U.S. Department of Labor

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

BRB No. 21-0613

ERIC J. WIGNALL	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	DATE ISSUED: 03/22/2023
ELECTRIC BOAT CORPORATION	)	
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Granting Benefits of Noran J. Camp, Administrative Law Judge, United States Department of Labor.

Lance G. Proctor (Attorney Lance G. Proctor, LLC), Groton, Connecticut, for Claimant.

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

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

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Noran J. Camp's Decision and Order Granting Benefits (2019-LHC-00722 and 2019-LHC-01368) rendered on claims filed pursuant to the Longshore and Harbor Workers' Compensation Act, as amended, 33

U.S.C. §901 *et seq.* (Act).[1] 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. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant filed two claims for injuries allegedly related to his employment with Employer: one on November 27, 2006, causing repetitive trauma to his cervical and lumbar spine, and one on December 14, 2007, where he slipped on ice, injuring his lumbar spine. Decision and Order Granting Benefits (D&O) at 2. Between 2009 and 2017, he underwent six surgeries to his lumbar, thoracic, and cervical spine. D&O at 4. After the first lumbar surgery, performed by Dr. Kenneth Paonessa on January 13, 2009, Claimant developed flatback syndrome, causing him to walk hunched over at a ninety-degree angle. D&O at 4, 6; Hearing Transcript (HT) at 41. He suffered from this syndrome for several years, until Dr. Rudolph Taddonio[2] surgically corrected the condition with fusion surgeries to his lumbar and thoracic spine, performed in 2012 and 2015. D&O at 6-8; HT at 41-42. Following the 2015 surgery, Claimant began complaining of neck pain and eventually underwent cervical spine surgeries in 2016 and 2017. D&O at 8-10. He also complained of worsening bowel and urinary incontinence. D&O at 6, 10-12. On September 13, 2018, Dr. Taddonio placed Claimant at maximum medical improvement (MMI) and opined he was totally disabled from all employment. D&O at 10.

The parties stipulated to the compensability of Claimant's 2007 lumbar spine injury, as well as his entitlement to permanent total disability (PTD) benefits from September 13, 2018, through the present and continuing. D&O at 3; HT at 6-9. The only issue before the ALJ was Claimant's entitlement to ongoing Section 7 medical benefits, 33 U.S.C. §907, for treatment of his cervical spine injury and his urinary and bowel issues, both of which Claimant alleged arose as sequelae of his 2007 lumbar spine injury.[3] D&O at 3. The ALJ weighed the medical evidence and found only Claimant's urinary and bowel symptoms related to his 2007 injury and subsequent surgical procedures, and therefore awarded reasonable and necessary medical benefits for that condition. D&O at 23-27. Neither party

[1] This case arises within the jurisdiction of the United States Court of Appeals for the Second Circuit because Claimant's injuries occurred in Connecticut. 33 U.S.C. §921(c); *Hon v. Director, OWCP*, 699 F.2d 441 (8th Cir. 1983).

[2] Dr. Taddonio began treating Claimant in 2011, upon Dr. Paonessa's referral.

[3] At the hearing, Claimant's counsel clarified he was not attempting to relate these conditions to Claimant's 2006 claimed injury. Rather, he argued both conditions were derivative of Claimant's 2007 lumbar spine injury. HT at 20, 22.

disputes Claimant's entitlement to medical benefits for his urinary and bowel symptoms; we therefore affirm the ALJ's finding as unchallenged. *Scalio v. Ceres Marine Terminals, Inc.*, 41 BRBS 57 (2007).

As for his claim for medical benefits for his cervical spine, Claimant argued his neck symptoms developed because of his prolonged flatback syndrome, which required extension of his neck in order for him to be able to hold up his head so he could see where he was going while walking. D&O at 6-7. The ALJ weighed the medical testimony of Claimant's treating physician, Dr. Taddonio, who tentatively opined Claimant's cervical symptoms were indirectly related to his compensable lumbar spine injury, against the conflicting medical opinion of Employer's expert, Dr. Alan Daniels, who categorically denied the conditions were related. The ALJ gave greater weight to Dr. Daniels' opinion and denied Claimant's cervical spine medical benefits claim. D&O at 19-23.

Claimant appeals the denial of his claim for medical benefits for his cervical spine condition. He argues the opinion of Dr. Taddonio, as his treating physician, should have been accorded special weight in determining whether his cervical spine condition and treatment are related to his 2007 lumbar spine injury. Employer responds, urging affirmance.

At the outset, we note the ALJ erred by failing to apply the Section 20(a) presumption to determine the relatedness and compensability of Claimant's cervical spine condition to his original workplace injury. 33 U.S.C. §920(a); D&O at 4, 18-19. Before the ALJ can determine whether the requested medical treatment is related to the work injury under Section 7, he must determine whether the claimed injury itself is work-related within the framework established by Section 20(a) of the Act. *Wendler v. Am. Nat'l Red Cross*, 23 BRBS 408, 414 (1990); *Romeike v. Kaiser Shipyards*, 22 BRBS 57 (1989).

To be entitled to the Section 20(a) presumption linking his injury to his employment, a claimant must sufficiently allege: 1) he has sustained a harm; and 2) an accident occurred or working conditions existed which could have caused or aggravated the harm. *Rose v. Vectrus Systems Corporation,* 56 BRBS 27 (2022) (Decision on Recon. en banc); *see, e.g., American Stevedoring, Ltd. v. Marinelli*, 248 F.3d 54, 35 BRBS 41(CRT) (2d Cir. 2001); *O'Kelley v. Dep't of the Army/NAF,* 34 BRBS 39 (2000). When a claimant claims a work-related primary injury as well as a secondary injury resulting from the primary injury, the Section 20(a) presumption applies to both. *Metro Mach. Corp. v. Director, OWCP*, 846 F.3d 680, 50 BRBS 81(CRT) (4th Cir. 2017); *see also U.S. Ind./Fed. Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608, 14 BRBS 631(1982); *but see Ins. Co. of the State of Pennsylvania v. Director, OWCP [Vickers]*, 713 F.3d 779, 47 BRBS 19(CRT) (5th Cir. 2013); *see generally Port of Portland v. Director, OWCP [Ronne II]*, 192 F.3d 933, 33 BRBS 143(CRT) (9th Cir. 1999), *cert. denied*, 529 U.S. 1086 (2000).

Consequently, the ALJ should have analyzed whether Claimant's cervical spine condition is a work-related sequela within the framework of the Section 20(a) presumption. *Seguro v. Universal Maritime Service Corp.*, 36 BRBS 28, 34 (2002); *Bass v. Broadway Maintenance*, 28 BRBS 11, 15 (1994). To be entitled to the Section 20(a) presumption linking this alleged secondary injury to his employment, Claimant must sufficiently allege the condition "(or its aggravation or hastening) could have *naturally or unavoidably* resulted from the primary injury." *Metro Mach.*, 846 F.3d at 692-693, 50 BRBS at 88(CRT) (emphasis in original). As the Board explained in *Rose*, this is not a heavy burden. *Rose*, 56 BRBS at 38.[4]

If Claimant invokes the Section 20(a) presumption as to his secondary injury, Employer can rebut the presumption by submitting substantial evidence that the cervical spine condition is due to an intervening or independent cause or that it did not naturally and unavoidably result from his lumbar spine injury. *Plappert v. Marine Corps Exchange*, 31 BRBS 109 (1997); *Bass*, 28 BRBS at 15; *Director, OWCP v. General Dynamics Corp.*, 769 F.2d 66, 68 (2d Cir. 1985); *Cyr v. Crescent Wharf & Warehouse Co*., 211 F.2d 454 (9th Cir. 1954). If Employer rebuts the Section 20(a) presumption, it no longer controls and the issue of causation must be resolved on the evidence as a whole, with Claimant bearing the burden of persuasion by a preponderance of the evidence. *Rainey v. Director, OWCP*, 517 F.3d 632, 634, 42 BRBS 11, 12(CRT) (2d Cir. 2008); *Marinelli*, 248 F.3d at 65, 35 BRBS at 49(CRT); *Santoro v. Maher Terminal, Inc.*, 30 BRBS 171 (1996); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994).

In the instant case, we hold the Section 20(a) presumption applies as a matter of law to Claimant's alleged sequela injury, as it is undisputed Claimant suffered an injury to his lumbar spine in 2007 while working for Employer and subsequently sought treatment for his cervical spine. Moreover, the record contains medical opinions connecting this condition to Claimant's 2007 work-related injury and related spinal surgeries. Claimant's Exhibit (CX) 20 at 12-17, 35. We further hold Employer successfully rebutted the Section 20(a) presumption by presenting medical evidence showing Claimant's cervical spine condition is unrelated to and/or not naturally arising from his 2007 lumbar injury. Employer's Exhibit (EX) 1. As such, the presumption falls from the case, and the ALJ's failure to apply the presumption is harmless error, provided his conclusion as to the condition's non-compensability is supported by substantial evidence.[5] *Suarez v. Serv.*

[4] "The burden of production or 'some evidence' standard which we have set forth here is a light burden – being no greater than an employer's burden on rebuttal – meant to give the claimant the benefit of the statutory framework." *Rose*, 56 BRBS at 38.

