U.S. Department of Labor

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

BRB No. 24-0201

NASER ZABID Claimant-Petitioner v. VHB GLOBAL, INCORPORATED and INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA Employer/Carrier-Respondents	)	**NOT-PUBLISHED** DATE ISSUED: 03/23/2026 DECISION and ORDER

Appeal of the Decision and Order Denying Benefits and Order Denying Motion for Reconsideration of Susan Hoffman, Administrative Law Judge, United States Department of Labor.

Jeffrey M. Winter (Law Office of Jeffrey M. Winter) Cookeville, Tennessee, for Claimant.

Edwin B. Barnes (Thomas Quinn, LLP) San Francisco, California, for Employer and its Carrier.

BEFORE: GRESH, Chief Administrative Appeals Judge, ROLFE and JONES, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Susan Hoffman's Decision and Order Denying Benefits and Order Denying Motion for Reconsideration (2021-LDA-

00992, 2021-LDA-02761) rendered on claims 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 findings of fact and conclusions of law if they are rational, supported by substantial evidence, and in accordance with applicable law.[1] 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant filed claims for benefits under the Act alleging a psychological injury and physical injuries to his neck, back, right shoulder, hip, and leg arising out of an altercation that occurred while Claimant was working as a linguist for Employer in Iraq on June 29, 2020.[2] Claimant's Exhibit (CX) 2. Employer denied the claims. CX 3. Following a formal evidentiary hearing, the ALJ issued a decision and order denying Claimant's claims for benefits (D&O). She determined Claimant invoked the Section 20(a) presumption of causation as to both his alleged psychological and orthopedic injuries but held that Employer produced substantial evidence to rebut them. D&O at 66-67. Upon weighing the evidence, the ALJ considered Claimant not credible and his medical providers' opinions "conclusory and unreasoned." Consequently, she denied Claimant's claims for benefits, finding he did not establish by a preponderance of the evidence that he sustained any psychological or orthopedic injuries arising out of and in the course of his employment with Employer. D&O at 66-68. Claimant subsequently moved for reconsideration of the ALJ's denial of his claims for benefits, which the ALJ denied (Order Den. Recons.).

[1] This case arises within the jurisdiction of the United States Court of Appeals for the Ninth Circuit because the office of the district director who filed the ALJ's decision is located in Long Beach, California. 33 U.S.C. §921(c); *McDonald v. Aecom Tech. Corp.*, 45 BRBS 45, 47 (2011); *see also Glob. Linguist Sols., L.L.C. v. Abdelmeged*, 913 F.3d 921, 922 (9th Cir. 2019).

[2] In his claim for compensation for his physical injuries, Claimant alleged he was playing dominoes with co-workers when another worker who wanted to play demanded his seat, picked up his chair, and threw him and his chair to the ground. CX 2 at 3. In his claim for compensation for his psychological injuries, he alleged the worker attacked him when he refused to leave the game. *Id.* at 5. In his testimony, Claimant stated when he got up from the floor, he knocked the worker's hat off and then a friend of the worker pushed Claimant to the ground. TR at 35-36, 388, 394. Witnesses' versions varied. CX 46 at 417-421; CX 47 at 422-427. Ultimately, the ALJ found the witnesses' versions indicating Claimant was not thrown or pushed to the ground, but there was pushing and yelling, more plausible than Claimant's. D&O at 45-47.

Regarding both the alleged psychological injury and the alleged orthopedic injuries, Claimant appeals the ALJ's finding that Employer rebutted the Section 20(a) presumption of causation, 33 U.S.C. §920(a). Cl Br.; Cl. Reply. Employer responds, urging affirmance of the ALJ's denial of Claimant's claims for benefits.[3]

Claimant contends the ALJ erred in finding Employer rebutted the Section 20(a) presumption. He asserts the opinion of Employer's orthopedic expert, Dr. Raymond Vance, does not constitute substantial evidence because it is an improper credibility assessment rather than a valid medical opinion. Thus, Claimant argues that by adopting Dr. Vance's opinion the ALJ impermissibly used a credibility determination to satisfy Employer's burden at the rebuttal stage, and his claim should be found compensable as a matter of law. Cl. Br. at 8-19; Cl. Reply at 5-7. We reject Claimant's argument.

Once a claimant invokes the Section 20(a) presumption of causation, as here, his employer may then rebut the presumption by "presenting substantial evidence that is 'specific and comprehensive enough to sever the potential connection between the disability and the work environment.'" *Haw. Stevedores, Inc. v. Ogawa*, 608 F.3d 642, 651 (9th Cir. 2010) (quoting *Ramey v. Stevedoring Servs. of Am.*, 134 F.3d 954, 959 (9th Cir. 1998)). Substantial evidence is more than a scintilla and "is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Schwirse v. Director, OWCP*, 736 F.3d 1165, 1171 (9th Cir. 2013) (quoting *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 477 (1951)). If aggravation of an underlying condition is at issue, the employer must present evidence establishing the work event neither directly caused the injury nor aggravated the underlying condition resulting in injury. *O'Kelley v. Dep't of the Army/NAF*, 34 BRBS 39, 40-41 (2000). A physician's unequivocal opinion that no relationship exists between an injury and a claimant's employment is sufficient to rebut the Section 20(a) presumption. *Duhagon v. Metropolitan Stevedore Co.*, 169 F.3d 615, 618 (9th Cir. 1999); *O'Kelley*, 34 BRBS at 41-42. If the employer successfully rebuts the presumption, the ALJ must weigh the evidence as a whole to evaluate whether the claimant met his burden of persuasion by a preponderance of the evidence that his injury is work-

[3] Upon acknowledging Claimant's appeal, the Benefits Review Board consolidated it with two other cases for briefing on the holding in *Harrow v. Dep't of Defense*, 601 U.S. 480 (2024), and its implication on the time specified for filing an appeal with the Board under 33 U.S.C. §921(a). Because the ALJ considered Claimant's motion for reconsideration on the merits and dismissed Employer's objections to untimeliness as moot, the Board denied Employer's Motion to Dismiss Claimant's appeal, severed the consolidated appeals, and set the briefing schedule for Claimant's appeal on the merits. *Dominguez v. Bethlehem Steel Corp.*, 59 BRBS 53 (2025).

related. *Schwirse*, 736 F.3d at 1171; *Ogawa*, 608 F.3d at 650-651; *Duhagon*, 169 F.3d at 618.

After finding Claimant invoked the Section 20(a) presumption based on his testimony and the opinion of his orthopedic surgeon, Dr. Chris Pallia, the ALJ determined Employer rebutted the presumption of causation through Dr. Vance's unequivocal opinion that Claimant did not sustain a new orthopedic injury or aggravate any underlying orthopedic conditions. D&O at 66. We reject Claimant's contention that Dr. Vance's opinion constitutes an improper credibility determination rather than a valid medical opinion.

Although Dr. Vance stated there was "no credible evidence of [a] meaningful orthopedic injury" and observed that Claimant's physical examination was "riddled with features suggesting exaggeration or magnification of his condition or complete fabrication of his claims," Employer's Exhibit (EX) 18 at 134, his ultimate conclusions were not based solely on his disbelief of Claimant's subjective reporting and are enough to rebut the presumption. Dr. Vance detailed objective clinical findings that Claimant ambulated with a "slow and awkward gait without an antalgic component," could walk on his toes and heels without weakness, had full range of motion in his neck and back, demonstrated "no significant restriction of motion of any part of his body," and was "neurologically normal without significant atrophy." EX 18 at 130-131; EX 136 at 1077-1078. He further explained none of the MRI abnormalities "can specifically be ascribed to any focal event" and instead reflected "commonplace degenerative changes frequently seen in the population at large." EX 19 at 142. In Dr. Vance's view, any progression indicated in the MRI studies was not related to Claimant's employment but instead represented "ongoing degenerative change" that was "relatively minor." EX 136 at 1080. Viewed in its proper context, Dr. Vance's reference to a lack of "credible evidence" reflects his medical assessment that neither the subjective evidence nor the objective examination findings and diagnostic studies substantiate the alleged traumatic orthopedic injuries. *Id.* at 1079, 1083.

We also reject Claimant's contention that Dr. Vance did not express his opinion to "any degree of medical probability" or "medical certainty." Cl. Br. at 5-12. On the contrary, Dr. Vance confirmed at his deposition his opinions were expressed to a reasonable degree of medical probability. EX 136 at 1077-1078. The fact that Dr. Vance acknowledged on cross-examination he could not "prove with any medical probability" that Claimant did not aggravate an underlying orthopedic condition due to the June 2020 incident, *id.* at 1085, does not render Dr. Vance's opinion equivocal or legally insufficient for rebuttal purposes. *See O'Kelley*, 34 BRBS at 42 ("'[A]bsolute certainty' is a difficult concept in the medical profession."). Throughout his reports and testimony, he stated repeatedly and unequivocally that Claimant did not sustain any work-related orthopedic injuries and any changes indicated in the MRI studies from both before and after the work

incident represented the natural progression of preexisting abnormalities and were not attributable to the alleged work incident. EX 18 at 134-135; EX 19 at 142; EX 136 at 1079, 1080-181, 1084-1085.

As the ALJ correctly found, Dr. Vance's opinion was "specific and comprehensive enough to sever any potential causal connection" between Claimant's orthopedic conditions and the June 2020 incident. D&O at 58; Order Den. Recons. at 4. It was therefore sufficient to rebut the Section 20(a) presumption. *Ogawa*, 608 F.3d at 651; *Duhagon*, 169 F.3d at 618; s*ee O'Kelley*, 34 BRBS at 41-42. Accordingly, we affirm the ALJ's finding that Employer rebutted the Section 20(a) presumption as to Claimant's orthopedic injuries.[4]

Claimant next contends the ALJ committed reversible error by admitting and relying upon the unsworn written statements of two eyewitnesses to the workplace incident, which he characterizes as inadmissible hearsay. He argues these statements "poison[ed] the [evidentiary] well" because they formed the foundation for Employer's medical experts' opinions and the ALJ's adverse credibility findings. Cl. Br. at 20-21; Cl. Reply at 2-4. Claimant's contentions are without merit.

In proceedings under the Act, ALJs are not "bound by common law or statutory rules of evidence" or "technical or formal rules of procedure." 33 U.S.C. §923(a). Thus, hearsay evidence is generally admissible if it is relevant, material, and reliable. 5 U.S.C. §556(d); 20 C.F.R. §§702.338, 702.339; *Allen v. Agrifos, L.P.*, 40 BRBS 78, 79-80 (2006); *see also Richardson v. Perales*, 402 U.S. 389, 402 (1971) (hearsay evidence is admissible in administrative hearings and may constitute substantial evidence to support an ALJ's ultimate finding); *Camarillo v. Nat'l Steel & Shipbuilding Co.*, 10 BRBS 54, 60 (1979) (same). In the instant case, the ALJ reasonably found the witness statements were both

[4] Separate from Dr. Vance's opinion, the ALJ also considered "substantial negative evidence that the incident did not actually occur as Claimant allege[d] and that he did not really suffer the alleged injuries during or as a result of the [workplace] incident." D&O at 66. In her Order Denying Motion for Reconsideration, she clarified she was referring to Claimant's colleagues' eyewitness statements that refuted Claimant's allegation that he fell to the ground and was immediately injured, one eyewitness statement that contradicted Claimant's recollection of the incident, the investigation findings regarding the incident, and Claimant's own reports that he worked in full protective gear immediately following the incident and continued to do so for weeks. Order Den. Recons. at 4-5. Because Dr. Vance's opinion is independently sufficient for rebuttal, we need not determine whether the ALJ erred in also considering this "substantial negative evidence" refuting Claimant's reporting of the work incident and his alleged injuries. *See id.* at 5 n.4.

relevant and reliable,[5] noting the statements were made contemporaneously with the work incident and were consistent with each other and the investigative findings, and there was no evidence of bias or that the information provided was inaccurate.[6] D&O at 46. As the statements were properly admitted into the evidentiary record, the ALJ did not err by considering them when weighing the evidence as a whole, nor was it improper for Employer's medical experts to review them as part of their evaluations of the case.[7]

We likewise affirm the ALJ's finding that Claimant did not sustain a work-related orthopedic injury or aggravation based on the record as a whole. As the factfinder, the ALJ "is exclusively entitled to assess both the weight of the evidence and the credibility of witnesses," and when substantial evidence supports the ALJ's conclusion, we may not substitute our judgment for the ALJ's. *Ogawa*, 608 F.3d at 652; *Cordero v. Triple A Mach. Shop*, 580 F.2d 1331, 1335 (9th Cir. 1978). The ALJ meticulously documented multiple significant inconsistencies in Claimant's own accounts regarding the mechanism of his injuries, the onset of his symptoms, and the nature of his disabilities. Critically, she found his narrative was in direct and irreconcilable conflict with consistent statements from two eyewitnesses who refuted his core allegation of being thrown to the ground. D&O 45-50; Order Den. Recons. at 4; CXs 13, 46-47; EXs 90-91. The ALJ rationally concluded the whole of the evidence demonstrated Claimant had "a history and pattern of making statements designed to suit the particular needs of any given situation." D&O at 50. Based in part on her well-supported assessment of Claimant's credibility, she reasonably afforded "great weight" to Dr. Vance's opinion that Claimant did not sustain a work-related

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[5] The ALJ previously denied Claimant's motion to exclude the written witness statements, finding they were relevant to the issues in dispute. But at that time, she declined to consider whether they were probative. Order Den. Mot. In Limine (ALJ June 21, 2022); *see also* D&O at 6 n.6.

[6] By contrast, the ALJ discounted one eyewitness statement as being "uncorroborated, unreliable, and possibly influenced by Claimant." D&O at 46. She also afforded no weight to statements given by the person who was directly involved in the altercation with Claimant because she found he was "less likely to be reliable or unbiased" given his direct involvement in the incident. *Id.* at 7 n.7.

[7] To the extent Claimant's argument implicates procedural due process, we reject it. As Employer points out, Claimant identified these individuals as eyewitnesses when reporting the incident to Employer and in his prehearing statement, initial disclosures, and responses to Employer's discovery requests. CX 12; CX 15; CX 39 at 251-252; CX 70; EX 34; EX 126; EX 127. He therefore had ample opportunity throughout the proceedings to confront and cross-examine the eyewitnesses. He decided not to.

orthopedic injury or aggravation, finding his opinion well-reasoned, well-supported, and well-documented. *Id.* at 57-58, 66-67. Conversely, she rejected Dr. Pallia's opinion that Claimant injured his back, right knee, and right shoulder and aggravated his underlying back and neck conditions in the work incident, finding his opinion was speculative and based on an "incomplete or inaccurate" understanding of how Claimant was allegedly injured and Claimant's unreliable subjective complaints. *Id.* at 53-57, 66-67.

Because the ALJ found Claimant was not credible as to his pain, symptoms, and the incident, her reluctance to rely on evidence based on his self-reporting was rational. Claimant has not shown the ALJ's reasons for crediting Dr. Vance's opinions as opposed to Claimant's treating providers and experts were "inherently incredible or patently unreasonable." *Ogawa*, 608 F.3d at 650. As the ALJ's weighing of the evidence and credibility determinations are reasonable, and her findings are supported by substantial evidence in the record, we affirm her finding that Claimant did not prove by a preponderance of the evidence that he sustained a work-related orthopedic injury.

Claimant's remaining argument, which addresses his psychological claim, is derivative of his primary challenge to the ALJ's reliance on Dr. Vance's opinion. He contends Employer's psychiatric expert, Dr. Dominick Addario, who opined Claimant's psychological issues were not related to the work incident and were instead attributable to non-work-related personality factors and life stressors, improperly accepted and relied on Dr. Vance's allegedly "subjective" and "legally insufficient" opinion that Claimant did not sustain a work-related orthopedic injury or aggravation. Specifically, Claimant asserts that Dr. Addario used this flawed premise as the foundation for his own analysis; therefore, Claimant maintains Dr. Addario's opinion suffers from the same fatal evidentiary defects as Dr. Vance's and, as a result, cannot constitute substantial evidence sufficient to rebut the Section 20(a) presumption as to his alleged psychological injury or to support the ALJ's conclusion that Claimant did not sustain a work-related psychological injury. Cl. Br. at 18, 22.

As we determined above, Dr. Vance's opinion constituted substantial evidence to rebut the presumption. Therefore, we reject Claimant's challenge to Dr. Addario's opinion. Further, it was neither improper nor unreasonable for Dr. Addario to consider Dr. Vance's orthopedic opinion when forming his own psychiatric opinion on Claimant's alleged psychological injury. In his report, Dr. Addario stated the orthopedic records he reviewed were "not consistent with any objective findings causing pain and impairment" from the work incident.[8] EX 12 at 108. He explained if there were orthopedic or neurologic records

[8] Contrary to Claimant's assertion, Dr. Addario's reliance on Dr. Vance's orthopedic opinion was not "whole-hearted." Cl. Br. at 22. In fact, at the time Dr. Addario prepared his report, he had not reviewed Dr. Vance's orthopedic reports and during his

that "objectively confirm significant injury" attributable to the altercation, he would "reconsider" whether Claimant suffered a pain disorder because of the work incident. *Id.* But based on Dr. Addario's experience as a medical doctor and treating patients with spine injuries, his independent review of the medical records and MRI studies, Claimant's medical and occupational history, presentation during the psychological examination, and psychological testing results, Dr. Addario found there was nothing to warrant a pain disorder diagnosis. EX 137 at 1104-1105, 1107-1110, 1112-1113. And while he deferred to the orthopedic specialists' opinions regarding the nature and extent of Claimant's orthopedic condition, Dr. Addario's opinion that there were "significant issues with Claimant's credibility" was based on his psychological examination of Claimant and his independent assessment of the records. *Id.* at 1107-1109, 1112.

The ALJ correctly found Dr. Addario's opinion that Claimant did not sustain any work-related psychological injuries as a result of the work incident or the general conditions of his employment with Employer constitutes sufficient evidence to rebut the Section 20(a) presumption as to Claimant's alleged psychological injury. Therefore, we affirm the ALJ's finding. *Ogawa*, 608 F.3d at 651; *Duhagon*, 169 F.3d at 618; s*ee O'Kelley*, 34 BRBS at 41-42.

Upon considering the evidence as a whole, the ALJ reasonably found Dr. Addario's opinion to be more persuasive than that of Claimant's psychological expert, Dr. Gary DeVoss, and rationally afforded it more weight. Dr. Addario attributed Claimant's psychological condition to specific, non-work-related factors, including personality and interpersonal issues and life stressors, EX 12 at 107-108, that were consistent with the broader evidentiary record and the ALJ's own adverse findings as to Claimant's credibility. D&O at 62. Conversely, Dr. DeVoss's opinion was unsupported by the evidentiary record and was undermined by his reliance on Claimant's subjective reporting, which the ALJ had already found to be unreliable. *Id.* at 50, 58-61. Therefore, the ALJ's decision to credit Dr. Addario's opinion as substantial evidence supporting her conclusion that Claimant failed to establish a work-related psychological injury was rational and well within her province as the trier of fact. As the ALJ's conclusion that Claimant failed to establish a work-related psychological injury is supported by substantial evidence in the record, we affirm it. *Ogawa*, 608 F.3d at 652.

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deposition testimony confirmed he first reviewed Dr. Vance's reports only after issuing his psychiatric report. EX 137 at 1108 ("I got [Dr. Vance's March 2021 report] after my report."), 1112-1113. As for his reference to Claimant's orthopedic records in his report, *see* EX 12 at 108, Dr. Addario testified he was referring to records from Claimant's treating physician, Dr. Harish Hosalkar. EX 137 at 1112-1113.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge