

U.S. Department of Labor

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



BRB No. 24-0394

ULSEMER VEGA RUIZ)
)
 Claimant-Petitioner)
)
 v.)
)
 SOC, LLC)
)
 and)
)
 CONTINENTAL INSURANCE COMPANY)
)
 Employer/Carrier-)
 Respondents)

NOT-PUBLISHED

DATE ISSUED: 05/06/2026

DECISION and ORDER

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

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

Krystal L. Layher and Carolina A. Phillips (Brown Sims), Houston, Texas, for Employer and its Carrier.

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

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Monica F. Markley’s Decision and Order Denying Benefits (2021-LDA-00432) 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 applicable law.¹ 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

Claimant, a native of Peru, worked for SOC (Employer) as an armed security guard in Iraq from August 2011 to April 2012.² Employer's Exhibit (EX) 1 at 12, 53; Claimant's Exhibit (CX) 28 at 1. During his employment with Employer, Claimant stated he experienced several rocket attacks and had to take shelter in bunkers; however, he did not provide specific details about any of these attacks.³ EX 1 at 78-79.

When Claimant returned to Peru in 2012, he started working as a construction assistant for a construction company but stated he left in 2014 due to his symptoms. EX 1 at 47-48. In 2015, Claimant purchased a motorcycle to use for selling flowers and

¹ 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 filed the ALJ's decision is located in New York. 33 U.S.C. §921(c); *Glob. Linguist Sols., L.L.C. v. Abdelmegeed*, 913 F.3d 921, 922 (9th Cir. 2019); *McDonald v. Aecom Tech. Corp.*, 45 BRBS 45, 47 (2011).

² Claimant previously worked in Iraq for Triple Canopy from September 2008 to 2011, where he was responsible for patrolling the entrance of the American Embassy in Baghdad. EX 1 at 33-36. During his time with Triple Canopy, Claimant reported experiencing mortar and rocket attacks, which led to sleep problems and nightmares. *Id.* at 37. Claimant did not receive an exit interview from Triple Canopy when he stopped working for them and had not been diagnosed with any psychological injury at that time. *Id.* at 88. Two months after returning home to Peru in 2011, Claimant was contacted about returning to Iraq to work for Employer. *Id.* at 16-17.

³ During Claimant's deposition, he described the following incidents from his time working with Triple Canopy: a mortar attack in 2009 or 2010 near the PX (Post Exchange), which caused him, a site leader, and an explosive detecting dog to take shelter in a bunker; a mortar attack in 2010 or 2011, in which he left his post after being told not to, hid in an elevator, and learned afterward the tower where he had been working was destroyed; a mortar attack in 2010 while eating lunch with coworkers at Camp Condor that left people injured and destroyed the camp; an attack in 2011 at a shooting range that resulted in the death of three colleagues, including a friend with whom he had swapped work shifts; and a car bomb that exploded 50 to 100 meters from him when he was near the airport. EX 1 at 38, 43-45, 80-81.

delivering items but stated he voluntarily stopped this work due to traffic noise.⁴ *Id.* at 51. Additionally, he reported having a small business in a market and earning sixty Peruvian soles (roughly eighteen U.S. dollars) per day. *Id.* at 52.

On March 15, 2019, Claimant met with psychiatrist Dr. Enrique Galli Cambiaso and reported symptoms of anger, irritability, sleeping difficulties, and a fear of noise. EX 1 at 48, 60; CX 28 at 2-3. Dr. Galli Cambiaso diagnosed Claimant with post-traumatic stress disorder (PTSD) due to exposure to a war zone and prescribed medication. EX 1 at 60, 62; CX 28 at 2. According to Claimant, Dr. Galli Cambiaso advised him against working in a war zone or in security. EX 1 at 73.

Claimant subsequently met with psychologist Carmen Cecilia Ciuffardi Montoya⁵ on July 15, 2019. He reported to her symptoms of not being able to sleep, waking up some nights at two or three in the morning, hearing a buzzing sound, and only sleeping four days a week. EX 1 at 65; CX 24 at 2. According to Ms. Ciuffardi Montoya, Claimant “suffers from a medical condition compatible with PTSD;” she recommended he receive psychotherapy to help reintegrate him into society and medication to help manage his symptoms. CX 24 at 2-3.

