



BRB No. 24-0338

ALBERT PASSALAUQUA

Claimant-Petitioner

v.

BATH IRON WORKS CORPORATION

Self-Insured

Employer-Respondent

NOT-PUBLISHED

DATE ISSUED: 06/09/2026

DECISION and ORDER

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

James J. MacAdam (MacAdam Law Offices, P.A.), Freeport, Maine, for Claimant.

Grant J. Henderson (Norman Hanson & DeTroy, L.L.C.), Portland, Maine, for Self-Insured Employer.

Before: ROLFE, JONES, and ULMER, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Jerry R. DeMaio's Decision and Order Denying Permanent Total Disability Benefits and the Order Denying Reconsideration (2022-LHC-00838) 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).

Claimant worked for Employer in various positions and locations from January 1988 until he retired on July 26, 2019. He generally worked as an “outside machinist,” though the physical requirements and nature of his work differed depending on where he was assigned. TR at 13-21, 29; JXs 15 at 59-66, 73-81; 18 at 126-128. From 2007 until his retirement, he worked as a machinist in the operating gear shop, TR at 39; JXs 15 at 73-75; 18 at 127-128, a job he testified was “probably” less physically demanding than his previous work as an outside machinist. JX 15 at 90; *see also* TR at 39.

During Claimant’s thirty-one years of employment for Employer, he sustained several work-related injuries to his knees, shoulders, wrists, back, and neck, for which Employer voluntarily paid disability compensation and authorized medical treatment. JXs 15 at 67-73, 81-83; 18 at 125. As a result of his injuries, he underwent knee replacement surgery on both knees, he received injections and a TENs machine for pain, and he underwent left rotator cuff surgery. TR at 24-31. He testified he was also exposed to dust, vapors, and fumes from epoxy paint, burning, and welding, to which he attributes his asthma and the need for two inhalers. *Id.* at 17-18, 29-30.

Claimant returned to work after each of his injuries; however, he testified he still had pain that gradually worsened over time. TR at 33. Thus, when he returned to work after taking one week off in January 2019, he decided to retire because he felt he could not work anymore and was “tired of hurting.” *Id.* He continued working for six months, however, until he officially retired in July 2019. *Id.* at 33, 40-41. Since retiring, Claimant has not worked, looked for work, or been given formal work restrictions from his treating physicians. *Id.* at 33-34, 40-41, 48

On October 31, 2019, Claimant filed a claim under the Act, seeking permanent total disability (PTD) compensation and medical benefits for injuries to his bilateral shoulders, bilateral wrists, low back, feet, and lungs, JX 1, and Employer controverted the claim, JX 3. *But see* JX 9 (Prehearing Statement: Claimant seeking PTD “as a result of his multiple orthopaedic injuries.”); Cl. Trial Br. at 1 (Claimant listing issue as whether he has been disabled as a result of his wrist, knee, or shoulder injuries “or a combination of the three

¹ This case arises within the jurisdiction of the United States Court of Appeals for the First Circuit because Claimant sustained the injuries at issue in this case in Maine. 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).

injuries”); Cl. Mot. Recons. at 8-11 (Claimant asserting “a gradual pain” injury and seeking PTD for chronic pain).

On November 15, 2022, the ALJ held a formal evidentiary hearing and on March 13, 2024, issued his D&O denying PTD benefits. The ALJ characterized Claimant’s disability claim as one for a “gradual injury that stemmed from the prior injuries, that did not manifest as total disability until around the time of [Claimant’s] retirement.” D&O at 10. Because Employer conceded causation with respect to Claimant’s prior injuries to his bilateral knees, shoulders, and wrists, “and to some extent his back and neck,” the ALJ addressed causation only as to Claimant’s breathing problems and ongoing back and neck pain. *Id.* For both conditions, he found Claimant invoked the Section 20(a) presumption of causation, 33 U.S.C. §920(a), through his testimony and Dr. Frank Graf’s opinion, and Employer rebutted the presumption with Dr. Craig Curtis’s opinion. *Id.* at 11-12. Upon weighing the record evidence as a whole, he concluded Claimant failed to establish by a preponderance of the evidence the work-relatedness of his pulmonary condition and ongoing back and neck pain. *Id.* at 13-14.

The ALJ next discussed the nature and extent of Claimant’s disability as it related to his work-related back, neck, and bilateral shoulder, wrist, and knee injuries. While the ALJ declined to credit Dr. Graf’s opinion regarding the specific date Claimant reached maximum medical improvement (MMI) for his work-related injuries, the ALJ nonetheless found Claimant had reached MMI as to his back, neck, left shoulder, bilateral wrist, and bilateral knee conditions by the time he was examined by Drs. Graf and Curtis. He noted “stronger evidence” suggested Claimant’s right shoulder condition had not yet reached MMI. *Id.* at 16. In addressing total disability, the ALJ considered that after Claimant decided to retire in January 2019, he continued to work for six months in the same job with no additional work restrictions and without sustaining a new injury or aggravation or seeking any medical treatment, until he eventually took his “time-in-service” retirement in July 2019. *Id.* at 17. The ALJ gave no weight to Dr. Graf’s conclusion that Claimant has no capacity to work, and he credited to some extent Dr. Curtis’s opinion that Claimant could perform light to sedentary duty work with accommodations. *Id.* Based on the totality of the evidence, the ALJ concluded Claimant failed to meet his burden of establishing he is totally disabled from his former employment, and therefore, denied Claimant’s claim for PTD benefits. *Id.* at 17-18.

On appeal, Claimant contends the ALJ erred in determining Employer rebutted the Section 20(a) presumption with respect to Claimant’s pulmonary condition and, thereafter,

in addressing the nature and extent of his disability without considering his lung condition.² Employer responds, urging affirmance.

Rebuttal

Claimant first contends the ALJ erred in finding Employer rebutted the Section 20(a) presumption with Dr. Curtis's opinion. He asserts it is legally insufficient for rebuttal because "Dr. Curtis was not able to say (or perhaps declined to say) one way or the other whether, 'due to a lack of evidence,' the employee's breathing problems were caused by his occupational exposures." Cl. Br. at 11. He also asserts it is insufficient because Dr. Curtis did not address Claimant's specific causation theory: that he was exposed to "numerous toxic substances during the course of his long career as an outside machinist . . . and . . . those exposures caused him to develop breathing problems and, ultimately, asthma and chronic lung disease." Cl. Br. at 9. Because there was no evidence to rebut his testimony regarding his exposure to toxins and because Dr. Curtis did not unequivocally opine Claimant's breathing problems were not caused or aggravated by occupational exposures, Claimant contends there was no evidence in the record on which Employer could rely to cast doubt upon causation. *Id.* at 11 (citing *Wheatley v. Adler*, 407 F.2d 307, 313 (D.C. Cir. 1968) (en banc)).

Once a claimant invokes the Section 20(a) presumption linking his condition to his work, the burden shifts to the employer to rebut it with substantial evidence that the claimant's condition was not caused or aggravated by his employment. *Carswell v. E. Pihl & Sons*, 999 F.3d 18, 30-31 (1st Cir. 2021); *Bath Iron Works Corp. v. Fields*, 599 F.3d 47, 55 (1st Cir. 2010); *Bath Iron Works Corp. v. Preston*, 380 F.3d 597, 606 (1st Cir. 2004); *Bath Iron Works Corp. v. Director, OWCP [Hartford]*, 137 F.3d 673, 675 (1st Cir. 1998); *Sprague v. Director, OWCP*, 699 F.2d 862, 865-866 (1st Cir. 1982); *Rose v. Vectrus Sys. Corp.*, 56 BRBS (2022) (en banc). In the context of rebutting the Section 20(a) presumption, substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion that the injury was not caused or aggravated by the claimant's working conditions. *Fields*, 599 F.3d at 55; *Preston*, 390 F.3d at 605; *Sprague*, 688 F.2d at 865. The United States Court of Appeals for the First Circuit, within whose jurisdiction this case arises, has clarified an employer need not produce evidence that "unequivocally severs" the causal connection between the claimant's condition and

² We affirm as unchallenged on appeal the ALJ's determination that Employer rebutted the Section 20(a) presumption as to Claimant's ongoing back and neck pain and his finding that that pain is not work-related based upon the record as a whole. *Scalio v. Ceres Marine Terminals, Inc.*, 41 BRBS 57, 58 (2007).

his employment; rather, the employer may rebut the presumption by introducing evidence of “reasonable probabilities” demonstrating a lack of causation. *Hartford*, 137 F.3d at 675.

In this case, Employer relied on its expert, Dr. Curtis, to rebut the presumption. Dr. Curtis examined Claimant on August 2, 2022, and made several observations relevant to Claimant’s pulmonary condition and symptoms. He noted Claimant “is quite obese,” “was very short of breath” when walking around and exiting the exam room and even when performing an “8 to 10 step activity,” and is “deconditioned.” JX 19 at 677-680. He found normal air exchange in Claimant’s lungs, “roughly normal breath sounds difficult to hear due to his size,” and “no obvious rales, rhonchi, or wheezes.” *Id.* at 679. Additionally, Dr. Curtis discovered a “very obvious grade II to III over IV systolic ejection murmur” and recommended Claimant seek timely medical attention. *Id.* He listed Claimant’s history of hypertension and asthma as non-work-related and non-injury related comorbidities. *Id.*

As to causation, however, Dr. Curtis expressly declined to conclude Claimant’s current lung condition and symptoms were work-related. He wrote:

It is unclear to me the diagnosis that he carries regarding his lungs. I have not seen any pulmonary function studies, x-rays, CT scans or MRIs of his lungs, nor have I seen any occupational documentation of respiratory clearance questionnaires, serial pulmonary function tests, and no detailed documentation of ongoing exposures. There simply has been a reference to his being around fumes, including epoxy paint fume[s], welding fumes, dust and metal particulates. It is unclear to me as an occupational specialist what his actual exposures were . . . [M]y discovery of a significant cardiac murmur concerns me that part of his lung problem is not related to a primary obstructive pulmonary process or restrictive pulmonary process, but to a cardiac source. *Therefore, at this juncture, I cannot attribute his lung condition to work exposures due to lack of workup and investigation to be causally linked to his work exposure or activities. This would need to be further investigated and defined to establish a causal link or to eliminate a causal link to his work.*

Id. at 681 (emphasis added). When asked to address MMI status with respect to Claimant’s lung condition, Dr. Curtis elaborated: “[T]he lung condition in my mind has not been defined, nor has a causal link been established. I believe he does warrant internal medicine / cardiologic workup for that, as I believe he may have a significant issue that needs to be medically addressed.” *Id.* at 682. Dr. Curtis further explained Claimant would be restricted from any strenuous work due to his “undefined cardiopulmonary issue” but clarified Claimant’s “cardiac condition would not be related to his work activities and his lung condition remains undefined.” *Id.* at 682-683.

The ALJ determined Employer rebutted the presumption with Dr. Curtis's opinion, characterizing Dr. Curtis's opinion as showing "a reasonable probability of a lack of causation" and pointing to Dr. Curtis's inability to attribute Claimant's pulmonary problems to his work and to his identification of a possible underlying cardiac condition as an alternative explanation. D&O at 12. When fairly read, however, Dr. Curtis's opinion does not support the ALJ's characterization. Dr. Curtis stated he "cannot attribute" Claimant's "undefined" lung condition to work exposures "due to lack of workup and investigation" and that a causal link would need to be "further investigated and defined" to be either established or eliminated. With respect to the cardiac murmur, Dr. Curtis wrote it "concerns" him that "part" of Claimant's breathing problems are related to a cardiac source; he did not conclude the cardiac condition was the sole cause, and he explicitly declined to eliminate occupational exposure as a contributing factor to Claimant's lung condition without further workup.

Contrary to the ALJ's characterization, Dr. Curtis did not opine Claimant's pulmonary condition was not caused by his employment, nor did he opine the cardiac condition was likely the sole source of Claimant's respiratory symptoms. In fact, he expressly opined he could not reach any causal connection conclusion whatsoever. The First Circuit's rebuttal standard, while not requiring certainty, does require evidence from which a reasonable mind could accept a conclusion of non-causation. *Hartford*, 137 F.3d at 675. An expert who states that causation could neither be established nor eliminated on the present record and that further investigation was required before any causal conclusion could be drawn does not meet that standard. *See Fields*, 599 F.3d at 57.

Given Dr. Curtis's opinion cannot adequately support the conclusion that Claimant's pulmonary condition was not caused or aggravated by work exposures, his opinion is legally insufficient to rebut the Section 20(a) presumption. *Fields*, 599 F.3d at 56-57. Because Employer did not submit any other evidence to rebut the Section 20(a) presumption as to Claimant's pulmonary condition, we reverse the ALJ's determination that Employer rebutted the presumption. Consequently, Claimant's pulmonary condition is work-related as a matter of law. *Id.* at 57.

Total Disability

Claimant next contends the ALJ erred in finding he failed to establish a prima facie case of total disability and failed to determine whether and when his pulmonary condition reached MMI. He asserts the ALJ did not account for his pulmonary condition when considering total disability and did not properly compare his medical restrictions with the physical requirements of his usual employment. Therefore, Claimant asserts the ALJ erroneously denied PTD benefits.

Because the ALJ did not consider Claimant's work-related pulmonary condition when addressing disability, we vacate his disability findings and remand the case to him for reconsideration. On remand, the ALJ must reassess whether Claimant established a prima facie case of total disability including but not limited to any restrictions that may be attributable to Claimant's pulmonary condition. *See Gacki v. Sea-Land Serv., Inc.*, 33 BRBS 127, 129 (1998) (the claimant bears the burden of establishing the nature and extent of his disability); *Trask v. Lockheed Shipbuilding & Constr. Co.*, 17 BRBS 56, 59 (1980) (same); *see also Moody v. Huntington Ingalls, Inc.*, 879 F.3d 96, 99-100 (4th Cir. 2018) (a claimant's retirement status does not affect his earning capacity or entitlement to disability benefits). Ultimately, the ALJ must conduct a full disability analysis and address any remaining disputed issues.³

Accordingly, we affirm in part and vacate in part the ALJ's Decision and Order Denying Permanent Total Disability Benefits and the Order Denying Reconsideration and remand the case to the ALJ for further analysis in accordance with this decision.

SO ORDERED.

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

GLENN E. ULMER
Administrative Appeals Judge

³ We decline to address Claimant's remaining arguments regarding the ALJ's disability determination. The ALJ's disability analysis on remand may differ materially with the inclusion of Claimant's pulmonary condition. Thus, addressing those arguments at this stage could unnecessarily constrain the ALJ's weighing the evidence relevant to that analysis. *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741, 742 (5th Cir. 1962).