr. Xenia Magali Aguilera,³ who diagnosed him with PTSD and dysthymia caused by his five years of work overseas;

¹ 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); *McDonald v. Aecom Tech. Corp.*, 45 BRBS 45 (2011); *see also Global Linguist Sols., L.L.C. v. Abdelmeged*, 913 F.3d 921 (9th Cir. 2019).

² Claimant previously worked as an armed security guard in Iraq for Triple Canopy from 2005 to 2007. D&O at 3; EX 15 at 6. During his employment at Triple Canopy, Claimant recalled experiencing a car bomb explode approximately five to six kilometers away from him and occasional gunfire. D&O at 3; EX 15 at 7.

³ Claimant testified he met with Dr. Magali Aguilera a total of three times. D&O at 5; EX 15 at 12.

she prescribed medication.⁴ D&O at 6; CX 19 at 2, 5.

On September 20, 2021, at Employer's request, psychologist Dr. John Tsanadis evaluated Claimant and administered several tests.⁵ D&O at 10; EX 8 at 1. He opined there was no substantive, reliable data to support a finding that Claimant suffered from a mental condition or psychiatric illness.⁶ D&O at 12; EX 8 at 6.

On April 14, 2022, Claimant met with psychologist Dr. Gustavo Benejam. D&O at 7; CX 17 at 9. Dr. Benejam interviewed Claimant and administered psychological testing,⁷ D&O at 7-8; CX 17 at 9-12, as well as reviewed the reports of Dr. Danarieza Nunez, Dr. Magali Aguilera, and Dr. Tsanadis.⁸ D&O at 7; CX 17 at 10. Dr. Benejam opined the test

⁴ On February 26, 2021, Dr. Oscar Alberto Palma of the Medical Association of Honduras prescribed Claimant 2 mg of Lorazepam; however, there are no credentials for Dr. Alberto Palma nor any treatment records from him in the record. *Id.* at 7; CX 23 at 2-3.

⁵ Dr. Tsanadis conducted a three-hour evaluation via videoconference and administered the following assessments: a medical records review, a clinical interview, the PTSD Symptom Scale-Interview for DSM-5 (PSS-1-5), the Inventario Estructurado de Simulacion de Sintomas (SIMS), the Miller Forensic Assessment of Symptoms Test (M-FAST), the Patient Health Questionnaire-9-Spanish Translation (PHQ-9), the Generalized Anxiety Disorder Questionnaire-7-Spanish Translation (GAD-7), the Post-Traumatic Checklist-Spanish Translation (PCL-5), the Inventory and Problems-29 (IOP-29), and the Test of Memory Malinger (TOMM). D&O at 10; EX 8 at 1.

⁶ Dr. Tsanadis further opined “[t]here is no evidence [Claimant] has a mental health condition that would prevent him from being able to work as a security guard overseas.” D&O at 12; CX 8 at 9. He noted Claimant is capable of working the same schedule he has worked in the past and currently works eleven hours a day, six days a week. *Id.*

⁷ Dr. Benejam administered the following tests: the Beck Depression Inventory-II (BDI), the Beck Anxiety Inventory (BAI), the Beck Suicide Inventory (BSI), the Revised Green et al. Paranoid Thoughts Scale (R-GPTS), the PTSD and Suicide Screener (PSS), the PTSD Checklist-3 (PCL), the Clinician-Administered PTSD Scale for DSM-5 (CAPS 5) – Past Month Version, the Structured Inventory of Malinger Symptomatology (SIMS), and the Miller Forensic Assessment of Symptoms Test (M-FAST). D&O at 8; CX 17 at 15-16.

⁸ Dr. Benejam also reviewed Claimant's employment records, the United States Embassy's Letter of Commendation dated November 24, 2006, and Claimant's certificate

results were consistent with Claimant’s reported symptoms and “confirm[ed] the presence of specific symptoms that support DSM-5 criteria” for diagnoses of “some” PTSD, depressive symptoms, and generalized anxiety disorder. D&O at 9; CX 17 at 17. He diagnosed Claimant with unspecified trauma and stressor-related disorder and major depressive disorder, severe with anxiety, and noted Claimant’s consistent medical results, reported symptoms, treating physicians’ diagnoses, and his own evaluation of Claimant “provide a high level of confidence and support the concluding diagnoses.” D&O at 9; CX 17 at 17, 22, 24.

Meanwhile, on October 5, 2020, Claimant was treated by Dr. Carlos Reyes Garcia for hearing issues. D&O at 10; CX 25 at 2. Dr. Reyes Garcia’s audiogram indicated Claimant suffered hearing loss to deep tones in the right ear, but he did not provide an impairment rating. D&O at 10; CX 25 at 2-3. On February 9, 2022, at Employer’s request, Dr. Michael Armstrong, Jr.,⁹ conducted a virtual evaluation of Claimant. D&O at 12; EX 10. He reviewed Dr. Reyes Garcia’s audiogram as well as a second audiogram obtained on February 5, 2022,¹⁰ and concluded they showed Claimant’s hearing had improved to the point that it was essentially normal. He therefore assigned a 0% hearing impairment rating. D&O at 13; EX 10 at 16.

On June 8, 2020, Claimant filed a claim for compensation alleging psychological issues as a result of his employment. D&O at 2; CX 1. On October 22, 2020, he amended his claim to also include work-related hearing loss. D&O at 2; CX 2. The case was referred to the Office of Administrative Law Judges (OALJ) on February 18, 2021, and the parties opted for the claim to be adjudicated on the record in lieu of an in-person hearing. D&O at 1.

On February 2, 2024, the ALJ issued a Decision and Order Denying Benefits. The ALJ determined Claimant invoked the Section 20(a) presumption that his psychological injury and his hearing loss are both related to his work for Employer in Iraq. D&O at 16, 25-26; *see* 33 U.S.C. §920(a). She further found Employer provided sufficient evidence to rebut the presumption as to both claimed injuries. *Id.* at 16-17, 26-27. Weighing the evidence as a whole, the ALJ found Claimant did not establish by a preponderance of the

of completion as a three-year Security Specialist dated December 10, 2012. D&O at 7; CX 17 at 10.

⁹ Dr. Armstrong is a licensed physician specializing in the ears, nose, and throat (ENT). EX 10 at 7.

¹⁰ Lucas Arturo Zelaya Zaldana conducted the February 9, 2022 audiogram. EX 10 at 10, 13. No credentials were provided for Mr. Zelaya Zaldana.

evidence that he suffered a work-related psychological injury or compensable hearing loss. *Id.* at 17-25, 27-28. She therefore denied Claimant's claim. *Id.* at 28.

Claimant appeals, challenging the ALJ's causation findings as to his psychological injury and hearing loss claims. Employer responds, urging affirmance. Claimant filed a reply brief, reiterating his argument.

Psychological Injuries

Claimant first asserts the ALJ improperly found Employer rebutted the Section 20(a) presumption as it relates to his alleged psychological injury. Claimant's Petition for Review and Brief (Cl. PR) at 4. Particularly, he argues the ALJ erred in finding Dr. Tsanadis's report constitutes substantial evidence to rebut the presumption. *Id.* at 5.

To invoke the Section 20(a) presumption, a claimant must establish that (1) he sustained a harm and (2) an accident occurred or working conditions existed which could have caused or aggravated the harm. *Rose v. Vectrus Sys. Corp.*, 56 BRBS 27 (2022) (Decision on Recon. en banc), *appeal dismissed* (MDFL Aug. 24, 2023); *see also Am. Stevedoring Ltd. v. Marinelli*, 248 F.3d 54, 64-65 (2d Cir. 2001). Once the presumption is invoked, as in this case, the burden shifts to the employer to rebut the presumption by producing substantial evidence that the claimant's injuries were not caused by, contributed to, or aggravated by his employment. *Rainey v. Director, OWCP*, 517 F.3d 632, 637 (2d Cir. 2008); *O'Kelley v. Dep't of the Army/NAF*, 34 BRBS 39, 41 (2000). The employer's burden at this stage is one of production, not persuasion. *Rainey*, 517 F.3d at 637; *Rose*, 56 BRBS at 35; *Suarez v. Serv. Emps. Int'l, Inc.*, 50 BRBS 33, 36 (2016). A physician's unequivocal opinion that no relationship exists between the employee's injury and his employment is sufficient to rebut the presumption. *See generally Suarez*, 50 BRBS at 36; *Cline v. Huntington Ingalls, Inc.*, 48 BRBS 5, 6-7 (2013); *O'Kelley*, 34 BRBS at 41-42.

The ALJ found Dr. Tsanadis's report sufficient to rebut the Section 20(a) presumption as to Claimant's alleged psychological injury. D&O at 17; EX 8. Dr. Tsanadis concluded Claimant did not have any mental health disorder and did not suffer from a work-related injury. D&O at 16; EX 8 at 6. As Dr. Tsanadis's unequivocal medical opinion is sufficient to satisfy an employer's burden of production on rebuttal, we affirm the ALJ's finding that Employer rebutted the Section 20(a) presumption as to Claimant's psychological injury. *Suarez*, 50 BRBS at 36; *Cline*, 48 BRBS at 6-7; *O'Kelley*, 34 BRBS at 41-42.

Claimant next asserts the ALJ erred at the weighing stage of the causation analysis for the claimed psychological injury. Cl. PR at 16. If the employer rebuts the Section 20(a) presumption, as in this case, it no longer applies, and the issue of causation must be resolved based on the evidence in the record with the claimant bearing the burden of

persuasion. *Rainey*, 517 F.3d at 634; *Marinelli*, 248 F.3d at 65; *Santoro v. Maher Terminals, Inc.*, 30 BRBS 171, 175 (1996); see also *Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267 (1994).¹¹ The ALJ is entitled to weigh the evidence and to draw his own inferences from it; he is not bound to accept the opinion or theory of any particular expert. See *Pietrunti v. Director, OWCP*, 119 F.3d 1035, 1042 (2d Cir. 1997); *Sealand Terminals, Inc. v. Gasparic*, 7 F.3d 321, 323 (2d Cir. 1993); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961). The Benefits Review 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. *Gasparic*, 7 F.3d at 323; *Volpe v. Ne. Marine Terminals*, 671 F.2d 697, 700 (2d Cir. 1982); *Perini Corp. v. Hyde*, 306 F. Supp. 1321, 1325-1326 (D.R.I. 1969).

Claimant argues the ALJ improperly weighed the medical experts' opinions and relied on factual mistakes in finding Claimant did not establish a psychological injury by a preponderance of the evidence. Cl. PR at 5. In evaluating the evidence, the ALJ gave little weight to the opinions rendered by Drs. Danarieza Nunez and Benejam and moderate weight to the opinion rendered by Dr. Magali Aguilera.¹² D&O 19-23. But she found all three doctors' opinions as to Claimant's psychological condition less persuasive than Dr. Tsanadis's opinion.¹³ *Id.* at 24. In reaching this conclusion, the ALJ found that Claimant's self-reported symptoms were neither consistent nor reliable.¹⁴ *Id.* at 24; CX 17 at 12-13;

¹¹ We reject Claimant's suggestion that all doubtful questions of fact should be resolved in his favor as it represents an incorrect statement of the law. Cl. PR. at 4; *Ondecko*, 512 U.S. at 281 (the "true doubt" rule violates Section 7(c) of the Administrative Procedure Act, 5 U.S.C. §556(d)); *Santoro*, 30 BRBS at 175.

¹² The ALJ gave the prescription for Lorazepam that Dr. Palma wrote no weight because the record was silent as to Dr. Palma's credentials, the details about his visit with Claimant, or what condition he intended to treat with the medication. D&O at 21.

¹³ The ALJ also gave Claimant's description of his symptoms less weight compared to Dr. Tsanadis's opinions. D&O at 24.

¹⁴ For instance, Claimant testified in his deposition that he first noticed his psychological symptoms in 2020, which included sadness, depression, anxiety, irritation, and anger. D&O at 5; EX 15 at 11. However, Dr. Benejam noted Claimant indicated he started experiencing psychological symptoms, including headaches, difficulty sleeping, nightmares, irritability, and concentration issues, upon his return to Honduras in December 2007 after his first deployment with Triple Canopy. D&O 7; CX 17 at 12. Additionally, Dr. Benejam documented that after Claimant's second deployment in Iraq with Employer,

EX 15 at 11. She further found Claimant's treating physicians, Drs. Danarieza Nunez and Magali Aguilera, met with him only sporadically and their assessments and PTSD diagnoses relied almost entirely on his self-reporting.¹⁵ D&O at 24; CX 19 at 2; CX 21 at 2-3. In addition, she noted although Dr. Benejam's report relied heavily on the reports of Drs. Danarieza Nunez and Magali Aguilera, it undermined the reliability of their evaluations because he ultimately reached a different diagnosis.¹⁶ D&O at 24; CX 17 at 17, 24. The ALJ also found that Dr. Benejam's opinion regarding Claimant's alleged psychological condition conflicted with Claimant's employment history and his demonstrated ability to maintain long-term work, including the security guard position he held at least from 2018 until his deposition in 2022 . D&O at 24; EX 15 at 10-11. Overall, the ALJ found Dr. Benejam's causation opinion conclusory and unsupported by the evidence. D&O at 24.

