

U.S. Department of Labor

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



BRB No. 24-0368

JOSE ALVAREZ DUENAS

Claimant-Petitioner

v.

CONSTELLIS GROUP/TRIPLE CANOPY,
INCORPORATED

and

CONTINENTAL INSURANCE COMPANY

Employer/Carrier-
Respondents

NOT-PUBLISHED

DATE ISSUED: 06/25/2026

DECISION and ORDER

Appeal of the Decision and Order on the Record of Christine Hilleren-Wilkins, Administrative Law Judge, United States Department of Labor.

Allison T. Graber and Jacob S. Garn (Attorneys Jo Ann Hoffman & Associates, P.A.), Lauderdale-By-The-Sea, Florida, for Claimant.

Sherman W. Jones, III, and Sergio A. Reynoso (Brown Sims), Houston, Texas, for Employer and its Carrier.

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

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Christine Hilleren-Wilkins's Decision and Order on the Record (2021-LDA-02380) 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). 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.¹ 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

Claimant, a native of Peru, allegedly sustained psychological injuries as a result of being exposed to war zone events while working for Employer in Iraq as a security guard at Union 3 Base from October 2007 to October 2008 and as a security guard and driver at Eastern Project, Camp Sullivan, and Camp Condor from October 2009 to October 2010. Joint Exhibit (JX) 1 at 6-9, 18. During his employment in Iraq, Claimant stated he was exposed to multiple mortar attacks and car bombings that caused him to take cover in bunkers and fear for his life. *Id.* at 8-11, 18-20.

He detailed what he deemed the four most traumatic events he experienced, all of which occurred in 2010. Specifically, he stated the first was a “big [mortar] attack” that destroyed the camp and injured some colleagues. JX 1 at 8. He also described a second event, during which he heard a mortar falling thirty to forty meters away. *Id.* at 10-11. The third incident reportedly involved Claimant's friend and others being killed by a mortar attack at a firearms-training camp while Claimant was on duty 200 to 300 meters away. *Id.* at 11. During the fourth event Claimant witnessed a wall being destroyed by an attack thirty to forty meters away from him. *Id.* at 20. Employer did not dispute Claimant was exposed to various war zone attacks, but it questioned in its post-hearing brief the veracity of these specific attacks due to “numerous inconsistencies,” and it continues to argue the ALJ correctly found inconsistencies undermined Claimant's account of these events. Emp. Post-H Brief at 16-19; Emp. Res. Br. at 8, 18, 32-33, 36-38.

After Claimant's second contract with Employer ended in October 2010, he returned to his home in Peru, working in a variety of intermittent positions over the years including occasional construction jobs and three years helping at his father's store. JX 1 at 7, 14-17. Claimant stated his symptoms progressed, and he avoided contact with his family due to aggressive behavior and conflict. *Id.* at 3-4. He testified he had problems with his wife due to his irritability, which also caused anxiety. *Id.* at 4. In addition, Claimant stated he

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 handled this claim is located in New York. 33 U.S.C. §921(c); *Glob. Linguist Sols., L.L.C. v. Abdelmeged*, 913 F.3d 921, 922 (9th Cir. 2019); *Hice v. Director, OWCP*, 156 F.3d 214, 218 (D.C. Cir. 1998) (“The location of . . . the district director[] who handled [the] claim determines the proper court to hear [the] appeal.”); Referral Letter (Aug. 23, 2024).

experienced other symptoms such as sleeping difficulties and nightmares. *Id.* at 12. Consequently, he sought medical treatment. *Id.*

On April 10, 2019, Claimant visited with Dr. Julian Valderrama Escalante (Dr. Valderrama), a psychiatrist. JXs 14, 15. He diagnosed Claimant with Post-Traumatic Stress Disorder (PTSD). JX 15 at 2. Dr. Valderrama's records from April 2019 to December 2022 state that Claimant is "slowly evolving favorably and is clinically stable under psychopharmacological and psychotherapeutic treatment." *Id.* at 2, 5, 12, 17, 26, 31, 37. Specifically, Dr. Valderrama opined that Claimant's working conditions for Employer caused his PTSD and restricted Claimant from working in a war zone. *Id.* at 7.

At Employer's request, Dr. Gloria Morote, a psychologist, examined Claimant on January 27, 2021, and administered various tests.² JXs 18, 19, 20. Dr. Morote reported Claimant demonstrated logical thought processes, coherent communication, and an easy-going manner at the interview, though his answers were sometimes vague. JX 18 at 8. She stated he reported feeling more relaxed with psychological treatment and both that his symptoms had diminished and that he had no current symptoms. *Id.* at 5-6. In addition, she stated his test results (HDRS and HARS) showed no indications of depression, anxiety, agitation, or difficulties performing work or daily activities, no evidence of overreporting atypical symptoms, and his profile for various behaviors (TSI) was "within normal limits" or in the "non-clinical, normal range." *Id.* at 9-10. Another test (MMPI-2) revealed some inconsistencies with answers signaling mild depression, feelings of unhappiness, and some anxiety, but not enough to invalidate the results, while its restructured format (MMPI-2-RF) revealed extreme overreporting of emotional and somatic symptoms – which did invalidate the test. *Id.* Based on Claimant's reported symptoms and experiences, his test results, his interview, and his medical records, Dr. Morote opined with a reasonable degree of professional certainty there is no reliable evidence that Claimant has a psychological injury related to his work with Employer. JX 18 at 10-14. She also concluded Claimant is not impaired socially or occupationally, and he does not need mental health treatment. *Id.* at 13-14.

At his attorney's request, on September 2, 2022, Claimant was evaluated by clinical psychologist Dr. Gustavo R. Benejam, who interviewed Claimant, conducted a mental

² Dr. Morote administered the following psychological testing, several of which were conducted in Spanish: the Hamilton Depression Rating Scale (HDRS), Hamilton Anxiety Rating Scale (HARS), the Minnesota Multiphasic Personality Inventory-2 (MMPI-2), the MMPI-2-Restructured Format (MMPI-2-RF), and the Trauma Symptom Inventory (TSI-2). JX 18 at 9-10.

status examination, administered psychological testing,³ and reviewed Claimant's medical records. JX 16 at 3-12. Dr. Benejam reported Claimant's demeanor at the interview revealed no cognitive impairment or evidence of thought disorder and his test results (MMSE) indicated his "cognitive state is within normal limits ... with only the possible presence of anxiety and depression." Other tests indicated Claimant was severely depressed (BDI-II) with a moderate range of anxiety (BAI), has PTSD (PCL-5 and CAPS-5), and has moderate to severe problems with participating in society and getting along with people (WHODAS-2). *Id.* at 7-9. Dr. Benejam concluded Claimant's test results "support [finding that] his cognitive and mental symptoms cause significant impairments or disabilities in functioning." Dr. Benejam diagnosed Claimant with PTSD and Major Depressive Disorder (MDD) due to his work in a war zone and based on his reported symptoms and test results. *Id.* at 9, 17-20. He recommended psychiatric care and psychological treatment on a consistent basis, and he further opined Claimant "is no[t] fit to return to work overseas or in a job that requires exposure to high-risk situations" and should "limit any work that involves stress and/or significant interaction with others." *Id.* at 17, 19.⁴

On June 13, 2019, Claimant filed a claim under the Act seeking benefits for his alleged work-related psychological condition. JX 2. Employer first became aware of the claim on June 18, 2019, and controverted it on July 15, 2019. JXs 3, 5. The case was referred to the Office of Administrative Law Judges (OALJ) on May 20, 2020. JX 7. Claimant was deposed on September 10, 2022. JX 1. On November 28, 2022, the parties jointly requested that the matter be adjudicated on the evidence of record in lieu of a hearing, which the ALJ approved. *See* Dec. 21, 2022 Order Granting Joint Request for on

³ Dr. Benejam administered the following psychological testing: the Folstein Mini-Mental State Exam (MMSE); the Beck Anxiety Inventory (BAI), the Beck Depression Inventory, 2nd Edition (BDI-II), the Paranoia Worries Questionnaire (PWQ), the Post-Traumatic Stress Disorder Checklist for DSM-5 (PCL-5), the Clinician-Administered PTSD Scale for DSM-5 (CAPS-5), the World Health Organization Disability Assessment (WHODAS-2), the Structured Inventory of Malingered Symptomatology (SIMS), and the Miller Forensic Assessment of Symptoms Test (M-FAST). JX 16 at 7-10.

⁴ Dr. Benejam also criticized Dr. Morote's evaluation – accusing her evaluation of being so long that it caused Claimant mental fatigue and exhaustion. JX 16 at 10. He opined the results of the tests she administered do not suggest overreporting, feigning, or malingering, and stated she improperly dismissed psychological symptoms. *Id.* at 10-11. On October 6, 2022, Dr. Morote authored an addendum report reviewing the medical opinions of Claimant's doctor and expert and responding to Dr. Benejam's critique of her evaluation and report. JX 20.

the Record Decision and Establishing Briefing Deadlines at 1, 5; Nov. 28, 2022 Joint Pre-Hearing Statement at 8 (unpaginated).

On June 5, 2024, the ALJ issued her Decision and Order (D&O). She first rejected Claimant's arguments regarding any adverse inferences from Employer's discovery responses.⁵ D&O at 6-7. Then, while she found Claimant successfully invoked the Section 20(a) presumption of compensability, 33 U.S.C. §920(a), she also found Employer presented sufficient evidence to rebut the presumption. *Id.* at 7-11. Considering the evidence as a whole, the ALJ assigned diminished weight to Claimant's partially inconsistent reporting of his symptoms, treatment, history of trauma, and work history and found he was not fully credible. D&O at 16-20. She also found Dr. Valderrama's opinion entitled to limited weight, and she assigned partial weight to the opinions of both Drs. Benejam and Morote. *Id.* at 20-33. Based on this assessment, she determined "Claimant has not satisfied his burden of persuasion" and the evidence is "evenly balanced." *Id.* at 33. As Claimant bears the burden of persuasion by a preponderance of the evidence, she found Claimant did not establish the existence of a work-related psychological condition on the record as a whole and denied benefits. *Id.*

⁵ We reject Claimant's argument that the ALJ failed to consider that Employer untimely filed its response to Claimant's request for admissions. Cl.'s Br. at 28. As demonstrated in Exhibit A of Employer's response brief, Claimant agreed to extend the deadline for the Employer twice via emails. Emp.'s Resp. Br., EX A. The original deadline was on October 12, 2021, then the parties agreed to extend the deadline to October 25, 2021, and then to November 8, 2021. *Id.* (also, Employer agreed Claimant could submit his discovery responses on or before November 22, 2021). On November 8, 2021, Employer timely filed its Objections and Responses to Claimant's First Request for Admissions and timely served them upon Claimant's counsel. JX 26 at 1-2. The ALJ found "the discovery requests asserted by Claimant to be incomplete were served by Employer in November 2021, nearly a year prior to the close of discovery." D&O at 6. She further concluded Claimant did not file a motion to compel any outstanding documentation during the discovery period, and Claimant first raised this issue in his brief filed on March 17, 2023. *Id.* at 4, 6. Claimant has not explained how the ALJ abused her discretion or how his contention makes any difference in the outcome of this case. *Shinseki v. Sanders*, 556 U.S. 396, 409 (2009) (appellant must explain how the "error to which [it] points could have made any difference"); *Patterson v. Omniplex World Services*, 36 BRBS 149, 152 (2003).

Claimant appeals the denial of benefits. He contends the ALJ erred in finding Dr. Morote's opinion rebutted the Section 20(a) presumption and in weighing the evidence of record. Employer responds, urging the Board to reject Claimant's arguments.

As the parties do not challenge the ALJ's findings on invocation of the Section 20(a) presumption for Claimant's alleged PTSD or psychological condition, we affirm them. *Scalio v. Ceres Marine Terminals, Inc.*, 41 BRBS 57, 58 (2007); D&O at 10.

Section 20(a) Rebuttal

Claimant contends the ALJ erred in finding Dr. Morote's opinion sufficient to rebut the Section 20(a) presumption because it is equivocal and does not constitute substantial evidence contrary to Claimant's evidence. Cl.'s Br. at 5-13. We disagree, as Claimant conflates the standards for rebutting the Section 20(a) presumption and for proving there is a work-related injury by weighing all the evidence.

When, as in this case, the Section 20(a) presumption is invoked, *Rose v. Vectrus Sys. Corp.*, 56 BRBS 27 (2022) (en banc), *appeal dismissed* (M.D. Fla. Aug. 24, 2023); *see also Rainey v. Dir., 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. *Am. 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). The inquiry at rebuttal is whether the employer submitted relevant evidence that a reasonable mind might accept to support a finding that the claimant's injury is not work-related. *Haw. Stevedores, Inc. v. Ogawa*, 608 F.3d 642, 651 (9th Cir. 2010); *Rainey*, 517 F.3d at 637. The employer's burden on rebuttal is one of production, not persuasion. *Rainey*, 517 F.3d at 637; *Truczinskas v. Dir., OWCP*, 699 F.3d 672, 678 (1st Cir. 2012); *Rose*, 56 BRBS at 35. A physician's unequivocal opinion that there is no injury or 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. Metro. Stevedore Co.*, 31 BRBS 98, 100 (1997), *aff'd*, 169 F.3d 615 (9th Cir. 1999); *Holmes v. Universal Mar. Serv. Corp.*, 29 BRBS 18, 20 (1995). If the employer successfully rebuts the presumption, then the ALJ must resolve the issue of causation based on the evidence as a whole with the claimant bearing the burden of persuasion. *Rainey*, 517 F.3d at 634; *Marinelli*, 248 F.3d at 65; *Universal Mar. Corp. v. Moore*, 126 F.3d 256, 262 (4th Cir. 1997); *Santoro v. Maher Terminals, Inc.*, 30 BRBS 171, 175 (1996).

Contrary to Claimant's assertion, the weighing of conflicting evidence or of the credibility of each piece of evidence "has no proper place in determining whether [employer] met its burden of production" at the rebuttal stage. *Ogawa*, 608 F.3d at 651; *Rose*, 56 BRBS at 35. In this case, Dr. Morote specifically concluded "there is no reliable evidence that [Claimant] has a psychological condition" based on her testing, interview, and review of the medical record. *Ogawa*, 608 F.3d at 651; *Rainey*, 517 F.3d at 637; *Rose*, 56 BRBS at 35; D&O at 11; JX 18 at 11. She also concluded Claimant does not need continued psychological treatment and he is capable of returning to work for Employer as a security guard JX 18 at 12-13. Her conclusions based on a reasonable degree of medical certainty are unambiguous, directly contradict the Section 20(a) presumption that Claimant has a psychological injury, are the kind of evidence a reasonable mind might accept to support the opposing conclusion, and are sufficient to rebut the presumption. *Rainey*, 517 F.3d at 637; *Suarez*, 50 BRBS at 36. Consequently, we affirm the ALJ's determination that Employer rebutted the Section 20(a) presumption with Dr. Morote's opinion.

Weighing the Evidence

Having affirmed the findings on invocation and rebuttal of the Section 20(a) presumption, the issue of causation must be resolved based on the evidence in the entire record with Claimant bearing the burden of persuasion by a preponderance of the evidence. *Dir., OWCP v. Greenwich Collieries [Ondecko]*, 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. If the ALJ finds the evidence is in equipoise, the party with the burden of persuasion, in this case Claimant, cannot succeed. *Ondecko*, 512 U.S. at 271;⁶ *Santoro*, 30 BRBS at 174-175.

⁶ In *Ondecko*, the Supreme Court of the United States held the Department of Labor's "true doubt" rule, which traditionally found for the claimant in cases where the evidence was evenly balanced, violated Section 7(c) of the Administrative Procedures Act (APA), which states that "except as otherwise provided by statute the proponent of a rule or order has the burden of proof." 5 U.S.C. §556(d); *Ondecko*, 512 U.S. at 276. The Court construed "burden of proof" as the burden of persuasion as opposed to the burden of production. Thus, once the Section 20(a) presumption drops out of the case, the claimant must prove his claim by a preponderance of the evidence. See *Ondecko*, 512 U.S. at 276; *Rose*, 56 BRBS at 30; *Santoro*, 30 BRBS at 174-175.

In challenging the ALJ's weighing of the psychological injury evidence, Claimant contends the ALJ erred in not giving the opinion of his treating physician, Dr. Valderrama, special weight. Cl.'s Br. at 14-16. He also asserts it was irrational and contrary to law for the ALJ to assign partial credit to Dr. Valderrama's testimony and to the opinions of Drs. Benejam and Morote, which resulted in ignoring flaws in Dr. Morote's opinion and in giving it automatic deference. *Id.* at 16-21. He further argues the ALJ erred in discrediting his testimony, as it constitutes substantial evidence to meet his burden in establishing causation. *Id.* at 23-26. We disagree.

As a factfinder, the ALJ has "the discretion to evaluate the credibility of a claimant and to arrive at an independent judgment, in light of medical findings and other evidence." *Pietrunti v. Dir., OWCP*, 119 F.3d 1035, 1042 (2d Cir. 1997). The ALJ also is tasked with assessing the weight and credibility of medical opinions and whether those opinions are rationally based on their underlying documentation. *S.K. [Kamal] v. ITT Indus., Inc.*, 43 BRBS 78, 80 (2009), *aff'd in part and rev'd in part mem.*, No. 4:09-MC-348, 2011 WL 798464 (S.D. Tex. Mar. 1, 2011); *see also Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403, 405 (2d Cir. 1961). She may accept parts of a witness's testimony and reject others, *Banks v. Chicago Grain Trimmers Ass'n*, 390 U.S. 459, 467 (1968); *Pimpinella v. Universal Mar. Serv. Inc.*, 27 BRBS 154, 157 (1993), and she may draw her own inferences and conclusions from the evidence, *Compton v. Avondale Indus., Inc.*, 33 BRBS 174, 176-177 (1999). Additionally, the ALJ must explain her rationale in reaching a decision on the evidence, *Kkunsu v. Constellis Grp./Triple Canopy, Inc.*, 59 BRBS 1, 4-5 (2025), and if the ALJ's conclusion upon weighing the evidence is rational and supported by substantial evidence, it must be affirmed. *Carswell v. E. Pihl & Sons*, 999 F.3d 18, 27 (1st Cir. 2021), *cert. denied*, 142 S. Ct. 1110 (2022); *Mendoza v. Marine Pers. Co.*, 46 F.3d 498, 500-501 (5th Cir. 1995). The Benefits Review 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. *Sealand Terminals v. Gasparic*, 7 F.3d 321, 323 (2d Cir. 1993); *Volpe v. Northeast Marine Terminals*, 671 F.2d 697, 700 (2d Cir. 1982); 20 C.F.R. §802.301(a).

In this case, the ALJ found Claimant is a partially credible witness. She concluded he "consistently reported" his pre-employment background but he was less consistent with his "allegations of his experiences in Iraq and his subsequent symptomology and treatment." In addition, she found "internal inconsistencies between Claimant's deposition testimony and his statements to treatment providers." D&O at 16. She then identified the discrepancies she found among his recounting of the traumatic events, the onset and nature of his symptoms, his medical treatment, his post-Iraq employment, and his family interactions. *Id.* at 16-20.

For example, the ALJ found Claimant informed Dr. Benejam that he witnessed a mortar attack at Camp Sullivan seventy to one hundred meters away and thereafter saw a black tarp covering a dead coworker, a mortar attack sixty meters away at Camp Condor, and a mortar attack at an Iraqi police station seventy meters away that killed several people. D&O at 17; JX 16 at 4. He informed Dr. Morote that attacks and explosions occurred daily, but later he stated they occurred every two weeks or so. He described only the Camp Sullivan event; Claimant stated he was in his room at the time, had heard the mortar attack killed a co-worker (whose name he could not recall), “had no problems or symptoms after this incident,” and left for home one month later. D&O at 17-18; JX 18 at 7. In addition, Claimant indicated he began experiencing psychological symptoms since his treatment with Dr. Valderrama in 2019 but later testified that he had these symptoms in Iraq. D&O at 18; JX 1 at 3-4, 12. Furthermore, the ALJ noted Claimant informed Dr. Morote that he had sleep disturbance due to his memories, but he could not recount any specific memories, indicated they happen only intermittently, and then stated he did not have any symptoms. D&O at 18-19; JX 18 at 5-6. The ALJ also noted discrepancies with Claimant’s recollection of his treatment and recommended treatment. D&O at 19-20. Dr. Valderrama’s records from April 2019 to December 2022 reflect that Claimant’s condition was improving with medication and psychotherapy. D&O at 20; JX 15 at 2, 5, 12, 17, 26, 31, 37. However, during his evaluation with Dr. Benejam in August 2022, Claimant reported that his symptoms had continued to increase over time resulting in a severe social impairment and that he had not taken his medication for months due to an inability to meet with Dr. Valderrama. D&O at 20; JX 16 at 3, 5-6, 12.

Moreover, Claimant testified that his symptoms impacted his employment since returning from Iraq, as he is always irritable and has no patience for people, but the record demonstrates he had been employed in numerous jobs since returning from Iraq without evidence of being terminated due to his psychological symptoms. D&O at 19; JX 1 at 14-17, 20. In addition, Claimant first testified that his evaluation with Dr. Valderrama was virtual but later indicated he took a bus to get to the location an hour away. D&O at 19; JX 1 at 13. Finally, Claimant reported to Dr. Morote that he lived with his wife and three children without conflict but later testified he lives in the bus station where he works due to conflicts arising from aggressive behavioral issues. D&O at 20; JXs 1 at 3, 18 at 5. While these types of testimonial inconsistencies are not equal in weight in regard to the nature of the claim as the earlier discrepancies the ALJ identified regarding the underlying traumatic events and Claimant’s medical treatment, they added to the ALJ’s skepticism of Claimant’s testimony on the whole. Based on Claimant’s “partially inconsistent” and unclear reports, the ALJ found his credibility diminished. D&O at 16-20, 30, 32-33. Considering the discretion accorded ALJs in weighing the evidence, *Gasparic*, 7 F.3d at 323, and as she fully explained her reasons for finding Claimant to be “partially credible,” we affirm the ALJ’s finding. *Banks*, 390 U.S. at 467; *Carswell*, 999 F.3d at 55; *see also*

Ceres Gulf, Inc. v. Dir., OWCP, 683 F.3d 225, 228 (5th Cir. 2012); *Pietrunti*, 119 F.3d at 1042; *Kkunsa*, 59 BRBS at 4-5; *Compton*, 33 BRBS at 176-177.⁷

Regarding the medical evidence of record, we first reject Claimant's argument that the ALJ failed to give Dr. Valderrama's opinion the "considerable and special weight" it deserved due to his status as treating physician. *Kkunsa*, 59 BRBS at 4 (where there is conflicting medical evidence, a claimant's treating physicians are not automatically entitled to significant or special weight on all issues); Cl.'s Brief at 14-15.⁸ As Employer presented evidence contrary to Dr. Valderrama's opinion, his opinion is not entitled to "special weight." *Kkunsa*, 59 BRBS at 4-5. Rather, the ALJ was required to, and did, consider and assess the weight and credibility of Dr. Valderrama's opinion, explaining it is entitled to limited weight because his reports do not contain objective support or reasons for his conclusions.⁹

⁷ We reject Claimant's assertion that finding a claimant's testimony credible inherently obviates the need for the ALJ to evaluate the medical evidence or requires him to credit the claimant over a medical provider. Cl.'s Brief at 29-30. First, the ALJ did not find Claimant fully credible. 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; it is up to the ALJ to weigh all the evidence, accepting or rejecting all or any part of any testimony according to her judgment. *Perini Corp. v. Heyde*, 306 F. Supp. 1321, 1325-1326 (D.R.I. 1969). The ALJ also must independently analyze and discuss the medical evidence to satisfy the Administrative Procedures Act's requirement for a reasoned analysis. 5 U.S.C. §557(c)(3)(A); *Kkunsa*, 59 BRBS at 3-4; *Ballesteros v. Willamette W. Corp.*, 20 BRBS 184, 187 (1988).

⁸ Claimant cites to *Pietrunti*, 119 F.3d 1035, and *Amos v. Director, OWCP*, 153 F.3d 1051 (9th Cir. 1998), *amended*, 164 F.3d 480 (9th Cir. 1999), *cert. denied*, 528 U.S. 809. Cl.'s Brief at 15-16. Unlike in this case, in *Pietrunti*, 119 F.3d at 1043-1044, the medical evidence on causation was "uncontroverted and unanimous," and the ALJ erroneously substituted his opinion for the treating physician's opinion, while in *Amos*, 153 F.3d at 1054, the issue was whether the claimant's treating physicians proposed a reasonable course of treatment. Therefore, those cases are distinguishable. See *Kkunsa*, 59 BRBS at 4-5.

⁹ The ALJ stated Dr. Valderrama diagnosed Claimant with PTSD on his first visit without "clinical psychological testing or mental status examination findings" and that diagnosis "appears to be solely based upon Claimant's (unrecorded) subjective reports without objective corroboration...." D&O at 21. To the extent Claimant otherwise challenges the weight the ALJ gave to Dr. Valderrama's opinion, his arguments amount to

Next, we reject Claimant's arguments that the ALJ erred in weighing Dr. Morote's opinion because she gave it automatic deference without fully considering it.¹⁰ Cl.'s Br. at 19. The ALJ did not automatically defer to Dr. Morote. Instead, the ALJ found Dr. Morote's opinion "somewhat diminished" and entitled to partial weight because she failed to fully explain differences between certain objective testing results. D&O at 27, 29-32; JX 18 at 3. Specifically, the ALJ observed that while the HDRS and HARS measures yielded global scores in the normal range pertaining to depression and anxiety, the MMPI-2 clinical scales signaled mild depression and some elements of anxiety. D&O at 29-30; JX 18 at 8-9. Similarly, the ALJ noted that while the MMPI-2 clinical profile was valid despite some inconsistent responses and exaggeration of symptoms, the MMPI-2-RF profile was invalid due to extreme over-reporting of cognitive, emotional, and somatic symptoms. D&O at 30; JX 18 at 9. The ALJ found Dr. Morote failed to provide a "detailed explanation of how such data was reconciled in concluding that Claimant does not carry a corresponding diagnosis." D&O at 30.¹¹ The ALJ also took some issue with the fact that

a request to reweigh the evidence which the Board is not empowered to do. *See Gasparic*, 7 F.3d at 323; *Volpe*, 671 F.2d at 700. Accordingly, we affirm the ALJ's weighing of his opinion.

¹⁰ We reject Claimant's assertion that, at the weighing stage, the ALJ omitted discussing whether Dr. Morote is an independent medical examiner (IME). Cl.'s Brief at 16. Although the ALJ stated Dr. Morote conducted an independent examination, any error in such a statement is harmless. D&O at 12; JX 18. There is no doubt that the parties and the ALJ knew Dr. Morote examined Claimant on Employer's behalf. D&O at 3, 12. An "independent medical examination" occurs only under Section 7(e) of the Act, which allows the district director to choose an IME physician to examine the claimant. 33 U.S.C. §907(e); *Augillard v. Pool Co.*, 31 BRBS 62, 64 (1997). Reports of Section 7(e) independent physicians are to be weighed along with the other medical opinions in the record. *Jackson v. Ceres Marine Terminals, Inc.*, 48 BRBS 71, 75 (2014), *aff'd sub nom. Ceres Marine Terminals, Inc. v. Director, OWCP*, 848 F.3d 115 (4th Cir. 2016). As Dr. Morote's IME "designation" played no role in the ALJ's weighing of the medical opinions in this instance, or her credibility determination regarding Dr. Morote's opinion specifically, Claimant has not explained how this alleged omission makes any difference in the outcome of this case. *Sanders*, 556 U.S. at 409.

¹¹ Dr. Morote also opined Claimant does not meet criterion A for PTSD under the under the American Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5). The DSM-5 Criteria A through H for diagnosing PTSD includes 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

Dr. Morote examined Claimant on only one occasion and conducted the exam via videoconference rather than in-person. D&O at 27, 30; JX 18 at 3. Nevertheless, the ALJ found Dr. Morote's opinion overall was better reasoned and documented than any other medical opinion of record. D&O at 32. She explained that Dr. Morote's report and addendum provided a detailed discussion and recitation of her clinical interview, mental status examination, and diagnostic testing administration, with multiple record reviews and clinical research citations to support her opinion.¹² *Id.* at 27, 31-32. Thus, she assigned Dr. Morote's opinion that Claimant does not have a work-related psychological injury partial weight despite having also found it generally well-reasoned and well-documented. D&O at 30, 33.

Further, as with the other evidence of record, the ALJ gave Dr. Benejam's opinion partial weight. D&O at 26, 31. She reasoned Dr. Benejam saw Claimant on only one occasion and his conclusions relied on Claimant's subjective reporting and Dr. Valderrama's opinion, which the ALJ found unreasoned and undocumented. *Id.* at 26, 31; *see* JX 16 at 5, 12-13. The ALJ also found Dr. Benejam failed to adequately explain the basis for certain interpretations within his report, such as using a SIMS score cutoff of fifteen rather than the more widely used cutoff score of fourteen, as Dr. Morote indicated. D&O at 26, 31; JXs 16 at 9, 20 at 4. Further, the ALJ determined Dr. Benejam's assertion that Dr. Morote's six-hour evaluation tired Claimant and rendered her opinion invalid is unsupported by any authority documenting the standard length of an acceptable

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>. While Dr. Morote may have rationally determined Claimant did not satisfy all the criteria for a PTSD diagnosis, she did not fully explain her conclusion that he did not satisfy criterion A (exposure to traumatic events). Although the ALJ, in her discretion, did permissibly find Claimant's accounts of those events problematic based on her comparison of what she considered Claimant's inconsistent testimony with the other evidence in the case. *Pietrunti*, 119 F.3d at 1042.

¹² Dr. Morote stated the test results in Dr. Benejam's report failed to support his opinion that Claimant has significant symptoms of PTSD or MDD, and that his SIMS score of 15 is above the cutoff and indicates the possibility of malingering. JX 20 at 4, 11. She also stated Dr. Valderrama's report does not provide any basis for his PTSD diagnosis. JX 18 at 12-13. Additionally, Dr. Morote opined there is no evidence Claimant experienced impairment in his occupational and social functioning since he started working for Employer or at any time thereafter. JXs 18 at 14, 20 at 8.

psychological evaluation or a statement of how long is acceptable. D&O at 26, 31; JX 16 at 10. The ALJ also noted Dr. Benejam's evaluation contained a lengthy interview and mental status examination of Claimant, along with more diagnostic testing than Dr. Morote conducted, but he did not explain why his evaluation was not similarly overwhelming. D&O at 26, 31; *see* JX 16 at 1-11. For these reasons, the ALJ found Dr. Benejam's opinions are "considered and credited to a degree" but are not entitled to "more than partial weight." D&O at 26.

Considering the evidence as a whole, the ALJ found Claimant did not satisfy his burden of persuasion. D&O at 33. Based on Claimant's diminished credibility, the limited weight afforded Dr. Valderrama's opinion, the partial weight given to Drs. Benejam's and Morote's opinions, and a full discussion of the evidence and her inferences and conclusions, the ALJ rationally found Claimant's evidence is not persuasive. Claimant's arguments amount to a request to reweigh the evidence which the Board is not empowered to do. *See Gasparic*, 7 F.3d at 323; *Volpe*, 671 F.2d at 700. Consequently, we affirm the ALJ's conclusion that Claimant has not established he suffers from a work-related psychological condition by a preponderance of the evidence.¹³ *Ondecko*, 512 U.S. at 271; *Santoro*, 30 BRBS at 174. Therefore, we affirm the ALJ's denial of benefits as it is rational, supported by substantial evidence, and in accordance with law. *Sistrunk v. Ingalls Shipbuilding, Inc.*, 35 BRBS 171, 174 (2001); *Coffey v. Marine Terminals Corp.*, 34 BRBS

¹³ Claimant also argues that the ALJ erroneously failed to weigh his photos, employment certificates and letters, employment contracts, disclosures, discovery responses, and filings with the Department of Labor. But Claimant has not explained how his contention would make any difference in the outcome of this case. *Shinseki*, 556 U.S. at 409; *Montoya v. Navy Exch. Serv. Command*, 49 BRBS 51, 52 n.1 (2015); *Patterson*, 36 BRBS at 152; *Plappert v. Marine Corps Exch.*, 31 BRBS 109, 111 (1997).

85, 87 (2000); *Duhagon v. Metro. Stevedore Co.*, 31 BRBS 98 (1997), *aff'd*, 169 F.3d 615 (9th Cir. 1999).

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge