BRB No. 23-0193

LUIS CARLOS ARAGON CACERES	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
TRIPLE CANOPY, INCORPORATED	)	
	)	
and	)	
	)	
CONTINENTAL INSURANCE COMPANY c/o CNA INTERNARTIONAL	)	DATE ISSUED: 3/12/2025
	)	
Employer/Carrier-Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits and Order Denying Motion for Reconsideration of Paul C. Johnson, Jr., District Chief Administrative Law Judge, United States Department of Labor.

Lara D. Merrigan and John P. Kaplan (Merrigan Legal), Campbell, California, and Jorden N. Pedersen (Javerbaum, Wurgaft, Hicks, Kahn, Wikstrom & Sinins), Elizabeth, New Jersey, for Claimant.

Alexandra E. Grover and Matthew M. Ferman (Brown Sims), Houston, Texas, for Employer and Carrier.

Matthew W. Boyle (Seema Nanda, Solicitor of Labor; Barry H. Joyner, Associate Solicitor; Jennifer Feldman Jones, Deputy Associate Solicitor; Mark A. Reinhalter, Counsel for Longshore), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

GRESH, Chief Administrative Appeals Judge, and JONES, Administrative Appeals Judge:

Claimant appeals District Chief Administrative Law Judge (ALJ) Paul C. Johnson's Decision and Order Denying Benefits and Order Denying Motion for Reconsideration (2020-LDA-01383) 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] 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. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant, a native of Peru, alleges he sustained a work-related psychological injury as a result of his work for Employer as a security guard in Iraq between November 2005 and October 2007.[2] Employer's Exhibit (EX) 9, Dep. at 27-29, 35, 41.[3] While in Iraq, Claimant was diagnosed with a pancreatic tumor and was sent home to Peru in October 2007 for surgical treatment. *Id*. at 29, 41; EX 8 at 1. At that time, Employer purportedly informed Claimant he would be able to return to his usual work after surgery. *Id.* Upon obtaining further treatment, Claimant learned there was nothing wrong with his pancreas. *Id.* Thereafter, Claimant contacted Employer multiple times in an effort to return to work. EX 4 at 8; EX 9, Dep. at 45. Initially, Employer did not respond to Claimant's request, but it later alerted him that he was in "red" status, meaning he could not return to work because the United States Department of State had "flagged" him due to either a conflict with a subordinate or, perhaps, his pancreatic cancer diagnosis. EX 4 at 8; EX 9, Dep. at 45.

[1] This case arises within the jurisdiction of the United States Court of Appeals for the Second Circuit because the district director who filed the ALJ's decision is in New York. 33 U.S.C. §921(c); *McDonald v. Aecom Tech. Corp.*, 45 BRBS 45 (2011).

[2] Claimant alleges he witnessed multiple traumatic incidents during his time in Iraq, including twenty to forty mortar attacks per day in Al-Basrah, two of which resulted in his supervisor's injury and his friend's death. EX 9, Dep. at 35, 36-40. He further alleges he watched a helicopter get shot down, saw a grenade attack on a restaurant that killed an American, and shot a man who failed to stop at a security checkpoint. *Id*. at 36-37, 40-41.

[3] Claimant's Exhibit (CX) 8 is the same as Employer's Exhibit (EX) 9, which are both Claimant's deposition transcript.

From 2008 to 2010, Claimant did not return to his employment in Iraq but instead worked locally in Peru in a variety of jobs.[4] EX 4 at 10. Subsequently, in 2011, a different U.S. contractor, SOC, hired Claimant. He began training in Jordan but was sent home before redeploying to Iraq due to his being "in red status" from his previous job, EX 9, Dep. at 45-46, presumably his termination from his previous job with Employer. Since his return home from Jordan, Claimant worked sporadically in several construction, assistant, and helper positions.[5] *Id.* at 53, 62-63. Claimant has been working since the end of October 2020 as a cleaning assistant for Montepinar, a construction company, where he performs multiple tasks, such as collecting garbage, watering garden plants, and engaging in fence building, masonry, and plumbing work. *Id.* at 55; *see* EX 4 at 11.

Claimant testified that, in 2008, he began experiencing sleeplessness, night sweats, and nightmares about the attacks he had witnessed in Iraq. EX 9, Dep. at 42-43, *see also* note 2 *supra*. However, he did not seek any treatment for these symptoms until November 1, 2016, when he met with a psychiatrist, Dr. Edwin Genaro Apaza Aceituno. *Id.*, Dep. at 47-48. Dr. Apaza Aceituno diagnosed Claimant with post-traumatic stress disorder (PTSD) related to his security guard work in Iraq and began treating him with medication. CX 5 at 1; CX 9, Dep. at 18, 19. Claimant continued to see Dr. Apazo Aceituno every month or two months at least through February 15, 2021. *See* CX 5 at 124-130.

On March 19, 2021, at Employer's request, Claimant was also evaluated by Dr. Yuri Velazco Lorenzo, a psychiatrist, who diagnosed him as having adjustment disorder with anxiety unrelated to his work in Iraq. EXs 4 at 1, 17, 20, 5 at 1.

Claimant filed his claim on November 23, 2016, seeking benefits for his alleged work-related psychological condition. CX 1 at 1, EX 1 at 1. Employer first received notice of the alleged injury and claim on December 15, 2016, and controverted the claim on December 28, 2016. EXs 2, 3.[6] The case was forwarded to the Office of Administrative

[4] The record indicates Claimant first worked as a machinery supervisor at the Municipality of Canete for four months, then as a security guard in the Province of Canta, and subsequently as a stevedore assistant in Villa El Salvador. He also worked at Procesos Esmeralda in Chorrillos, and he worked for a year in public cleaning at Relima Innova. Later, in 2010, he tried to secure employment at Hermes as a security guard without success. For the majority of 2010 until September, Claimant worked in logistics delivering merchandise for Esmeralda Corp. EX 4 at 10; EX 9, Dep. at 51-52.

[5] From 2014 to 2015, for a little over one year, Claimant worked as an assistant gathering solid waste at Innova Ambiental. EX 9, Dep. at 53.

[6] Although Employer's LS-202 First Report of Injury Form dated December 22, 2016, indicates it received knowledge of Claimant's injury on February 21, 2016, we

Law Judges (OALJ); the parties agreed to have the ALJ render a decision based on the written record. 18 C.F.R. §18.21(b).

The ALJ found Claimant failed to provide timely notice of his alleged injury under Section 12(a), 33 U.S.C. §912(a), because he should have been aware of the relationship between his employment, his injury, and his disability in 2008 when he first experienced sleeplessness, night sweats, and nightmares related to the attacks he witnessed in Iraq.[7] Decision and Order (D&O) at 12-13. He also found Employer was prejudiced by the notice in 2016, as it could not "participate in medical decisions that might have prevented the progression of Claimant's symptoms." *Id*. at 13. He concluded Claimant's notice of injury was untimely and, therefore, his claim is barred by Section 12 of the Act. *Id.*

Claimant filed a motion for reconsideration of the ALJ's Decision and Order, contending his notice of injury was timely filed and, even if it was untimely, the ALJ should have determined whether his psychological condition arose from his work for Employer and awarded medical benefits, for which no statute of limitation applies. The ALJ denied Claimant's motion for reconsideration. He again found the notice of injury was untimely filed because Claimant had, or should have had, the requisite awareness in 2008, but added that there is no doubt Claimant became actually aware of the connection between his injury, his employment, and his disability in 2011, when he applied to work for another contractor in Iraq, hoping to work in Baghdad where there was less exposure to combat conditions than in al Basra, but was rejected for that job because he was "in the red" from his employment with Employer. Order Denying Motion for Reconsideration at 2. He also found that the cases Claimant relied on addressed the availability of medical benefits when a claim is untimely filed under Section 13, 33 U.S.C §913, not when there has been untimely notice under Section 12. Order Denying Mot. For Recon. at 2. He distinguished the language in these two sections and stated: "[u]nder Section 12, the entire claim is barred

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consider this date to be a typographical error, as Employer stated on the very same form that it obtained knowledge when it "[r]eceived LS-203 in the mail." EX 2. Claimant's LS-203 Claim for Compensation Form is dated November 23, 2016, EX 1, and Employer's LS-207 Notice of Controversion Form states its first knowledge of the injury was on December 15, 2016. EX 3.

[7] In addressing timeliness, the ALJ concluded Claimant's date of awareness was "no later than 2008" when "he was suffering from a psychological condition caused by his employment in Iraq." D&O at 13. He further found: "His symptoms involved nightmares and flashbacks to his experiences, including rocket attacks and exposure to gunfire; and there is no evidence that [Claimant] experienced such traumatic events anywhere other than in Iraq." *Id.*

if notice is not timely given, but under Section 13, only compensation is barred if a claim is not timely filed. *Compare* 33 U.S.C. §912(d) *with* 33 U.S.C. §913(a)." *Id.*

On appeal, Claimant contends the ALJ erred in finding his notice of injury was not timely under Section 12(a) of the Act because the ALJ: 1) failed to apply the statutory presumption under Section 20(b), 33 U.S.C. §920(b); and 2) failed to determine whether Claimant knew or should have known his psychological injury would permanently impair his wage-earning capacity. Claimant also contends the ALJ erred in finding Employer established prejudice due to the late notice because the ALJ did not explain and Employer did not demonstrate how it was prejudiced in accordance with Section 12(d)(2), 33 U.S.C. §912(d)(2). He further asserts the ALJ erred in denying medical benefits, even if the notice was untimely, because medical benefits are never time-barred. Employer responds, urging affirmance of the ALJ's decision and his order denying reconsideration. The Director, Office of Workers' Compensation Programs (the Director), responds urging the Board to reverse the ALJ's findings or vacate them and remand the case for further consideration. Claimant filed a reply brief reiterating his arguments.

Section 20(b) Presumption

Section 20(b) of the Act provides a claimant with a presumption that his notice of injury and claim were timely filed. 33 U.S.C. §920(b); *DynCorp Int'l v. Director, OWCP*, 658 F.3d 133, 136-137 (2d Cir. 2011), *aff'g E.M.* [*Mechler*] *v. DynCorp Int'l*, 42 BRBS 73 (2008); *Blanding v. Director, OWCP*, 186 F.3d 232, 235 (2d Cir. 1999); *see Bath Iron Works Corp. v. U.S. Dep't of Labor* [*Knight*], 336 F.3d 51, 57 (1st Cir. 2003); *Stark v. Washington Star Co.*, 833 F.2d 1025 (D.C. Cir. 1987); *Steed v. Container Stevedoring Co.*, 25 BRBS 210, 216 (1991); *Shaller v. Cramp Shipbuilding & Dry Dock Co*., 23 BRBS 140, 144-145 (1989). The burden is on the employer to produce substantial evidence showing that the notice or claim was untimely filed. *Mechler*, 658 F.3d at 137; *Knight*, 336 F.3d at 57.

In this case, we agree with the argument raised by Claimant and the Director: the ALJ did not apply the Section 20(b) presumption, as he made no mention of that provision. Claimant's Brief at 21; Director's Brief at 5. Rather than presume Claimant's notice of injury was timely and place the burden on Employer to produce substantial evidence to the contrary, the ALJ incorrectly placed the burden on Claimant to establish timely notice. D&O at 12-13; *see Sabanosh v. Navy Exch. Serv. Command*, 54 BRBS 5, 7 (2020); *see also Blanding*, 186 F.3d at 235; *Stevenson v. Linens of the Week*, 688 F.2d 93, 97–98 (D.C. Cir. 1982); *Avondale Shipyards, Inc. v. Vinson*, 623 F.2d 1117, 1119 (5th Cir. 1980); *Duluth, M. & I. R. Ry. Co. v. U. S. Dep't of Labor*, 553 F.2d 1144, 1148-1149 (8th Cir. 1977). Because the ALJ failed to apply the Section 20(b) presumption, his decision on the matter of whether notice was timely is flawed. As discussed below, the ALJ made

additional errors in weighing the evidence and applying the law with respect to timeliness under Section 12.

Section 12(a) – Awareness

In cases involving an occupational disease[8] which does not immediately result in disability, Section 12(a) of the Act requires claimants to file a notice of injury within one year after they become aware, "or in the exercise of reasonable diligence or by reason of medical advice" should have been aware, of the relationship between their employment, disease, and disability. 33 U.S.C. §912(a). The statute of limitations for filing a notice of injury under Section 12 commences only after the claimant becomes aware or reasonably should have been aware of the "full character, extent, and impact of the injury."[9] *Mechler*, 658 F.3d at 137; *see* 33 U.S.C. §912(a). A claimant is not "aware" until he knows the likely impairment to his wage-earning capacity due to his work injury. *Abel v. Director, OWCP*, 932 F.2d 819, 821 (9th Cir. 1991); *Newport News Shipbuilding & Dry Dock Co. v. Parker*, 935 F.2d 20, 27 (4th Cir. 1991); *Brown v. ITT/Continental Baking Co.*, 921 F.2d 289, 294-95 (D.C. Cir. 1990); *J.M. Martinac Shipbuilding v. Director, OWCP*, 900 F.2d 180, 183 (9th Cir. 1990); *Brown v. Jacksonville Shipyards, Inc.*, 893 F.2d 294, 296 (11th Cir. 1990); *Bechtel Associates, P.C. v. Sweeney*, 834 F.2d 1029, 1033 (D.C. Cir. 1987); *Marathon Oil Co. v. Lunsford*, 733 F.2d 1139, 1141-1142 (5th Cir. 1984). A court must also examine a claimant's appreciation of the relation between his injury and his employment. *SSA Terminals v. Carrion*, 821 F.3d 1168, 1172 (9th Cir. 2016) (affirming

[8] We affirm, as unchallenged on appeal, the ALJ's finding that "Claimant and Employer agree that this case involves [an] occupational disease." D&O at 12; *Scalio v. Ceres Marine Terminals, Inc*., 41 BRBS 57, 58 (2007).

[9] In his Order Denying Motion for Reconsideration, the ALJ rejected Claimant's argument that his claim is timely because he found Claimant, in part, conflated timeliness under Section 12 with timeliness under Section 13 of the Act. Order Denying Mot. for Recon. at 2. Contrary to that finding, the standard for determining timeliness under both Sections 12 and 13 is the same in that both begin to run only after a claimant becomes aware or reasonably should have been aware of the full character, extent, and impact of the injury. *Bechtel Associates, P.C. v. Sweeney*, 834 F.2d 1029, 1033 n.4 (D.C. Cir. 1987) (addressing both sections, and applying the same standard for awareness under both because "the language at issue in §12(a) is virtually identical to that at issue in §13(a)"); *Smith v. Aerojet-General Shipyards*, 647 F.2d 518, 524 (5th Cir. 1981) (the "same reasoning we employ to determine the commencement of section thirteen's limitation period for filing a claim controls section twelve's notice requirement"); *see Suarez v. Serv. Employees Int'l, Inc*., 50 BRBS 33 (2016): *Love v. Owens-Corning Fiberglass Co.*, 27 BRBS 148 (1993); *see also* Director's Brief at 6.

claimant was not aware of the full character, extent, and impact of the harm done to him until he appreciated that his work for his employer caused a cumulative trauma knee injury resulting in an impairment of his earning power); *Lunsford*, 733 F.2d at 1141. "Awareness" in an occupational disease claim means the filing period does not begin to run until the employee is disabled. 20 C.F.R. §702.222(c). Moreover, under Section 12(d), untimely notice will not bar the claim if: (1) the employer or carrier had actual knowledge of the injury or death; (2) the district director determined the employer or carrier was not prejudiced by the claimant's late notice; or 3) the district director excused the late filing. 33 U.S.C. §912(d); 20 C.F.R. §702.216; *Bustillo v. Southwest Marine, Inc.*, 33 BRBS 15, 16-17 (1999).

In addition to misapplying the burden of proof under Section 20(b), the ALJ's finding that Claimant's notice was untimely and his analysis of Claimant's "awareness" under Section 12(a) are similarly flawed and inadequately reasoned. The ALJ found Claimant's notice of injury was untimely because: (1) Claimant testified he experienced nightmares, night sweats, and sleeplessness in 2008; and (2) Claimant stated that when he again sought work in Iraq in 2011, he would have preferred to work in Baghdad because it was less dangerous. D&O at 12-13; *see* EX 9, Dep. at 12-13, 42-43. The ALJ found it "immaterial" that Claimant had not been diagnosed with a psychological disorder until 2016. D&O at 13. Therefore, he determined Claimant was "aware" of the connection between his employment, his injury, and his disability no later than 2008 when his symptoms began. *Id.*

Claimant and the Director assert neither of the facts the ALJ relied on is sufficient to "start the clock" under Section 12(a) for Claimant to give notice of his psychological injury. Director's Brief at 7-8. We agree.

