U.S. Department of Labor

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

BRB No. 24-0381

EDDIE GEWARGES Claimant-Petitioner v. CWU, INCORPORATED and INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA Employer/Carrier-Respondents	)	**NOT-PUBLISHED** DATE ISSUED: 06/30/2026 DECISION and ORDER

Appeal of the Decision and Order Awarding Limited Benefits of Paul C. Johnson, Jr., District Chief Administrative Law Judge, United States Department of Labor.

Kirk E. Karamanian (O'Bryan Baun Karamanian), Birmingham, Michigan, 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) Paul C. Johnson, Jr.'s Decision and Order Awarding Limited Benefits (2021-LDA-04425) 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] The Benefits Review Board must affirm the ALJ's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.[2] 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359, 361-62 (1965).

Claimant alleges he sustained injuries to his back, neck, and right shoulder on March 13, 2020, while working for Employer as a translator in Germany. It is uncontested that Claimant lost his balance while squatting to clean under his desk and, in falling backwards, his leg struck the table, his neck struck the chair, and his right shoulder and back struck the floor. The ALJ found that Claimant invoked the Section 20(a) presumption of compensability, 33 U.S.C. §920(a), linking his injuries to his work for Employer and that Employer and its Carrier (Employer) rebutted the presumption for each injury. Weighing the evidence as a whole, the ALJ found Claimant established his back and neck injuries were work-related but failed to establish his right shoulder injury is work-related by a preponderance of the evidence. The ALJ then found that because Claimant's back and neck injuries resolved within four weeks of the incident, and his shoulder injury is not work-related, Claimant is not entitled to medical benefits for any of his injuries, 33 U.S.C. §907(a). But the ALJ found Claimant entitled to temporary total disability (TTD) benefits for his neck and back injuries for the five days he was off work from March 16 through March 20, 2020, to be calculated based on an average weekly wage (AWW) of $2,215.12.

On appeal, Claimant argues the ALJ erred in weighing the evidence regarding the compensability of his right shoulder injury. Employer responds in support of the ALJ's findings.

We affirm, as unchallenged on appeal, the ALJ's finding that Claimant invoked the Section 20(a) presumption as to his right shoulder and that Employer rebutted it. *See Scalio*

[1] On July 25, 2024, the ALJ issued an errata order for the limited purpose of adding an attorney as counsel for Employer. Errata Order at 2 n.1. In all other respects, the errata order is the same as the Decision and Order Awarding Limited Benefits. *Id.*

[2] This case arises within the jurisdiction of the United States Court of Appeals for the Fifth Circuit because the office of the district director who handled this claim is located in Texas. 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 (Oct. 1, 2024).

v. Ceres Marine Terminals, Inc., 41 BRBS 57, 58 (2007); Decision and Order (D&O) at 43-45. As no party challenges the ALJ's finding that Claimant established work-related back and neck injuries but is not entitled to further medical benefits for those injuries, we also affirm it. 33 U.S.C. §907(a); *see Scalio*, 41 BRBS at 58; D&O at 51-61, 72. We further affirm, as unchallenged, the ALJ's finding that Claimant is entitled to TTD benefits for his back and neck injuries from March 16 through March 20, 2020, to be calculated based on an AWW of $2,515.12. *See Scalio*, 41 BRBS at 58; D&O at 51-61, 72.

The only issue on appeal is whether Claimant's right shoulder injury is work-related based on a weighing of the evidence as a whole.

When the Board has affirmed the ALJ's finding that the employer rebutted the Section 20(a) presumption, the ALJ must resolve the issue of causation based on the evidence in the whole record with the claimant bearing the burden of persuasion. *See Bis Salamis, Inc. v. Director, OWCP* [*Meeks*], 819 F.3d 116, 127 (5th Cir. 2016); *see generally Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 271 (1994); *Santoro v. Maher Terminals, Inc.*, 30 BRBS 171, 174 (1996); *Rose v. Vectrus Sys. Corp.*, 56 BRBS 27, 39 (2022) (Decision on Recon. en banc), *appeal dismissed* (M.D. Fla. Aug. 24, 2023). The ALJ is entitled to evaluate the credibility of all witnesses, weigh the medical evidence, and draw his own inferences and conclusions from the record. *See Todd Shipyards Corp. v. Donovan*, 300 F.2d 741, 742 (5th Cir. 1962). In doing so, he may accept parts of a witness's testimony while rejecting other parts, *Banks v. Chi. Grain Trimmers Ass'n*, 390 U.S. 459, 467 (1968), and may draw his own inferences and conclusions from the evidence. *See Calbeck v. Strachan Shipping Co*., 306 F.2d 693, 695 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *Compton v. Avondale Indus., Inc.*, 33 BRBS 174, 176-177 (1999). The Board may not reweigh the evidence or substitute its opinion for that of the ALJ even if the evidence could support other inferences or conclusions. *See Sea-Land Servs., Inc.*, *v. Director, OWCP* [*Ceasar*], 949 F.3d 921, 927 (5th Cir. 2020).

In determining whether Claimant established his right shoulder injury is work-related, the ALJ considered Claimant's testimony and the opinions of Drs. Hans Harjung, Vasillios Moutzouros, and Musib Gappy that his right shoulder condition is work-related, and the contrary opinions of Drs. William Kesto and Paul Drouillard that it is not.[3] D&O at 61-67; Claimant's Exhibits (CXs) 15-17, 31; Employer's Exhibits (EXs) 15, 19, 20, 30, 35. The ALJ discredited Claimant's testimony and the opinions of Drs. Harjung,

[3] Dr. Harjung is an internal medicine physician in Germany. EX 17. Dr. Moutzouros is an orthopedic surgeon. CX 32 at 5. Dr. Gappy is board-certified in internal medicine and gastroenterology. CX 31 at 5. Dr. Kesto's credentials are not in the record. CXs 15, 31 at 24. Dr. Drouillard is an orthopedic surgeon. EX 21.

Moutzouros, Gappy, and Kesto. D&O at 47-51, 61-65. In contrast, he found Dr. Drouillard's opinion reasoned and documented. *Id.* at 65-66. Therefore, he found Claimant failed to establish his shoulder injury is work-related by a preponderance of the evidence. *Id.* at 67.

Claimant argues the ALJ erred in weighing the opinions of Drs. Harjung, Moutzouros, and Drouillard.[4] Claimant's Br. at 8-20.

Dr. Harjung initially treated Claimant three days after his work accident and noted bruises on his right shoulder. EX 17 at 1. On September 8, 2020, he referred Claimant to a radiologist for a magnetic resonance imaging (MRI) scan of his right shoulder. EX 19. The radiologist who interpreted the MRI scan opined it showed Claimant had "subtotal" rupture of the supraspinatus tendon, chronic irritation of the subacromial bursa with "obvious capsulitis," AC joint osteoarthritis, tendinosis with resorption cysts of the infraspinatus and subscapularis tendons, and peritendinitis and tenosynovitis "or slight tendinosis of the long biceps tendon in the sulcus with preserved intra-articular continuity." *Id.* After reviewing the scan, Dr. Harjung opined Claimant had a "[s]ubtle rupture of the supraspinatus tendon" and stated Claimant required physiotherapy for his "right shoulder after trauma." *Id.* at 5.

Dr. Moutzouros reviewed the MRI scan and opined it showed "clear as day" a supraspinatus and infraspinatus tear consistent with a traumatic complete rotator cuff tear because it is "completely off the greater tuberosity." CXs 10 at 32, 16 at 9, 32 at 11, 24. He opined that even fifteen months after the MRI scan, Claimant did not have much fat atrophy, which indicated his shoulder injury "likely" occurred from a traumatic event. *Id.* In addition, he opined Claimant's retraction is "consistent with an acute injury." *Id.* at 12. When Dr. Moutzouros performed surgery on Claimant's shoulder, he confirmed Claimant's rotator cuff was completely torn. CX 17 at 2-3. He stated he observed some age-related fraying of the labrum and bicep, but those changes did not make Claimant more susceptible to a rotator cuff tear because those are "different structures." CX 32 at 31; CX 17 at 2-3.

In contrast, Dr. Drouillard opined the MRI scan "showed evidence of degenerative changes, not traumatic ones." EXs 20 at 6, 30 at 2. During his deposition, Dr. Drouillard testified the MRI scan showed what "looked like the bone spurs there" were "impinging on the rotator cuff" causing tendonitis. EX 35 at 22. He opined there was "a high-grade

[4] We affirm, as unchallenged, the ALJ's discrediting of Claimant's testimony and the opinions of Drs. Kesto and Gappy. *See Scalio*, 41 BRBS at 58; D&O at 51, 62-65.

partial thickness degenerative rotator cuff tear from those bone spurs rubbin[g] on it," but there was "no evidence of a traumatic injury." *Id.*

Dr. Harjung did not reduce his opinion to writing; rather, the only indication the ALJ had of Dr. Harjung's opinion is Claimant's testimony that his current condition "most likely happened because of [his] age." D&O at 51, 62; EX 32 at 56. The ALJ discredited this evidence of Dr. Harjung's purported opinion because "Claimant's memory of Dr. Harjung's opinion is vague." D&O at 51, 62. The ALJ also discredited Dr. Moutzouros's opinion because he failed to explain why retraction, fat atrophy, and a complete tear were consistent with a traumatic injury and why a fall like the one Claimant described was "likely to cause a rotator cuff tear." *Id.* at 64. In contrast, the ALJ found Dr. Drouillard's opinion reasoned and documented because he "persuasively explained" how bone spurs can cause a partial rotator cuff tear. *Id.* at 67.

Claimant asserts the ALJ failed to consider Dr. Harjung's medical records based on an erroneous reading of Claimant's testimony. Claimant's Br. at 11-13. We agree.

The ALJ stated he discredited Dr. Harjung's opinion regarding Claimant's shoulder injury for "the same reasons that [he] did not credit [it]" earlier in his decision. D&O at 62. Reviewing the ALJ's earlier reasons, he gave no weight to Claimant's testimony that Dr. Harjung related Claimant's conditions to age because that opinion did not come directly from Dr. Harjung, it did not specify which conditions were related to age, and it lacked explanation. *Id.* at 51. Indeed, Claimant testified that Dr. Harjung told him his lower back injury "most likely" happened because of his age. EX 32 at 56. Claimant also testified, however, that Dr. Harjung told him his rotator cuff injury was "most likely" from his work accident. *Id.* at 56-57. Nonetheless, the ALJ found "Dr. Harjung's opinion is identical with regard to Claimant's neck, lower back, and shoulder." D&O at 51 n.19. Thus, the ALJ's finding is erroneous.

Although the ALJ accurately noted Dr. Harjung saw bruising on Claimant's right shoulder three days after his work incident and he referred Claimant to a radiologist for an MRI scan, the ALJ failed to consider Dr. Harjung's diagnosis of a "[s]ubtle rupture of the supraspinatus tendon" based on the MRI scan and his opinion that Claimant needed physiotherapy for his "right shoulder after trauma." D&O at 15-16; EXs 17 at 1, 5. Rather, he based his conclusion solely on his erroneous characterization of Claimant's testimony. D&O at 51.

Based on this error, the ALJ failed to weigh any of Dr. Harjung's medical records. When an ALJ has failed to consider all relevant evidence, remand is required. *McCurley v. Kiewest Co.*, 22 BRBS 115, 118 (1989) (remanding for the ALJ to discuss all relevant evidence); *see Director, OWCP v. Gen. Dynamics Corp.* [*Fantucchio*], 787 F.2d 723, 724

n.1 (1st Cir. 1986) (the Board properly remanded the case to the ALJ for additional fact-finding); *Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983) ("When the ALJ fails to make important and necessary factual findings, the proper course for the Board is to remand the case to the ALJ pursuant to 33 U.S.C. § 921(b)(4) rather than attempting to fill the gaps in the ALJ's opinion"). We therefore vacate the ALJ's weighing of Dr. Harjung's opinion. *See McCurley*, 22 BRBS at 118; *Fantucchio* 787 F.2d at 724 n.1; D&O at 51, 62.

Next, the ALJ found Dr. Moutzouros "was in a better position to accurately identify" whether Claimant's rotator cuff tear was full or partial because he performed shoulder surgery on Claimant and found that he "correctly identified the tear as complete." D&O at 65 n.22, 67. However, he discredited Dr. Moutzouros's opinion for failing to explain how he diagnosed Claimant's shoulder injury as work-related. *Id.* at 64.

Initially, we reject Claimant's contention that the ALJ erred in not assigning "significant weight" to Dr. Moutzouros opinion as Claimant's treating physician. Claimant's Br. at 17. When medical evidence conflicts, the ALJ is not required to give special weight to a treating physician's opinion. *Kkunsa v. Constellis Grp./Triple Canopy, Inc.*, 59 BRBS 1, 4 (2025). Instead, the ALJ must consider all relevant evidence, assess the weight and credibility of each opinion, and explain his rationale for reaching a decision. *Id.* at 4-5. Because the record contains conflicting reports from multiple providers addressing whether Claimant has a work-related shoulder injury, the ALJ correctly refrained from simply deferring to the opinion of Claimant's treating provider. *See Kkunsa*, 59 BRBS at 5; D&O at 61-67.

Nevertheless, we agree with Claimant's argument that the ALJ erred in discrediting Dr. Moutzouros's opinion for failing to explain why Claimant's shoulder injury is work-related on the facts of this case. Claimant's Br. at 16-20. We are not bound to accept an ultimate finding or inference if the decision discloses that it was reached in an invalid manner, *Howell v. Einbinder*, 350 F.2d 442, 444 (D.C. Cir. 1965), or if we are unable to conscientiously conclude that the decision is supported by substantial evidence. *Goins v. Noble Drilling Corp.*, 397 F.2d 392, 394 (5th Cir. 1968). A finding lacking the support of substantial evidence is not in accordance with law and must be set aside. *Fantucchio*, 787 F.2d at 725.

Contrary to the ALJ's findings, Dr. Moutzouros explained he knew Claimant's rotator cuff tear was caused by trauma for two reasons. CX 32 at 11-31. First, he explained the MRI scan showed "a complete tear." *Id.* at 24-25. He opined the rotator cuff was "completely off the tuberosity." *Id.* at 24. Second, he stated there was not a "significant amount of fat atrophy" in Claimant's supraspinatus, infraspinatus, "or even his subscap[ularis] or anywhere else in his rotator cuff" which does not "suggest that this is a

long-term chronic situation." *Id.* at 25. He explained that if Claimant's shoulder condition was chronic, he "would see a lot more [fat] atrophy on the MRI," which is why an MRI is ordered for a shoulder injury rather than an ultrasound. *Id.* In addition, he explained that although he saw some age-related "fraying" on Claimant's labrum and bicep during surgery, such fraying did not make Claimant more susceptible to a rotator cuff tear because those are "different structures." *Id.* at 31; CX 17 at 2-3. Given this detailed rationale, we are unable to discern why the ALJ found Dr. Moutzouros failed to explain his opinion. *See Goins*, 397 F.2d at 394; *Fantucchio*, 787 F.2d at 725; D&O at 64-65.

We also agree with Claimant's argument that the ALJ erred in crediting Dr. Drouillard's opinion because he diagnosed a partial rotator cuff tear contrary to the ALJ's finding Claimant had a complete rotator cuff tear and there are unresolved conflicts in the ALJ's reasoning. Claimant's Br. at 13-16. The ALJ found Dr. Drouillard persuasively explained how the MRI scan showed Claimant had a degenerative partial thickness tear of his rotator cuff due to bone spurs rubbing against it. D&O at 66-67. Yet the ALJ also observed the MRI report "is not clear" whether the scan shows bone spurs. *Id.* at 66 n.23 (citing EX 19). In addition, the ALJ acknowledged that Dr. Drouillard failed to correctly identify that Claimant had a complete tear, rather than a partial tear. *Id.* at 67. Notwithstanding, the ALJ found his opinion reasoned and documented because he "persuasively explained" how bone spurs can cause a partial rotator cuff tear. *Id.* Consequently, we are unable to discern why the ALJ credited Dr. Drouillard's opinion that bone spurs caused Claimant's partial rotator cuff tear when the ALJ found that Claimant had a complete rotator cuff tear and that it is "not clear" whether the MRI scan showed Claimant had bone spurs. *Id.* As the ALJ's reasoning is internally inconsistent, we vacate his crediting of Dr. Drouillard's opinion and remand the case for reconsideration. *See Goins*, 397 F.2d at 394; *Fantucchio*, 787 F.2d at 725; D&O at 66; Claimant's Br. at 13-16.

Claimant also argues the ALJ erred in failing to address his argument raised in his post-hearing brief that Dr. Drouillard is biased because he earns $984,000 per year working exclusively with insurance companies in workers' compensation claims as a "cut-off doctor." Claimant's Br. at 8-11; Claimant's Post-Hearing Br. at 42-43, 56-58. An ALJ should consider the degree to which any opinion is the product of bias, and "[t]o the extent that ALJ[s] determine that a particular expert's opinion is not, in fact, independent based on the facts of a particular claim," the ALJ has discretion to find that opinion entitled to little weight. *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 951 (4th Cir. 1997); *see Sea-Land Servs., Inc. v. Director, OWCP* [*Ceasar*], 949 F.3d 921, 926-927 (5th Cir. 2020) (ALJ may give less weight to a physician's opinion "when there is good cause shown to the contrary"); *Avondale Indus., Inc. v. Director, OWCP* [*Cuevas*], 977 F.2d 186, 189 (5th Cir. 1992) ("As fact finder, the ALJ determines questions of credibility of witnesses and of conflicting evidence"); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-35-36 (1991) (en banc) (it is error to discredit, as biased, a medical report prepared for litigation

absent a specific basis for finding the report unreliable); *see also Gremillion v. Gulf Coast Catering Co*., 31 BRBS 163, 168 (1997). Although the ALJ declined to give Dr. Drouillard's opinion less weight because he was named as a defendant in several dismissed Racketeer Influence and Corrupt Organizations Act (RICO) cases, on remand, the ALJ should address Claimant's argument that Dr. Drouillard's work has impacted his objectivity in this claim. 5 U.S.C. §557(c)(3)(A); *see Ceasar*, 949 F.3d at 926-927; *Cuevas*, 977 F.2d at 189; D&O at 54 n.20; Claimant's Br. at 8-11; Claimant's Post-Hearing Br. at 42-43, 57-58.

Because the ALJ failed to consider all relevant evidence regarding Claimant's right shoulder condition, did not adequately explain his findings as the Administrative Procedure Act (APA) requires, and did not consider a material argument from Claimant's post-hearing brief, we vacate his weighing of the medical opinions and his finding that Claimant failed to establish a work-related shoulder condition.[5] *See* 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §919(d); *see Howell*, 350 F.2d at 444; *Goins*, 397 F.2d at 394; *Fantucchio*, 787 F.2d at 725; D&O at 67.

Remand Instructions

On remand, the ALJ must reconsider the medical records and opinions of Drs. Harjung, Moutzouros, and Drouillard to determine whether Claimant established his right shoulder condition is directly related to, or was aggravated, exacerbated, or accelerated by, his March 2020 work incident. *Meeks*, 819 F.3d at 127; *Ceres Gulf, Inc. v. Director, OWCP* [*Plaisance*], 683 F.3d 225, 231 (5th Cir. 2012); *Ondecko*, 512 U.S. at 271. In assessing Dr. Drouillard's opinion, the ALJ should determine if his work for insurance companies in workers' compensation claims has impacted his objectivity in this claim. Claimant's Br. at 8-11; *see* 5 U.S.C. §557(c)(3)(A); *Ceasar*, 949 F.3d at 926-927; *Cuevas*, 977 F.2d at 189.

If the ALJ finds Claimant's shoulder condition is work-related, he must address the nature and extent of any disability arising from that injury and any resulting award of benefits. 33 U.S.C. §908; *New Orleans (Gulfwide) Stevedores v. Turner*, 661 F.2d 1031, 1038 (5th Cir. 1981); *see also Gacki v. Sea-Land Serv., Inc.*, 33 BRBS 127, 128 (1998); *Trask v. Lockheed Shipbuilding & Constr. Co*., 17 BRBS 56, 59 (1980). In making his

[5] The Administrative Procedure Act, 5 U.S.C. §§500-591, provides that every adjudicatory decision must include "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented[.]" 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 33 U.S.C. §919(d).

determinations, the ALJ must explain the bases for his findings in accordance with the APA. 5 U.S.C. §557(c)(3)(A).

Accordingly, we affirm in part and vacate in part the Decision and Order Awarding Limited Benefits and remand the case to the ALJ for further consideration consistent with this opinion.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge