



BRB No. 24-0382

JIMMIE WARREN

Claimant-Respondent

v.

IDS/CONSTELLIS GROUP¹

and

STARR INDEMNITY & LIABILITY
COMPANY

Employer/Carrier-
Petitioners

DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS, UNITED
STATES DEPARTMENT OF LABOR

Respondent

NOT-PUBLISHED

DATE ISSUED: 06/11/2026

DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Monica Markley,
Administrative Law Judge, United States Department of Labor.

Howard S. Grossman and Sean Domnick (Grossman Attorneys at Law),
Boca Raton, Florida, for Claimant.

Brittany M. Ustruck (Thomas Quinn, L.L.P.), San Francisco, California, for
Employer and its Carrier.

¹ Formerly Constellis Holdings, LLC.

Ann Marie Scarpino (Jonathan Berry, Solicitor of Labor; Jennifer Feldman Jones, Acting Associate Solicitor; William M. Bush, Acting Counsel for Administrative Appeals), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Monica Markley's Decision and Order Awarding Benefits (2020-LDA-02130) 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 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, 361-362 (1965).

Claimant alleged a psychological injury sustained while working for Employer in Afghanistan as an Emergency Medical Technician (EMT) from August 2013 to September 2017. Hearing Transcript (HT) at 25-26; Claimant's Exhibit (CX) 1; Employer's Exhibit (EX) 8 at 4. When asked about significant traumatic events, he described witnessing a bomb exploding from approximately fifty meters away in May 2017 and being unable to assist injured and dying people because he had been directed to secure and defend the area. HT at 26-30, 70-71; EX 5 at 24-27. He stopped working for Employer on September 20, 2017, to receive treatment for a neck injury.³ CX 1; EXs 5 at 29-30, 7 at 9. After returning

² This case arises within the jurisdiction of the United States Court of Appeals for the Eleventh Circuit because the office of the district director who handled this claim is located in Florida. 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).

³ Claimant filed a claim for this neck injury, and on August 31, 2021, the ALJ awarded Claimant temporary total disability benefits from September 20, 2017, to March 3, 2019, permanent total disability benefits from March 4, 2019, to June 16, 2019, and permanent partial disability benefits from June 17, 2019, to the present and continuing for that injury. *Warren v. Constellis Grp., Inc.*, 2019-LDA-01155, slip op. at 37-38 (ALJ Aug. 31, 2021).

home, he began having nightmares about explosions and being unable to help injured people. HT at 71-72, 77; EX 5 at 31; CX 11. He also detailed multiple unexpected or startling events that triggered significant reactions, including holding his neighbor at gunpoint and firing tracers over his wife's car. HT at 40, 72-76; CX 11 at 6, 14.

On June 5, 2020, Claimant filed a claim seeking benefits for work-related psychological injuries. CX 1. Employer controverted the claim on August 26, 2020. EX 2. The case was transferred to the Office of Administrative Law Judges for a hearing, which the ALJ held on May 2, 2022. The ALJ found Claimant invoked the Section 20(a) presumption of compensability with respect to his psychological condition, 33 U.S.C. §920(a), and Employer rebutted the presumption. D&O at 18-20. Weighing the evidence as a whole, the ALJ found Claimant established a work-related psychological injury. *Id.* at 20-25.

In addressing the nature and extent of Claimant's disability, the ALJ found his psychological condition reached maximum medical improvement (MMI) on May 2, 2022, and has prevented him from returning to his usual employment, thereby establishing a prima facie case of total disability. D&O at 28-31. As Employer presented no evidence of suitable alternate employment, the ALJ awarded Claimant temporary total disability (TTD) benefits from September 20, 2017, to May 2, 2022, permanent total disability (PTD) benefits from May 3, 2022, to the present and continuing, and interest on all past-due compensation. *Id.* at 31, 35. The ALJ also awarded Claimant reasonable and necessary medical treatment for his work-related psychological injury. *Id.* at 34-35.

On appeal, Employer challenges the ALJ's award of PTD benefits, arguing it was unaware Claimant was seeking such benefits and, therefore, did not have an appropriate opportunity to address the issue before the ALJ. Employer also contends the record does not support the ALJ's MMI determination and award of PTD benefits. Claimant responds, urging affirmance of the ALJ's decision.⁴ The Director, Office of Workers' Compensation Programs (Director), filed a limited response, urging the Benefits Review Board to reject Employer's argument that it lacked notice Claimant was seeking PTD benefits.⁵

⁴ The Benefits Review Board dismissed Claimant's cross-appeal because it did not challenge the ALJ's decision but, rather, raised issues with the district director's letter calculating benefits, and that letter is not an appealable order. *Warren v. Constellis Holding LLC*, BRB No. 24-0382A (Apr. 7, 2025) (Order).

⁵ We affirm, as unchallenged on appeal, the ALJ's findings that neither Section 12 nor 13 of the Act, 33 U.S.C. §§912, 913, barred Claimant's claim for compensation, Claimant established a work-related psychological injury, and Claimant's average weekly

Nature and Extent of Disability

The claimant has the burden of establishing the nature and extent of his disability. *Gacki v. Sea-Land Serv., Inc.*, 33 BRBS 127, 128 (1998); *Trask v. Lockheed Shipbuilding & Constr. Co.*, 17 BRBS 56, 59 (1980). A claimant's condition has reached MMI when he is no longer undergoing treatment intended to improve his work-related condition or when that condition is of a lasting and indefinite duration beyond a normal healing period. See *Gulf Best Elec., Inc. v. Methe*, 396 F.3d 601, 605 (5th Cir. 2004); *La. Ins. Guar. Ass'n v. Abbott*, 40 F.3d 122, 125-126 (5th Cir. 1994); *Watson v. Gulf Stevedore Corp.*, 400 F.2d 649, 654 (5th Cir. 1968), *cert. denied*, 394 U.S. 976 (1969); *McCaskie v. Aalborg Ciser Norfolk, Inc.*, 34 BRBS 9, 12 (2000). The date that a claimant's disability reaches permanency is a question of fact determined solely by medical evidence. *SGS Control Servs. v. Director, OWCP [Barrios]*, 86 F.3d 438, 443 (5th Cir. 1996). If a physician believes further treatment should be undertaken, then the possibility of improvement exists; even if, in retrospect, the treatment was unsuccessful, MMI does not occur until the treatment is complete. *Methe*, 396 F.3d at 605-606. Where the record contains a medical opinion establishing the employee's condition persists, however, a recommendation for further treatment or a prognosis that the employee's condition may improve in the future does not preclude a finding of permanency. *Misho v. Glob. Linguist Sols.*, 48 BRBS 13, 14-15 (2014); *Mills v. Marine Repair Serv.*, 21 BRBS 115, 117 (1988), *modified on other grounds on recon.*, 22 BRBS 335 (1989).

Employer first contends the ALJ "improper[ly]" awarded Claimant PTD benefits because it "did not have knowledge" that Claimant was seeking PTD benefits prior to the hearing and, therefore, "could not have been prepared" to address that issue before the ALJ. Emp. Brief at 6-8. Claimant and the Director assert Employer had adequate notice of the issues and the claim for PTD benefits. Director's Brief at 1-2; Cl. Brief at 8-12. We agree with Claimant's and the Director's arguments and reject Employer's contention.

While "a party must be notified [by the ALJ] and given an opportunity to present argument and evidence on a new issue . . . which arises during the course of a hearing," here, the record contains sufficient evidence to establish Employer had notice prior to, during, and after the hearing that Claimant was seeking PTD benefits. See *Klubnikin v. Crescent Wharf & Warehouse Co.*, 16 BRBS 182, 184-185 (1984); *Swan v. George Hyman Constr. Co.*, 3 BRBS 490, 492-493 (1976). In his initial claim for compensation, Claimant indicated his "injury resulted in permanent disability[.]" and both parties identified nature and extent as a contested issue in their 2020, 2021, and 2022 pre-hearing statements. CXs

wage for this injury is \$3,161.31. *Scalio v. Ceres Marine Terminals, Inc.*, 41 BRBS 57, 58 (2007); D&O at 25-28, 31-33.

1, 4, 5; Claimant's and Employer's April 11, 2022 Pre-Hearing Statements. Indeed, in Claimant's Pre-Hearing Statement (Form LS-18), he sought "PTD/PPD benefits from MMI to present and ongoing." CX 4. At the hearing, Employer's counsel specifically agreed with the ALJ's characterization of the issues in dispute, which included the nature and extent of Claimant's disability and MMI. HT at 6-8. And, in its Post-Hearing Brief, Employer acknowledged the issues identified in Claimant's Pre-Hearing Statement and did not otherwise argue before the ALJ that it lacked adequate notice that permanency was at issue. Emp. Post-Hearing Brief at 17 (citing CX 4).

For these reasons, we reject Employer's contention that it did not have sufficient notice to respond to a claim for PTD benefits and, thus, we see no error in the ALJ considering the nature and extent of Claimant's disability and addressing whether Claimant was entitled to PTD benefits. See *Diosdado v. Newpark Shipbuilding & Repair, Inc.*, 31 BRBS 70, 72 (1997) (rejecting the employer's argument that the claimant waived his claim for PTD because the "record contain[ed] evidence sufficient to establish that employer had knowledge of a claim for total disability"); *Duran v. Interport Maint. Corp.*, 27 BRBS 8, 12 (1993); *Bonner v. Ryan-Walsh Stevedoring Co. Inc.*, 15 BRBS 321, 323-324 (1983); *Walker v. AAF Exch. Serv.*, 5 BRBS 500, 505 (1977).

Nevertheless, we agree with Employer's argument that the ALJ did not discuss all the relevant medical evidence when considering the nature of Claimant's disability. Emp. Brief at 7, 10-11. Adjudications of claims arising under the Act are subject to the Administrative Procedure Act (APA), 33 U.S.C. §919(d), and the APA requires every adjudicatory decision to "include a statement of . . . findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record." 5 U.S.C. §557(c)(3)(A); see 20 C.F.R. §§702.338 (ALJ "shall inquire fully into the matters at issue" considering relevant and material evidence), 702.339 (ALJ shall investigate in a manner "to best ascertain the rights of the parties"), 702.348 (ALJ's decision shall contain appropriate findings of fact and conclusions of law). An ALJ, therefore, must adequately detail the rationale behind her decision and specify the law and evidence upon which she relied. *Gelinas v. Elec. Boat Corp.*, 45 BRBS 69, 71-72 (2011); *Ballesteros v. Willamette W. Corp.*, 20 BRBS 184, 187 (1988).

Here, the ALJ first noted that although the issue was raised, neither Claimant nor Employer made specific arguments in their respective post-hearing briefs addressing whether Claimant's disability is temporary or permanent. D&O at 29-30. She then considered the course of Claimant's treatment with Nurse Practitioner Daria Lewis for his

psychological complaints from July 3, 2020, until April 7, 2022.⁶ *Id.* at 29-30; CX 11. The ALJ determined Claimant's treatment records showed his "medication had not changed in well over a year, he had discontinued therapy" due to improvements, and Nurse Practitioner Lewis generally described him as "stable" during the hearing and in her treatment notes, despite intermittent "triggering" events. D&O at 29-30; CX-11 at 7, 16; HT at 103-104. The ALJ also noted Nurse Practitioner Lewis testified she did not know whether Claimant had reached a "plateau" in his treatment, but he reported better sleeping and was "okay" when he was not "triggered." D&O at 30; HT at 40-41. Based on this evidence, the ALJ determined Claimant's condition had reached MMI and became permanent by May 2, 2022, the date of the hearing. D&O at 30.

However, the ALJ did not discuss Dr. Maureen Reardon's opinion when considering the nature of Claimant's disability. EX 7; Emp. Brief at 7, 10-11. Dr. Reardon, a psychologist, examined Claimant at Employer's request and diagnosed him with unspecified trauma and stressor-related disorder related to his work for Employer in Afghanistan. EX 7 at 21-22. She opined his psychological disorder was unlikely to "interfere significantly" with his ability to perform work as an EMT but stated with additional treatment, returning to work "could" improve his "overall mental health status." *Id.* at 23. Dr. Reardon further opined Claimant's current treatments have been "insufficient in frequency and focus" and recommended he undergo a "structured, evidenced-based cognitive behavioral program" to help regulate his emotions and manage distress from internal and environmental stressors. *Id.* at 22. She also stated: "while [Claimant] may have derived some benefit from medications to aid sleep in the past year, alternative interventions appear warranted to address his trauma-related symptoms on a more permanent basis." *Id.* This included pharmacological intervention and weekly psychotherapy for a better prognosis for "long-term adjustment." *Id.*

The ALJ summarized Dr. Reardon's opinion in her decision but did not discuss it in her two-paragraph analysis of the nature of Claimant's disability. Because it contains information relevant to the issue of whether Claimant's condition is permanent in nature, Employer is correct that the ALJ should have considered Dr. Reardon's relevant opinion in weighing the evidence and discussing whether Claimant's condition reached MMI.⁷ *See*

⁶ On July 3, 2020, Nurse Practitioner Lewis diagnosed chronic post-traumatic stress disorder and nightmares, prescribed medication, and referred Claimant to regular therapy. CX 11 at 2-3.

⁷ We reject Claimant's contention that Dr. Reardon's recommendation for further treatment is insufficient to disturb the finding of permanency. Cl. Brief at 12, 16 (citing *Watson*, 400 F.2d at 654-655). The ALJ did not consider Dr. Reardon's recommendation in rendering her finding, and we are not empowered to make such a determination on a

Frazier v. Nashville Bridge Co., 13 BRBS 436, 437 (1983) (it is the ALJ’s responsibility to fully evaluate the relevant evidence and provide some level of detail in her rationale to enable the reviewing body to accurately assess the decision); *see also Methe*, 396 F.3d at 605-606; Emp. Brief at 7, 10-11. Consequently, we vacate the ALJ’s finding that Claimant’s work-related psychological condition reached MMI and became permanent on May 2, 2022, and remand the case for her to address all the relevant evidence in determining the nature and extent of his disability and the appropriate date, if any, that his condition reached MMI.⁸ *Barrios*, 86 F.3d at 443; *Gelinas*, 45 BRBS at 71-72; *Ballesteros*, 20 BRBS at 187; *Frazier*, 13 BRBS at 437; Emp. Brief at 8-11.⁹

disputed issue in the first instance. *See* 20 C.F.R. §802.301(a) (the Board is not empowered to review a case de novo); *see also Methe*, 396 F.3d at 605-606.

⁸ The date of the hearing is not an appropriate date of MMI unless the medical record supports such a finding. *See Barrios*, 86 F.3d at 443; *Ezell v. Direct Labor, Inc.*, 33 BRBS 19, 24 (1999).

⁹ Although Employer challenges the award of PTD benefits and it makes a one-sentence assertion that: “[n]one of the . . . providers specifically identified work restrictions for Claimant so as to establish a disability,” work restrictions go to the extent of disability – not to its nature. Employer neither raises specific arguments nor identifies any errors in the ALJ’s finding that Claimant cannot return to his usual work for Employer, as supported by both Nurse Practitioner Lewis’s concerns about Claimant returning to a warzone and Dr. Reardon’s opinion that Claimant should not be employed in a position requiring the use of firearms. Emp. Brief at 6, 8-12; D&O at 30-31; HT at 50-51; EX 7 at 23. A party challenging the ALJ’s finding must demonstrate why, in terms of law and evidence, the finding is not supported by substantial evidence or in accordance with law. 20 C.F.R. §802.211(b). As any challenge to the extent of disability is inadequately briefed, we decline to address it, and we affirm the ALJ’s determination that Claimant established a prima facie case of total disability. *See Montoya v. Navy Exch. Serv. Command*, 49 BRBS 51, 52 n.1 (2015); *Plappert v. Marine Corps Exch.*, 31 BRBS 109, 111 (1997); *Scalio*, 41 BRBS at 58. As the ALJ found Employer presented no evidence of suitable alternate employment, we also affirm the ALJ’s determination that Claimant is totally disabled. *See Gacki*, 33 BRBS at 128; D&O at 30-31.

Accordingly, we vacate the ALJ's award of permanent total disability benefits and remand the case for further consideration consistent with our opinion. In all other respects, we affirm the ALJ's Decision and Order Awarding Benefits.¹⁰

SO ORDERED.

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

GLENN E. ULMER
Administrative Appeals Judge

¹⁰ If a party appeals the Board's decision in this case, which arises in the Eleventh Circuit, that circuit requires appeals of the Board's Defense Base Act decisions be filed first with the appropriate United States District Court; the Board requests notification from the petitioners of any appeal that is filed, as the district courts often do not provide such notice to the Board.