

U.S. Department of Labor

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



BRB No. 24-0346

EDGAR ESCOBAR GILVONIO )  
 )  
 Claimant-Petitioner )  
 )  
 v. )  
 )  
 CONSTELLIS GROUP/TRIPLE CANOPY, )  
 INCORPORATED )  
 )  
 and )  
 )  
 CONTINENTAL INSURANCE COMPANY )  
 )  
 Employer/Carrier- )  
 Respondents )

**NOT-PUBLISHED**

DATE ISSUED: 05/27/2026

DECISION and ORDER

Appeal of the Decision and Order Denying Claim of Christopher Larsen, Administrative Law Judge, United States Department of Labor.

Allison T. Graber, Jacob S. Garn and Arjun Sahni (Attorneys Jo Ann Hoffman & Associates, P.A.), Lauderdale-By-The-Sea, Florida, for Claimant.

Edwin B. Barnes and Javier A. Valencia (Thomas Quinn, L.L.P.), San Francisco, California, for Employer and its Carrier.

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

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Christopher Larsen’s Decision and Order Denying Claim (2022-LDA-04140) 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). 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.<sup>1</sup> 33 U.S.C. §921(b)(3); *O'Keefe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

Claimant allegedly sustained psychological injuries as a result of being exposed to life-threatening events while working for Employer as an armed security guard in Iraq from June 2008 to June 2011. Claimant's Exhibit (CX) 22; Employer's Exhibit (EX) 3 at 23, 74. Specifically, Claimant testified about several events he recalled from the time of his employment when he was exposed to multiple improvised explosive device detonations, as well as rocket and mortar attacks. EX 3 at 50-71. He detailed one experience when a mortar round struck fifty to sixty meters away from him, killing three people and causing him to run to a bunker; he stated he feared for his life. *Id.* at 50-51, 53-55, 58-60, 62. Another attack occurred three days later that created an "explosive wave," threw Claimant to the ground, and caused him additional fear as well as a few hours of hearing problems. *Id.* at 62-65. Claimant also feared for his life during a third incident when the Iraqi army pointed their tanks and guns at him for a long time due to an escalating argument regarding an individual's expired identification. *Id.* at 68-70. For three days after this event, Claimant dreamed of being shot at during the war. *Id.* at 71.

After Claimant's last contract with Employer ended in July 2011, he returned to his home in Peru. EX 3 at 74. Since then, Claimant testified he had only worked "in the [land] field" he owns. *Id.* at 95-96. He stated his symptoms commenced six months after his return, including frequent war-related nightmares, anxiety, stress, impatience, impulsiveness, aggressiveness towards others, and arguments with his wife. *Id.* at 73-77. In 2016, he separated from his wife, who told him at the time to get help. *Id.* at 75-76, 81-82. Claimant believed his marital separation would resolve his symptoms but realized by 2020 that his problems had worsened so he sought medical treatment. *Id.*

On October 28, 2020, Claimant visited with Dr. Carmen Cecilia Ciuffardi Montoya (Dr. Ciuffardi), a psychologist. CXs 16, 17. She diagnosed Claimant with Post-Traumatic

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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 office of the district director who handled this claim is located in New York. 33 U.S.C. §921(c); *Glob. Linguist Sols., L.L.C. v. Abdelmeged*, 913 F.3d 921, 922 (9th Cir. 2019); *Hice v. Director, OWCP*, 156 F.3d 214, 218 (D.C. Cir. 1998) ("The location of . . . the district director[] who handled [the] claim determines the proper court to hear [the] appeal."); Referral Letter (Aug. 7, 2024).

Stress Disorder (PTSD) due to his work in a war zone that caused “situations of repetitive and severe stress” and recommended Claimant receive medication and psychiatric treatment. CX 17 at at 2-3. In a July 7, 2021 report, Dr. Ciuffardi indicated Claimant was unable to attend therapy sessions due to financial challenges posed by the COVID-19 pandemic but stated he “secured occasional work in civil construction.” *Id.* at 7.

On November 10, 2020, psychiatrist Dr. Angel Manrique Galvez (Dr. Manrique) diagnosed Claimant with PTSD due to his work in a war zone, based on his reported symptoms and experiences; as a result, Dr. Manrique prescribed medications. CXs 14, 15 at 3. Claimant returned for several follow-up appointments from May 2021 to May 2022. *See generally* CX 15. Dr. Manrique authored four additional medical reports in 2021 dated June 23, July 1, September 10, and November 19, in which he again diagnosed Claimant with PTSD, prescribed medication, and discussed his progressive symptoms including “new fears and anxieties produced by unemployment and difficulties in finding jobs.” *Id.* at 2-3, 19-21, 26-30, 45-48. In his July 2021 report, Dr. Manrique specifically noted that Claimant meets the PTSD criteria in the American Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5).<sup>2</sup> *Id.* at 19.

At Employer’s request, Dr. Rose Dunn, a clinical neuropsychologist, examined Claimant on June 13, 2023, and administered various tests.<sup>3</sup> EXs 4, 5, 7. Based on Claimant’s reported symptoms and experiences, his test results, his interview, and his medical records, Dr. Dunn opined there is no reliable evidence that Claimant has a psychological injury related to his work with Employer based on a reasonable degree of

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<sup>2</sup> The DSM-5 Criteria A through H for diagnosing PTSD include exposure to a traumatic event, followed by the presence of specific symptoms in four categories: intrusion (at least one symptom required), avoidance (at least one symptom required), negative alterations in cognition and mood (at least two symptoms required), and arousal and reactivity (at least two symptoms required). These symptoms must be present for at least one month and cause significant distress or impairment in functioning. *See American Psychiatric Association (March 2022) Diagnostic and Statistical Manual of Mental Disorders (5th ed., text rev.), <https://doi.org/10.1176/appi.books.9780890425787>.*

<sup>3</sup> Dr. Dunn administered the following psychological tests, many of which were in Spanish: the Beck Anxiety Inventory (BAI), the Beck Depression Inventory, 2nd Edition (BDI-II), the Clinician Administered PTSD Scale-5 (CAPS-5), the Minnesota Multiphasic Personality Inventory-3 (MMPI-3), the Neurobehavioral Symptom Inventory (NSI), the PTSD Checklist for DSM-5 (PCL-5), the Structured Inventory of Malingered Symptomatology (SIMS), the Test of Memory and Malingered (TOMM), and the World Health Organization Disability Assessment Schedule 2.0 (WHODAS 2.0). EX 7 at 10-13.

professional certainty. EX 7 at 13, 16-18. Consequently, she concluded Claimant does not need mental health treatment. *Id.* at 18.

At his attorney's request, Claimant was evaluated by clinical psychologist Dr. Gustavo R. Benejam on November 17, 2023, who interviewed Claimant, conducted a mental status examination, administered psychological testing,<sup>4</sup> and reviewed Claimant's medical records. CX 18 at 1-12. Dr. Benejam diagnosed Claimant with PTSD due to his work in a war zone based on his reported symptoms, test results, and the DSM-5 criteria. *Id.* at 12-13, 19, 21. He recommended psychiatric care and psychological treatment and further opined Claimant "is deemed not fit to work in a war zone or in jobs that are high stress or that require significant interaction with others."<sup>5</sup> *Id.* at 13.

On May 12, 2021, Claimant filed a claim under the Act seeking benefits for his alleged work-related psychological condition. CX 1. Employer first became aware of the claim on May 13, 2021, and controverted it on May 26, 2021. CX 2; EX 2. The case was referred to the Office of Administrative Law Judges (OALJ) on August 22, 2022. CX 4. Claimant was deposed on May 26, 2023. EX 3. On December 4, 2023, the parties jointly requested that the matter be adjudicated based on the evidence of record in lieu of a live hearing, which the ALJ approved. CX 8; *see* Dec. 22, 2023 Order Approving Dec. on Rec.

On May 15, 2024, the ALJ issued his Decision and Order (D&O). While he found Claimant successfully invoked the Section 20(a) presumption of compensability, 33 U.S.C. §920(a), he also found Employer presented sufficient evidence to rebut the presumption. D&O at 26-28. Upon weighing the evidence as a whole, the ALJ found Claimant failed to

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<sup>4</sup> Dr. Benejam administered the following psychological testing: the Patient Health Questionnaire (PHQ-9), the Generalized Anxiety Disorder 7-item (GAD-7), the Post-Traumatic Stress Disorder Checklist for DSM-5 (PCL-5), the Clinician-Administered PTSD Scale for DSM-5 (CAPS-5), the World Health Organization Disability Assessment (WHODAS-2), the Atypical Response Scale (ATR), the Neurobehavioral Symptom Inventory (NSI) and Validity-10 Scale, the Structured Inventory of Malingered Symptomatology (SIMS), and the Miller Forensic Assessment of Symptoms Test (M-FAST). CX 18 at 2-3.

<sup>5</sup> Dr. Benejam also criticized Dr. Dunn's evaluation for being so long that it caused Claimant mental fatigue and exhaustion. CX 18 at 14. In addition, Dr. Benejam indicated Dr. Dunn's testing was translated into Spanish "on the spot" by an interpreter, causing "loss of psychometric properties of the instruments." *Id.* Dr. Benejam further opined Dr. Dunn "ignored or dismissed" multiple cultural factors which affected the accuracy of her conclusions about Claimant's mental condition. *Id.* at 17.

prove by a preponderance of the evidence that he suffers from a work-related psychological condition and denied benefits. *Id.* at 28-30.

Claimant appeals the ALJ's denial of benefits for his psychological condition. He contends the ALJ erred in finding Dr. Dunn's opinion rebutted the Section 20(a) presumption and in giving it greater weight than his testimony, the opinions of his treating physicians, and the opinion of his expert, Dr. Benejam. Employer responds, urging the Board to reject Claimant's arguments.

As the parties do not challenge the ALJ's findings on invocation of the Section 20(a) presumption for Claimant's alleged PTSD or psychological condition, we affirm them. *Scalio v. Ceres Marine Terminals, Inc.*, 41 BRBS 57, 58 (2007); D&O at 25.

### **Section 20(a) Rebuttal**

When, as in this case, the Section 20(a) presumption is invoked, *Rose v. Vectrus Sys. Corp.*, 56 BRBS 27 (2022) (en banc), *appeal dismissed* (M.D. Fla. Aug. 24, 2023); *see also Rainey v. Dir., OWCP*, 517 F.3d 632, 634 (2d Cir. 2008), the burden shifts to the employer to produce substantial evidence that is "specific and comprehensive enough" to sever the connection between the claimant's condition and his employment. *Am. Stevedoring Ltd. v. Marinelli*, 248 F.3d 54, 65 (2d Cir. 2001); *Port Cooper/T. Smith Stevedoring Co. v. Hunter*, 227 F.3d 285, 288 (5th Cir. 2000); *see Noble Drilling Co. v. Drake*, 795 F.2d 478, 481 (5th Cir. 1986) (substantial evidence is that which a reasonable mind could accept to support a conclusion). The inquiry at rebuttal is whether the employer submitted "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. The employer's burden on rebuttal is one of production, not persuasion. A physician's unequivocal opinion that there is no injury or that no relationship exists between the alleged injury and a claimant's employment is sufficient to rebut the presumption. *Suarez v. Serv. Emps. Int'l, Inc.*, 50 BRBS 33, 36 (2016); *Cline v. Huntington Ingalls, Inc.*, 48 BRBS 5, 6-7 (2013); *O'Kelley v. Dep't of the Army/NAF*, 34 BRBS 39, 41-42 (2000); *Duhagon v. Metro. Stevedore Co.*, 31 BRBS 98, 100 (1997), *aff'd*, 169 F.3d 615 (9th Cir. 1999); *Holmes v. Universal Mar. Serv. Corp.*, 29 BRBS 18, 20 (1995).

Claimant contends the ALJ erred in finding Dr. Dunn's opinion is sufficient to rebut the Section 20(a) presumption because it is equivocal and does not constitute substantial evidence contrary to Claimant's evidence. Cl.'s Br. at 5-14. We disagree, as Claimant conflates the requirements for rebutting the Section 20(a) presumption and proving there is a work-related injury by weighing all the evidence.

The inquiry at rebuttal concerns "whether the employer submitted evidence that could satisfy a reasonable fact finder that [Claimant's injury] is not work-related." *Haw.*

*Stevedores, Inc. v. Ogawa*, 608 F.3d 642, 651 (9th Cir. 2010). Consequently, the employer's burden on rebuttal is one of production only. *Rainey*, 517 F.3d at 637 (“[T]he employer's burden in rebutting the Section 20(a) presumption is a burden of production, not a burden of persuasion.”); *Truczinskas v. Dir., OWCP*, 699 F.3d 672, 678 (1st Cir. 2012); *Rose*, 56 BRBS at 35. The weighing of conflicting evidence or of the credibility of each piece of the employer's evidence “has no proper place in determining whether [the employer] met its burden of production.” *Ogawa*, 608 F.3d at 651. Neither the weight given to a claimant's supporting evidence nor the credibility of the employer's evidence affects the employer's burden of production on rebuttal, as the credibility of the evidence is not a consideration at either the invocation or rebuttal stages of the causation analysis. *Ogawa*, 608 F.3d at 651; *Rose*, 56 BRBS at 35. If the employer successfully rebuts the presumption, then the ALJ must resolve the issue of causation based on the evidence as a whole. *Rainey*, 517 F.3d at 634; *Marinelli*, 248 F.3d at 65; *Universal Mar. Corp. v. Moore*, 126 F.3d 256, 262 (4th Cir. 1997); *Santoro v. Maher Terminals, Inc.*, 30 BRBS 171, 175 (1996).

Contrary to Claimant's assertion, the ALJ did not make an erroneous finding of fact that would affect his determination as to whether Employer successfully rebutted the presumption. D&O at 26-28; Cl.'s Br. at 6, 11. We agree with Claimant's statement of the law that an equivocal opinion as to etiology is insufficient to support rebuttal. Cl.'s Br. at 6; *Parsons Corp. of Cal. v. Dir., 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 when an expert could not say the exposure did not trigger or accelerate the disease). But in this instance, Dr. Dunn unambiguously concluded there is no reliable evidence establishing Claimant has a psychological condition based on his test results and interview. *Ogawa*, 608 F.3d at 651; *Rainey*, 517 F.3d at 637; *Rose*, 56 BRBS at 35; D&O at 23; EX 7 at 18.

Dr. Dunn unequivocally opined Claimant “does not have a psychological diagnosis/injury related to his employment with Triple Canopy.” *Id.* at 13. As Dr. Dunn's opinion directly contradicts the Section 20(a) presumption that Claimant has a psychological injury and is the kind of evidence “a reasonable mind might accept as adequate” to support that conclusion, and because persuasiveness on the record as a whole is not an issue at this stage, it constitutes substantial evidence that is legally sufficient to rebut the presumption. *Rainey*, 517 F.3d at 637; *Cline*, 48 BRBS at 6-7; *Suarez*, 50 BRBS at 36; *O'Kelley*, 34 BRBS at 41-42; *Duhagon*, 31 BRBS at 100; *Holmes*, 29 BRBS at 20. Consequently, we affirm the ALJ's determination that Employer rebutted the Section 20(a) presumption with Dr. Dunn's opinion. D&O at 28.

## Weighing the Evidence

Because we have affirmed the ALJ's findings on invocation and rebuttal of the Section 20(a) presumption, the issue of causation must be resolved based on the evidence in the record as a whole with Claimant bearing the burden of persuasion by a preponderance of the evidence. *Dir., OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 271 (1994); *Rainey*, 517 F.3d at 634; *Rose*, 56 BRBS at 39; *Bolden v. G.A.T.X. Terminals Corp.*, 30 BRBS 71 (1996); *Santoro*, 30 BRBS at 174. A preponderance of the evidence is not a quantitative standard; rather, it is a standard which denotes a superiority of weight, requiring that the party having the burden of persuasion prove his position by more convincing evidence than the opposing party's evidence. *Santoro*, 30 BRBS at 174-175; see Black's Law Dictionary (12th ed. 2024); see also Barron's Law Dictionary (1984).

In challenging the ALJ's weighing of the psychological injury evidence, Claimant contends the ALJ erred in not giving his treating physicians' opinions special weight. Cl.'s Br. at 15-17. He also asserts it was irrational and contrary to law for the ALJ to assign Dr. Dunn's opinion greater weight than Dr. Benejam's opinion, as he contends Dr. Dunn's opinion is not as well reasoned and documented as Dr. Benejam's opinion. *Id.* at 17-21. Further, he argues the ALJ erred in discrediting his testimony, as it constitutes substantial evidence to meet his burden in establishing causation. *Id.* at 23-26. We disagree.

As a preliminary matter, questions of witness credibility are for the ALJ as the trier-of-fact and will be reversed only when they are unreasonable, given medical findings and other evidence of record in the case. *Pietrunti v. Dir., OWCP*, 119 F.3d 1035, 1042 (2d Cir. 1997); *Sealand Terminals v. Gasparic*, 7 F.3d 321, 323 (2d Cir. 1993); *Volpe v. Ne. Marine Terminals*, 671 F.2d 697, 700 (2d Cir. 1982); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403, 405 (2d Cir. 1961); *Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963). He may accept parts of a witness's testimony and reject others, *Banks v. Chi. Grain Trimmers Ass'n*, 390 U.S. 459, 467 (1968); *Pimpinella v. Universal Mar. Serv. Inc.*, 27 BRBS 154, 157 (1993), and he may draw his own inferences and conclusions from the evidence, *Compton v. Avondale Indus., Inc.*, 33 BRBS 174, 176-177 (1999). Nonetheless, the ALJ must explain his rationale in reaching a decision on the evidence, *Kkunsu v. Constellis Grp./Triple Canopy, Inc.*, 59 BRBS 1, 4-5 (2025), and if the ALJ's conclusion upon weighing the evidence is rational and supported by substantial evidence, it must be affirmed. *Carswell v. E. Pihl & Sons*, 999 F.3d 18, 27 (1st Cir. 2021), *cert. denied*, 142 S. Ct. 1110 (2022); *Mendoza v. Marine Pers. Co.*, 46 F.3d 498, 500-501 (5th Cir. 1995). The Benefits Review Board may not reweigh the evidence or substitute its opinion for that of the ALJ even if the evidence could support other inferences or conclusions. See *Gasparic*, 7 F.3d at 323; *Volpe*, 671 F.2d at 700.

The ALJ acted within his discretion when assessing Claimant's credibility. Cl.'s Br. at 23-26. In this case, the ALJ discredited Claimant's testimony for several reasons and referred to it as "troubling." D&O at 29. Specifically, the ALJ noted Claimant avoided answering questions regarding any reason(s) as to why he waited until 2020 to seek professional help for his symptoms when his wife encouraged him no later than 2016 to do so. D&O at 29; EX 3 at 73-77, 81-86.<sup>6</sup> The ALJ found Claimant's explanations are "ambiguous" and insufficiently detailed, as he failed to adequately describe: 1) the nature of his symptoms; 2) when he became aware that his symptoms are work-related; and 3) examples of how his symptoms interfered with his ability to work. D&O at 29; EX 3 at 77-81, 83-86. In addition, the ALJ noted that when asked to identify the activities his symptoms prevented, Claimant responded by discussing his symptoms and family problems instead of answering the specific questions. D&O at 29; EX 33 at 97-98.

Further, the ALJ found Claimant's descriptions of events and facts contain numerous inconsistencies between his deposition testimony and his reports to his doctors which undermined his credibility regarding his symptoms and purported limitations. D&O at 29. For example, Claimant testified that due to his disability he had no source of income other than working the field on his own land. EX 3 at 95-96. However, he informed Dr. Ciuffardi that he "secured occasional work in civil construction." CX 17 at 7.

While Dr. Dunn described the alleged traumatic experiences Claimant witnessed in Iraq in her report, EX 7 at 2-6, she indicated Claimant's "self-report was . . . non-credible," EX 7 at 16. To support her determination, she opined there was "strong evidence of a non-credible presentation" pursuant to the validity testing. EX 7 at 13. For example, Dr. Dunn cited Claimant's SIMS score of 37 that exceeded the test manual's cut off score and the conservative cut off score. *Id.* at 11, 13. She also determined Claimant's MMPI-3 scale score results (RBS=105; F=84; Fp=84) indicated excessive overreporting of memory dysfunction given the extreme RBS scale elevation, with high F and Fp scales suggesting symptom overreporting. *Id.* Dr. Dunn further opined Claimant's reliability is "limited" because of numerous "concern[ing]" inconsistencies, such as a "significant discrepancy" between his interview, during which Claimant was calm and showed no signs of emotional distress or discomfort, and his self-reported symptoms during the testing where he endorsed every PTSD symptom on the PCL-5 and described a "highly unusual" duration and frequency of traumatic flashbacks in the CAPS-5. *Id.* at 14. Additionally, Dr. Dunn determined Claimant's reported functional impairment on the WHODAS 2.0 was

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<sup>6</sup> In addition, Claimant testified his symptoms began in late 2011 or early 2012 after he returned home to Peru. EX 3 at 73-77. Dr. Dunn noted Claimant claimed his symptoms have gotten worse since he left the war zone. She stated this is "incongruent with the expected trajectory of recovery...." EX 7 at 17.

dissimilar to his reported levels of ability and daily functioning during the evaluation. *Id.* Finally, she pointed to variations between Claimant’s evaluation responses, his deposition testimony, and information he provided to his treating physicians. *Id.* at 14-15. The ALJ concluded Dr. Dunn’s opinion in her reports constitutes substantial evidence that Claimant does not have a work-related psychological injury and throws doubt on Claimant’s prima facie case. D&O at 28.

In addition, Dr. Manrique stated that Claimant reported he was unable to find or perform work due to COVID-19 pandemic restrictions, which the ALJ determined was different from the explanation Claimant provided during his testimony that he could not work because he “cannot stand being around people.” D&O at 29; CX 15 at 21; EX 3 at 97-98. Dr. Manrique also indicated Claimant experienced “discomfort due to the long period of restrictions” that “prevented him from developing an adequate productive capacity” which the ALJ found inconsistent with Claimant’s testimony that due to his symptoms he is unable to perform activities other than work in his own field. D&O at 29; CX 15 at 47; EX 3 at 96.

Considering the discretion accorded to ALJs in weighing the evidence, *Gasparic*, 7 F.3d at 323, we affirm the ALJ’s finding that the many discrepancies the ALJ identified undermined Claimant’s credibility.<sup>7</sup> *Carswell*, 999 F.3d at 55; *see also Ceres Gulf, Inc. v. Dir., OWCP [Plaisance]*, 683 F.3d 225, 228 (5th Cir. 2012); *Cordero v. Triple A Mach. Shop*, 580 F.2d 1331, 1335 (9th Cir. 1978).

Regarding the medical evidence of record, we first reject Claimant’s argument that the ALJ failed to give the opinions of Drs. Ciuffardi and Manrique the “special and considerable weight” he asserts they deserve due to their status as his treating physicians. Cl.’s Brief at 14-17; *see Kkunsa*, 59 BRBS at 4 (where there is conflicting medical evidence, a claimant’s treating physicians are not automatically entitled to

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<sup>7</sup> We reject Claimant’s assertion that finding a claimant’s testimony credible inherently obviates the need for the ALJ to evaluate the medical evidence or requires him to credit the claimant over a medical provider. Cl.’s Brief at 28-30. At the weighing stage of the causation analysis, finding a claimant credible does not automatically provide sufficient weight to prove causation by a preponderance of evidence; it is up to the ALJ to weigh all the evidence, accepting or rejecting all or any part of any testimony according to his judgment. *Perini Corp. v. Heyde*, 306 F. Supp. 1321, 1325-1326 (D.R.I. 1969). The ALJ also must independently analyze and discuss the medical evidence to satisfy the Administrative Procedure Act’s requirement to provide a reasoned analysis. 5 U.S.C. §557(c)(3)(A); *Kkunsa*, 59 BRBS at 3-4; *Ballesteros v. Willamette W. Corp.*, 20 BRBS 184, 187 (1988). In any event, the ALJ did not find Claimant to be reliable.

significant or special weight on all issues).<sup>8</sup> As Employer presented evidence contrary to the opinions of Drs. Ciuffardi and Manrique, their opinions are not entitled to “special weight.”<sup>9</sup> Rather, the ALJ was required to and did consider all of the relevant evidence, assess the weight and credibility of each opinion, and explain his rationale in reaching his decision on the evidence. *Kkunsu*, 59 BRBS at 4-5.

Next, we reject Claimant’s argument that the ALJ erroneously found Dr. Dunn’s opinion “slightly more convincing” than Dr. Benejam’s opinion given the limited weight he assigned to Claimant’s deposition. Cl.’s Br. at 17-21; D&O at 29. The ALJ credited Dr. Dunn’s opinion that Dr. Benejam’s report contains insufficient information to support his diagnoses as Dr. Benejam failed to consider all the available evidence. D&O at 29. Specifically, the ALJ credited Dr. Dunn’s opinions that Dr. Benejam over-relied on objective testing and that Dr. Benejam failed to consider Claimant’s presentation during both experts’ evaluations which conflicted with Claimant’s reported symptoms and the validity scores indicating Claimant’s lack of credibility. D&O at 28-29 (citing EX 9). Furthermore, Dr. Dunn disagreed with Dr. Benejam’s statement that the TOMM and SIMS tests’ scores “suggest possible issues with not putting forth maximum effort” and instead determined they strongly indicated Claimant is not credible. EX 9 at 3 (citing CX 18 at 14). Dr. Dunn opined the “mixed” results from validity testing in noncredible patients is normal and should not be deemed evidence of credible responding considering the “strong evidence of a non-credible presentation from two standalone validity measures.” *Id.* at 5. Additionally, the ALJ agreed with Dr. Dunn’s opinion that there are discrepancies between Claimant’s behavioral presentation in both doctors’ evaluations and his self-reporting of symptoms that Dr. Benejam disregarded. D&O at 29-30; EX 9 at 5-6. Dr. Dunn observed

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<sup>8</sup> Claimant cites to *Pietrunti v. Dir.*, *OWCP*, 119 F.3d 1035 (2d Cir. 1997), *Amos v. Director, OWCP*, 153 F.3d 1051 (9th Cir. 1998), *amended*, 164 F.3d 480 (9th Cir. 1999), *cert. denied*, 528 U.S. 809, and *Rivera v. Harris*, 623 F.2d 212 (2d Cir. 1980), in support of his argument. Cl.’s Brief at 15-16. These cases are distinguishable. Specifically, unlike this case, in *Pietrunti*, 119 F.3d at 1043-1044, the medical evidence on causation was “uncontroverted and unanimous” and the ALJ erroneously substituted his opinion for the treating physician’s opinion; in *Amos*, 153 F.3d at 1054, the issue was whether the claimant’s treating physicians proposed a reasonable course of treatment; and in *Rivera*, 623 F.2d at 213, the claimant’s treating physicians gave no opinion on the matter at issue.

<sup>9</sup> Claimant does not appear to otherwise challenge the weight the ALJ gave to the opinions of Drs. Ciuffardi and Manrique. To the extent he does, his arguments amount to requests to reweigh the evidence which the Board is not empowered to do. *See Gasparic*, 7 F.3d at 323; *Volpe*, 671 F.2d at 700. Accordingly, we affirm the ALJ’s weighing of their opinions.

that in Dr. Benejam's report, Dr. Benejam noted Claimant could recall information efficiently and had a high attention span without distractions, which conflicted with Claimant's TOMM scores (T1= 19; T2 = 29, and RT = 31) indicating severe memory dysfunction and his WHODAS 2.0 result reflecting functional impairment. EX 7 at 10, 13-14; EX 9 at 6; *see* CX 18 at 8, 10-11, 14. Dr. Dunn also opined that Dr. Benejam did not adequately address the discrepancy between Claimant's overreporting of his symptoms on the one hand and his behavioral presentation and ability to work in the field for eight hours per day on the other when he stated that "working in agriculture and building a house for his parents represent activities that are of low stress and do not require much interaction with others." According to Dr. Dunn, Dr. Benejam's statement failed to explain why Claimant's self-reported level of impairment did not align with his daily functioning or why he would struggle with basic physical tasks that an individual with credible PTSD symptoms can accomplish without challenges. CX 18 at 11, 17; EX 9 at 6.

Additionally, Dr. Dunn highlighted inconsistencies among her evaluation of Claimant, Dr. Benejam's evaluation, and Claimant's deposition transcript. EX 9 at 7-8. For example, Dr. Benejam stated that Claimant reported problems with sleeping, nightmares, social isolation, and occasional headaches while in Iraq, but he "ignored" those issues until he returned home, and there was no mention of his seeking treatment in Iraq. EX 9 at 7; *see* CX 18 at 6. In contrast, Claimant testified in his deposition that he attended a "public clinic" in Iraq for treatment of his headaches. *Id.*; *see* EX 3 at 12. In addition, during Dr. Benejam's evaluation, Claimant detailed having occasional back pain but failed to discuss it during Dr. Dunn's evaluation. CX 18 at 4; EX 9 at 8. The ALJ credited Dr. Dunn's assessment of those inconsistencies. D&O at 29-30. The ALJ also discredited Dr. Benejam's opinion that Dr. Dunn's evaluation is flawed because its length caused Claimant mental fatigue; instead the ALJ gave weight to Dr. Dunn's determination that Dr. Benejam should have focused more on Claimant's inconsistent reported activities and work rather than "erroneously attribut[ing] them to issues with the length of [his] evaluation." D&O at 30; CX 18 at 14; EX 9 at 7-8. Finally, the ALJ noted Dr. Dunn stated that Claimant denied auditory hallucinations and suicidal tendencies when she asked about them, yet he reported to Dr. Benejam that he heard voices calling his name and postponed his evaluation with Dr. Benejam due to suicidal ideation. EX 9 at 6-8; D&O at 23; CX 18 at 2, 6, 9. Overall, the ALJ was more persuaded by Dr. Dunn's opinion than those of Claimant's physicians and expert because she utilized "the widest variety of assessment methods" to form a "well-documented" and "well-supported" opinion. D&O at 30.

Claimant's arguments regarding the ALJ's weighing of the medical opinions amount to a request to reweigh the evidence which the Board is not empowered to do. *See Gasparic*, 7 F.3d at 323; *Volpe*, 671 F.2d at 700. Because the ALJ permissibly exercised his discretion in weighing Claimant's testimony and the medical opinions, the ALJ provided full explanations, and substantial evidence supports his rational credibility

determinations, we affirm his finding that Claimant failed to establish a compensable, work-related psychological injury by a preponderance of the evidence.<sup>10</sup> *Carswell*, 999 F.3d at 27; *Pietrunti*, 119 F.3d at 1042; *Hughes*, 289 F.2d at 405; *Kkunsa*, 59 BRBS at 3-4; *Sistrunk v. Ingalls Shipbuilding, Inc.*, 35 BRBS 171, 174 (2001); *Coffey v. Marine Terminals Corp.*, 34 BRBS 85, 87 (2000); *Norwood v. Ingalls Shipbuilding, Inc.*, 26 BRBS 66, 68 (1992); *Bruce v. Bath Iron Works Corp.*, 25 BRBS 157, 160 (1991); D&O at 32.

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

SO ORDERED.

DANIEL T. GRESH, Chief  
Administrative Appeals Judge

MELISSA LIN JONES  
Administrative Appeals Judge

GLENN E. ULMER  
Administrative Appeals Judge

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<sup>10</sup> Although Claimant argues that the ALJ erroneously failed to weigh his photos, employment certificates, employment letters, employment contracts, disclosures, discovery responses, and filings with the Department of Labor, Claimant has not met his burden to demonstrate why the ALJ's consideration of them could have led to a different outcome. Cl.'s Brief at 27-28; *Shinseki v. Sanders*, 556 U.S. 396, 409 (2009) (appellant must explain how the "error to which [it] points could have made any difference"); *Montoya v. Navy Exch. Serv. Command*, 49 BRBS 51, 52 n.1 (2015); *Plappert v. Marine Corps Exch.*, 31 BRBS 109, 111 (1997).