Conversely, the ALJ gave greater weight to Dr. Tsanadis's report, finding it described his clinical interview with Claimant, Claimant's reported symptoms, the results of the mental status exam and objective testing, and Claimant's experiences working for Employer. D&O at 24. Dr. Tsanadis also reviewed and considered the reports of Drs. Danarieza Nunez and Magali Aguilera and discredited them due to their lack of objective testing and complete reliance on Claimant's self-reported symptoms. D&O at 24; EX 8 at 2; EX 12 at 9-11. As a result, the ALJ ultimately found "Dr. Tsanadis's opinions are well

he began experiencing the same symptoms as before as well as depression, anxiousness, negative cognitions, and intrusive thoughts. D&O at 8; CX 17 at 13.

¹⁵ We reject Claimant's argument that the ALJ erred by failing to give his treating physicians' opinions "special and considerable weight." Where there are conflicting medical opinions, as here, the ALJ is not required to automatically give "special weight" to the treating physicians' opinions. *Kkunsu v. Constellis Group/Triple Canopy, Inc.*, 59 BRBS 1, 4 (2025). Rather, she must consider all relevant evidence, assess the weight and credibility of each opinion, and explain her rationale in reaching a decision on the evidence. *Id.* at 4-5.

¹⁶ Although both Drs. Danarieza Nunez and Magali Aguilera diagnosed Claimant with PTSD and Dr. Benejam opined the test results "support the presence of some PTSD," Dr. Benejam did not actually diagnose Claimant with PTSD but with unspecified trauma and stressor related disorder and major depressive disorder, severe with anxiety. CX 17 at 17, 24.

supported by clear reasoning and explanation and well-documented.”¹⁷ D&O at 24. In sum, because the ALJ’s weighing of the evidence as a whole and decision to credit Dr. Tsanadis’s opinion over Dr. Benejam’s is rational and supported by substantial evidence in the record, *Pietrunti*, 119 F.3d at 1042; *Gasparic*, 7 F.3d at 323; *Hughes*, 289 F.2d at 405; *Pisaturo v. Logistec, Inc.*, 49 BRBS 77, 81 (2015), we affirm the ALJ’s finding that Claimant’s alleged psychological condition is not work-related. *Sistrunk v. Ingalls Shipbuilding, Inc.*, 35 BRBS 171, 174 (2001); *Coffey v. Marine Terminals Corp.*, 34 BRBS 85, 87 (2000).

We reject Claimant’s contention that the ALJ violated the Administrative Procedure Act (APA), 5 U.S.C. § 557, by failing to weigh multiple pieces of evidence when determining whether Claimant was entitled to benefits.¹⁸ Cl. PR at 23. Claimant asserts it is not clear whether the ALJ considered a witness statement from Celio Fernan Martinez, responses to discoveries, and filings with the Department of Labor. *Id.* But Claimant has not explained the relevance of those documents to the ALJ’s causation analysis or why the ALJ’s consideration of them could have led to a different outcome.¹⁹ *Montoya v. Navy Exch. Serv. Command*, 49 BRBS 51, 52 n.1 (2015); *Plappert v. Marine Corps Exch.*, 31 BRBS 109, 111 (1997). We also reject Claimant’s contention that the ALJ’s reliance on

¹⁷ Because Claimant did not meet the criteria on any tests that Dr. Tsanadis administered for depression, anxiety, or PTSD, Dr. Tsanadis did not diagnose Claimant with any psychological condition. *Id.*

¹⁸ The ALJ carefully reviewed and considered all the relevant evidence and detailed the rationale behind her causation findings. D&O 2-27; *see Santoro*, 30 BRBS at 172; *Cotton v. Newport News Shipbuilding & Dry Dock Co.*, 23 BRBS 380 (1990); *Cairns v. Matson Terminals, Inc.*, 21 BRBS 252 (1988). Thus, the ALJ’s decision accords with the APA’s requirements. *See* 5 U.S.C. §557(c)(3)(A).

¹⁹ The only case Claimant cites in support of his argument is *Mitchell v. Island Creek Kentucky Mining & Dir.*, OWCP, BRB No. 19-0313 BLA (May 29, 2020), an unpublished case arising under the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2012). Cl. PR at 23, n.146. First, we note *Mitchell* is not precedential. Moreover, *Mitchell* did not involve an ALJ’s failure to consider certain evidence at the weighing stage of the causation analysis. Rather, in *Mitchell*, the Board found the ALJ failed to adequately explain his conclusion that the x-ray evidence as a whole did not support the existence of pneumoconiosis. Consequently, there was a lack of adequate explanation, not a failure to consider evidence.

the Employer’s expert medical opinions highlighted several factual mistakes.²⁰ Cl. PR at 16. *See Poole v. Nat’l Steel & Shipbuilding Co.*, 11 BRBS 390 (1979) (it is solely within the discretion of the ALJ to accept or reject all or any part of any testimony according to her judgment). Specifically, Claimant contends Dr. Tsanadis contradicted himself by stating that Claimant’s results on four different symptom validity tests “did not reveal evidence of flagrant attempts to misrepresent symptom or functional status,” yet he opined Claimant “endorsed some unusual items.” Cl. PR at 6. Furthermore, Claimant argues that Dr. Tsanadis “equivocated . . . his findings.” *Id.* at 8. Claimant has not established how these contentions could lead to a different outcome, and he is, in essence, inappropriately requesting the Board to re-weigh evidence already evaluated by the ALJ. *Gasparic*, 7 F.3d at 323; *see also Carswell v. E. Pihl & Sons*, 999 F.3d 18, 32 (1st Cir. 2021) (the Board cannot re-weigh the evidence; rather, if the ALJ’s conclusion upon weighing the evidence is rational and supported by substantial evidence, as it is here, it must be affirmed).

Hearing Loss

Claimant next contends the ALJ erred in finding Dr. Armstrong’s report sufficient to rebut the Section 20(a) presumption as to his hearing loss claim. Cl PR at 4-5; D&O at 26-27. Dr. Armstrong noted the audiogram obtained on February 5, 2022, demonstrated substantial improvement compared to the audiogram obtained on October 5, 2020. EX 10 at 16; *see* D&O at 26. He concluded Claimant suffers from a “mild high-frequency sensory hearing loss at 4000 Hz bilaterally with a threshold of 40dB in the left ear and 30 dB in the right ear” but assigned a 0% binaural hearing loss rating because Claimant’s “hearing in the range of 500-3000 Hz is better than 25dB and does not qualify for a disability rating according to the AMA Guides, sixth edition.”²¹ EX 10 at 2, 5; *see* D&O at 26. Despite

²⁰ We reject Claimant’s allegation that the ALJ made a factual error in characterizing Dr. Tsanadis’s evaluation as “independent.” Although this characterization of his report as “independent” may not be accurate, we find it to be harmless error as there is no confusion, either from the parties’ arguments or the record, that Dr. Tsanadis’s evaluation and report were generated at Employer’s request. *See generally Suarez*, 50 BRBS at 37.

²¹ In accordance with 33 U.S.C. §908(c)(13)(E), determinations of the amount of hearing loss when assessing compensation for permanent partial disability are to be made in accordance with the American Medical Association’s *Guides to the Evaluation of Permanent Impairment*. Notably, the assignment of an impairment rating goes to the extent of the disability, not to the cause of it. 33 U.S.C. §908(c)(13). Moreover, Section 8(c)(13)(C) of the Act provides: “[a]n audiogram shall be presumptive evidence of the *amount* of hearing loss sustained” – this goes to the extent of that loss and not to the fact of injury or causation. 33 U.S.C. §908(c)(13)(C) (emphasis added).

finding no calculable hearing disability rating but having found some hearing loss, Dr. Armstrong concluded it was likely Claimant's hearing loss pre-dated his employment with Employer and opined "with a reasonable degree of medical certainty that [Claimant's] previous weapon training was the primary cause of his current hearing loss." EX 10 at 2-3; *see* D&O at 26. The ALJ found Dr. Armstrong's report "specific and comprehensive enough" to constitute substantial evidence sufficient to rebut the Section 20(a) presumption. D&O at 27.

We agree with Claimant's argument that the ALJ erred in finding Dr. Armstrong's opinion sufficient to rebut the Section 20(a) presumption because it is not an unequivocal statement severing the relationship between Claimant's hearing loss and his employment. *Suarez*, 50 BRBS at 36; *Cline*, 48 BRBS at 6-7; *O'Kelley*, 34 BRBS at 41-42. Dr. Armstrong acknowledged Claimant suffered a hearing loss, denied it was the result of his employment with Employer, *see* EX 10 at 4, yet also asserted it was "more likely than not that *some* of his current hearing loss was pre-existing" and attributed Claimant's current loss *primarily* to his prior weapons training, *see* EX 10 at 2-3 (emphasis added). D&O at 13, 26-27.

To rebut the Section 20(a) presumption, the employer must produce substantial evidence that the claimant's condition was not caused or aggravated by his employment. *Bath Iron Works Corp. v. Preston*, 380 F.3d 597, 605 (1st Cir. 2004); *O'Kelley*, 34 BRBS at 41. A medical opinion that a claimant's hearing loss is "more likely" related to a non-employment cause is not the same as a medical opinion concluding his employment did not cause, contribute to, or exacerbate the hearing loss because the claimant's employment does not have to be the sole cause for the entire injury to be compensable. *Metro. Mach. Corp. v. Dir. [Stephenson]*, 846 F.3d 680, 684 (4th Cir. 2017); *Newport News Shipbuilding & Dry Dock Co. v. Fishel*, 694 F.2d 327, 329 (4th Cir. 1982); *Myshka v. Elec. Boat Corp.*, 48 BRBS 79, 81 (2015); *Epps v. Newport News Shipbuilding & Dry Dock Co.*, 19 BRBS 1, 2 (1986). Likewise, Dr. Armstrong's conclusion that Claimant's prior weapons training was a "primary cause" of his hearing loss does not constitute an unequivocal opinion that no relationship exists between the hearing loss and Claimant's employment and, therefore, is not enough to sever the connection established by the Section 20(a) presumption. *Bath Iron Works Corp. v. Fields*, 599 F.3d 47, 54 (1st Cir. 2010) (rebuttal of an aggravation claim must cast doubt on whether working conditions worsened the underlying disease process or increased a claimant's symptoms or pain); *Rainey*, 517 F.3d at 637. That being said, Dr. Armstrong also stated "I do not believe [Claimant] suffered a hearing loss while working for [Employer]" because he never fired a weapon or directly witnessed combat or

an explosion in the course of that employment, as opposed to his employment with Triple Canopy where he trained with assault rifles. EX 10 at 2-4.

The ALJ's conclusion that Dr. Armstrong's report was sufficient to rebut the Section 20(a) presumption is not rational or supported by substantial evidence and must be vacated. *Preston*, 380 F.3d at 605. On remand, the ALJ must reconsider whether Employer presented substantial evidence rebutting the presumption that Claimant's hearing loss is related to his work. If the ALJ finds Dr. Armstrong's opinion is insufficient to rebut the presumption, Claimant's hearing loss is work-related as a matter of law. *Obadiaru v. ITT Corp.*, 45 BRBS 17 (2011); *Clophus v. Amoco Prod. Co.*, 21 BRBS 261 (1988). The ALJ must then address any remaining issues regarding the nature and extent of the injury and the amount of benefits due to Claimant, if any. If the ALJ finds Dr. Armstrong's opinion is sufficient to rebut the presumption, then he must fully explain his rationale, and he also must reconsider the evidence as a whole regarding whether Claimant's work with Employer caused, aggravated, or contributed to his current hearing condition, fully explaining his reasons for his determination.²²

Accordingly, we vacate the ALJ's denial of Claimant's hearing loss claim and remand the case for reconsideration of the issues consistent with this decision. In all other respects, we affirm the ALJ's Decision and Order Denying Benefits.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

²² If a claimant sustains an aggravation of the original injury, the employer at the time of the aggravation is liable for the entire disability resulting from it. *See Found. Constructors, Inc. v. Director, OWCP*, 950 F.2d 621 (9th Cir. 1991); *Kooley v. Marine Indus. Nw.*, 22 BRBS 142 (1989); *Abbott v. Dillingham Marine & Mfg. Co.*, 14 BRBS 453 (1981), *aff'd mem. sub nom. Willamette Iron & Steel Co. v. Director, OWCP*, 698 F.2d 1235 (9th Cir. 1982). This result follows from the aggravation rule, *see Indep. Stevedore*

Co. v. O'Leary, 357 F.2d 812 (9th Cir. 1966), under which a claimant is compensated for the totality of his disability. See *Found. Constructors*, 950 F.2d at 624; *Abbott*, 14 BRBS at 453.