U.S. Department of Labor

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

BRB No. 24-0070

LISA DiROCCO (Widow of ROCCO DiROCCO) Claimant-Petitioner v. ELECTRIC BOAT CORPORATION Self-Insured Employer-Respondent	)	**NOT-PUBLISHED** DATE ISSUED: 07/15/2025 DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Timothy J. McGrath, Administrative Law Judge, United States Department of Labor

Amity L. Arscott and Brendan McPherson (Embry Neusner Arscott & Shafner, LLC), Groton, Connecticut, for Claimant.

Edward W. Murphy (Morrison Mahoney LLP), Boston, Massachusetts, for Self-Insured Employer.

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

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Timothy J. McGrath's Decision and Order Denying Benefits (2023-LHC-00243) 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 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 Associates, Inc.*, 380 U.S. 359 (1965).

Rocco DiRocco (Decedent) worked as a vulcanizing technician in Department 241 for Employer. Claimant's Exhibit (CX) 10 at 3; Employer's Exhibits (EXs) 1 at 1, 5 at 10; Hearing Transcript (TR) at 25-26. Claimant, Decedent's widow, alleges Decedent's work exposed him to SARS-CoV-2 (COVID-19), which eventually caused pneumonia and acute hypoxic respiratory failure resulting in his death on September 12, 2021. CX 1.

The timeline of events appears to be undisputed. During the weekend of August 13, 2021, Decedent attended a rodeo at a "big stadium" in Connecticut with his two adult children and his future son-in-law. EX 5 at 30. On August 17, 2021, Decedent worked in Employer's vulcanizing department in a 25-by-30-by-15-foot room with three other employees, including Chase Gilman (Gilman), and two contractors from the Sirrocco Company. CX 4 at 2. On that same day, Gilman informed Decedent that his girlfriend had been exposed to COVID-19 while she was working at a hospital, and after receiving this information, Decedent minimized contact with Gilman.[2] EX 5 at 13-15.

The two Sirrocco contractors later developed symptomatic COVID-19 infections while working at Employer's facility. CX 4 at 2. On August 19, 2021, Employer learned Gilman had tested positive for COVID-19 that day. CX 4 at 2, EX 1 at 2. Employer conducted contact tracing to identify the employees with whom Gilman had been in contact, and upon identifying Decedent as a close contact, Decedent was placed in the COVID-19 protocol which required him to report to the yard hospital every morning to get tested. EX 1 at 2; TR at 20.

On August 20, 2021, Decedent tested negative for COVID-19, but Claimant testified he had had a "very hard cough." EX 1 at 2; TR at 21. Another of Decedent's co-workers, Sean Hawkins ("Hawkins") also tested negative on August 20, 2021. CX 4 at 2. On August 23, 2021, Decedent tested positive for COVID-19 at the yard hospital and was sent home immediately. TR at 20-21. His cough worsened and prompted him to contact Dr. Alan Ruiz, his primary care physician, who noted Decedent was "[f]eeling unwell."

[1] This case arises within the jurisdiction of the United States Court of Appeals for the Second Circuit because Decedent sustained his alleged injury in Connecticut. 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] Decedent's last contact with Gilman was on August 17, 2021. CX 10 at 3; EX 5 at 13-14.

Id.; *see* CX 6 at 3-4. Claimant and their son began experiencing symptoms over the next few days. EX 5 at 21-22. Their daughter and future son-in-law also developed symptoms that week, and all later tested positive for the virus. EXs 5 at 23, 6-9.

On August 31, 2021, an ambulance was called to Decedent's residence due to his "shortness of breath." CX 7. His family stated he was "incoherent" and "feeling worse;" the ambulance medic's report indicated he was "pale, warm, and diaphoretic." CX 7 at 1; TR at 21. Decedent was taken to Day Kimball Hospital and subsequently transferred to Backus Hospital. *Id.*; *see generally* CX 8. On September 12, 2021, Decedent died due to COVID-19 complications. CXs 1, 9; TR at 21-22.

In January 2023, at Claimant's request, Dr. Michael M. Conway, a Board-certified internist and pulmonologist, reviewed Decedent's treatment and hospital records, death certificate, witness statements, and the Occupational Safety and Health Administration's investigative report. CXs 4, 15 at 24. He opined Decedent was exposed to COVID-19 from infected coworkers during the scope of his work for Employer where "masks were not worn and effective quarantine was not possible." CX 4 at 3. Further, he stated that "lack of vaccination and underlying health conditions predisposed him to a poor outcome from his COVID-19 infection." *Id.*; *see* CX 15.

In February 2023, at Employer's request, Dr. Milo Pulde, a Board-certified internist and assistant professor of medicine at Harvard Medical School, also reviewed the same information. EXs 2, 3, 4. Based on his review of that information and of medical literature regarding the epidemiology pathogenesis and diagnosis of COVID-19, he opined, to a reasonable degree of medical certainty, that there is no evidence Decedent acquired the COVID-19 infection during the course of his work for Employer. EX 2 at 20; *see* EX 4.

Claimant filed a claim under the Act seeking benefits for Decedent's COVID-19 infection and subsequent death.[3] The case was transferred to the Office of Administrative Law Judges (OALJ) for a video hearing, which was held on June 15, 2023.

On November 14, 2023, the ALJ issued his Decision and Order, finding Claimant did not establish Decedent's COVID-19 infection and subsequent death arose out of his exposure while working at Employer's workplace. The ALJ accepted the parties' stipulations that Decedent was in close contact with Gilman, that both later tested positive

[3] Claimant conceded COVID-19 is not an occupational disease within the meaning of the Act but argues Decedent's contraction of the virus and subsequent death should be categorized as an accidental injury due to exposure at work. Cl. Post-Hearing Brief at 5.

for COVID-19, that Decedent was totally disabled between August 23, 2021, and his death, and that his death on September 12, 2021, was due to COVID-19-related complications.

After concluding COVID-19 may be a covered injury under the Act, the ALJ found Claimant established a prima facie case of compensability based on the parties' stipulations regarding Decedent's illness and death and his close contact with Gilman while working at Employer's workplace. Consequently, the ALJ found Claimant invoked the Section 20(a) presumption, 33 U.S.C. §920(a); Decision and Order (D&O) at 2, 11. He then determined Employer rebutted the presumption with Dr. Pulde's medical opinion that Decedent's infection and death were not caused by a workplace exposure. D&O at 11.

Considering the evidence as a whole, the ALJ assigned limited weight to the testimony of Claimant ("moderately credible") and Hawkins ("slightly credible") because he found their testimony lacked sufficient detail. The ALJ assigned less weight to Dr. Conway's opinion because it relied on Claimant's and Hawkins' subjective input. *Id.* at 11-12, 15-16. The ALJ stated both Dr. Conway and Dr. Pulde were qualified to render an opinion on the matter, but he was persuaded by Dr. Pulde's significant experience and research and found his opinion more reasoned and documented than Dr. Conway's. *Id.* at 12-16. Thus, he assigned Dr. Pulde's opinion the greatest weight. *Id.* at 15-16. After acknowledging that "[t]racing the precise course of a COVID-19 infection is no simple task," the ALJ concluded Claimant failed to establish by a preponderance of the evidence that Decedent's COVID-19 infection was caused by a workplace exposure and denied her claim. *Id.* at 16.

Claimant appeals the ALJ's denial of benefits for Decedent's COVID-19 infection and subsequent death. Employer responds, urging the Board to reject Claimant's arguments and affirm the ALJ's decision.

When, as in this case, the Section 20(a) presumption is invoked,[4] *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

[4] As the parties do not challenge the ALJ's findings on invocation of the Section 20(a) presumption for Decedent's COVID-19 infection or death, we affirm them. *Scalio v. Ceres Marine Terminals, Inc*., 41 BRBS 57, 58 (2007); D&O at 11.

mind could accept to support a conclusion). If the employer successfully rebuts the presumption, the issue of causation must be resolved by weighing 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).

Claimant contends the ALJ erred in finding Dr. Pulde's opinion is sufficient to rebut the Section 20(a) presumption. Cl.'s Brief at 4. We disagree.

The inquiry at rebuttal evaluates "whether the employer submitted evidence that could satisfy a reasonable fact finder that [the claimant's injury] is not work-related." *Hawaii Stevedores, Inc. v. Ogawa*, 608 F.3d 642, 651 (9th Cir. 2010). Consequently, the employer's burden on rebuttal is one of production only. *Rainey*, 517 F.3d at 637 ("the employer's burden in rebutting the Section 20(a) presumption is a burden of production, not a burden of persuasion."); *Truczinskas v. Director, OWCP*, 699 F.3d 672, 678 (1st Cir. 2012); *Rose*, 56 BRBS at 35. A physician's unequivocal opinion that no relationship exists between the alleged injury and a claimant's employment is sufficient to rebut the presumption. *Suarez v. Serv. Employees Int'l, Inc.*, 50 BRBS 33, 36 (2016); *Cline v. Huntington Ingalls, Inc.*, 48 BRBS 5, 6-7 (2013); *O'Kelly v. Dep't of the Army/NAF*, 34 BRBS 39, 41-42 (2000); *Duhagon v. Metropolitan Stevedore Co.*, 31 BRBS 98, 100 (1997), *aff'd*, 169 F.3d 615 (9th Cir. 1999); *Holmes v. Universal Maritime Serv. Corp.*, 29 BRBS 18, 20 (1995). Employer submitted Dr. Pulde's opinion for that purpose.

To a reasonable degree of medical certainty, Dr. Pulde concluded Decedent did not contract the disease while at work. He based his conclusion on: his review of the records; the literature relating to epidemiology, pathogenesis, and diagnosis of COVID-19 infection; and the timing of Claimant's positive COVID-19 test. He stated there is no evidence that Decedent acquired his COVID-19 infection in the course of his work for Employer prior to the day of his positive COVID-19 test or that any previous work-related exposure(s) aggravated, caused, or contributed to his COVID-19 infection and death. Overall, this constitutes an unequivocal medical opinion that Decedent's COVID-19 infection was not work-related. *Suarez*, 50 BRBS at 36. Consequently, it rebuts the Section 20(a) presumption as the ALJ correctly found.

In asserting Employer did not present substantial evidence rebutting the presumption, Claimant argues Dr. Pulde's opinion is premised on "three speculative arguments." Cl. Brief at 4. While Claimant is correct that rebuttal evidence must be based on facts and not on "mere speculation," *Conoco, Inc. v. Director, OWCP [Prewitt]*, 194 F.3d 684, 687-688 (5th Cir. 1999), her arguments introduce a requirement of persuasiveness that is not applicable at the rebuttal stage. *Truczinskas*, 699 F.3d at 678;

Rose, 56 BRBS at 35. The weighing of conflicting evidence or of the credibility of evidence "has no proper place in determining whether [the employer] met its burden of production." *Ogawa*, 608 F.3d at 651. The ALJ properly held Employer to a burden of production on rebuttal in this case. D&O at 9; see *Rose*, 56 BRBS at 30; *Suarez*, 50 BRBS at 36 n.4; *Cline*, 48 BRBS at 7.

Dr. Pulde cautioned that COVID-19 may be contracted almost anywhere and "a direct attribution to a specific workplace exposure is often difficult," as it is "often impossible" to determine a precise incident or exposure to a person with the virus, especially in the absence of genotyping.[5] EX 2 at 49, 59. The fact that Dr. Pulde stated Claimant "likely" acquired COVID-19 in the community or at home does not compel the conclusion that his opinion is "speculative" and cannot rebut the Section 20(a) presumption. *O'Kelley*, 34 BRBS at 41-42 (an employer need not prove an alternate cause of a claimant's injury in order to rebut the Section 20(a) presumption); *see also Bath Iron Works Corp. v. Director, OWCP [Harford]*, 137 F.3d 673, 675 (1st Cir. 1998) (an employer's evidence need not rule out all causal possibilities in order to constitute substantial evidence of non-causation); *DaSilva v. American Brands, Inc.*, 845 F.2d 356, 361 (1st Cir. 1988) ("reasonable probabilities" constitute substantial evidence of non-causation). Because Dr. Pulde ultimately arrived at an unambiguous conclusion – his opinion cannot be described as "mere speculation." *Cf. Rainey*, 517 F.3d at 636-637 (while a discredited medical theory cannot support a physician's opinion, an ALJ may credit an opinion based on recent research and clinical study publications related to epidemiology, immunology, pathogenesis, and diagnosis of a condition); *see also* EX 2 at 20-59.

Dr. Pulde stated that the Center for Disease Control (CDC) and the World Health Organization (WHO) research indicated a COVID-19 infection incubation period between two and fourteen days after exposure, with an average onset five to six days after infection. EX 2 at 17-18. He then specified that if Decedent's incubation period had been the typical 5.5 days and he had been symptomatic since August 23, then he likely contracted his COVID-19 infection in the community in the interval between August 17 and August 21, when his colleague Gilman had been absent from work. *Id.* In addition, he stated that if Decedent had been first symptomatic shortly prior to his August 31 hospital admission, then his incubation period would have been between August 19 and August 21, which would have eliminated any potential viral transmission from Gilman. *Id.*

[5] The ALJ also acknowledged that "tracing the precise source of a COVID-19 infection is no simple task. There is no test to differentiate between community and workplace exposures. Instead, courts are left to deal in probabilities as the source of a COVID-19 infection can never be known with certainty." D&O at 12.

As Dr. Pulde offered an opinion that directly contradicts the Section 20(a) presumption linking Decedent's COVID-19 infection to his work for Employer, and it is the type of evidence "a reasonable mind might accept as adequate" to support that conclusion, it constitutes substantial evidence that is legally sufficient to rebut the presumption. *Rainey*, 517 F.3d at 637; *Cline*, 48 BRBS at 6-7; *Suarez*, 50 BRBS at 36; *O'Kelley*, 34 BRBS at 41-42; *Duhagon*, 31 BRBS at 100; *Holmes*, 29 BRBS at 20. Consequently, we affirm the ALJ's determination that Employer rebutted the Section 20(a) presumption with Dr. Pulde's opinion, and we therefore reject Claimant's assertion that she wins her case at invocation.

To the extent Claimant challenges the ALJ's findings on weighing the evidence as a whole, substantial evidence supports the ALJ's decision. *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 assigned more weight to Dr. Pulde's opinion than to Dr. Conway's opinion due to his greater experience in treating, researching, and teaching about COVID-19 infections. D&O at 12, 12 n.6. Moreover, he accorded "significant weight" to Dr. Pulde's opinion because he found the doctor's conclusions more persuasive and adequately supported by his citations to COVID-19 literature and studies.[6] Conversely, he gave little weight to Dr.

[6] Although he was not required to prove an alternate cause of Decedent's injury, *O'Kelley*, 34 BRBS at 41-42, Dr. Pulde stated the potential rodeo exposure is a "high risk exposure within [Decedent's] incubation period." EX 4 at 22. He also opined Decedent likely acquired the infection outside of the workplace from an asymptomatic or presymptomatic infected community contact or a domestic exposure rather than at work for Employer. EX 2 at 1-2, 7-8, 18-20. He reasoned there was a surge in COVID-19 cases from early August to mid-September of 2021 in Windham County where Decedent resided, and the only COVID-19 case in Employer's Department 241 from July 30 to August 22 was Gilman, *Id.* at 7, 18, 58. This information suggested to the doctor that the "community rates drove the rates of COVID infection at [Employer's facility] and other workplaces" as opposed to acquiring the infection directly in the Employer's workplace. *Id.* Moreover, Dr. Pulde determined Decedent had a greater risk of contracting COVID-19 in a community where he wore less effective personal protective equipment and had been less vigilant of precautionary measures to avoid infection, unlike at Employer's workplace where he would have adhered to their infection transmission prevention practices. *Id.* at 7, 19. Claimant testified that Decedent, being aware of his preexisting medical conditions placing him at high risk of COVID-19 complications, was vigilant in wearing a surgical mask at work and when traveling on a commuter van. EX 5 at 10-12, 39; *see* CX 10 at 4. Employer also required its employees to "wear a face covering, maintain social distancing to the greatest extent possible, wash/sanitize his hands frequently, and abide by all other COVID-19 protocols" at the time. CX 10 at 3-5.

Conway's opinion because it is not supported by medical research related to COVID-19 and does not adequately address the specific facts of Decedent's case. *Id.* at 12, 15.

It is axiomatic that 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). The Board must accept the ALJ's weighing of the medical evidence if it is rational and supported by substantial evidence. *See Smith v. Chater,* 99 F.3d 635, 637-638 (4th Cir.1996) (if substantial evidence supports an ALJ's findings, the reviewing body must sustain the ALJ's decision, even if it might disagree with those findings); *Mendoza v. Marine Pers. Co., Inc.,* 46 F.3d 498, 500-501 (5th Cir. 1995); *Pittman Mechanical Contractors, Inc. v. Director, OWCP [Simonds]*, 35 F.3d 122, 127 (4th Cir. 1994); *Mijangos v. Avondale Shipyards, Inc.*, 948 F.2d 941, 944 (5th Cir. 1991). As the ALJ's analysis is rational and supported by substantial evidence, we affirm his finding that Claimant has not established Decedent's COVID-19 infection and subsequent death arose out of or in the course of his work at Employer's workplace by a preponderance of the evidence, along with his 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 15-16.

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