[5] The ALJ committed the same harmless error in addressing Claimant's urinary and bowel conditions; however, he awarded medical benefits for those conditions, and, as

Employees Int'l, Inc., 50 BRBS 33 (2016); *Pardee v. Army and Air Force Exchange Service*, 13 BRBS 1130 (1981); *Novak v. I.T.O. Corp. of Baltimore*, 12 BRBS 127 (1979).

The record contains substantial evidence supporting the ALJ's conclusion that Claimant's cervical spine condition is not the natural and unavoidable sequela of his 2007 lumbar spine injury. Employer's expert orthopedic surgeon, Dr. Daniels, unequivocally testified Claimant's cervical spine condition was not caused by either his flatback syndrome or by stress from fusion surgeries to other parts of his spine. EX 1; EX 12 at 18. Dr. Daniels based his conclusion on his examination of Claimant, his review of the medical records, and his "extensive experience treating, researching, and publishing on spinal deformity and spinal alignment." EX 12 at 18, 31. He explained Claimant required cervical surgery to correct diagnoses of cervical spondylosis and cervical myelopathy; however, in his experience, and based upon his review of the medical literature, there is nothing supporting a connection between flatback syndrome and these diagnoses. EX 12 at 31-32. Further, he explained any stress placed upon Claimant's spine by the thoracic and lumbar fusions, called adjacent segment syndrome, would only affect the level of the spine adjacent to the fusion; however, Claimant's cervical problems requiring surgery occurred at a level of the spine several vertebrae above his thoracic fusion. EX 12 at 33-34.

Claimant argues the ALJ erred in crediting Dr. Daniels' opinion over Dr. Taddonio's, considering Dr. Taddonio's status as Claimant's treating physician. Claimant maintains a treating physician's opinion should be given special weight, citing as support *Pietrunti v. Director, OWCP*, 119 F.3d 1035, 1042, 31 BRBS 84, 89(CRT) (2d Cir. 1997) ("An ALJ is nonetheless bound by the expert opinion of a treating physician as to the existence of a disability 'unless contradicted by substantial evidence to the contrary'"), and *Amos v. Director, OWCP*, 153 F.3d 1051, 1054 (9th Cir. 1998), *amended*, 164 F.3d 480, 32 BRBS 144, 147(CRT) (9th Cir. 1999), *cert. denied*, 528 U.S. 809 (1999) ("When an injured employee seeks benefits under the [Act], a treating physician's opinion is entitled to special weight.").

But these cases are distinguishable in that the treating physicians' opinions on the issue of causation were uncontradicted or causation was not in dispute. In *Pietrunti*, the United States Court of Appeals for the Second Circuit vacated the ALJ's finding of insufficient credible evidence to support a causal link between the claimed psychological injury and the work-related arm injury, holding the ALJ impermissibly substituted his own judgment for that of the claimant's treating physician, whose opinion as to causation was

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stated above, no party challenges that finding. Consequently, we need not address that analysis.

uncontradicted. *Pietrunti*, 119 F.3d at 1044, 31 BRBS at 91. In *Amos*, the dispute on appeal involved the reasonableness and necessity of surgery to treat the work-related condition, not whether the condition itself was work-related. *Amos*, 153 F.3d at 1054, 32 BRBS at 147. The claimant's treating physician recommended surgery, but the employer's two experts recommended against it. *Id*., 153 F.3d at 1052-1053, 32 BRBS at 145-146. Because all the physicians' recommendations were valid and reasonable, the court held it was for the claimant and his doctor, not the employer or the ALJ, to decide how to proceed with his medical care. *Id*., 153 F.3d at 1054, 32 BRBS at 147.

Unlike *Pietrunti* and *Amos*, this case involves a dispute over causation with clearly conflicting medical opinions. The ALJ permissibly and rationally weighed Dr. Daniels' opinion, as outlined above, against the opinion of Claimant's treating physician, Dr. Taddonio, and found Dr. Taddonio's opinion less convincing. *See Calbeck v. Strachan Shipping Co*., 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961); *Perini Corp. v. Heyde*, 306 F. Supp. 1321 (D.R.I. 1969). Despite Dr. Taddonio's treatment of Claimant since 2011, he admitted he lacked knowledge of the mechanism of Claimant's 2007 injury and therefore could not directly relate Claimant's cervical spine issues to that injury. CX 20 at 12, 28-29, 35. Although Dr. Taddonio opined Claimant's cervical condition was indirectly linked to his 2007 injury through flatback syndrome and multiple surgeries, the doctor provided no stated basis for his opinion other than broad hypothetical phrases such as "you could say…it could cause the damage"[6] and "I guess there's a, you know, there's a waterfall type of situation here."[7] Dr. Taddonio also indicated, in a medical report dated December 3, 2015, that Claimant "has never complained of neck issues in the past and not part of this injury at least according to our records." EX 3 at 25. In light of Dr. Taddonio's equivocal and conflicting opinion on causation, the ALJ gave greater weight to Dr. Daniels' opinion. D&O at 23.

Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Rainey*, 517 F.3d 632, 42 BRBS 11 (quoting *Richardson v. Perales*, 402 U.S. 389, 401 (1971)); *Am. Grain Trimmers, Inc. v. Director, OWCP [Janich]*, 181 F.3d 810, 818, 33 BRBS 71, 76(CRT) (7th Cir. 1999), *cert. denied*, 528 U.S. 1187 (2000); *Sprague v. Director, OWCP*, 688 F.2d 862, 865, 15 BRBS 11, 15(CRT) (1st Cir 1982), *aff'g* 13 BRBS 1083 (1981). The ALJ's rational decision to credit the opinion of Dr. Daniels over the opinion of Claimant's treating physician was permissible given Dr. Daniels' unambiguous conclusion, which the ALJ found supported

[6] CX 20 at 12.

[7] CX 20 at 17.

by his reliance on research and medical literature, including some of Dr. Daniels' own publications. The ALJ reasonably contrasted Dr. Daniels' reasoned opinion with what he considered the type of logic that might be offered by a "lay observer" with "no basis" in "clinical experience, medical literature, or science" as put forth by Claimant's treating physician. D&O at 23; *see Pietrunti*, 119 F.3d at 1042.

The ALJ has the authority and discretion to weigh the evidence, accepting any medical opinion in whole or in part. *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997); *Santoro*, 30 BRBS 171; *see also Donovan*, 300 F.2d 741. Questions of witness credibility are for the ALJ as the trier-of-fact, and the Board must respect his evaluation of all testimony, including that of medical witnesses. *Calbeck*, 306 F.2d 693; *John W. McGrath Corp.*, 289 F.2d 403. The Board will not interfere with credibility determinations unless they are "inherently incredible or patently unreasonable." *Cordero v. Triple A Mach. Shop*, 580 F.2d 1331, 1335, 8 BRBS 744, 747 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979); *see generally Bis Salamis, Inc. v. Director, OWCP [Meeks]*, 819 F.3d 116, 130, 50 BRBS 29, 37(CRT) (5th Cir. 2016) (Board may not second-guess an ALJ's factual findings or disregard them merely because other inferences could have been drawn from the evidence). The Board cannot re-weigh the evidence; rather, if the ALJ's conclusion upon weighing the evidence is rational and supported by substantial evidence, as it is here, it must be affirmed. *Carswell v. E. Pihl & Sons*, 999 F.3d 18, 55 BRBS 27(CRT) (1st Cir. 2021), *cert. denied*, 142 S.Ct. 1110 (2022).

As a result, despite the ALJ's error in failing to apply the Section 20(a) presumption to Claimant's cervical spine injury, this error is harmless as he weighed all the evidence, and his decision as to the lack of causation between Claimant's cervical spine condition and his 2007 work-related lumbar spine injury is supported by substantial evidence. *Suarez*, 50 BRBS 33; *Pardee*, 13 BRBS 1130; *Novak*, 12 BRBS 127. Thus, we must affirm

the ALJ's finding that Claimant did not establish entitlement to medical benefits related to his cervical spine condition. 33 U.S.C. §907; 20 C.F.R. §702.401; *Pardee*, 13 BRBS 1130.

Accordingly, we affirm the ALJ's Decision and Order Granting Benefits.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge