

BRB No. 23-0512

FRANCIS LUWWUM	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
EOD TECHNOLOGY, INCORPORATED	)	
	)	DATE ISSUED: 3/13/2025
and	)	
	)	
INSURANCE COMPANY OF THE STATE	)	
OF PENNSYLVANIA	)	
	)	
Employer/Carrier-	)	
Respondents	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Timothy J. McGrath,  
Administrative Law Judge, United States Department of Labor.

Andrew Nyombi (KNA Pearl Law, LLC), Silver Spring, Maryland, for  
Claimant.

John R. Soler (Skarzynski Marick & Black LLP), New York, New York, for  
Employer/Carrier.

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

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Timothy J. McGrath's Decision and Order Denying Benefits (2021-LDA-02741) 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).<sup>1</sup> We must

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<sup>1</sup> 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 located in New York. 33 U.S.C. §921(c); *McDonald v. Aecom Tech. Corp.*, 45 BRBS 45 (2011); *see also Global Linguist Solutions, L.L.C. v. Abdelmeged*, 913 F.3d 921 (9th Cir. 2019).

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, a Ugandan citizen, allegedly sustained psychological injuries because of his work for Employer as a security guard in Iraq from 2006 through February 2012. He generally alleged he was exposed to rocket and mortar attacks on a weekly or sometimes bi-weekly basis throughout the course of his work in Iraq.<sup>2</sup> JX 5, Dep. at 25-26. He recalled a particular attack on February 3, 2012, when a rocket-propelled grenade (RPG) hit a guard tower causing it to fall on his right ankle. *Id.*, Dep. at 23-25. He awoke several hours later in a military hospital, where they placed his leg in a cast and provided him with pain medication. *Id.* After about four days in the hospital, Employer sent Claimant home to Uganda. *Id.*, Dep. at 25. Claimant stated he has not worked since 2012. *Id.*, Dep. at 37.

Thereafter, a variety of physical ailments prompted Claimant to visit Surs Healthcare on October 6, 2017, where he was examined by Dr. Robert Mivule. JX 11 at 6. During a follow-up visit on April 4, 2019, Dr. Mivule documented for the first time Claimant's reports of severe headaches and "nightmares of war which are associated with the incoming bombs and different voices in his mind," *id.*,<sup>3</sup> prompting him to refer Claimant to a psychiatrist to rule out post-traumatic stress disorder (PTSD). *Id.* at 17. Claimant testified he subsequently met with Dr. Joyce Nziiza who diagnosed PTSD and provided treatment, including medication, which he stated "sometimes" helps "but not totally right now." *Id.*, Dep. at 36-37. At Employer's request, Dr. Steven Shindell, a board-certified neuropsychologist, evaluated Claimant on September 15, 2021. JX 7. Dr. Shindell opined there is no evidence that Claimant sustained any psychological injury because of his work in Iraq for Employer. *Id.* at 5-6.

Meanwhile, Claimant filed a claim on December 12, 2019, seeking benefits for "psychological injuries," which Employer controverted.<sup>4</sup> JXs 1, 3. On March 1, 2021, the

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<sup>2</sup> Claimant testified his work included guarding towers and patrolling the perimeter walls at Camp Falcon and in the Green Zone in Baghdad. JX 5, Dep. at 17-22. He stated most of the shelling occurred while he was at Camp Falcon. *Id.*

<sup>3</sup> Claimant separately testified that at some point after his return to Uganda he began experiencing sleeping problems, nightmares, and depression, which he stated led him to seek psychiatric treatment for the first time in 2017 or 2018. JX 5, Dep. at 34-35.

<sup>4</sup> Claimant did not file a claim for his physical injuries resulting from the February 2012 incident; however, it appears he received medical treatment for those injuries. D&O at 3-4; JX 5 at 29-30.

case was forwarded to the Office of Administrative Law Judges for a formal hearing. JX 4. On March 3, 2022, the ALJ issued an order specifying that, among other things, unless the parties requested otherwise, the case would be decided on the record. Neither party requested a hearing. The parties' joint prehearing statements were due on December 5, 2022, with final briefs to be filed by December 14, 2022. On December 7, 2022, Employer filed a motion seeking to exclude Dr. Nziiza's reports because Claimant's counsel failed to timely disclose them or her testimony. In his Order dated February 2, 2023, the ALJ granted Employer's motion, excluding Dr. Nziiza's reports dated June 29, 2020, and September 10, 2021, from the record and revising the briefing deadline to conclude on February 22, 2023. On February 22, 2023, Employer submitted proposed Joint Exhibits (JX) 1-8. The next day Claimant filed proposed JX 9-14.<sup>5</sup>

As a preliminary matter, the ALJ admitted JXs 1-8, 11, 12, and 13, but excluded JXs 9 and 10, Dr. Nziiza's reports, for the reasons stated in his prior order. He also excluded JX 14, an unsigned "Mental Health Assessment Report" from Kampala Independent Hospital, because it lacked credentials or background for the physician, Dr. Daniel Lule, who provided the report and because the date of the report, January 11, 2023, was months after discovery had already closed. After determining neither Section 12 nor 13 of the Act, 33 U.S.C. §§912, 913, barred Claimant's claim for compensation, the ALJ found Claimant entitled to the Section 20(a) presumption, 33 U.S.C. §920(a), relating his psychological injuries to his work with Employer.<sup>6</sup> He next found Employer rebutted the presumption and, based on the evidence as whole, found Claimant did not establish a causal relationship between his psychological injuries and his work for Employer in Iraq. Accordingly, the ALJ denied Claimant's claim for benefits.

On appeal, Claimant contends the ALJ erred in finding Employer rebutted the Section 20(a) presumption and in weighing the evidence as a whole regarding his alleged psychological injuries.<sup>7</sup> Employer responds, urging affirmance of the denial of benefits.

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<sup>5</sup> By Order dated March 6, 2023, the ALJ denied Claimant's February 22, 2023 motion for an extension of the briefing deadline and for a limited reopening of discovery for submission of alleged newly discovered medical treatment records. He also informed the parties the record was closed.

<sup>6</sup> The ALJ stated that "the only claim before me is for an alleged psychological injury. Since a claim for physical injuries is not before me, it will not be considered." D&O at 4 n.3.

<sup>7</sup> We affirm the ALJ's evidentiary determinations and, in particular, his decision to exclude reports from Drs. Nziiza and Lule, JXs 9, 10, 14, as they are unchallenged on appeal. *Scalio v. Ceres Marine Terminals, Inc.*, 41 BRBS 57, 58 (2007).

## Section 20(a) Rebuttal

The ALJ found Employer rebutted the Section 20(a) presumption for Claimant's psychological injuries with Dr. Shindell's report opining Claimant did not suffer from a mental health condition caused by his employment in Iraq. D&O at 10. Claimant generally argues the ALJ erred in doing so. Cl's Br. at 7, 16. We disagree.

Once, as here, the Section 20(a) presumption is invoked, the burden shifts to the employer to rebut it with substantial evidence that the claimant's condition was not caused or aggravated by his employment. *Rainey v. Director, OWCP*, 517 F.3d 632, 634 (2d Cir. 2008); *American Stevedoring, Ltd. v. Marinelli*, 248 F.3d 54, 64-65 (2d Cir. 2001); *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. *Id.*; *Rose v. Vectrus Sys. Corp.*, 56 BRBS 27, 30 (2022) (Decision on Recon. en banc), *appeal dismissed* (M.D. Fla. Aug. 24, 2023); *Victorian v. Int'l-Matex Tank Terminals*, 52 BRBS 35, 41 (2018), *aff'd sub nom. Int'l-Matex Tank Terminals v. Director, OWCP*, 943 F.3d 278 (5th Cir. 2019); *Suarez v. Serv. Emps. Int'l, Inc.*, 50 BRBS 33, 36 n.4 (2016); *Cline v. Huntington Ingalls, Inc.*, 48 BRBS 5, 7 (2013).<sup>8</sup> All an employer must do is submit "such relevant evidence as a reasonable mind might accept as adequate" to support a finding that the claimant's injury is not work-related. *Rainey*, 517 F.3d at 637. A physician's unequivocal opinion, rendered to a reasonable degree of medical certainty, that no relationship exists between the alleged injury and the claimant's employment is sufficient to rebut the presumption. *Suarez*, 50 BRBS at 36; *Cline*, 48 BRBS at 7; *O'Kelley*, 34 BRBS at 41.

In his report dated September 15, 2021, Dr. Shindell opined, to a reasonable degree of medical probability, that "there does not exist credible data that would suggest either a diagnosis of PTSD or any psychological condition;" there is "no connection between [Claimant's] employment over a decade ago and his current reported symptoms;" there "is no evidence of a mental health disorder of any type;" and there does not appear to be a connection of any kind between "his reported mental health symptoms and his employment in Iraq," i.e., his symptoms were not caused, aggravated, accelerated, or worsened by his employment. JX 7 at 5-6 (emphasis in original). Dr. Shindell reiterated these findings during his deposition. JX 8 at 34-37. As Dr. Shindell's opinion directly contradicts the

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<sup>8</sup> Contrary to Claimant's assertion, there is nothing in the ALJ's decision to suggest he "afforded substantial weight and outright automatic deference to [E]mployer's expert Dr. Steven Shindell's report finding it was more than sufficient to rebut the Section 20(a) presumption." Cl's Br. at 7. Rather, the ALJ applied the appropriate rebuttal standard, noting Employer's burden is one of production, rather than persuasion, and is therefore not dependent on credibility. D&O at 10; *see also Rose*, 56 BRBS at 35; *Cline*, 48 BRBS at 6-7.

presumption that Claimant's alleged psychological injuries are related to his employment and is the kind of evidence "a reasonable mind might accept as adequate" to support that conclusion, it constitutes substantial evidence that is legally sufficient to rebut the presumption. *Rainey*, 517 F.3d at 637; *Suarez*, 50 BRBS at 36; *Cline*, 48 BRBS at 6-7; *O'Kelley*, 34 BRBS at 41-42. Consequently, we affirm the ALJ's finding that Employer rebutted the Section 20(a) presumption for Claimant's alleged psychological injuries. *Rainey*, 517 F.3d at 637; *Rose*, 56 BRBS at 30.

### **Causation as a Whole**

If the employer rebuts the Section 20(a) presumption, it drops out of the analysis and the issue of causation must be resolved based on the evidence of record as a whole, with the claimant bearing the burden of persuasion. *Rainey*, 517 F.3d at 634; *Marinelli*, 248 F.3d at 65; *Santoro v. Maher Terminal, Inc.*, 30 BRBS 171 (1996); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 276 (1994). The ALJ is entitled to weigh the evidence and draw his own inferences and conclusions from it; he is not bound to accept the opinion or theory of any particular expert. *See Pietrunti v. Director, OWCP*, 119 F.3d 1035, 1042 (2d Cir. 1997); *Sealand Terminals, Inc. v. Gasparic*, 7 F.3d 321, 323 (2d Cir. 1993); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961). The Benefits Review Board is not free to reweigh the evidence or make credibility determinations but must affirm the ALJ's findings if they are rational and supported by substantial evidence. *Gasparic*, 7 F.3d at 323; *Volpe v. Northeast Marine Terminals*, 671 F.2d 697, 700 (2d Cir. 1982); *Perini Corp. v. Hyde*, 306 F. Supp. 1321, 1325-1326 (D.R.I. 1969).

Claimant asserts the ALJ erroneously discredited his testimony regarding his psychological injuries. He also argues the ALJ improperly accorded little weight to Dr. Mivule's references to and treatment of Claimant's psychological injuries<sup>9</sup> and improperly gave great weight to Dr. Shindell's opinion because his "testimony is rife with infirmities." Claimant's contentions are not persuasive.

In weighing the evidence, the ALJ found Claimant "has produced no admissible evidence to substantiate his claimed psychological injury" beyond his own limited

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<sup>9</sup> We reject Claimant's assertion that Dr. Mivule is automatically entitled to greater weight by virtue of his status as Claimant's treating physician as the record contains conflicting reports addressing whether Claimant has a work-related psychological injury, thereby obligating the ALJ to review and weigh the evidence on causation in its entirety. *Pietrunti*, 119 F.3d at 1042; *Carswell v. E. Pihl & Sons*, 999 F.3d 18, 31-32 (1st Cir. 2021), *cert. denied*, 14 S. Ct. 1110 (2022); *Sea-Land Services, Inc. v. Director, OWCP [Ceasar]*, 949 F.3d 921, 925 (5th Cir. 2020); *Kkunsu v. Constellis Group*, BRBS , slip op. at 8-9, BRB No. 24-0001 (Feb. 5, 2025).

testimony on the subject and a notation in the medical records from Dr. Mivule. D&O at 11. The ALJ accorded little weight to Claimant's testimony, particularly as it related to any alleged psychological condition, because he found Claimant's primary "focus was about his physical injuries, not psychological injuries"<sup>10</sup> and his story about the only specific traumatic event he described, the February 3, 2012 incident and the injuries resulting from it, "changed over time."<sup>11</sup> *Id.* As questions of witness credibility are reserved for the ALJ and may not be overturned unless they are patently unreasonable, we affirm the ALJ's credibility assessment of Claimant's testimony. *Pietrunti*, 119 F.3d at 1042; *Gasparic*, 7 F.3d at 323.

As to the medical evidence, the ALJ determined Dr. Mivule's reports held limited value because he found them "to be superficial and primarily focused on physical ailments." D&O at 11. In this regard, although the ALJ found Dr. Mivule's reports contained some "offhand comments about psychological problems, there is nothing of detail expressed" in them. We agree. Claimant's medical evidence in the record consists of Dr. Mivule's three reports: one each from October 2017, April 2019, and November 2019. JX 11. In all three reports, Dr. Mivule stated Claimant "sustained bodily injuries" because of the February 2012 work incident and he identified Claimant's "major complaints" as eye problems, hearing loss, severe stomach complications, severe chest pain, severe back pain, general body weakness, and respiration complications. *Id.* at 4, 6, 17. While, as the ALJ acknowledged, the two 2019 reports contained general references to Claimant's possibly having psychological issues,<sup>12</sup> neither of those reports offered the

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<sup>10</sup> The ALJ found "the vast majority of Claimant's testimony focused on physical problems." D&O at 4 n.3.

<sup>11</sup> The ALJ noted Claimant's deposition testimony stated an RPG hit the guard tower where he was working and caused it to collapse and fall on his ankle; he subsequently told an investigator that he hurt his leg and ankle and sustained other physical injuries while running towards a bunker. He told Dr. Shindell he was injured when the guard tower collapsed from a bomb blast more than one kilometer away. *Compare* JX 5, Dep. at 23-25 with JX 12 at 7 and JX 7 at 2. The ALJ reasonably surmised that given the February 3, 2012 incident was the only traumatic event Claimant referred to, he "would have expected his story to be consistent" and the fact it was not consistent was "hard to reconcile." D&O at 11.

<sup>12</sup> On April 17, 2019, Dr. Mivule noted Claimant "report[ed]" severe headaches which do not respond to painkillers and "nightmares of war which are associated with the incoming bombs and different voices in his mind." JX 11 at 17. Consequently, Dr. Mivule referred Claimant "to the psychiatrist to rule out PTSD." *Id.* In a follow-up report dated November 6, 2019, Dr. Mivule noted Claimant reported depression and, "upon

physician's opinion as to the cause or causes of his alleged psychological issues, let alone related them to Claimant's work for Employer in Iraq. *Id.* at 4, 17.

In contrast, the ALJ found Dr. Shindell's opinion is entitled to "great weight" because his report and accompanying testimony are well-reasoned and well-supported. D&O at 11. He found Dr. Shindell's evaluation of Claimant consisted of a clinical interview, a records review, and the administration of two validity tests. *Id.* at 5. The ALJ further found Dr. Shindell explained in detail the results of the tests he administered and noted deviations between those results and Claimant's statements during the clinical interview and his own observations of Claimant. JX 7. Additionally, he observed Dr. Shindell noted other non-work-related incidents in Claimant's life that caused him significant distress and explained that Claimant's alleged present symptoms could have resulted solely from those stressors.

We affirm the ALJ's decision to accord greatest weight to Dr. Shindell's opinion and little weight to Dr. Mivule's reports as it is supported by substantial evidence. *Gasparic*, 7 F.3d at 323. The ALJ therefore rationally found, based on his weighing of the evidence of record, that Claimant's testimony and the limited medical records of Dr. Mivule "are not sufficiently probative to establish by a preponderance of the evidence that he suffers from a work-related psychological injury." D&O at 12. We affirm his finding that Claimant failed to carry his burden of proving he suffered a work-related psychological

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recommendation from the psychiatrist, [Claimant] is currently on physcosocial (*sic*) rehabilitation services and physiotherapy." *Id.* at 2.

injury within the meaning of the Act. *Greenwich Collieries*, 512 U.S. at 276. Consequently, we affirm the ALJ's conclusion that Claimant did not establish he has a work-related psychological condition. *Rainey*, 517 F.3d at 634; *Marinelli*, 248 F.3d at 65.

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