U.S. Department of Labor

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

BRB No. 24-0253

REGINA REEP	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	**NOT-PUBLISHED**
VIRGINIA INTERNATIONAL TERMINALS, LLC	)	
	)	
and	)	DATE ISSUED: 01/30/2026
	)	
SIGNAL MUTUAL INDEMNITY ASSOCIATION, LIMTED	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Monica Markley, Administrative Law Judge, United States Department of Labor.

Gregory E. Camden (Kalfus & Nachman, P.C.), Norfolk, Virginia, 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 Administrative Law Judge (ALJ) Monica Markley's Decision and Order Denying Benefits (2021-LHC-00724) rendered on a claim filed pursuant to the

Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §§901-950 (Act). We must affirm the ALJ's Decision and Order if it is 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, 361-62 (1965).

Claimant allegedly sustained injuries to her left knee, back, right shoulder, and neck while working for Employer as a hustler driver on November 25, 2017. She stated she hit a dip in the road which caused her and the truck to bounce up in the air and back down. Hearing Tr. at 23. After about thirty minutes, she started feeling pain in her back and knees and left work early. *Id.* at 23-24. A few hours later, she noticed she could not move her right shoulder and had pain in her shoulder and neck. *Id.* at 24-25.

The parties stipulated Employer paid temporary total disability benefits from November 29, 2017, through November 12, 2020, and permanent partial disability benefits from November 13, 2020, through October 28, 2021, as well as medical benefits. JX 1; CX 3; EX 46. Claimant contended she has a continuing disability due to the alleged work injuries. 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 her current left knee, back, right shoulder, and neck conditions are work-related, and she denied any further benefits. D&O at 33.

On appeal, Claimant asserts the ALJ erred in finding she failed to establish a current, work-related right shoulder disability.[2] Employer responds in support of the ALJ's findings.

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[1] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because Claimant sustained her injuries in Virginia. 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 (4th Cir. 2002), *cert. denied*, 537 U.S. 1188 (2003); 20 C.F.R. §702.201(a).

[2] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant invoked the Section 20(a) presumption and Employer rebutted it for all alleged injuries. *See Scalio v. Ceres Marine Terminals, Inc.*, 41 BRBS 57, 58 (2007); D&O at 33-35. We also affirm, as unchallenged beyond a single sentence in the opening and closing paragraphs of Claimant's brief, the ALJ's finding that Claimant failed to establish a continuing work-related neck condition. *See Scalio*, 41 BRBS at 58; D&O at 35-47. Additionally, Claimant's general contention that the ALJ may have ignored evidence establishing she has current work-related low back and left knee conditions is merely a request to reweigh the evidence, which we are not empowered to do. *See Newport News Shipbuilding & Dry*

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. *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 262 (4th Cir. 1997); *Santoro v. Maher Terminals, Inc.*, 30 BRBS 171, 173-74 (1996); *see also Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 281 (1994). The ALJ is entitled to evaluate the credibility of all witnesses, weigh the medical evidence, and draw her own inferences and conclusions from the record. *See*, *e.g.*, *Newport News Shipbuilding & Dry Dock Co. v. Cherry*, 326 F.3d 449, 452 (4th Cir. 2003); *Pittman Mech. Contractors, Inc. v. Director, OWCP* [*Simonds*], 35 F.3d 122, 127 (4th Cir. 1994). 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, e.g., Newport News Shipbuilding & Dry Dock Co. v. Winn*, 326 F.3d 427, 430 (4th Cir. 2003); *Newport News Shipbuilding & Dry Dock Co. v. Director, OWCP* [*Brickhouse*], 315 F.3d 286, 294 (4th Cir. 2002).

In determining whether Claimant established a continuing work-related right shoulder condition beyond the date of Employer's last payment of benefits, the ALJ considered the medical opinions of Drs. Arthur Wardell, Sheldon Cohn, and Chad Manke.[3] D&O at 43-47. Dr. Wardell diagnosed Claimant with a rotator cuff tear related to her work accident. Claimant's Exhibit (CX) 13 at 15. In contrast, Drs. Cohn and Manke opined Claimant's rotator cuff tear preexisted her work injury. Employer's Exhibits (EXs) 12 at 5, 29 at 2, 53 at 11-12, 55 at 1-2.

Dr. Wardell explained that the March 19, 2018 magnetic resonance imaging (MRI) scan showed a portion of the rotator cuff had a "through-and-through" tear and that a significant thickness of the rotator cuff had been torn but opined he could not tell whether the injury was traumatic or preexisting. EX 13 at 5-6. In addition, he explained that he performed surgery in June 2018 to reattach Claimant's entire rotator cuff and saw there was less than 20% of the thickness. *Id.* at 8. Despite stating he could not tell whether this injury was acute or preexisting, he concluded Claimant's work accident caused a deep

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Dock Co. v. Director, OWCP [*Brickhouse*], 315 F.3d 286, 294 (4th Cir. 2002); Claimant's Br. at 12-14. Therefore, we affirm those findings as supported by substantial evidence. *See Marine Repair Servs., Inc. v. Fifer*, 717 F.3d 327, 334 (4th Cir. 2013); D&O at 38-47; EXs 12, 15, 17, 25, 26, 49, 53.

[3] Dr. Wardell is a board-certified orthopedist, Dr. Cohn is a board-certified orthopedic surgeon specializing in shoulder and knee conditions, and Dr. Manke is a board-certified orthopedic surgeon specializing in upper extremities, including shoulder arthroplasty and shoulder reconstruction. CXs 11 at 23-27, 13 at 26-27; EXs 53 at 6-9, 58.

partial thickness tear of her rotator cuff that required surgery and was complicated afterwards by a "frozen shoulder." *Id.* at 15-16. He stated Claimant had residual sequela of her rotator cuff tear and of her surgery in the form of shoulder pain, stiffness, and weakness. *Id.* Further, he stated there is a "possibility" that Claimant "had some abnormality" with her rotator cuff her work accident aggravated. *Id.* at 15-16, 32.

In contrast, Dr. Cohn, who initially saw Claimant in April 2018, noted Claimant struggled to elevate her right arm and complained of pain with any motion but opined the mechanism of her work injury would not have caused a significant partial thickness tear of her rotator cuff. EX 12 at 4; EX 53 at 13. Further, he noted the incident report did not give a history of shoulder pain and Claimant only began complaining about shoulder pain later, which is more consistent with an exacerbation of a preexisting rotator cuff problem. EX 12 at 5. But he could not state with medical certainty that Claimant had a preexisting shoulder condition because her pain was "much out of proportion to her anatomic findings," causing him to believe she was malingering. *Id.* at 5-7; EXs 53 at 13-14, 54 at 1. He explained that if Claimant had a significant rotator cuff injury at the time of her work accident, she would have been unable to elevate her arm and would have complained about pain and weakness in her shoulder. EXs 12 at 5-7, 53 at 12. In addition, he opined Claimant may have developed "some subacromial bursitis and exacerbation of her cuff" due to the surgery and stated he was concerned that operating on her shoulder would lead to complications, such as a frozen shoulder. EXs 12 at 5, 53 at 10.

Similarly, Dr. Manke, who initially saw Claimant in April 2019, agreed with Dr. Cohn's opinion that Claimant's rotator cuff tear was not a result of her hitting a bump while driving a hustler because the mechanism of injury does not fit with the diagnosis. EXs 29 at 2, 55 at 2. He stated Claimant's work accident did not cause her rotator cuff injury because hitting a bump while driving "will not tear" the rotator cuff. CX 29 at 39. Rather, he explained acute rotator cuff tears occur from falling off a ladder, being in a motor vehicle crash, or the arm being pulled with resistance. *Id.* at 29. He also agreed with Dr. Cohn's opinion that Claimant's frozen shoulder is a result of surgical intervention on her rotator cuff and that she is malingering. EX 29 at 2. During his deposition, Dr. Manke explained frozen shoulder is common after shoulder surgery because scarring and loss of range of motion occurs. CX 11 at 29. Following his second visit with Claimant in August 2021, Dr. Manke opined Claimant's ongoing shoulder pain was of unknown origin and was not related to her rotator cuff surgery, the surgery was not related to the work injury, and whatever she may have suffered from the incident resolved within three months of it. EX 55 at 1-2.

The ALJ acknowledged Drs. Cohn and Manke are board-certified orthopedic surgeons who specialize in treating shoulder conditions. D&O at 45-46; CX 11 at 23-27; EX 53 at 6-9. She also noted they both agreed the mechanism of the injury would be

unlikely to have caused a rotator cuff tear and they both concluded Claimant's complaints of pain were out of proportion to the objective findings. Consequently, she gave their opinions "the most weight." D&O at 45-46. In contrast, she observed Dr. Wardell is a "general orthopedist" who spends about 80% of his time treating knee and spine conditions, but only 20% of his time treating shoulder conditions, and has no formal surgical training. D&O at 46; CX 13 at 26-27. In addition, despite not knowing whether Claimant's rotator cuff tear was due to the work accident or was preexisting, he nevertheless still concluded Claimant's work accident caused her shoulder injury. *Id.* at 6, 8, 15. Thus, the ALJ found his opinion equivocal. D&O at 46-47.

Consequently, because Dr. Wardell spends less of his practice on, and has less experience with, shoulder impairments, and his opinion is equivocal and less persuasive, the ALJ permissibly gave it "little weight."[4] *See Cherry*, 326 F.3d at 452; *Simonds*, 35 F.3d at 127; D&O at 46-47; Claimant's Br. at 11-12. Having found the opinions of Drs. Cohn and Manke entitled to the "greatest weight," and finding Claimant's sole medical expert unpersuasive, the ALJ rationally concluded Claimant failed to establish by a preponderance of the evidence that the work accident caused her rotator cuff tear or her subsequent shoulder problems.[5] *See Moore*, 126 F.3d at 262; *Santoro*, 30 BRBS at 173-75; D&O at 46-47.

[4] Because the ALJ provided valid reasons for rejecting Dr. Wardell's opinion on the issue of causation, we need not address Claimant's remaining arguments regarding the ALJ's weighing of his opinion. *See Haw. Stevedores, Inc. v. Ogawa*, 608 F.3d 642, 650 (9th Cir. 2010) (as the ALJ rejected a doctor's opinion on other grounds supported by substantial evidence, any alleged error in discrediting that opinion is harmless); *Am. Stevedoring Ltd. v. Marinelli*, 248 F.3d 54, 65-66 (2d Cir. 2001) (same); *Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983) (same); Claimant's Br. at 6-14.

[5] Contrary to Claimant's contention that Employer failed to explain how "Claimant's prior injuries were material" to the work accident, Claimant's Br. at 8, after the presumption falls from the case, the ALJ must consider and weigh the relevant evidence in the record to determine whether the *claimant* has established the alleged injury is work-related. *See Universal Maritime Corp. v. Moore*, 126 F.3d 256, 262 (4th Cir. 1997). At this stage of the analysis, the ALJ addresses and weighs the evidence of record, but the quality or persuasiveness of Employer's evidence is not necessarily dispositive because Claimant bears the burden of persuasion. In this case, Claimant did not satisfy her burden.

Claimant's arguments generally amount to a request to reweigh the evidence which we are not empowered to do.[6] *See Winn*, 326 F.3d at 430; *Brickhouse*, 315 F.3d at 294; Claimant's Br. at 6-14. Because the ALJ's findings are rational and supported by substantial evidence, we affirm her determination that Claimant failed to establish her right shoulder condition is a compensable work-related injury and, therefore, the denial of any

[6] Claimant asserts the ALJ erred in finding she was magnifying symptoms because she "overlook[ed]" Claimant's psychological factors. Claimant's Br. at 6-7. We decline to address this argument, as well as her arguments regarding the ALJ's discrediting of her testimony, as she has not explained how the alleged "error[s] to which [s]he points could have made any difference." *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009); Claimant's Br. at 6-9. Claimant has not alleged a psychological injury claim. Moreover, at the weighing stage of the causation analysis, finding a claimant credible does not automatically provide sufficient weight to prove causation by a preponderance of evidence as it is up to the ALJ to weigh all the evidence, accepting or rejecting all or any part of any testimony. *Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *Perini Corp. v. Heyde*, 306 F. Supp. 1321 (D.R.I. 1969); *see also Pittman Mech. Contractors, Inc. v. Director, OWCP* [*Simonds*], 35 F.3d 122, 127 (4th Cir. 1994). The ALJ also must independently analyze and discuss the medical evidence to satisfy the Administrative Procedure Act's requirement for a reasoned analysis. 5 U.S.C. §557(c)(3)(A); *Kkunsa v. Constellis Grp./Triple Canopy, Inc.*, 59 BRBS 1, 3-4 (2025).

additional benefits. *Brickhouse*, 315 F.3d at 294; *Marine Repair Servs., Inc. v. Fifer*, 717 F.3d 327, 334 (4th Cir. 2013); *Wendler v. Am. Nat'l Red Cross,* 23 BRBS 408, 414 (1990); D&O at 47.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

GLENN E. ULMER
Administrative Appeals Judge