On October 16, 2020, upon Dr. Galli Cambiaso’s referral, Claimant met virtually with psychiatrist Dr. Julian Valderrama Escalante. CX 34 at 2. Claimant reported the same symptoms he reported to Dr. Galli Cambiaso. EX 1 at 60; CX 34 at 2. On February 22, 2021, Dr. Valderrama Escalante completed a questionnaire where he diagnosed Claimant with PTSD related to his employment in Iraq, opined his condition had not reached maximum medical improvement (MMI), recommended ongoing psychiatric treatment, and restricted Claimant from working in a war zone, in surveillance, or for a military, paramilitary, or police group. *Id.* at 8-9. The record contains three additional “Certificates of Care” from Dr. Valderrama Escalante prescribing Claimant with medications and indicating his condition was improving with treatment.⁶ *Id.* at 13, 16, 19, 22, 25, 29. When he was deposed on June 2, 2021, Claimant testified he was still undergoing treatment with Dr. Valderrama Escalante, though he had temporarily stopped due to illness. EX 1 at 68.

⁴ Claimant told Dr. Renee A. Delgado Villa, Employer’s expert, that he continues to sell flowers. EX 12 at 9-10. He also mentioned he applied to two security companies while in Peru but did not get the jobs because of his hearing limitations. *Id.*

⁵ During his deposition, Claimant acknowledged that Ms. Ciuffardi Montoya is Dr. Galli Cambiaso’s wife. EX 1 at 62-63, 65.

⁶ The Certificates of Care are dated February 22, 2021, March 23, 2021, and September 10, 2021. CX 34 at 13, 19, 25.

On July 23, 2021, psychiatrist Dr. Renee A. Delgado Villa evaluated Claimant at Employer's request. *See* EX 12. In addition to interviewing Claimant, she reviewed the reports of Dr. Galli Cambiaso, Ms. Ciuffardi Montoya, and Dr. Valderrama Escalante, Claimant's deposition transcript, as well as other documents related to his claim, and she administered several tests.⁷ EX 12 at 6-7. Claimant reported the following symptoms to Dr. Delgado Villa: "insomnia, sporadic nightmares involving violent situations, feelings of insecurity, impulsiveness, and verbal and physical violence against his current partner." EX 12 at 10, 40. Dr. Delgado Villa concluded there was no evidence of a psychological injury. *Id.* at 20.

On November 17, 2021, psychologist Dr. Gustavo R. Benejam evaluated Claimant. CX 22 at 6-24. Dr. Benejam reviewed Claimant's employment documents and the medical records of Dr. Galli Cambiaso, Ms. Ciuffardi Montoya, Dr. Valderrama Escalante, and Dr. Delgado Villa, and administered several tests.⁸ *Id.* at 7-8. Claimant reported to Dr. Benejam he was experiencing symptoms of depression, anxiety, fearfulness, irritability, isolation, withdrawal, difficulties sleeping, nightmares, headaches, and ringing in his right ear. CX 35 at 5. Claimant told Dr. Benejam that, upon his returning to Peru, his symptoms included increased irritability, poor impulse control, aggressiveness within his relationship, withdrawal, isolation, anxiety, being unstable, insecurity, intrusive thoughts, avoiding past memories, feeling guarded, frequent nightmares, depression, being anxious, being unable to function, hearing voices, paranoia, frequent headaches, hearing difficulties, and ringing in his ears. CX 35 at 5. Dr. Benejam diagnosed Claimant with chronic PTSD, recurrent, severe Major Depressive Disorder with psychotic features, and Generalized Anxiety Disorder. CX 35 at 15, 18. On December 23, 2021, Dr. Delgado Villa issued an addendum following her review of Dr. Benejam's report; her conclusion did not change. EX 12 at 48-54.

⁷ Dr. Delgado Villa administered the following tests: the Clinician-Administered PTSD Scale for DSM-5 (CAPS-5) – Past Month Version; the Miller Forensic Assessment of Symptoms Test (M-FAST); the Test of Memory Malingering (TOMM); and the Structured Inventory of Malingered Symptomatology (SIMS). EX 12 at 16, 20, 40, 41.

⁸ Dr. Benejam administered the following tests: the Mental Status Examination; the Beck Depression Inventory (BDI-II); the Beck Anxiety Inventory (BAI); the Beck Suicide Inventory; the Revised Green et. al Paranoid Thoughts Scale (R-GTPS); PTSD and Suicide Screener (PSS); PTSD Checklist-5 (PCL); the CAPS-5 – Past Month Version; the SIMS; and the M-FAST. CX 22 at 12.

On June 5, 2020, Claimant filed a claim seeking benefits for work-related psychological injuries.⁹ CX 1. The case was forwarded to the Office of Administrative Law Judges (OALJ), where the parties opted for the claim to be adjudicated by submission of evidence in lieu of an in-person hearing.

On June 26, 2024, the ALJ issued a Decision and Order Denying Benefits (D&O). The ALJ determined Claimant invoked the Section 20(a) presumption, 33 U.S.C. §920(a), for his alleged psychological injury and Employer rebutted the presumption. D&O at 41-43, 45. Weighing the evidence as a whole, the ALJ found Claimant did not establish by a preponderance of the evidence that he suffered a work-related psychological injury and therefore denied his claim.¹⁰ *Id.* at 46-56, 59.

Claimant appeals, challenging the ALJ's causation findings as to his psychological injury. Employer responds, urging affirmance. Claimant filed a reply brief, reiterating his argument.

Rebuttal

Claimant first asserts the ALJ improperly found Employer rebutted the Section 20(a) presumption. Claimant's Petition for Review and Brief (Cl. PR) at 5. He argues the ALJ erred in finding Dr. Delgado Villa's report constituted substantial evidence sufficient to rebut the Section 20(a) presumption because he asserts her medical opinion was equivocal, unreliable, and filled with inconsistencies and factual mistakes. *Id.* at 5-13.

To invoke the Section 20(a) presumption, a claimant must first establish (1) he sustained a harm and (2) an accident occurred or working conditions existed which could have caused or aggravated the harm. *Rose v. Vectrus Sys. Corp.*, 56 BRBS 27, 36 (2022) (Decision on Recon. en banc), *appeal dismissed* (MDFL Aug. 24, 2023); *see also Am. Stevedoring Ltd. v. Marinelli*, 248 F.3d 54, 64-65 (2d Cir. 2001). Once the presumption is invoked, as in this case, the burden shifts to the employer to rebut the presumption by producing substantial evidence that the claimant's injuries were not caused by, contributed to, or aggravated by his employment. *Rainey v. Director, OWCP*, 517 F.3d 632, 637 (2d

⁹ On December 14, 2021, Claimant amended his claim to also include work-related hearing loss. CX 3.

¹⁰ The ALJ also denied Claimant's hearing loss claim, finding Claimant invoked the Section 20(a) presumption, Employer rebutted it, and Claimant failed to prove he suffered work-related hearing loss by a preponderance of the evidence. D&O at 43-45, 57-59. As the ALJ's denial of Claimant's hearing loss claim is unchallenged on appeal, we affirm it. *Scalio v. Ceres Marine Terminals, Inc.*, 41 BRBS 57, 58 (2007).

Cir. 2008); *O'Kelley v. Dep't of the Army/NAF*, 34 BRBS 39, 41 (2000). The employer's burden at this stage is one of production, not persuasion. *Rainey*, 517 F.3d at 637; *Rose*, 56 BRBS at 35; *Suarez v. Serv. Emps. Int'l, Inc.*, 50 BRBS 33, 36 (2016). A physician's unequivocal opinion that the claimant does not suffer from the alleged injury or that no relationship exists between the employee's injury and his employment is sufficient to rebut the presumption. *See generally Sylejmani v. Fluor Conops, Ltd.*, 57 BRBS 25, 31 (2023); *Suarez*, 50 BRBS at 36; *Cline v. Huntington Ingalls, Inc.*, 48 BRBS 5, 6-7 (2013); *O'Kelley*, 34 BRBS at 41-42. The inquiry at rebuttal concerns whether the employer submitted evidence that, if considered true, 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).

The ALJ found Dr. Delgado Villa's report sufficient to rebut the Section 20(a) presumption as to Claimant's alleged psychological injury because she concluded there was no evidence that Claimant has any psychiatric condition. D&O at 45; EX 12 at 20. Dr. Delgado Villa based her opinion on Claimant's DSM-5 results, which she determined did not support a PTSD diagnosis, and his results on three out of four validity tests, which were positive for malingering. D&O at 45; EX 12 at 16, 19-20. Claimant maintains Dr. Delgado Villa's medical reports were at times inconsistent and therefore cannot constitute substantial evidence sufficient to rebut the presumption. Cl. PR at 5-6. But these assertions go the weight of the evidence, an inquiry that has no place at the rebuttal stage of the Section 20(a) analysis. *Rainey*, 517 F.3d at 637; *Rose*, 56 BRBS at 35; *Suarez*, 50 BRBS at 36. Rather, as the ALJ correctly found, Dr. Delgado Villa's unequivocal medical opinion that Claimant does not have a psychological injury taken as true at this stage is sufficient to satisfy a reasonable person that Claimant does not suffer from a psychological condition caused by his workplace exposures and thus sufficient to meet Employer's burden of production on rebuttal. Therefore, we affirm her finding that Employer rebutted the Section 20(a) presumption. *Sylejmani*, 57 BRBS at 31; *see* D&O at 13.

Weighing of the Evidence

Claimant next asserts the ALJ erred at the weighing stage of the causation analysis for his claimed psychological injury. Cl. PR at 16-21. If the employer rebuts the Section 20(a) presumption, as in this case, it no longer applies, and the issue of causation must be resolved based on the evidence in the record, with the claimant bearing the burden of persuasion. *Rainey*, 517 F.3d at 634; *Marinelli*, 248 F.3d at 65; *Santoro v. Maher Terminals, Inc.*, 30 BRBS 171, 175 (1996); *see also Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267 (1994). The ALJ is entitled to weigh the evidence and to draw his own inferences 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 may not reweigh the evidence or substitute its opinion for a reasonable opinion of an ALJ even if the evidence could support other reasonable inferences or conclusions. *Gasparic*, 7 F.3d at 323; *Volpe v. Ne. Marine Terminals*, 671 F.2d 697, 700 (2d Cir. 1982); *Perini Corp. v. Hyde*, 306 F. Supp. 1321, 1325-1326 (D.R.I. 1969).

In weighing the evidence, the ALJ began by addressing Claimant's credibility. D&O at 46. She found Claimant's reports of traumatic events were generally consistent. *Id.* at 48. Despite this, the ALJ found "numerous inconsistencies" between Claimant's testimony and his reporting to various providers that undermined his credibility concerning the underlying stressors he witnessed and his resulting symptoms. *Id.* at 46-49. Specifically, the ALJ found Claimant inconsistent with respect to reporting his pre-employment history, his relationships, his alcohol consumption, his symptoms (particularly whether he heard voices), and his traumatic experiences to his providers and examiners (not that his descriptions of these events varied, but that he did not consistently report all claimed traumatic experiences to all providers).¹¹ D&O at 46-49; *see* EX 1 at 14-17, 22-

¹¹ In Claimant's reports to his providers, he did not recount all the incidents mentioned in his deposition. D&O at 48; EX 1 at 79-80. Claimant did not disclose the attack at the Post Exchange to Ms. Ciuffardi Montoya, Dr. Galli Cambiaso, Dr. Benejam, or Dr. Delgado Villa. D&O at 48-49. Similarly, he failed to mention any car bombs to Drs. Benejam or Galli Cambiaso, although he reported a car bomb to Ms. Ciuffardi Montoya that matched his deposition testimony, and told Dr. Delgado Villa that car bombs were frequent, despite only reporting one such attack to Ms. Ciuffardi Montoya and in his deposition. D&O at 49; CX 24 at 2; EX 12 at 13. Additionally, Claimant described to Dr. Galli Cambiaso and in his deposition, a 2010 mortar attack while having lunch with colleagues, which resulted in injuries, but did not reveal this incident to Ms. Ciuffardi Montoya, Dr. Benejam, or Dr. Delgado Villa. D&O at 49; CX 28 at 2; EX 1 at 40. Regarding the incident when Claimant swapped shifts with a colleague who was subsequently killed during an attack, he reported this to Drs. Galli Cambiaso, Benejam, and Delgado Villa but did not disclose it when speaking with Ms. Ciuffardi Montoya. D&O at 49; CX 28 at 3; CX 35 at 5; EX 12 at 14. Although Claimant testified that his friend died in the attack, he did not inform Drs. Benejam or Delgado Villa of his friendship with the deceased colleague. D&O at 49; EX 1 at 41.

Claimant also reported attacks to Ms. Ciuffardi Montoya and Dr. Benejam about his living quarters being destroyed but did not mention these incidents in his deposition or to Dr. Galli Cambiaso or Dr. Delgado Villa. D&O at 49; CX 24 at 2; CX 35 at 4-5. Additionally, both Drs. Benejam and Delgado Villa noted attacks that made Claimant want to return to Peru, which he also did not mention in his deposition or report to Dr. Galli Cambiaso or Ms. Ciuffardi Montoya. D&O at 49; CX 35 at 4; EX 12 at 10. Claimant

25, 39-45, 71, 74-76, 79-81; EX 12 at 7-8, 13-15, 51; CX 22 at 8-11, 16; CX 24 at 2; CX 28 at 2-3. The ALJ concluded Claimant's testimony and reports to physicians were unreliable and entitled to little weight.¹² D&O at 49.

Claimant contends that in finding him not credible because of his inconsistent reporting of traumatic events, the ALJ ignored that Dr. Benejam documented that Claimant is moderately disabled in his ability to recall and remember details. Cl. PR at 23. He further contends the ALJ ignored the consistent aspects of his reporting that she acknowledged, such as his consistently reporting the mortar attack when he left his post. *Id.* at 27, 29 (citing D&O at 48). We disagree. As the factfinder, the ALJ could reasonably conclude that as these are the traumatic experiences Claimant contends have left him with a psychological injury, a greater degree of consistency in his reporting of those traumatic events to medical providers would be expected. *Gasparic*, 7 F.3d at 323; *Volpe*, 671 F.2d at 700; *Hyde*, 306 F. Supp. at 1325-1326. And contrary to Claimant's contention, the ALJ did not ignore that he consistently reported certain events, but she permissibly found those "consistencies are outweighed by several inconsistencies in Claimant's recounted experiences." D&O at 48; *see Santoro*, 30 BRBS at 173.

As for the medical evidence, the ALJ accorded little weight to the reports of Dr. Galli Cambiaso, Ms. Ciuffardi Montoya, and Dr. Valderrama Escalante, because they did not administer objective testing, relied solely on Claimant's self-reporting, and failed to

described a mortar attack to Dr. Benejam and told Dr. Delgado Villa about a mortar attack while people slept, both of which made him want to return home. *Id.*

¹² We reject Claimant's assertion that the ALJ failed to consider the validity of Claimant's self-reporting as demonstrated by the results of the TOMM test administered by Dr. Delgado Villa and Dr. Benejam's interpretation of the results of the SIMS and M-FAST tests he administered. Cl. PR at 23. The ALJ evaluated all testing results, as well as the interpretation of those results by both Dr. Delgado Villa and Dr. Benejam. D&O at 26, 34-36. She found Dr. Benejam's interpretation of the SIMS and M-FAST tests he administered to be "circular and flawed" because he "essentially found that, because Claimant told him he was having those symptoms, the fact that the objective testing showed that such endorsements are highly atypical and highly suggestive of malingering should be disregarded." D&O at 52; *see CX 22* at 15. The ALJ also found Claimant's negative test scores on the TOMM were outweighed by his positive scores on the MENT, M-FAST, and SIMS, which "all exceeded the cut off scores and...indicated malingering." D&O at 54; *see CX 22* at 14-15; EX 12 at 19-20. As the ALJ clearly considered and weighed the evidence Claimant refers to, and as her conclusions relating to that evidence are rational and supported, we decline to disturb her credibility findings. *Mendoza v. Marine Pers. Co.*, 46 F.3d 498, 500 (5th Cir. 1995).

adequately document his alleged traumatic experiences. D&O at 49-51; *see* CX 24; CX 28; CX 34. We reject Claimant’s argument that the ALJ erred by failing to give “considerable and special weight” to his treating providers’ opinions. Cl. PR at 14. When there is conflicting medical evidence, the ALJ is not required to give special weight to a treating physician’s opinion. *Kkunsu v. Constellis Grp./Triple Canopy, Inc.*, 59 BRBS 1, 4 (2025). Rather, she must consider all relevant evidence, assess the weight and credibility of each opinion, and explain her rationale in reaching a decision on the evidence. *Id.* at 4-5.

Likewise, the ALJ gave little weight to Dr. Benejam’s opinions, finding them “not well-reasoned” because he ignored inconsistencies in Claimant’s statements to his treating physicians but relied on certain information in the treating physicians’ reports to support his conclusion. D&O at 53 n.110; *see* CX 22 at 11, 20. The ALJ further found that the results of several tests Dr. Benejam administered were based on Claimant’s subjective reporting, which was “not credible or reliable.” D&O at 53; *see* CX 22 at 12-16. The ALJ noted that Claimant’s results on the SIMS and M-FAST tests Dr. Benejam administered indicated malingering of symptoms, yet he disregarded these findings, which ultimately undermined the reliability of his report. D&O at 53; CX 22 at 14-16.

Conversely, the ALJ gave “probative” weight to Dr. Delgado Villa’s opinion, finding it well-documented and well-reasoned.¹³ D&O at 56. She noted Dr. Delgado Villa’s evaluation did not support a diagnosis of PTSD under the DSM-5 because Claimant did not meet Criterion A, as he showed no emotional distress despite reporting several traumatic events. D&O 54-55; EX 12 at 16, 20. Even if Claimant was found to have met Criterion A, Dr. Delgado Villa found Claimant did not meet Criteria B through E. D&O at 55; EX 12 at 16. Furthermore, the ALJ found Dr. Delgado Villa’s administration of validity testing “clearly” showed Claimant was malingering symptoms, a finding reinforced by Dr. Benejam’s own validity testing.¹⁴ D&O 54; EX 12 at 19-20; CX 22 at

¹³ We reject Claimant’s allegation that the ALJ made a factual error in characterizing Dr. Delgado Villa’s evaluation as “independent.” Cl. PR at 16-17. Although this characterization may not be accurate, we find it to be harmless error, as there is no confusion, either from the parties’ arguments or the record, that Dr. Delgado Villa’s evaluation and report were generated at Employer’s request. *See generally Suarez*, 50 BRBS at 37.

¹⁴ Claimant’s scores on the MENT, the M-FAST, and the SIMS tests that Dr. Delgado Villa administered, all of which evaluate the authenticity of reported symptoms, exceeded the cut-off scores for each test, indicating the presence of malingering. EX 12 at 19-20. The only test Dr. Delgado Villa administered that did not indicate malingering was the TOMM, which evaluates whether there is malingering with memory problems. EX 12

14-16. The ALJ also gave weight to Dr. Delgado Villa's opinion finding inconsistencies between Claimant's statements to her and at his deposition¹⁵ and believed Claimant was malingering to receive compensation.¹⁶ D&O at 55; EX 12 at 18.

Claimant contends the ALJ's weighing analysis is not supported by the evidence. He argues the ALJ should not have given weight to Dr. Delgado Villa's opinion when it is inconsistent, equivocal, and based on factual inaccuracies. Cl. PR at 5-6. Specifically, Claimant asserts the ALJ failed to adequately consider that Dr. Delgado Villa: did not conduct diagnostic testing, only validity testing; failed to adequately explain the validity testing results; focused only on whether Claimant suffered from PTSD; noted Claimant reported traumatic events but subsequently found there was no trauma and Claimant failed to meet Criterion A of the DSM-5; did not address the potential positive effects of Claimant's treating providers' treatment; and failed to address discrepancies between symptoms Claimant reported to her and those he reported to other providers. *Id.* at 5-12, 16-20, 23.

at 20. Dr. Benejam administered two of the same validity tests – the SIMS and the M-FAST – and opined both “support[ed the] possible presence of malingering.” CX 35 at 9-11. But Dr. Benejam disregarded these results because “several of the ‘questionable’ items endorsed by [Claimant on the tests] are related to significant mood, anxiety and symptomatology that he is experiencing.” *Id.* at 11. The ALJ found this reasoning “circular and flawed.” D&O at 52.

¹⁵ Specifically, Dr. Delgado Villa found inconsistencies regarding 1) Claimant's post-Iraq employment (he testified that he worked in civil construction until 2015, then started a freight bicycle business, and also owned a small market booth with his brother, where he sometimes worked, but did not report any of this to Dr. Delgado Villa); 2) his relationship with his wife (Claimant testified that relationship ended in 2012 due to his abuse of her, but told Dr. Delgado Villa it ended in 2010 due to “relationship fatigue” and his new relationship with a woman named Gina); 3) his volatile new relationship with Gina (which he told Dr. Delgado Villa has resulted in a complaint being filed against him for physical and psychological abuse, but which he did not mention at his deposition); and 4) the fact that his brother and cousin, who also worked in Iraq, have received compensation from their former employers (which he told Dr. Delgado Villa but did not mention at his deposition). EX 12 at 18-19; *see* EX 1 at 47, 50-51, 71, 75.

¹⁶ Dr. Delgado Villa concluded Claimant was motivated to file his claim because of his cousin's and brother's receipt of compensation and suggested they had helped him. D&O at 54; EX 12 at 18.

Moreover, Claimant maintains the ALJ's weighing of Dr. Benejam's opinion was based on factual mistakes. Cl. PR at 20. For instance, the ALJ noted Dr. Benejam obtained comprehensive family, work and medical histories from Claimant and administered tests, but she failed to find his report well-reasoned. *Id.* at 20. Claimant asserts she inappropriately relied on Dr. Benejam's testing results as evidence of malingering, despite his explanation as to why those results were unsupported. *Id.* at 20-21. Finally, Claimant maintains the ALJ incorrectly found Dr. Benejam's report to be based primarily on Claimant's self-reporting (despite his administration of tests) and inappropriately failed to address Dr. Benejam's opinion regarding Claimant's functional impairment. *Id.* at 21, 26.

We reject Claimant's arguments regarding the ALJ's weighing of the medical experts' opinions. First, the ALJ thoroughly discussed her reasons for rejecting Dr. Benejam's opinion. She explained that despite obtaining family, work and medical histories, interviewing Claimant, and administering symptom and validity tests, Dr. Benejam relied heavily on Claimant's own self-reporting. The ALJ found this problematic because Dr. Benejam rejected evidence of Claimant's malingering in favor of his atypical test results that matched his endorsed symptoms. She also found Dr. Benejam ignored Claimant's differing reports to the various providers. D&O at 51-53. As the ALJ rationally found Claimant to be an unreliable witness due to his many, varied and inconsistent descriptions of his supposed trauma and symptoms, it was reasonable for her to give less weight to Dr. Benejam's opinion, which was significantly based on those descriptions.

Similarly, it was reasonable for the ALJ to give greater weight to Dr. Delgado Villa's opinion based on the logic of her conclusions from her interview, testing, and review of the other medical evidence. While the ALJ did not accept all of Dr. Delgado Villa's reasoning, she credited the aspects of her opinion explaining issues with Claimant's inconsistent reporting, evidence of malingering, and improper motivation for filing a claim. D&O at 54-56. Dr. Delgado Villa administered a diagnostic test to assess PTSD and opined Claimant did not meet the requirements. D&O at 55-56 (citing EX 12 at 16-17) ("he did not exhibit any emotional distress" while relaying alleged traumatic experiences; instead he "displayed amusement while discussing events" which would be "impossible for a person who is reliving a situation of panic"). Although Dr. Delgado Villa did not test for depression and anxiety, the ALJ rationally gave more weight to the fact that Claimant's performance on the validity testing conducted by both Dr. Delgado Villa and Dr. Benejam suggested malingering, which aligned with her own assessment of Claimant's credibility.¹⁷

¹⁷ The ALJ acknowledged Dr. Delgado Villa's description that when she asked Claimant for details about his symptoms, "he avoided eye contact, 'as if he wishe[d] to change the subject,'" and he was "unable to describe his nightmares and attempted to change the subject." D&O at 54 (citing EX 12 at 17).

D&O at 46-49, 52-53, 56; *see* CX 22 at 14-16; EX 12 at 19-20. Furthermore, contrary to Claimant's assertion, the ALJ noted Dr. Delgado Villa's confusion with respect to Claimant's ongoing treatment and taking of medication, as Claimant told her he had stopped taking his medication but told Dr. Benejam he was continuing to take it.¹⁸ D&O at 29; *see* EX 12 at 51; CX 22 at 11. Finally, despite Claimant's argument, Dr. Delgado Villa acknowledged Claimant's reported symptoms to other providers were different from what he reported to her, which the ALJ also noted. D&O at 27-28; *see* EX 12 at 18. The fact that the ALJ found portions of Dr. Delgado Villa's opinion unpersuasive does not detract from her overall weighing and thorough analysis of the medical evidence. *See Poole v. Nat'l Steel & Shipbuilding Co.*, 11 BRBS 390, 395-396 (1979) (it is solely within the discretion of the ALJ to accept or reject all or any part of any testimony according to her judgment).

In sum, the ALJ adequately considered all the doctors' medical evidence and fully explained her reasoning for giving greater weight to Dr. Delgado Villa's opinion over the opinions of the treating physicians, Dr. Benejam, and Claimant's own testimony. D&O at 16-38, 46-57. Claimant inappropriately asks the Board to reweigh the evidence. *Gasparic*, 7 F.3d at 323; *see also Carswell v. E. Pihl & Sons*, 999 F.3d 18, 32 (1st Cir. 2021) (if the ALJ's conclusion upon weighing the evidence is rational and supported by substantial evidence, as it is here, it must be affirmed even if the Board would have reached a different conclusion). Because the ALJ's weighing of the evidence as a whole is rational, and because substantial evidence supports her decision to credit Dr. Delgado Villa's opinion over Dr. Benejam's, *Pietrunti*, 119 F.3d at 1042; *Gasparic*, 7 F.3d at 323; *Hughes*, 289 F.2d at 405; *Pisaturo v. Logistec, Inc.*, 49 BRBS 77, 81 (2015), we affirm the ALJ's finding that Claimant's alleged psychological condition is not work-related. *Sistrunk v. Ingalls Shipbuilding, Inc.*, 35 BRBS 171, 174 (2001); *Coffey v. Marine Terminals Corp.*, 34 BRBS 85, 87 (2000).

Finally, we also reject Claimant's contention that the ALJ violated the Administrative Procedure Act (APA), 5 U.S.C. §557, by failing to weigh multiple pieces of evidence when determining whether Claimant was entitled to benefits. Cl. PR at 26. Claimant asserts it is unclear whether the ALJ considered Claimant's certificates, employment contract, filings with the Office of Workers' Compensation Programs, and discovery responses. *Id.* But Claimant has not explained the relevance of those documents

¹⁸ The ALJ also was confused because in several instances the prescribed dosages in Dr. Valderrama Escalante's medical reports did not match the dosages on Claimant's corresponding prescriptions. D&O at 20-21 nn.48, 51-52; *see* CX 34 at 2, 5-6, 13, 16-17, 25, 29.

to the ALJ's causation analysis or why the ALJ's consideration of them could have led to a different outcome.¹⁹ *Montoya v. Navy Exch. Serv. Command*, 49 BRBS 51, 52 n.1 (2015); *Plappert v. Marine Corps Exch.*, 31 BRBS 109, 111 (1997). Contrary to Claimant's assertions, the ALJ carefully reviewed and considered all the relevant evidence and detailed the rationale behind her causation findings, and her decision accords with the APA's requirements. 5 U.S.C. §557(c)(3)(A); D&O 2-27; see *Santoro*, 30 BRBS at 172; *Cairns v. Matson Terminals, Inc.*, 21 BRBS 252, 256-257 (1988) (ALJ considered all evidence to

¹⁹ To support his argument, Claimant cites *Mitchell v. Island Creek Kentucky Mining & Dir.*, *OWCP*, BRB No. 19-0313 BLA (May 29, 2020), an unpublished case arising under the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2018). Cl. PR at 27 n.130. We note this case is not precedential. Moreover, *Mitchell* did not involve an ALJ's failure to consider certain evidence at the weighing stage of the causation analysis. Rather, in *Mitchell*, the Board found the ALJ failed to adequately explain his conclusion that the x-ray evidence as a whole did not support a finding of the existence of pneumoconiosis. Consequently, there was a lack of adequate explanation, not a failure to consider evidence.

find no rebuttal); *compare with Cotton v. Newport News Shipbuilding & Dry Dock Co.*, 23 BRBS 380, 382-385 (1990) (Board remanded case for ALJ to consider all relevant evidence).

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

GLENN E. ULMER
Administrative Appeals Judge