

U.S. Department of Labor

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



BRB No. 24-0312

MUJIB L. MUHSIN)
)
 Claimant-Petitioner)
)
 v.)
)
 GENERAL DYNAMICS CORPORATION)
)
 and)
)
 NEW HAMPSHIRE INSURANCE)
 COMPANY c/o BROADSPIRE SERVICES)
)
 Employer/Carrier-)
 Respondents)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Respondent)

NOT-PUBLISHED

DATE ISSUED: 03/27/2026

DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Monica Markley,
Administrative Law Judge, United States Department of Labor.

Mujib L. Muhsin, Suffolk, Virginia.

Michael D. Williams and Nicholas J. Cenac (Brown Sims), Houston, Texas,
for Employer and its Carrier.

Victoria Yee (Jonathan Berry Solicitor of Labor; Jennifer Feldman Jones,
Acting Associate Solicitor; William M. Bush, Acting Counsel for

Administrative Appeals), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Claimant appeals, without representation, Administrative Law Judge (ALJ) Monica Markley's Decision and Order Denying Benefits (2021-LHC-00090) rendered on a claim filed pursuant to the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §§901-950 (Act). In an appeal a claimant files without representation, the Benefits Review Board reviews the ALJ's decision below to determine if the findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with applicable law.¹ 33 U.S.C. §921(b)(3); *O'Keefe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359, 361-362 (1965).

Claimant sustained bilateral knee injuries while working for Employer on January 7, 2020, when a transformer frame fell and struck both of his legs. Hearing Tr. at 29; Employer's Exhibits (EXs) 1 at 4, 17 at 58-61. Employer and its Carrier (Employer) accepted liability and paid temporary total disability benefits from January 7, 2020, until June 2, 2020, when it asserts Claimant's right knee condition resolved.² Hearing Tr. at 6; EX 28. Claimant filed a claim for additional benefits. He testified he had no problems with his knees before the work injury and his ongoing knee condition, continuing after June 2, 2020, when Employer terminated benefits, is a result of the work injury. Hearing Tr. at 32; Claimant's Exhibit (CX) 10.

The ALJ found Claimant invoked the Section 20(a) presumption of compensability, 33 U.S.C. §920(a), linking his ongoing right knee condition to the January 7, 2020 work accident, and found Employer rebutted the presumption. Weighing the evidence, the ALJ

¹ This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because Claimant sustained his injuries in 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 ALJ noted Employer paid Claimant disability benefits at a rate of \$516.25 per week from January 8, 2020, through June 2, 2020, as well as medical benefits from January 8, 2020, through June 2, 2020. D&O at 34; EX 28.

found Claimant failed to establish his ongoing knee condition is work-related and denied additional benefits.

On appeal, Claimant generally challenges the ALJ's findings.³ Employer responds, asserting Claimant's appeal is untimely. In the alternative, it asserts the ALJ properly denied benefits. The Director, Office of Workers' Compensation Programs (the Director), filed a response in support of Claimant's appeal, asserting Claimant's appeal was timely filed and the ALJ erred in finding Employer rebutted the presumption and in weighing the evidence as a whole. Employer filed a response opposing the Director's position and reiterating its arguments.

Timeliness of the Appeal

For the Board to consider the issue of timeliness, a party must raise it. *Dominguez v. Bethlehem Steel Corp.*, 59 BRBS 53, 55 (2025) (Section 21(a) is a claim-processing rule, as opposed to a jurisdictional mandate, and is subject to ordinary rules of waiver and forfeiture). If a respondent does not timely object to an untimely filed notice of appeal, the argument is forfeited and the Board will proceed to the merits of the claim as if the claim were timely filed. *See, e.g., Eberhart v. United States*, 546 U.S. 12, 19 (2005) ("Here, where the Government failed to raise a defense of untimeliness until after the District Court had reached the merits, it forfeited that defense. The Court of Appeals should therefore have proceeded to the merits."). Section 21(a) provides that "unless proceedings for the suspension or setting aside of such [compensation] order are instituted as provided in subsection (b) of this section, [that order] shall become final at the expiration of the thirtieth day thereafter." 33 U.S.C. §921(a). A notice of appeal is considered filed as of the date it is received in the Office of the Clerk of the Board. 20 C.F.R. §802.207(a)(1) (removed and reserved as of Mar. 11, 2024); 20 C.F.R. §802.222(e)(1) (effective Mar. 11, 2024).⁴

Employer contends Claimant's appeal is time-barred. The district director filed the ALJ's Decision and Order (D&O) and served the parties on February 7, 2024. Notice of

³ We affirm, as unchallenged on appeal, the ALJ's finding Claimant invoked the Section 20(a) presumption that his work injury caused his current knee condition. *See Scilio v. Ceres Marine Terminals, Inc.*, 41 BRBS 57, 58 (2007); D&O at 26-27.

⁴ The substance of the old regulation at 20 C.F.R. §802.207 (removed and reserved as of Mar. 11, 2024) and the new regulation at 20 C.F.R. §802.222 (effective Mar. 11, 2024) articulate the same language as to when a notice of appeal is considered filed. *See* 89 Fed. Reg. 8533, 8536 (Feb. 8, 2024).

Appeal at 1. Thereafter, Claimant mailed Employer a handwritten letter dated February 28, 2024, and postmarked March 6, 2024, but addressed to the “Clerk of the Appellate Boards (OCAB[])” stating he was filing an appeal. Employer’s Br. at 19-20; Director’s Br. at 8-9, Attach. C. As the Director notes, Claimant also mailed a copy of the same handwritten appeal letter addressed to the “Clerk of the Appellate Boards (OCAB[])” and dated February 28, 2024, to the Virginia Workers’ Compensation Commission (VWCC), which received it on March 12, 2024. Director’s Br. at 8, Attachs. A-B. But there is no postmark date in the record indicating when Claimant mailed the appeal letter to the VWCC.

Employer stated it received the appeal letter on March 12, 2024, and because it “could not verify” whether the district director, the ALJ, and the Board had received Claimant’s appeal, it sent a copy to the Office of Administrative Law Judges (OALJ) on March 28, 2024, stating it “object[s] to the late-filed request.” Employer’s Br. at 19-20; Director’s Br. at 28. Subsequently, Claimant sent another letter to the Clerk of the Board at the Department of Labor postmarked April 4, 2024, stating his desire to appeal. Notice of Appeal at 5.

Employer contends Claimant’s appeal is untimely because he did not “properly address[]” it to the Board when he originally mailed it, so the Board was not notified of his appeal until April 10, 2024, when it received his subsequent letter postmarked April 4, 2024, more than thirty days after the district director filed the ALJ’s D&O. Employer’s Br. at 19-20; Employer’s Reply at 2-5. The Director asserts Claimant’s appeal is timely because the postmark date of the letter he mailed to Employer’s counsel on March 6, 2024, is within the thirty-day period following the filing of the ALJ’s D&O. Director’s Br. at 8-9. We agree with the Director’s argument that the appeal is timely.

A notice of appeal filed with any other government office and forwarded to the Board will be considered filed with the Clerk as of the date it was received by that other office. 20 C.F.R. §802.207(a)(2) (removed and reserved as of Mar. 11, 2024); 20 C.F.R. §802.222(e)(2) (effective Mar. 11, 2024). In addition, if the notice of appeal is mailed and would be untimely based on the date the Board received it, it may be considered filed as of the date it was mailed. 20 C.F.R. §802.207(b) (removed and reserved as of Mar. 11, 2024); 20 C.F.R. §802.222(e)(3) (effective Mar. 11, 2024).

It is Employer’s burden to raise the affirmative defense of untimeliness and establish by a preponderance of the evidence that Claimant’s appeal was untimely filed. *Dominguez*, 59 BRBS at 55; *see also, e.g., Universal Mar. Corp. v. Moore*, 126 F.3d 256, 267 (4th Cir. 1997) (timeliness of request for relief under 33 U.S.C. §908(f) is an affirmative defense the Director must raise); *Newton-Sealey v. ArmorGroup Services (Jersey), Ltd.*, 49 BRBS 17, 19 (2015) (33 U.S.C. §933(g) is an affirmative defense the employer must raise and

bears the burden of proving); *Tennant v. Gen. Dynamics Corp.*, 26 BRBS 103, 107 (1992) (Section 8(f)(3) is an affirmative defense the Director must raise).

Here, the record establishes that Claimant mailed his appeal to the VWCC, another government office, sometime prior to March 12, 2024. But nothing supports Employer's burden to establish by a preponderance of the evidence that Claimant's appeal was untimely filed. The lack of a postmarked envelope to the VWCC is insufficient; its absence says nothing about when the appeal was mailed. Conversely, the postmarked envelope to Employer's counsel supports the inference the appeal was timely, under a reasonable assumption Claimant mailed the correspondence the same day as the appeal. In any event, Employer has not met its burden to show it is more likely than not that Claimant filed his appeal after the thirty-day deadline, and Employer thus did not meet its affirmative defense burden. *Moore*, 126 F.3d at 267; *Newton-Sealey*, 49 BRBS at 19; *Tennant*, 26 BRBS at 107. Consequently, we proceed to the merits of the claim. *See Dominguez*, 59 BRBS at 55.

Section 20(a)

Rebuttal

Once a claimant invokes the Section 20(a) presumption, 33 U.S.C. §920(a), linking his injuries to his work, the burden shifts to the employer to produce substantial evidence that the claimant's condition is not work-related. *See Metro Machine Corp. v. Director, OWCP [Stephenson]*, 846 F.3d 680, 684 (4th Cir. 2017); *Rose v. Vectrus Sys. Corp.*, 56 BRBS 27, 31 (2022) (en banc), *appeal dismissed* (M.D. Fla. Aug. 24, 2023). An employer's burden on rebuttal is one of production, not persuasion. *Moore*, 126 F.3d at 262. The inquiry at rebuttal concerns whether the employer submitted evidence that could satisfy a reasonable fact finder that the claimant's injuries are not work-related. *See Newport News Shipbuilding & Dry Dock Co. v. Holiday*, 591 F.3d 219, 225-226 (4th Cir. 2009).

Employer relied on the opinions of Drs. Anthony Carter, Sheldon Cohn, and Marc Forrest to rebut the presumption that Claimant's ongoing right knee condition is related to his work injury.⁵ Dr. Carter acknowledged Claimant sustained a work-related right knee contusion and abrasion but diagnosed him with pre-existing osteoarthritis and degenerative tearing of both menisci of the right knee based on January 27, 2020 and March 4, 2020 x-

⁵ Dr. Carter is a board-certified orthopedic surgeon. EX 11. Dr. Cohn's credentials are not in the record, but the evidence suggests he is an orthopedic physician who examined Claimant at Employer's request. EXs 5, 7. Dr. Forrest holds a doctorate in physical therapy and was a licensed physical therapist for seventeen years. EX 13.

rays and an August 5, 2020 magnetic resonance imaging (MRI) scan. EXs 10 at 3-4, 18 at 13. He opined Claimant's work-related contusion "certainly could have caused a transient increase in swelling in his knee," but this "acute injury should essentially be resolved." *Id.* Specifically, he opined "most" of Claimant's ongoing symptoms are related "primarily" to his underlying pre-existing osteoarthritis. *Id.* Dr. Forrest agreed with Dr. Carter's opinion that Claimant's work-related contusion should not be affecting him "two years after the injury." EX 19 at 64.

Dr. Cohn opined Claimant's work-related right knee contusion "exacerbated" his pre-existing osteoarthritis and "most likely" caused existing chondral lesions to become symptomatic. EX 7 at 2. He recommended an arthroscopic debridement followed by physical therapy and work conditioning for eight weeks, after which he believed Claimant's condition would "likely" be at maximum medical improvement (MMI). *Id.* Beyond that point, he stated treatment for Claimant's right knee contusion would not be related to the work accident. *Id.* But he also opined that if Claimant did not have arthroscopic intervention, then his condition reached MMI as of June 2, 2020, the date of his examination. *Id.*

The ALJ found Employer produced substantial evidence to rebut the presumption that Claimant's ongoing symptoms are related to his work-related right knee contusion because Dr. Carter opined that to the extent Claimant's work-related right knee contusion aggravated his pre-existing arthritis, it resolved by June 2, 2020. D&O at 28. She also found his opinion supported by Employer's other evidence in the record. *Id.*

The Director argues the ALJ erred in finding Employer rebutted the Section 20(a) presumption because Dr. Carter's opinion does not constitute substantial evidence to rebut the presumption. Director's Br. at 10-14. We agree with the Director's position.

An equivocal opinion as to etiology is insufficient to support rebuttal. *Parsons Corp. of Cal. v. Director, OWCP [Gunter]*, 619 F.2d 38, 41 (9th Cir. 1980) (rebuttal requires evidence "specific and comprehensive enough to sever the potential connection between the disability and the work environment;" the standard is not met where an expert could not say exposure did not trigger or accelerate the disease). Further, to rebut, an employer must "proffer evidence that could allow a reasonable factfinder to infer" the claimant's condition was not permanently aggravated by the work injury. *Stephenson*, 846 F.3d at 688; *Moore*, 126 F.3d at 262-263. Contrary to the ALJ's findings, Dr. Carter opined "most" of Claimant's ongoing symptoms are related "primarily" to his pre-existing arthritis and his work-related injury "should be essentially resolved." EXs 10 at 3-4, 18 at 18-19. Further, Dr. Cohn did not state whether Claimant's condition, without his recommended surgery, remained attributable to the exacerbation from the work injury or was due solely to the pre-existing arthritis itself. EX 7 at 1-2. In addition, we agree with the Director's

assertion that Dr. Forrest's opinion is equivocal because he merely agreed with Dr. Carter's opinion and did not explain how he determined Claimant's ongoing right knee condition is not related to his work injury. Director's Br. at 14-15; EX 19 at 64-66. As the Director accurately asserts, the opinions of Drs. Carter, Cohn, and Forrest are insufficient to rebut the presumption because they do not unequivocally establish there is no relationship between Claimant's work-related injury and his ongoing right knee condition. *See Rainey v. Director, OWCP*, 517 F.3d 632, 637 (2d Cir. 2008) (“[A]n employer cannot satisfy its burden of production simply by submitting any ‘evidence’ whatsoever.”); Director's Br. at 12-13.

In the absence of any other evidence in the record legally sufficient to support a finding that Claimant's ongoing right knee condition is not work-related, we reverse the ALJ's finding that Employer rebutted the Section 20(a) presumption. *See Rainey*, 517 F.3d at 637; *C&C Marine Maint. Co. v. Bellows*, 538 F.3d 292, 298 (3d Cir. 2008); *Bath Iron Works Corp. v. Preston*, 380 F.3d 597, 605-606 (1st Cir. 2004); D&O at 28. Therefore, Claimant's right knee condition is work-related as a matter of law.⁶ *See Obadiaru v. ITT Corp.*, 45 BRBS 17, 20 (2011). Consequently, we reverse the ALJ's denial of benefits for Claimant's right knee condition.

Remand Instructions

On remand, the ALJ must address the nature and extent of Claimant's right knee disability and any resulting award of benefits. 33 U.S.C. §907; *see, e.g., Norfolk Shipbuilding & Dry Dock Co. v. Hord*, 193 F.3d 797, 800 (4th Cir. 1999); *see also Gacki v. Sea-Land Serv., Inc.*, 33 BRBS 127, 128 (1998); *Trask v. Lockheed Shipbuilding & Constr. Co.*, 17 BRBS 56, 59 (1980). In making her determinations, the ALJ must explain the bases for her findings in accordance with the Administrative Procedure Act.⁷ 5 U.S.C. §557(c)(3)(A).

⁶ We have used the term “condition” when referring to the resulting injuries to Claimant's knees. However, it appears there are multiple diagnoses, and the ALJ should identify which ailments are work-related and which have been aggravated for both the right and left knees.

⁷ The Administrative Procedure Act, 5 U.S.C. §§500-591, requires that every adjudicatory decision include a statement of “findings and conclusions and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented....” 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *Santoro v. Maher Terminals, Inc.*, 30 BRBS 171, 172 (1996).

In addition, because Claimant filed a claim for compensation for bilateral knee injuries, EX 1 at 4, and the ALJ failed to address whether Claimant's left knee condition is work-related, the ALJ must also address this issue on remand. As the ALJ accurately found Employer conceded that Claimant sustained a work-related left knee injury, Claimant has invoked the Section 20(a) presumption. *See Burley v. Tidewater Temps, Inc.*, 35 BRBS 185, 188-189 (2002) (invocation is satisfied where Employer concedes Claimant sustained an injury); D&O at 3; Hearing Tr. at 6 (Employer's counsel stating "[w]e agree there was an initial injury [to the bilateral knees, but w]e do dispute causation and continued treatment."). On remand, the ALJ must reexamine the record to determine whether Employer produced substantial evidence to rebut the presumption that Claimant's left knee condition is work-related. *See Stephenson*, 846 F.3d at 684; *Rose*, 56 BRBS at 31.

If the ALJ finds Employer rebutted the presumption as to the left knee, she must then weigh the evidence in the record as a whole to determine whether Claimant's left knee condition is work-related, with Claimant bearing the burden of persuasion. *See Rose*, 56 BRBS at 39; *Suarez v. Serv. Emps. Int'l, Inc.*, 50 BRBS 33, 36 (2016). If the ALJ finds Employer has not rebutted the presumption, or that Claimant established compensability by a preponderance of the evidence, then Claimant has established a work-related left knee condition. The ALJ then must address and fully explain her findings regarding the nature

and extent of any disability stemming from Claimant's work-related left knee injury and his entitlement to benefits. 5 U.S.C. §557(c)(3)(A); 33 U.S.C. §907; *see Hord*, 193 F.3d at 800; *Gacki*, 33 BRBS at 128; *Trask*, 17 BRBS at 59.

Accordingly, we affirm in part and reverse in part the ALJ's Decision and Order Denying Benefits and remand the case for further consideration consistent with this opinion.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge