U.S. Department of Labor

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

BRB No. 23-0382

WILLIAM B. LEE	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	**NOT-PUBLISHED**
VIRGINIA INTERNATIONAL TERMINALS, LLC	)	
	)	
and	)	DATE ISSUED: 03/31/2025
	)	
SIGNAL MUTUAL INDEMNITY ASSOCIATION, LIMITED	)	
	)	
Employer/Carrier-Respondents	)	
	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Pamela A. Kultgen, Administrative Law Judge, United States Department of Labor.

Gregory E. Camden (Montagna Klein Camden, LLP), Norfolk, Virginia, for Claimant.

Megan B. Caramore (Woods Rogers Vandeventer Black), Norfolk, Virginia, for Employer/Carrier.

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

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Pamela A. Kultgen's Decision and Order Denying Benefits (2022-LHC-00234) rendered on a claim filed pursuant to the

Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §§901-950 (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, 363 (1965).

Claimant alleges he injured his left shoulder while operating a ship-to-shore crane on May 26, 2021.[2] Hearing Transcript (Tr.) at 17, 19-20. The crane's electronic stop (E-stop) engaged, causing the crane to stop all movements. *Id*. at 19-20. Claimant testified the E-stop caused the crane's cab to shake, and he "snatched down" on the crane's joysticks to brace himself. *Id*. at 22. He sought treatment from orthopedic surgeon Dr. Arthur Wardell, who diagnosed a left shoulder sprain. Claimant's Exhibit (CX) 15 at 1. Dr. Wardell recommended physical therapy as well as several diagnostic tests, including an ultrasound,[3] an electromyography (EMG) study,[4] and magnetic resonance imaging (MRI).[5] *Id*. at 1, 5, 12. On September 8, 2021, Dr. Wardell recommended left shoulder surgery. *Id*. at 18.

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[1] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because Claimant sustained an injury in Norfolk, Virginia. 33 U.S.C. §921(c); *see Roberts v. Custom Ship Interiors*, 35 BRBS 65, 67 n.2 (2001), *aff'd*, 300 F.3d 510 (4th Cir. 2002), *cert. denied*, 537 U.S. 1188 (2003); 20 C.F.R. §702.201(a).

[2] The parties stipulated that Claimant injured his neck in the course of his employment on May 26, 2021, as a result of the same incident. Decision and Order Denying Benefits (D&O) at 2. Claimant was paid temporary total disability (TTD) compensation for his work-related neck injury at a weekly rate of $1,632.70 from June 2, 2021, to November 1, 2021. *Id.* The sole issue before the ALJ was whether Claimant's left shoulder condition is related to the work injury on May 26, 2021. *Id*. at 3.

[3] The left shoulder ultrasound was conducted on June 8, 2021, and was normal. CX 15 at 1, 4.

[4] The left extremity EMG study was conducted on July 26, 2021. It revealed evidence of moderate carpal syndrome but no radiculopathy or peripheral neuropathy. CXs 7 at 2, 15 at 11.

[5] The left shoulder MRI was obtained on August 12, 2021. It showed no evidence of a high-grade rotator cuff tear but did reveal mild-to-moderate tendinosis, a low-grade partial-thickness tear of the supraspinatus tendon, biceps tendinosis with possible partial thickness tear, mild osteoarthritis, and mild bursitis. CXs 8 at 2, 15 at 14.

On October 22, 2021, Employer sent Claimant to orthopedic surgeon Dr. Daniel Cavazos. Employer's Exhibit (EX) 6 at 6. Dr. Cavazos issued a report on November 1, 2022, in which he opined Claimant "did not sustain a musculoskeletal injury to the left shoulder," indicating there was no evidence, either through his review of Claimant's medical records or his physical examination, of a glenoid labral, rotator cuff, or biceps tendon tear requiring surgery. *Id*. at 11. He concluded the MRI findings were degenerative in nature and the May 26 workplace incident neither aggravated nor exacerbated them. *Id*. at 12.

Employer also asked Dr. Seth Scholl, a physical medicine and rehabilitation (PM&R) physician, to review Claimant's medical records and the video of the incident.[6] EX 8 at 1. In a report issued on December 8, 2021, Dr. Scholl opined the video demonstrated no evidence of shoulder trauma. *Id*. at 2. He opined neither the MRI nor EMG findings were related to the May 26 incident. *Id*. at 3.

Claimant underwent left shoulder surgery on March 1, 2022. CX 10. According to Dr. Wardell, the surgery revealed a superior glenoid labrum tear, a partial-thickness tear to the biceps anchor, and a minor partial-thickness tear of the supraspinatus above that area. CXs 10, 15 at 56.

On March 3, 2022, orthopedic surgeon Dr. Loel Payne issued a report following a records review conducted at Employer's request. EX 10 at 4. He opined the video of the workplace incident failed to demonstrate any mechanism for a left shoulder injury that would have caused a rotator cuff or biceps tear, as Claimant's left arm is never shown to be in an overhead or extended position. *Id*. He found no evidence warranting left shoulder surgery. *Id*.

Dr. Wardell responded to Dr. Payne's report on March 14, 2022. CX 12. He noted the surgery revealed a superior glenoid labrum tear and a partial thickness tear at the biceps anchor, which he opined were caused by the May 26 workplace incident. Dr. Wardell explained his physical examinations supported this finding, as Claimant repeatedly demonstrated tenderness over the biceps tendon, and the MRI showed a partial thickness tear of the biceps anchor. Dr. Wardell had "little doubt" Claimant's biceps tendon tear was the "source of his pain" and was caused by the workplace incident. *Id*.

Dr. Payne issued a second report on March 29, 2022, after reviewing Claimant's surgical records, particularly photographs taken during surgery, as well as Dr. Wardell's response letter. EX 10 at 1. Dr. Payne opined the surgery revealed a degenerative Type II superior labrum anterior posterior (SLAP) tear involving approximately 75% of the biceps

[6] Dr. Scholl did not examine Claimant. EX 8.

anchor. *Id.* He further opined that both the MRI findings and extensive labrum fraying evident during surgery indicated this tear was degenerative in nature. *Id*. Dr. Payne also concluded the video of the workplace incident did not demonstrate Claimant performing any motions that would cause an acute SLAP tear. *Id*. at 2. As a result, he opined none of the surgical findings were related to the May 26 workplace incident but rather were "of a chronic degenerative nature present prior to the accident." *Id*. at 2-3.

On April 19, 2022, Dr. Cavazos issued a supplemental report after reviewing Claimant's surgical records as well as Dr. Wardell's March 14 correspondence and Dr. Payne's reports. EX 6 at 1. He opined the May 26 workplace accident did not cause Claimant to suffer a biceps or labral tear, any tears were already present when the incident occurred, and the incident neither aggravated nor exacerbated them. *Id*. at 5.

On April 14 and May 2, 2022, Dr. Wardell again responded to Dr. Payne's reports. CXs 13, 14. He stated Dr. Payne's opinion was inconsistent, as he did not identify a biceps tendon injury in his first report but indicated in his second report that Claimant had biceps tendon pathology. CX 13. Dr. Wardell further opined that the fraying he found during the surgery, which Dr. Payne indicated was proof Claimant's injury was degenerative, was consistent with an acute injury considering nine months passed between the May 26 incident and the surgery. *Id*. Additionally, Dr. Wardell considered Claimant's improvement since the surgery to be proof a biceps tendon injury had caused his pain. CXs 13, 14.

On June 30, 2023, the ALJ issued a Decision and Order Denying Benefits (D&O). She found Claimant invoked the Section 20(a) presumption with respect to his left shoulder injury, but Employer produced substantial evidence sufficient to rebut the presumption. 33 U.S.C. §920(a); D&O at 5-9. After weighing the evidence as a whole, the ALJ found Claimant did not suffer a left shoulder injury as a result of the May 26, 2021 work accident. D&O at 9, 17-22. Therefore, she concluded Claimant was not entitled to temporary total disability (TTD) benefits or reimbursement for his left shoulder surgery. *Id*. at 22. Claimant appeals, arguing the ALJ erroneously found Employer rebutted the Section 20(a) presumption and improperly weighed the evidence in determining causation. Employer responds, urging affirmance.

Claimant first asserts the ALJ improperly found Employer rebutted the Section 20(a) presumption regarding his left shoulder tear. In determining whether an injury is work-related, a claimant is aided by the Section 20(a) presumption, 33 U.S.C. §920(a), which is invoked after he presents some evidence or allegation that he suffered a harm and conditions existed, or an accident occurred, at his place of employment which could have caused the harm. *See Ceres Marine Terminals, Inc. v. Director, OWCP* [*Jackson*], 848 F.3d 115, 121 (4th Cir. 2016); *Universal Mar. Corp. v. Moore*, 126 F.3d 256, 262 (4th Cir. 1997); *Rose v. Vectrus Systems Corp.*, 56 BRBS 27, 33 (2022) (Decision on Recon. en

banc), *appeal dismissed* (M.D. Fla. Aug. 24, 2023); *Bolden v. G.A.T.X. Terminals Corp.*, 30 BRBS 71, 72 (1996). Once the Section 20(a) presumption is invoked, as in this case, the burden shifts to the employer to provide substantial evidence that the claimant's injury was not caused or aggravated by his employment. *Newport News Shipbuilding & Dock Co. v. Holiday*, 591 F.3d 219, 225 (4th Cir. 2009); *Moore*, 126 F.3d at 262; *O'Kelley v. Dep't of the Army/NAF*, 34 BRBS 39, 41 (2000). The employer's burden on rebuttal is one of production, not persuasion. *Rose*, 56 BRBS at 35; *Suarez v. Serv. Employees Int'l, Inc.*, 50 BRBS 33, 36 n.4 (2016). An employer meets its burden by submitting "such relevant evidence as a reasonable mind might accept as adequate" to support a finding that the claimant does not have a work-related injury. *See, e.g., Rainey v. Director, OWCP*, 517 F.3d 632, 637 (2d Cir. 2008). In addition, it is well settled that a medical opinion of non-causation rendered to a reasonable degree of medical certainty is sufficient to rebut the presumption. *See O'Kelley*, 34 BRBS at 41-42.

In this case, the ALJ rationally found Employer rebutted the Section 20(a) presumption with the opinions of Drs. Cavazos, Scholl, and Payne. D&O at 7. The ALJ found Dr. Cavazos opined Claimant did not injure his left shoulder as a result of the May 26 workplace incident, and did not exacerbate or aggravate any pre-existing shoulder tears. D&O at 8; EX 6 at 5, 11. Likewise, the ALJ found Dr. Scholl concluded the video of the May 26 incident showed no evidence of shoulder trauma, and the MRI findings were unrelated to the workplace incident. D&O at 8; EX 8 at 2-3. Finally, the ALJ found Dr. Payne opined the video failed to show a mechanism for an injury that supported surgical intervention or the SLAP tear discovered during Claimant's surgery, and the MRI findings did not indicate trauma but rather suggested Claimant's condition existed prior to the May 26 incident. D&O at 8; EX 10 at 2, 4-5. As these opinions constitute substantial evidence that Claimant's left shoulder condition was not a consequence of the May 26 workplace incident, we reject Claimant's contention that Employer did not rebut the Section 20(a) presumption, and we affirm the ALJ's rebuttal finding. *See Holiday*, 591 F.3d at 225; *Moore*, 126 F.3d at 262; *Rose*, 56 BRBS at 35; *Suarez*, 50 BRBS at 36; *O'Kelley*, 34 BRBS at 41-42.

Claimant next asserts the ALJ improperly found the evidence weighed as a whole does not establish he suffered a compensable left shoulder injury. Once the Section 20(a) presumption is rebutted, as in this case, it no longer applies and the issue of causation must be resolved on the record as a whole with the claimant bearing the burden of persuasion. *Moore*, 126 F.3d at 262; *Santoro v. Maher Terminals, Inc.*, 30 BRBS 171, 174-175 (1996); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 271 (1994). The ALJ is entitled to weigh the evidence and draw her own inferences from it; she has the discretion to determine which of the conflicting opinions is entitled to determinative weight, and the Benefits Review Board is not empowered to reweigh the evidence. *See*, *e.g.*, *Newport News Shipbuilding & Dry Dock Co. v. Cherry*, 326 F.3d 449, 452 (4th Cir. 2003); *Pittman*

Mech. Contractors, Inc. v. Director, OWCP [Simonds], 35 F.3d 122, 127 (4th Cir. 1994). Moreover, questions of witness credibility are for the ALJ as the trier-of-fact. *Simonds*, 35 F.3d at 127. 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 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979); *see also Newport News Shipbuilding & Dry Dock Co. v. Tann*, 841 F.2d 540, 543 (4th Cir. 1988).

After weighing the medical evidence, the ALJ gave greater weight to the opinions of Drs. Cavazos, Scholl, and Payne, and less weight to Dr. Wardell's opinion. D&O at 17. She noted Dr. Wardell's causation opinion relied primarily on Claimant's pain complaints after the workplace incident and on his reduced pain after the surgery. *Id*.; CXs 13, 14. Conversely, the ALJ found Drs. Cavazos, Scholl, and Payne provided well-reasoned and well-documented opinions explaining why the mechanism of injury, as shown on the video of the workplace incident, could not have caused the left shoulder tear requiring surgery. D&O at 18. She noted Dr. Scholl observed: 1) Claimant's left hand was not on the joystick when the accident occurred; 2) Claimant's chair absorbed the brunt of the force; and 3) and there was "no evidence of trauma or abnormal motion of the shoulder." *Id*.; EX 8 at 2. Similarly, she found Dr. Payne observed, "[t]he left shoulder and arm were not braced…. [Claimant's] arm was at his side and not in an overhead or extended position." D&O at 18; EX 10 at 4. The ALJ found Dr. Payne also clarified what mechanism of injury would be required to cause a SLAP tear (i.e., an extension of the arm, a direct compression injury, repetitive overhead activity, or sudden heavy lifting), none of which was demonstrated on the video of the incident. D&O at 18-19; EX 10 at 4.

After watching the video herself, the ALJ concluded Drs. Scholl and Payne "fairly and accurately" described it. D&O at 19; EXs 3, 8 at 2, 10 at 4. She found both Drs. Scholl and Payne "correctly noted" Claimant did not brace himself against the joystick when the E-stop occurred, as the video both supported this conclusion and refuted Claimant's testimony to the contrary.[7] D&O at 19; EXs 3, 8 at 2, 10 at 4. Conversely, the ALJ found there was no evidence Dr. Wardell ever reviewed the video of the incident but only relied on Claimant's description of the accident to find the mechanism of injury consistent with Claimant's left shoulder tear. D&O at 20; CX 14. As the video of the incident did not support Claimant's description of the accident at the hearing, the ALJ found Dr. Wardell's opinion was potentially based on an inaccurate characterization of the accident and therefore accorded it no weight. D&O at 20.

The ALJ also found that Dr. Payne provided a thorough and well-supported explanation for why Claimant's left shoulder tear aligned more with age-related

[7] Claimant testified that when the E-stop occurred, he "grabbed the joysticks…and basically snatched down on them to brace myself from the jolt of the cab." Tr. at 22.

degenerative changes than work-related trauma. D&O at 20; EX 10 at 2. Dr. Payne explained that a SLAP tear finding is not unusual in someone of Claimant's age and concluded it was more likely than not he already had a pre-existing SLAP tear at the time of the incident. D&O at 21; EX 10 at 2. The ALJ noted Dr. Wardell did not address or attempt to refute the relationship between Claimant's age and the SLAP tear. D&O at 21; CXs 13, 14. The ALJ acknowledged Dr. Wardell could be correct in pointing to the lapse of time between the incident and the surgery to account for some degeneration, but she found this explanation was insufficient to establish an acute tear in fact occurred on May 26, 2021. D&O at 21; CX 13. Rather, as Drs. Scholl and Payne persuasively opined the mechanism of injury observed on the video of the workplace incident did not support the kind of injury that Claimant suffered, the ALJ found it more likely than not Claimant's condition "was the consequence of chronic, age-related degeneration, not acute, work-related trauma." D&O at 21; *see* EXs 8 at 2, 10 at 2, 4. As the ALJ adequately explained her findings, and as her weighing of the medical evidence is supported by substantial evidence and is neither inherently incredible nor patently unreasonable, we affirm her finding Claimant failed to establish a work-related left shoulder injury. *Simonds*, 35 F.3d at 127; *Cordero*, 580 F.2d at 1335.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge