U.S. Department of Labor

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

BRB No. 23-0487

MARJAN APOSTOLOVSKI Claimant-Petitioner v. DYNCORP INTERNATIONAL, INCORPORATED and INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA Employer/Carrier-Respondents	)	**NOT-PUBLISHED** DATE ISSUED: 07/09/2025 DECISION and ORDER

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

Lara D. Merrigan (Merrigan Legal), Campbell, California, and Jon B. Robinson (Strongpoint Law Firm, LLC), Mandeville, Louisiana, for Claimant.

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

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

PER CURIAM:

Claimant appeals District Chief Administrative Law Judge (ALJ) Patrick M. Rosenow's Decision and Order (2020-LDA-02617) 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 findings of fact and conclusions of law if they are rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant alleges he sustained a work-related psychological injury as a result of his work for Employer in Afghanistan from June 2010 to June 2012, during which time he fueled helicopters and vehicles and worked on signals. Claimant's Exhibit (CX) 1 at 1; Employer's Exhibits (EXs) 5, 12 at 6. On multiple occasions, he had to seek shelter due to grenade attacks and explosions. EX 12 at 9-10, 12. For example, Claimant testified he had to take cover in a bunker when there was a grenade attack on a helicopter attempting to land, and he described waiting at a bus stop and hearing the bus be "blown up to pieces." *Id.* at 13, 16-18.

Claimant reported having lost his appetite due to stress from his job, and he testified he lost weight over the course of his employment, commencing at 120 kilograms and ending at 90 kilograms. EX 12 at 14. Further, he stated he had trouble sleeping due to the attacks. *Id.* at 14. When asked about the symptoms he had while in Afghanistan, Claimant indicated he experienced an elevated heart rate, headaches, trembling, and muscle cramps. *Id.* at 31-32. He later relayed to one of his doctors that he suffered additional symptoms such as anger, nervousness, and noises in his ear. *Id.* at 37-39. After departing Afghanistan in June 2012, Claimant remained unemployed until June 2014 when he obtained work.[2] CX 10 at 3.

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

[2] Claimant unsuccessfully applied for jobs in different occupations in 2013. CX 10 at 4-5. He commenced work as a forklift operator for "Ds Foods Doo" in June 2014, but his employment was terminated in January 2017 due to the company's financial struggles. *Id.* at 3. From March 2017 to the "present," he worked for "Termo Trans DOOEL" as a forklift operator. *Id.* at 3-4.

Purportedly at the recommendation of his family physician, Claimant treated with three doctors between November 2018 and March 2021. From November 21, 2018, to October 8, 2020, Claimant met with Dr. Lidija Manasievska, a psychologist and psychotherapist who diagnosed Claimant with Post-Traumatic Stress Disorder (PTSD) due to his work in a warzone based on his reported symptoms and experiences. CXs 2, 8; EX 6. She opined Claimant has a diminished capacity for employment in his home of Macedonia, should not return to his work in Afghanistan, and should continue therapy. CX 2 at 7, 16, 19, 22. From February 10, 2020, until August 7, 2020, Claimant treated with psychiatrist Dr. Gjorgje Hadzi-Angjelkovski, who diagnosed him with PTSD and prescribed several medications based on his reported symptoms, including but not limited to depression, anxiety, trouble sleeping, hysteria, body cramps, and sweating. CXs 3, 8; EX 7. From September 30, 2020, to March 25, 2021, psychiatrist Dr. Tanja Risteska treated Claimant, diagnosed him with PTSD based on symptoms arising from his employment in a war zone, recommended further therapy, and refilled his previously prescribed medications. CXs 4, 9; EX 8.

At Employer's request, clinical psychologist and neuropsychologist Dr. Melissa Ogden interviewed Claimant on July 14, 2021, reviewed his treatment records, and administered various psychological tests. EX 10. Dr. Ogden opined Claimant does not have, and has not had, any psychological condition related to his work with Employer. *Id*. at 7-14; *see also* CX 17; Hearing Transcript (TR) at 85-118.

Dr. Brett Valette, Claimant's expert psychologist, reviewed Dr. Ogden's report and Claimant's treatment notes. He diagnosed Claimant with other specified trauma and stressor-related disorder due to his time working in Afghanistan and opined Claimant should not return to his previous work with Employer. CX 5; TR at 21-77.

Claimant filed a claim under the Act on April 7, 2020, seeking benefits for his alleged psychological condition. EX 1 at 3. Employer, who first received notice of the alleged injury through an Office of Workers' Compensation Programs (OWCP) letter dated April 15, 2020, controverted the claim on May 19, 2020. EXs 1 at 1, 3. The case was transferred to the Office of Administrative Law Judges (OALJ) for a hearing, which the ALJ held on December 13, 2021.

On August 29, 2023, the ALJ issued his Decision and Order, finding Claimant did not establish a psychological condition, including but not limited to PTSD, caused by his work for Employer. The ALJ first found Claimant established a prima facie case of compensable injury and invoked the Section 20(a) presumption, 33 U.S.C. §920(a), based on documentation of a PTSD or stress disorder diagnosis from Dr. Valette and Claimant's treating physicians. D&O at 13. However, he also determined Employer rebutted the

presumption with Dr. Ogden's medical opinion that Claimant does not have PTSD or any other work-related psychological condition. *Id*. at 14.

Considering the evidence as a whole, the ALJ found Claimant was exposed to war conditions during his work with Employer that resulted in "transient fear and visceral reactions." D&O at 16. The ALJ determined Claimant was not a credible witness, however, as he found Claimant's testimony contained conflicting reports and was "only minimally consistent" with symptoms he reported to his doctors and statements he made at the hearing. *Id.* at 14-15. The ALJ assigned Claimant's treatment records from Drs. Hadzi-Angjelkovski, Manasievska, and Risteska limited weight, finding they are neither well-documented nor well-reasoned. *Id.* at 15. In addition, he assigned less weight to Dr. Valette's opinion than to Dr. Ogden's opinion because he was ultimately persuaded by Dr. Ogden's "full and rational explanation" along with her diagnostic testing. *Id.* at 15-16. As the ALJ determined the weight of the evidence demonstrates Claimant's failure to carry his burden of proof, he concluded Claimant suffered only "from what Dr. Ogden identified as minimal symptomology, not rising to the level of a psychological injury" and that the symptomology "was likely due to his [current] shift work and not a consequence of his employment." *Id.* at 16-17.

Claimant appeals the ALJ's denial of benefits. Specifically, he argues the ALJ erred in crediting Dr. Ogden's opinion on rebuttal and when weighing the evidence. He further contends the ALJ mischaracterized the opinions of his treating physicians and irrationally doubted Claimant's credibility. Employer responds, urging the Board to affirm. Claimant filed a reply brief, reiterating his arguments.

Causation

When, as in this case, the Section 20(a) presumption is invoked,[3] *Rose v. Vectrus Systems Corp.*, 56 BRBS 27 (2022) (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 is "specific and comprehensive enough" to sever the connection between the claimant's condition and his employment. *American Stevedoring Ltd. v. Marinelli*, 248 F.3d 54, 65 (2d Cir. 2001); *Port Cooper/T. Smith Stevedoring Co. Inc. v. Hunter*, 227 F.3d 285, 288 (5th Cir. 2000); *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

[3] As the parties do not challenge the ALJ's findings on invocation of the Section 20(a) presumption for Claimant's alleged PTSD or other psychological condition, we affirm them. *Scalio v. Ceres Marine Terminals, Inc*., 41 BRBS 57, 58 (2007); D&O at 13.

presumption, the issue of causation must be resolved on the evidence 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; *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 262 (4th Cir. 1997); *Santoro v. Maher Terminals, Inc.*, 30 BRBS 171, 175 (1996).

Section 20(a) Rebuttal

Claimant first contends the ALJ erred in finding Dr. Ogden's opinion sufficient to rebut the Section 20(a) presumption. He maintains the doctor conflated the Act's "injury" and "disability" requirements by using the DSM-5's criteria for a disorder. In addition, he asserts Dr. Ogden admitted that some of the testing she conducted was not validated for Claimant's demographics, so she relied on unscientific evidence. Cl's Brief at 20-34; Cl.'s Reply at 7-13. Claimant further asserts Dr. Ogden's opinion that Claimant's doctors' records are invalid is mere conjecture. *Id.* For these reasons, he asserts Dr. Ogden's opinion does not constitute substantial rebuttal evidence. *Id.* We disagree.

Dr. Ogden determined Claimant's "assertion [that] he sustained a psychological injury associated with his employment for DynCorp 10 years ago is without merit from a psychological perspective for several reasons:" 1) the symptoms he reported are somewhat vague and do not meet the DSM-5 criteria for "PTSD or any other known psychiatric condition;" 2) if he actually had sustained a psychological injury, the symptoms should have started around the time of the trauma in Afghanistan and would improve (not increase) once away from the trauma; 3) Claimant works full-time in shifts, and the symptoms he mentions are likely attributable to that; 4) there are many inconsistencies in Claimant's reporting of his alleged symptoms and their timing, and he scored low on symptom-validity tests; and 5) the medical records do not contain any personal information about Claimant which would link to the doctors' lists of symptoms and diagnoses to Claimant's employment, and some of those records are inconsistent with Claimant's self-reporting.[4] EX 10 at 10-12. Based on these reasons, Dr. Ogden concluded there is no evidence indicating Claimant has PTSD, any work-related psychological condition, or any psychological condition at all. *Id.* at 13. The ALJ found Dr. Ogden's unequivocal medical opinion that Claimant does not have a psychological injury sufficient to rebut the Section 20(a) presumption. D&O at 14.

[4] Dr. Ogden determined: 1) the Morel Emotional Numbing Test (MENT) and Test for Memory Malingering (TOMM) objective testing results indicated Claimant is overreporting and exaggerating symptoms; 2) Claimant's treating physicians' opinions are invalid; and 3) Claimant did not meet any diagnostic criteria for a mental illness. EX 10 at 9-12; TR at 90-96.

An employer's burden at rebuttal is one of production, not one of persuasion. *Rainey*, 517 F.3d at 634; *see American Grain Trimmers v. Director, OWCP* [*Janich*], 181 F.3d 810, 816-817 (7th Cir. 1999) (en banc) ("the burden of persuasion rests at all times on the claimant…"). An employer need only introduce substantial evidence showing a claimant's condition was not caused by his work. *Conoco Inc. v. Director, OWCP*, 194 F.3d 684, 690 (5th Cir. 1999). Therefore, at rebuttal, the ALJ need not be persuaded by an employer's evidence; it is only necessary for the employer to proffer "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Truczinskas v. Director, OWCP*, 699 F.3d 672, 677-678 (1st Cir. 2012); *Bath Iron Works Corp. v. Fields*, 599 F.3d 47, 53 (1st Cir. 2010); *Newport News Shipbuilding & Dry Dock Co. v. Holiday*, 591 F.3d 219, 226 (4th Cir. 2009) (such evidence need not prove a litigant's theory of the case is "more likely than not" to have occurred, "it need only provide enough facts to support one rational conclusion."); *see Janich*, 181 F.3d at 818 ("vague and speculative" evidence does not meet an employer's rebuttal burden to produce "substantial evidence").

First, we reject Claimant's several arguments for refuting a psychologist's or psychiatrist's use of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM-5) to assess a claimant's psychological condition.[5] The DSM-5 sets forth the diagnostic criteria for PTSD.[6] However, a doctor is neither required to use, nor prohibited from using, the DSM-5 to diagnose PTSD or other psychological injury. *S.K. [Kamal] v. ITT Industries, Inc.*, 43 BRBS 78, 79-80 (2009), *aff'd in part and rev'd in part mem.*, No. 4:09-MC-348, 2011 U.S. Dist. LEXIS 21721 (S.D. Tex. Mar. 1,

[5] The parties, the ALJ, and the Board have previously relied on opinions using the DSM-5 testing or diagnostic criteria to support their positions or a particular outcome. *See generally Sylejmani v. Fluor ConOps, Ltd.*, 57 BRBS 25 (2023); *Rose*, 56 BRBS 27. Therefore, it would not be unreasonable for the ALJ to view credibly a doctor's opinion based on the DSM-5 criteria provided both the doctor's opinion and the ALJ's opinion are fully explained.

[6] The DSM-5 Criteria A through H for diagnosing PTSD involve exposure to a traumatic event, followed by the presence of specific symptoms in four categories: intrusion (at least one symptom required), avoidance (at least one symptom required), negative alterations in cognition and mood (at least two symptoms required), and arousal and reactivity (at least two symptoms required). These symptoms must be present for at least one month and cause significant distress or impairment in functioning. *See* American Psychiatric Association (March 2022) *Diagnostic and Statistical Manual of Mental Disorders* (5th ed., text rev.), https://doi.org/10.1176/appi.books.9780890425787; *see also* CX 15.

2011).[7] If, however, a physician bases a diagnosis on the DSM criteria, then he or she must identify and support those criteria in reaching a conclusion. *Jackson v. Ceres Marine Terminals, Inc.*, 48 BRBS 71, 77 n.8 (2014).

Claimant's argument that Dr. Ogden effectively amended Congress's definition of "injury" to incorporate and require "disability" is unfounded. Cl.'s Brief at 26-28. Section 2(2) of the Act defines "injury" as an "accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury…." 33 U.S.C. §902(2).[8] Section 2(10) of the Act defines "disability" as incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment. 33 U.S.C. §902(10).

Dr. Ogden unequivocally opined Claimant does not have PTSD or any work- or non-work-related psychological injury; she did not confuse or substitute "injury" with "disability." Nor did she ever discuss Claimant's disability in terms of his incapacity to earn wages as contemplated by the Act. Rather, Dr. Ogden used the DSM-5 criteria to determine whether Claimant has PTSD or any other psychological condition because that is what she "typically rel[ies] on" in making psychological diagnoses irrespective of the Act.[9] CX 17 at 19; EX 10 at 11-12. Further, Dr. Ogden stated that when a patient has

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[7] In *Kamal*, the Board rejected the employer's argument that the claimant failed to establish a psychological injury because his doctors did not analyze his condition using the DSM-4. *Kamal*, 43 BRBS at 79-80. The United States District Court for the Southern District of Texas affirmed the Board's decision but stated "if a physician explicitly claims to base his diagnosis on the criteria in the DSM-4, then he must either support those elements or state why, in his opinion, a particular element need not be supported under the facts of the particular diagnosis." 2011 U.S. Dist. LEXIS 21721, at 37-38.

[8] It is axiomatic that a psychological "injury" constitutes a "harm" within the meaning of the Act. *Butler v. District Parking Management*, 363 F.2d 682 (D.C. Cir. 1966); *American National Red Cross v. Hagen*, 327 F.2d 559 (7th Cir. 1964); *Sewell v. Noncommissioned Officers Open Mess, McCord Air Force Base*, 32 BRBS 127 (1997), *aff'd on recon. en banc*, 32 BRBS 134 (1998); *Konno v. Young Brothers, Ltd.*, 28 BRBS 57 (1994).

[9] It is somewhat incongruous for Claimant to take issue with Employer's expert's use of the DSM-5 to conclude he does not have a psychological disorder when his own medical expert, Dr. Valette, used the DSM-5 criteria to conclude Claimant has a psychological condition. TR at 30 ("felt that he fit the DSM-5 criteria for other specified trauma and stressor-related disorder.").

PTSD, "they are by definition experiencing impairment. That is straight out of the DSM-5." CX 17 at 135. Dr. Ogden was measuring "injury" or "harm" in terms of the DSM-5 criteria, which is characterized by considerable symptomology post-trauma. CX 12 at 21; *see also Wheatley v. Adler*, 407 F.2d 307, 313 (D.C. Cir. 1968) (en banc) (a harm occurs when "something unexpectedly goes wrong within the human frame"); *Romeike v. Kaiser Shipyards*, 22 BRBS 57 (1989) (a claimant need not show a specific illness or disease in order to establish an injury under the Act; he need only establish some form of harm). Regardless, the ALJ explicitly acknowledged that even though Dr. Ogden's statement is "inconsistent with the legal definition of an injury [under the Act], since any symptom may qualify, that distinction is moot, since she credibly explained [any symptomology] was likely due to" Claimant's current shift work as a forklift operator and not a consequence of his prior work for Employer. D&O at 17; *see* CX 17 at 114-115; EX 10 at 6, 11, 14. This evidence is sufficient to rebut the Section 20(a) presumption.[10]

Additionally, we reject Claimant's arguments regarding other aspects of Dr. Ogden's opinion and whether it constitutes substantial rebuttal evidence because Claimant's arguments would impose a weighing or credibility factor at the rebuttal stage where there is none. A discussion of whether Dr. Ogden's opinion is based on scientific evidence or whether she reasonably rejected another doctor's opinion is clearly a matter of weighing the evidence. *See, e.g., Jackson v. Ceres Marine Terminals, Inc*., 48 BRBS 71 (2014), *aff'd sub nom. Ceres Marine Terminals, Inc. v. Director, OWCP*, 848 F.3d. 115, 50 BRBS 92(CRT) (4th Cir. 2016) (in weighing evidence ALJ examined logic of doctor's opinion and found it questionable). Credibility and weighing have not yet come into play. *Rainey*, 517 F.3d at 634.

We also are not persuaded by the argument that Dr. Ogden's opinion does not rebut the presumption because it contradicted an element necessary to invoke the presumption but did not sever the causal connection between Claimant's employment and his psychological condition. Cl.'s Brief at 32-33. An employer is not required to "rule out

[10] Claimant submitted an additional brief citing *Muldrow v. City of St. Louis*, 144 S.Ct. 967 (2024), to show he need not establish "significant" disability to prove he has an injury. Fed. R. Civ. P 28(j). Employer responded in opposition. We accept these briefs into the administrative record. 20 C.F.R. §802.215. As *Muldrow* held that a forced job transfer could qualify as an actionable harm under Title VII even if the harm is not significant, Employer is correct – the case does not apply here. Neither Dr. Ogden nor the ALJ held Claimant to a higher standard than the Act requires. Rather, based on Dr. Ogden's expert opinion, the ALJ determined Employer provided substantial rebuttal evidence which a reasonable person could believe to show Claimant does not have the harm he claims to have.

any possible causal relationship between the claimant's employment and his condition." *Bath Iron Works Corp. v. Director, OWCP* [*Shorette*], 109 F.3d 53, 56 (1st Cir. 1998). A medical opinion of non-causation rendered to a reasonable degree of medical certainty is sufficient to rebut the presumption, *O'Kelley*, 34 BRBS at 41-42. Dr. Ogden clearly opined there is no indication of a psychological injury or condition caused or aggravated by Claimant's employment. *Cf. Parsons Corp. of Cal. v. Director, OWCP,* 619 F.2d 38, 41-42 (9th Cir. 1980) (the rebuttal standard is not met if an expert does not say exposure did not trigger or accelerate the disease); CX 17 at 115-117; EX 10 at 12.

Contrary to Claimant's assertion that Employer's evidence must focus solely on rebutting the presumed legal connection of an injury or harm to employment, an employer may submit evidence to rebut any element necessary to invoke the presumption – it is not restricted to accepting the claimant's version of those facts as controlling and to rebutting only the purported employment link between them.[11] The Section 20(a) rule is an application of the "bursting bubble" theory of evidentiary presumptions, derived from a decision the Supreme Court of the United States issued in *Del Vecchio v. Bowers,* 296 U.S. 280 (1935).[12] If a hole is poked in the bubble through evidence that refutes the evidence relied upon to invoke the presumption, the presumption disappears from consideration. *Rainey*, 517 F.3d at 634; *Marinelli*, 248 F.3d at 65. In other words, the hole in the bubble is created by introducing additional evidence that contradicts the elements that allowed the party to invoke the presumption in the first place. Consequently, we reject Claimant's assertion that an employer rebuts the Section 20(a) presumption only if it establishes the claimant's injury is not legally work-related.

Dr. Ogden's opinion meets Employer's burden of production on rebuttal. She testified she reviewed the claim for compensation, the parties' interrogatories, and the available medical reports from Drs. Hadzi-Angjelkovski, Manasievska, and Risteska. CX 17 at 35; EX 10 at 10. She opined none of the treating doctors' opinions considered any

[11] Indeed, the rebuttal stage is the employer's first opportunity to address whether the claimant suffered a harm or was subject to working conditions or a work accident that could have caused the harm. To prohibit an employer's rebuttal evidence from offering contradictory facts would mean that invoking the presumption automatically establishes the facts as asserted by the claimant despite the ALJ's inability to assess the credibility of those facts.

[12] The Court explained that when a trier-of-fact must be persuaded of one truth or another, a party bears the burden of going forward with the case. Once this step is passed, the other party bears the burden of showing any contradictory facts. If it does so, the presumption drops from the case completely and can no longer work in the original party's favor. *Del Vecchio,* 296 U.S. at 286-287.

other potential etiology for Claimant's symptoms, as they did not adequately assess symptom validity beyond merely listing symptoms "right out of the DSM-5." CX 17 at 100, 128, 130. In addition, she highlighted the lack of personal examples of Claimant's experience with his symptoms in the treating doctors' reports. EX 10 at 10. Based on her review of Claimant's medical records, her own psychological evaluation, and the objective testing, Dr. Ogden indicated Claimant exaggerated or feigned his psychological and cognitive symptoms. *Id.* at 10-12.

Dr. Ogden further opined Claimant does not meet the DSM-5 criteria for PTSD or any other known psychiatric condition because there is no evidence Claimant was experiencing clinically significant distress, debilitating symptoms, or impairment in any area of functioning, particularly occupational, familial, and social functioning. EX 10 at 10-11. Dr. Ogden's report constitutes substantial evidence casting doubt on the presumed connection between Claimant's alleged injury and his employment by definitively stating her opinion that the alleged injury does not exist. *See Bourgeois v. Director, OWCP*, 946 F.3d 263, 265 (5th Cir. 2020) (finding the Section 20(a) presumption was rebutted by a medical opinion stating the evidence showed no proof of the alleged injury). We, therefore, affirm the ALJ's conclusion that Dr. Ogden's opinion rebuts the Section 20(a) presumption. *Marinelli*, 248 F.3d at 65; *Truczinskas*, 699 F.3d at 677-678; *Fields*, 599 F.3d at 53; *Holiday*, 591 F.3d at 226. With the presumption rebutted, the ALJ properly proceeded to weigh the evidence as a whole.

Weighing the Evidence

Having affirmed the findings on invocation and rebuttal of the Section 20(a) presumption, the issue of Claimant's injury and causation must be resolved based on the evidence of the record as a whole with Claimant bearing the burden of persuasion by a preponderance of the evidence. *Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 271 (1994); *Rainey*, 517 F.3d at 634; *Rose*, 56 BRBS at 39; *Bolden v. G.A.T.X. Terminals Corp*., 30 BRBS 71 (1996); *Santoro*, 30 BRBS at 174. Preponderance of the evidence is not a quantitative standard; rather, it is a standard which denotes a superiority of weight, requiring the party having the burden of persuasion to prove his position by more convincing evidence than the opposing party's evidence. *Santoro*, 30 BRBS at 174-175; *see* Black's Law Dictionary (12th ed. 2024); *see also* Barron's Law Dictionary (1984).

In rendering a decision under the Act, the ALJ ultimately has the authority to evaluate, credit, and weigh all evidence and testimony, including that of medical experts. *John W. McGrath Corp. v. Hughes*, 289 F.2d 403, 405 (2d Cir. 1961). It is solely within the ALJ's discretion to accept or reject all or any part of any testimony according to his judgment, *Perini Corp. v. Heyde*, 306 F. Supp. 1321, 1325-1326 (D.R.I. 1969). It is impermissible for the Board to reweigh the evidence or to substitute its own views for those

of the ALJ. *Sealand Terminals v. Gasparic*, 7 F.3d 321, 323 (2d Cir. 1993); *Mijangos v. Avondale Shipyards, Inc.*, 948 F.2d 941 (5th Cir. 1991) (although the evidence could support a finding in favor of either party, the choice among reasonable inferences is left to the ALJ; the Board may not engage in *de novo* review of the evidence); *Volpe v. Northeast Marine Terminals*, 671 F.2d 697, 700 (2d Cir. 1982); *see Elkins v. Sec'y of HHS*, 658 F.2d 437, 439 (6th Cir.) (1981) ("If the [ALJ's] findings are supported by substantial evidence, we must affirm the ALJ's decision, even though as triers of fact we might have arrived at a different result.").

Claimant contends the ALJ erred in weighing the evidence because he irrationally discredited Claimant's testimony and rejected the opinions of his treating physicians. Cl. Brief at 43-50. He also argues the great weight the ALJ assigned to Dr. Ogden's opinion is irrational. *Id.* at 48. We reject Claimant's assertions.

In this case, despite Claimant's ability to recount his personal history, the ALJ found there were "significant discrepancies in [his] testimony and other statements that call into question his credibility." D&O at 14. For instance, the ALJ determined Claimant's post-deployment health assessment did not demonstrate "significant exposure to combat related stress." *Id.* He accurately noted Claimant reported in his post-deployment assessment that: 1) his health was very good and somewhat better than it was before he deployed; 2) he did not experience emotional problems that presented challenges at work, home, or when socializing; 3) he had not been injured, wounded, assaulted or otherwise hurt during his deployment; and 4) he had no issues with sleeping, concentrating, remembering or deciding.[13] D&O at 5 n.14, 14; *see* EX 19 at 3. Further, Claimant testified that one of his psychological symptoms was loss of appetite indicated by the fact that he weighed 120 kilograms when he began working for Employer in June 2010 and then left Afghanistan in June 2012 weighing 90 kilograms. D&O at 5, 14; EX 12 at 14. But the ALJ noted that Claimant's pre-deployment physical showed he weighed 101 kilograms when he first deployed and denied health problems when he redeployed. D&O at 5 n.13, 14; EX 17 at 6.

The ALJ also determined Claimant's reasons for leaving his work with Employer were "at best ambiguous and not credible." D&O at 14. He pointed out that Claimant's

[13] We decline to address Claimant's assertion that the ALJ irrationally diminished Claimant's credibility by using the post-deployment health assessment because Claimant neither signed it nor understood it due to his English language barrier. Cl.'s Brief at 52-54; *see* EX 19. As Claimant did not raise an objection to this document below, we cannot consider it in the first instance. *See Johnston v. Hayward Baker*, 48 BRBS 59, 63 (2014); *Turk v. Eastern Shore Railroad, Inc.*, 34 BRBS 27, 32 (2000).

testimony regarding his history and his symptoms is only minimally consistent with the reports he made to his treating providers and, like his interview with Dr. Ogden, included no references to the flashbacks or intrusive thoughts he discussed with Drs. Hadzi-Anjelkovski and Risteska. *Id.*; *see* CX 3 at 13-16; EX 8 at 1, 3, 5. Further, he found Dr. Ogden's testimony that Claimant was "prone to overstate" and was not a reliable historian supports other objective evidence of Claimant's lack of credibility. *Id.* at 15; *see* CX 17 at 123; EX 10 at 12. Considering the broad discretion accorded ALJs in weighing the evidence, *Gasparic*, 7 F.3d at 323, and as the ALJ's determination is not "inherently incredible or patently unreasonable," we affirm the ALJ's finding that several discrepancies between Claimant's testimony, statements, and other evidence in the record undermined Claimant's credibility. *Ceres Gulf. Inc. v. Director, OWCP*, 683 F.3d 225, 228 (5th Cir. 2012); *Cordero v. Triple A Mach. Shop*, 580 F.2d 1331, 1335 (9th Cir. 1978); *see also Carswell v. E. Pihl & Sons*, 999 F.3d 18, 55 (1st Cir. 2021), *cert. denied*, 142 S.Ct. 1110 (2022).

Finally, we reject Claimant's argument that the ALJ erred in weighing the conflicting medical opinions.[14] The ALJ detailed why he found each of Claimant's treating doctors' reports entitled to limited weight: their treatment records included little of Claimant's work history and contained only vague references to objective diagnostic testing. D&O at 15; *see* CXs 2, 3, 4; EXs 6, 7, 8. He observed that Dr. Manasievska failed to adequately describe the tests she administered, nor did she produce their results. D&O at 15; *see* CX 2 at 21-22; EX 6 at 4-5. In addition, he noted Claimant's treating doctors did not adequately focus on any treatment but mostly listed symptomology without any accompanying details as to Claimant's personal experiences with them, which led to "unreasoned" diagnoses. D&O at 15. The ALJ further found Claimant's treating doctors did not discuss his current shift work and its relation to his reported symptoms, and they did not address any other factors considered in reaching their diagnosis. *Id.* Therefore, the ALJ found the opinions of Drs. Hadzi-Angjelkovski, Manasievska, and Risteska neither well-documented nor well-reasoned. *Id.*

Conversely, the ALJ was persuaded by Dr. Ogden's "full" and "rational" explanation of the reasons for her opinion and the accompanying details surrounding Claimant's diagnostic testing. D&O at 16. He noted Dr. Ogden found Claimant to be a reasonably well-functioning individual able to work full-time in a loud environment without issues. D&O at 16; TR at 113. In addition, he emphasized Dr. Ogden's remark that Claimant applied to work in Afghanistan again in 2018, which someone with debilitating symptoms of PTSD from a warzone would not do. D&O at 16; EX 10 at 11.

[14] As Claimant does not challenge the ALJ's findings regarding Dr. Valette's opinion, we affirm them. *Scalio*, 41 BRBS at 58; D&O at 16; CX 5; TR at 21-84.

He noted Claimant's reactions and responses to Dr. Ogden were dissimilar to those included in the treating physicians' opinions. D&O at 16. For these reasons, the ALJ found the weight of the credible evidence demonstrates that the minimal symptomology Claimant displayed did not rise to the level of a psychological injury and therefore Claimant failed to carry his burden in establishing he suffered a work-related injury. *Id.* at 16-17.

Because the ALJ permissibly exercised his discretion in weighing the medical opinions of record, and his credibility determinations are 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 v. Logistec, Inc.*, 49 BRBS 77, 81 (2015), we affirm the ALJ's conclusion that Claimant does not have a work-related psychological condition and his denial of benefits.[15] *Sistrunk v. Ingalls Shipbuilding, Inc.*, 35 BRBS 171, 174 (2001); *Coffey v. Marine Terminals Corp.*, 34 BRBS 85, 87 (2000); D&O at 17.

[15] Claimant argues the ALJ erred by admitting and relying on "nonparty medical records" that Employer obtained from other cases. Cl.'s Brief at 34-42; EXs 13, 21. We reject this argument. Ultimately, although he has great discretion concerning the admission or exclusion of evidence, *see*, *e.g.*, *Raimer v. Willamette Iron & Steele Co.*, 21 BRBS 98 (1988); 20 C.F.R. §702.339, the ALJ did not discuss or rely on these exhibits. D&O at 13-17.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge