



BRB No. 24-0333

JOHN BEINOBWENGYE)

Claimant-Petitioner)

v.)

SABRE INTERNATIONAL SECURITY)

and)

CONTINENTAL INSURANCE COMPANY)

Employer/Carrier-)
Respondents)

NOT-PUBLISHED

DATE ISSUED: 01/16/2026

DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Jerry R. DeMaio,
Administrative Law Judge, United States Department of Labor

John Beinobwengye, Kashenshero, Ruhinda, Mitooma, Uganda.¹

¹ Claimant was represented by counsel throughout the proceedings before the Office of Administrative Law Judges. Christopher A. O'Brien, Esq., of Attorneys Jo Ann Hoffman & Associates, P.A., filed Claimant's notice of appeal to the Benefits Review Board on June 3, 2024. On September 5, 2024, Christie H. Gibbons, Esq., of Attorneys Jo Ann Hoffman & Associates, P.A., notified the Board that she represented Claimant, and she filed a Motion to Withdraw as Petitioner's Counsel, Notice of Lien, and Unopposed Motion to Stay Proceedings for Petitioner to Find New Counsel. On September 26, 2024, the Board indicated it would review the appeal under the general standard of review because Claimant was no longer represented by an attorney.

Christian J. Berchild and Javier A. Valencia (Thomas Quinn, LLP), San Francisco, California, for Employer and its Carrier.

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

PER CURIAM:

Claimant, without representation, appeals Administrative Law Judge (ALJ) Jerry R. DeMaio's Decision and Order Denying Benefits (2021-LDA-04373) 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). In an appeal a claimant files without representation, the Benefits Review Board reviews the ALJ's decision to determine if the findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with applicable law.² 33 U.S.C. §921(b)(3); *O'Keefe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

Claimant allegedly sustained psychological injuries due to his work for Employer as a security guard in Iraq from November 14, 2007, to September 23, 2008. Employer's Exhibit (EX) 7 at 23.³ He testified he heard explosions, alarms for incoming rockets, and mortar attacks almost every day and could "never forget" witnessing people dying and losing limbs. *Id.* at 53, 64-65, 85-87. When asked about traumatic events, he recounted seeing injured and dead people offloaded from ambulances while he guarded the sickbay. *Id.* at 64-65, 85-87. In July or August of 2008, he began experiencing headaches and then developed additional symptoms, including nightmares, flashbacks, sleeplessness, isolation, agitation, and suicidal ideation, and he reported the headaches to his supervisor. *Id.* at 32-35, 86-88. He left his work for Employer on September 23, 2008, when his contract ended, and has not been employed since returning home to Uganda from Iraq. *Id.* at 27, 76; EXs 4 at 2, 14 at 5-6.

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., L.L.C. v. Abdelmegeed*, 913 F.3d 921 (9th Cir. 2019); *McDonald v. Aecom Tech. Corp.*, 45 BRBS 45 (2011).

³ Each page of EX 7 consists of four pages of Claimant's deposition transcript. Our decision refers to the deposition's pagination, whereas the ALJ referred to the exhibit's pagination. *See* D&O at 3-4.

On September 27, 2019, Claimant began treating with Psychiatric Clinical Officer Musuto Bwonya Alex (PCO Alex) at the China-Uganda Friendship Hospital.⁴ EX 7 at 44; Claimant’s Exhibits (CX) 1 at 1, 3 at 1. PCO Alex noted Claimant reported symptoms that began while he was working in Iraq, including nightmares, flashbacks, sleeplessness, sweating, headaches, constant fear and anxiety, isolation, outbursts of anger, and sadness. CX 1 at 13. He diagnosed Claimant with post-traumatic stress disorder (PTSD) and depression based on the Beck Depression Inventory (BDI), the Self-Reporting Questionnaire (SRQ), the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), and his clinical interview.⁵ *Id.* at 15. Claimant reported that since beginning treatment with PCO Alex, his nightmares have decreased to approximately four times per week, his flashbacks have decreased to once per week, and his suicidal ideations have decreased in frequency. EX 7 at 63-66, 83.

On September 21, 2020, Claimant filed his claim seeking benefits for work-related psychological injuries. Joint Exhibit (JX) 1. Employer and its Carrier (Employer) controverted the claim on January 27, 2021. EX 8. On June 14, 2021, the case was transferred to the Office of Administrative Law Judges (OALJ), and on March 10, 2022, the ALJ issued a Notice of Assignment indicating there would be no formal hearing unless requested by a party. Neither party requested a hearing.

At Employer’s request, Dr. Thomas Nguyen, a clinical neuropsychologist, conducted a virtual evaluation of Claimant on May 20, 2022, with assistance from an interpreter. EXs 1, 4 at 1, 13. Dr. Nguyen reviewed Claimant’s treatment records, symptoms, and employment history, conducted a clinical interview, and administered psychological tests.⁶ EX 4 at 1-9. He opined symptom and performance validity measures

⁴ Upon returning home, Claimant first sought care for his symptoms from a traditional healer. EX 7 at 36, 73.

⁵ The ALJ reviewed the “Medical Questionnaire” and handwritten notes from the China-Uganda Friendship Hospital that Claimant submitted with PCO Alex’s report and observed they include “no provider names, unverifiable signatures, and unverifiable dates of treatment.” D&O at 4. The China-Uganda Friendship Hospital records listed Claimant’s symptoms, medications, and diagnoses of PTSD and depression. CX 1 at 1-12, 16-22.

⁶ Dr. Nguyen administered the following tests: Beck Anxiety Inventory (BAI); BDI-II; Clinician-Administered PTSD Scale-5 (CAPS-5); Dot Counting Test (DCT); Minnesota Multiphasic Personality Inventory-2-Restructured Form (MMPI-2-RF); Neurobehavioral Symptom Inventory (NSI); Patient Competency Rating Scale (PCRS); PTSD Checklist for DSM-5 (PCL-5); Structured Inventory of Malingered Symptomatology (SIMS); Test of

“indicated evidence of symptom overreporting/magnification such as would be suggestive of an invalid psychiatric presentation.” *Id.* at 9. Further, he noted “despite [a] tendency to overreport” symptoms, Claimant did not meet the criteria for PTSD on the CAPS-5 testing. *Id.* at 9-10. Based on inconsistencies between Claimant’s self-reporting, the test results, and his interview, Dr. Nguyen concluded his “evaluation does not support the presence of a psychological/emotional condition” caused by Claimant’s work for Employer. *Id.* at 10, 13. After reviewing Claimant’s deposition testimony, Dr. Nguyen wrote an addendum to his report identifying “notable discrepancies” between Claimant’s testimony and the interview he conducted, including the frequency of Claimant’s nightmares and flashbacks and whether sweating was a “prominent symptom” when he is reminded of traumatic events. EX 5 at 1-2. Dr. Nguyen concluded these inconsistencies “further highlight[ed]” that Claimant does not have PTSD or any other psychological condition. *Id.* at 2.

The ALJ found Claimant invoked the Section 20(a) presumption, 33 U.S.C. §920(a), linking his work to his alleged psychological injury, and Employer rebutted it. D&O at 6-7. In weighing the evidence as a whole, the ALJ determined Claimant failed to establish a work-related psychological injury.⁷ *Id.* at 7-9. Consequently, he denied benefits.⁸ *Id.* at 9.

Memory and Malingering (TOMM); and World Health Organization Disability Assessment Schedule 2.0 (WHODAS 2.0). EX 4 at 6.

⁷ After the parties submitted closing briefs, the ALJ issued an Order to Show Cause (OTSC) requiring Claimant to address the discovery of “virtually identical” medical reports purportedly authored by PCO Alex in multiple cases pending before the OALJ’s Boston District Office. Subsequently, the ALJ issued a Supplemental OTSC, and the parties filed multiple responses to both orders. On June 28, 2023, the ALJ issued an Order Vacating Prior OTSC and Setting Deadline for Filing Objections, in which he took notice of another ALJ’s findings in a different proceeding in the Boston District Office, and on July 5, 2023, Claimant objected to this Order. In his Decision and Order, the ALJ noted Claimant’s objection, considered the reliability of PCO Alex’s report independent of the OTSC proceedings in weighing the evidence as a whole, and did not otherwise address the effects of the OTSC proceedings in rendering his decision. D&O at 4 n.1, 8-9.

⁸ Having found no compensable injury, the ALJ did not address the timeliness of the notice of injury, timeliness of the claim, the nature and extent of Claimant’s alleged disability, or his average weekly wage. D&O at 6.

On appeal, Claimant generally challenges the denial of benefits.⁹ Employer responds, urging affirmance.

Section 20(a) Rebuttal

When, as in this case, the Section 20(a) presumption is invoked, *Rose v. Vectrus Sys. Corp.*, 56 BRBS 27 (2022) (Decision on Recon. en banc), *appeal dismissed* (M.D. Fla. Aug. 24, 2023); *see also Rainey v. Director, OWCP*, 517 F.3d 632, 634 (2d Cir. 2008), the burden shifts to the employer to produce substantial evidence that the claimant's condition was not caused or aggravated by his employment. *Rainey*, 517 F.3d at 634; *Am. Stevedoring, Ltd. v. Marinelli*, 248 F.3d 54, 65 (2d Cir. 2001); *O'Kelley v. Dep't of the Army/NAF*, 34 BRBS 39, 41 (2000). The inquiry at rebuttal is whether the employer submitted "such relevant evidence as a reasonable mind might accept as adequate" to support a finding that the claimant's injury is not work-related. *Rainey*, 517 F.3d at 637. The employer's burden on rebuttal is one of production, not persuasion, and is not dependent on credibility. *Id.*; *Rose*, 56 BRBS at 30; *Victorian v. Int'l-Matex Tank Terminals*, 52 BRBS 35, 41 (2018), *aff'd sub nom. Int'l-Matex Tank Terminals v. Director, OWCP*, 943 F.3d 278 (5th Cir. 2019); *Suarez v. Serv. Emps. Int'l, Inc.*, 50 BRBS 33, 36 n.4 (2016); *Cline v. Huntington Ingalls, Inc.*, 48 BRBS 5, 7 (2013). A physician's unequivocal opinion that no relationship exists between the alleged injury and a claimant's employment is sufficient to rebut the presumption. *See Suarez*, 50 BRBS at 36; *Cline*, 48 BRBS at 7; *O'Kelley*, 34 BRBS at 41.

The ALJ found Dr. Nguyen's opinion that Claimant does not have a psychological condition related to his work for Employer sufficient to rebut the Section 20(a) presumption. D&O at 7; *see EX 4* at 9, 13. We agree. Dr. Nguyen reported "inconsistencies" between Claimant's self-reported symptoms and his responses during the interview and objective testing and testing results that "strongly suggest[ed] overreporting" of symptoms. EX 4 at 9-10, 13. Based on this evidence, Dr. Nguyen concluded Claimant does not have a work-related psychological condition "to a reasonable degree of medical certainty." *Id.* at 13. Dr. Nguyen's opinion constitutes substantial evidence to rebut the Section 20(a) presumption. *See Rainey*, 517 F.3d at 637; *Suarez*, 50 BRBS at 36; *Cline*, 48 BRBS at 6-7; *O'Kelley*, 34 BRBS at 41-42. Consequently, we affirm the ALJ's determination that Employer rebutted the Section 20(a) presumption. D&O at 7.

⁹ We affirm, as unchallenged on appeal, the ALJ's finding that Claimant invoked the Section 20(a) presumption. *See Scilio v. Ceres Marine Terminals, Inc.*, 41 BRBS 57, 58 (2007); D&O at 6-7.

Weighing the Evidence as a Whole

If the employer rebuts the Section 20(a) presumption, it drops out of the analysis, and the issue of causation must be resolved on the record 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 (1996); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267 (1994). When weighing the evidence, the ALJ is entitled to evaluate the credibility of the witnesses, *Pietrunti v. Director, OWCP*, 119 F.3d 1035, 1042 (2d Cir. 1997); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403, 405 (2d Cir. 1961), accept parts of a witness's testimony while rejecting others, *Banks v. Chi. 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 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).

First, the ALJ determined Claimant is not credible based on Dr. Nguyen's validity testing and discrepancies between Claimant's testimony and his reports to Dr. Nguyen. D&O at 8. The ALJ then found PCO Alex's opinion is "not persuasive" and "lacking," the related treatment records from the China-Uganda Friendship Hospital are not reasoned or documented, and neither are entitled to any weight. *Id.* at 4-5, 8-9. Conversely, he found Dr. Nguyen's opinion to be reasoned, documented, and persuasive. *Id.* at 7, 9. Weighing the evidence as a whole, the ALJ concluded Claimant failed to establish a work-related psychological injury. *Id.* at 9.

In considering Claimant's credibility, the ALJ identified "inconsistencies" between Claimant's reporting during Dr. Nguyen's evaluation and in his subsequent deposition. D&O at 8. The ALJ noted Claimant told Dr. Nguyen that sweating was a "prominent symptom;" however, Claimant did not mention sweating as a symptom during his deposition but rather stated he only sweats due to heat. *Id.* at 6, 8; *compare* EXs 4 at 2, 8, 5 at 2, *with* EX 7 at 68. As another example, the ALJ noted Claimant's accounting of the frequency of his nightmares and flashbacks varied between his evaluation with Dr. Nguyen and his deposition. D&O at 6, 8; *compare* EX 5 at 2 (during Dr. Nguyen's evaluation, Claimant reported having two nightmares in the past month and one flashback per week), *with* EX 7 at 63-64, 66 (During his subsequent deposition, Claimant reported having four nightmares per week and three flashbacks per week but explained the flashbacks have decreased to once per week since treating with PCO Alex.). The ALJ found these "inconsistencies," in conjunction with Dr. Nguyen's "reasonable analysis" and objective testing which indicated "overreporting" of symptoms, demonstrated Claimant is not

credible. D&O at 8. As the ALJ's conclusion that Claimant is not a credible witness is rational and supported by substantial evidence of record, we affirm it. *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).

The ALJ next considered PCO Alex's report and the related handwritten treatment records from the China-Uganda Friendship Hospital. D&O at 4-5, 8-9. In his report, PCO Alex noted Claimant's self-reported symptoms began while he was working in Iraq and diagnosed him with PTSD and depression. CX 1 at 13-15. The ALJ found PCO Alex's "limited" report is not persuasive because he did not explain his diagnoses of PTSD and depression and he failed to provide any details about Claimant's traumatic experiences while working in Iraq. D&O at 4-5, 8-9; *see* CX 1 at 13-15. In addition, the ALJ could not verify any authors or dates in the handwritten treatment records because they are largely illegible. D&O at 4, 8-9; *see* CX 1 at 1-12, 16-22. Further, "[t]o the extent they may be intelligible," he found the records "appear[ed]" to primarily be a list of symptoms and prescriptions and found that does not make them well-reasoned, supported, or documented. D&O at 8-9; *see* CX 1 at 1-12, 16-22. The ALJ concluded PCO Alex's report and the related treatment records are entitled to "no weight." D&O at 9. As the ALJ explained how he weighed the evidence and substantial evidence supports his conclusions, we affirm them. *Pietrunti*, 119 F.3d at 1042; *Gasparic*, 7 F.3d at 323; *Hughes*, 289 F.2d at 405; *Pisaturo*, 49 BRBS at 81.

The ALJ found Dr. Nguyen's opinion that Claimant does not have a work-related psychological condition to be reasoned and documented based on his evaluation, objective testing results, review of the record, and detailed accounting of Claimant's history. D&O at 7-9. The ALJ relied on Dr. Nguyen's observation of inconsistencies between Claimant's responses during the psychological evaluation and his deposition testimony, including the frequency of his nightmares and flashbacks and whether sweating was a "prominent symptom." *Id.* at 8-9; *see* EX 4s at 9-10, 13, 5 at 2. Further, the ALJ accurately noted Dr. Nguyen concluded that Claimant's testing results indicated "overreporting[]" such as would be suggestive of an invalid psychiatric presentation" and that Claimant did not meet the criteria for PTSD on the CAPS-5 testing. D&O at 5, 8; *see* EX 4 at 9-10, 13.

Comparing the two providers' reports, the ALJ determined Dr. Nguyen's "reasonable analysis" and "thorough[]" opinion is "more persuasive" than PCO Alex's "limited and lacking" opinion. D&O at 8-9. Because the ALJ's weighing of the evidence is rational and supported by substantial evidence, *Pietrunti*, 119 F.3d at 1042; *Gasparic*, 7 F.3d at 323; *Hughes*, 289 F.2d at 405; *Pisaturo*, 49 BRBS at 81, we affirm his finding that Claimant has not established a work-related psychological injury by a preponderance of the evidence and the denial of benefits. *Sistrunk v. Ingalls Shipbuilding, Inc.*, 35 BRBS 171, 174 (2001); *Coffey v. Marine Terminals Corp.*, 34 BRBS 85, 87 (2000); D&O at 9.

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

MELISSA LIN JONES
Administrative Appeals Judge