The statutory definition of "awareness" is knowledge of "the full character, extent, and impact of [the] work-related injury." *Mechler*, 658 F.3d at 137. Nightmares, night sweats, or trouble sleeping do not necessarily indicate a work-related psychological problem or a loss of wage-earning capacity. *See Rodriguez v. Triple Canopy, Inc.*, 55 BRBS 17, 18 n.2, 19 (2021) (determining there was no substantial evidence of "awareness" of a claimant's work-related psychological injury prior to his PTSD diagnosis despite his earlier reported symptom of trouble sleeping); *see also Bath Iron Works Corp. v. Galen*, 605 F.2d 583, 585 (1st Cir. 1979) (a worker need not notify his employer until he knows or reasonably should have known that he had sustained an injury that will decrease his earning power); *Stancil v. Massey*, 436 F.2d 274, 276-277 (D.C. Cir. 1970) (only when the worker has been alerted to the likely impairment of his earning power does an injury under the Act exist). Likewise, preferring to work in an area that Claimant deems relatively less dangerous provides no indication of either a work-related psychological disorder or a loss of wage-earning capacity. *Id.*

Here, the ALJ failed to address or adequately explain how or why Claimant knew or should have known his 2008 symptoms were work-related, or how those symptoms and his preference to work in a relatively safer environment such as Baghdad indicated he had sustained an injury that would impair his earning power. *Abel*, 932 F.2d at 821; *Parker*, 935 F.2d at 27; *Mechler*, 658 F.3d at 137; *see* 33 U.S.C. §912(a). The ALJ also did not assess whether Claimant appreciated the full character, extent, and impact of the injury based only on the knowledge of his symptoms in 2008. *Carrion*, 821 F.3d at 1172; *Lunsford*, 733 F.2d at 1141.

Further, the ALJ did not consider or discuss additional relevant evidence related to Claimant's date of awareness. Specifically, the ALJ did not address Claimant's explanation as to why and when he realized he had a psychological problem. Claimant testified he had familial issues after returning home from Iraq, but he did not realize he needed psychological healthcare until 2015 when his family left him and 2016 when his brother insisted on, and paid for, a psychiatrist visit. EX 4 at 9; EX 9, Dep. at 14, 47-48. When the ALJ asked Claimant why he did not see a psychiatrist or psychologist when his family problems started, Claimant responded he "didn't believe that [he] was sick." EX 9, Dep. at 14. The ALJ also failed to consider the portion of Dr. Velazco Lorenzo's report where he noted Claimant's statement that: "[a]t first, I did not realize that I had many memories of what had happened to me. I had nightmares; I could not sleep well, I sweated a lot. It all began in 2015 when my family left me, and I realized that I had problems." EX 4 at 9.

Moreover, Dr. Apaza Aceituno diagnosed Claimant with PTSD related to his employment in Iraq on November 1, 2016. CX 5 at 1; EX 9 at 47-49. This is the first medical opinion diagnosing a psychological injury related to Claimant's employment. *See Lewis v. Todd Pacific Shipyards Corp.*, 30 BRBS 154, 156 (1996) (claimant not aware of work-related asbestosis until diagnosed by a physician); *Bridier v. Alabama Dry Dock & Shipbuilding Corp.*, 29 BRBS 84, 87-89 (1995) (awareness of injury alone is insufficient to rebut Section 20(b) presumption; claimant must be aware of its relation to his employment). While the date of a diagnosis is significant, it is not controlling if there is other evidence showing awareness at an earlier time. *Geisler v. Columbia Asbestos, Inc.*, 14 BRBS 794, 797 (1981). In this case, there is no evidence prior to Dr. Apaza Aceituno's report in November 2016 that linked Claimant's psychological issues to his employment in Iraq. Therefore, contrary to the ALJ's finding, there is no substantial evidence of the "full character, extent, and impact" of Claimant's work-related injury in 2008 when the ALJ found Claimant should have been "aware." *See Abel*, 932 F.2d at 822-823 (finding the claimant did not understand the nature or extent of his injury and its related symptoms until he received a physician's diagnosis); *Todd Shipyards v. Allan*, 666 F.2d 399, 401-402 (9th Cir.), *cert. denied*, 459 U.S. 1034 (1982) (same). Twenty-two days after receiving his PTSD diagnosis from a doctor, Claimant filed his claim for benefits. CX 1; EX 1. Thus,

the ALJ also erred in finding it "immaterial" that Claimant did not receive a diagnosis until 2016. D&O at 13.

The uncontroverted evidence demonstrates Claimant was not, and could not have been, "aware" of the full nature and extent of his injury until he received his diagnosis on November 1, 2016. As a matter of law, the claim filed on November 23, 2016, constituted timely notice of Claimant's injury under Section 12(a) of the Act. 33 U.S.C. §912(a); *Abel*, 932 F.2d at 822-823; *Allan*, 666 F.2d at 401-402; *Lewis*, 30 BRBS at 156. Accordingly, we reverse the ALJ's findings that Claimant's date of awareness was no later than 2008, and his notice in 2016 was untimely filed. D&O at 12-13. Because we hold the notice was timely filed, there was no delay that could have prejudiced Employer; therefore, we vacate as moot the ALJ's determination that, pursuant to Section 12(d)(2) of the Act, 33 U.S.C. §912(d)(2), Employer was prejudiced by Claimant's untimely notice of injury.[10] D&O at 13. Consequently, we also reverse the ALJ's denial of Claimant's claim in its entirety for being time-barred under Section 12.[11] *Id.*

Medical Benefits

In finding Claimant's notice of injury was untimely, the ALJ denied not only disability compensation but also medical benefits. In denying reconsideration, the ALJ found "only compensation is barred if a claim is not timely filed" under Section 13, but "[u]nder Section 12, the entire claim is barred if notice is not timely given." Order Denying Mot. For Recon. at 2. Although the ALJ cited to language in the statutory provisions of Sections 12(d) and 13(a), he did not otherwise explain his reasoning or cite any relevant case law to support his finding.

[10] Claimant, joined by the Director, asserts that if Claimant's notice of injury is untimely, the late notice should be excused under 33 U.S.C. §912(d)(3)(ii) and 20 C.F.R. §702.211(b)(4). Claimant's Brief at 29-31. Specifically, Claimant argues there is no evidence that Employer published the name or position of the individual authorized to receive notices of injury on its behalf or any evidence that it filed a Notice to Employees Form (LS-241/LS-242). Claimant's Brief at 31; *see* Director's Brief at 11 n.4. Because we reverse the ALJ's finding regarding the timeliness of the notice, we need not address Claimant's contention that his late filing should be excused.

[11] Because timeliness under Section 13 was a disputed issue before the ALJ, but he did not address it, and because timeliness under Sections 12 and 13 is determined in the same manner, we also hold Claimant's claim for benefits was timely filed as a matter of law. 33 U.S.C. §913(b)(2); *Love*, 27 BRBS at 150-151 n.1; *Gregory v. Southeast Marine Co.*, 25 BRBS 188, 190-191 (1991); *Lindsay v. Bethlehem Steel Corp.*, 18 BRBS 20, 22-23 (1986).

Because we have determined he ALJ erred in denying medical benefits due to Claimant's alleged failure to provide timely notice under Section 12, we vacate the ALJ's determination and remand the case for reconsideration. On remand, the ALJ must address whether Claimant has established a work-related psychological condition/PTSD.[12] 33 U.S.C. §920(a). If so, he must then award medical benefits in accordance with Section 7 of the Act. 33 U.S.C. §907(a).

Accordingly, we reverse the ALJ's finding that Claimant's claim is time-barred, vacate the denial of benefits, and remand this case for further consideration consistent with this opinion.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

BOGGS, Administrative Appeals Judge, concurring:

I agree with my colleagues that the ALJ failed to properly apply the Section 20(b) presumption of timeliness and did not adequately explain his findings and conclusions as to timeliness under Sections 12 and 13. 33 U.S.C. §§912, 913, 920(b). However, because it is the role of the ALJ, and not the Board, to serve as factfinder, I would remand the case with instructions for him to make the appropriate findings with explanations as the Act and the APA require. 5 U.S.C. §557(c)(3)(A) (the ALJ's decision must contain "findings and conclusions, and the reasons or bases therefor, on all material issues of fact, law or

[12] Employer's notice of controversion and brief before the ALJ document its challenge as to whether Claimant sustained a work-related psychological condition. EX 3; Emp's OALJ Br. at 8-16. Consequently, the ALJ explicitly identified "[w]hether Claimant suffered a work-related injury" as a "primary unresolved issue in this case." D&O at 13. As causation remains an unresolved issue relevant to any claim for medical benefits in this case, the ALJ must address it on remand.

discretion presented on the record."); *Duhagon v. Metropolitan Stevedore Co.*, 19 F.3d 615, 618 (9th Cir. 1999); *LaFaille v. Benefits Review Bd.*, 884 F.2d 54, 61 (2d Cir. 1989).

JUDITH S. BOGGS
Administrative Appeals Judge