U.S. Department of Labor

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

BRB No. 24-0149

STANLEY CAMPBELL Claimant-Petitioner v. CERES MARINE TERMINALS, INCORPORATED Self-Insured Employer-Respondent	)	**NOT-PUBLISHED** DATE ISSUED: 11/24/2025 DECISION and ORDER

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

Erin Brownfield Raley (Raley & Raley PC), Savannah, Georgia, for Claimant.

Lawrence P. Postol (Postol Law Firm, P.C.), McLean, Virginia, for Self-Insured Employer.

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

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Noran J. Camp's Decision and Order Denying Benefits (2022-LHC-00992) rendered on a claim filed pursuant to the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §§901-950 (Act). 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 filed a claim for benefits related to alleged hearing loss sustained during his employment at the Port of Savannah.[2] Employer's Exhibit (EX) 2 at 4. On October 14, 2020, Gabriel J. Pitt, Au.D., administrated an audiogram and assigned an impairment rating of 21.2%.[3] EX 6. On January 19, 2021, Sheana A. Richardson, Au.D., conducted an audiogram at Employer's request and assigned a 0% impairment rating bilaterally. EX 7. On March 30, 2021, Dawn Hostetler-MacMillan, Au.D., conducted an audiogram and found Claimant demonstrated moderate sensorineural flat hearing loss in the right ear and mild sensorineural flat hearing loss in the left ear but did not assign an impairment rating. EX 9. Employer subsequently retained Chris Zambas, Au.D., to conduct a records review. EXs 15, 21. Dr. Zambas issued a report on August 23, 2022, in which he opined Drs. Pitt's and MacMillan's audiogram results were unreliable but Dr. Richardon's audiogram report was reliable. EX 15 at 1-2. He concluded it was "more likely than not" that Claimant's hearing is within normal limits and that he suffers no impairment under the American Medical Association's *Guides to the Evaluation of Permanent Impairment* (AMA *Guides*). *Id.* at 2.

On January 24, 2024, the ALJ issued a Decision and Order Denying Benefits (D&O). He found Claimant invoked Section 20(a)'s presumption of compensability

[1] This case arises within the jurisdiction of the United States Court of Appeals for the Eleventh Circuit because Claimant sustained an alleged injury in Savannah, Georgia. 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] Claimant filed a previous hearing loss claim in 2018 against a different employer. *See* Employer's Exhibit (EX) 19 at 1. On July 26, 2018, Gabriel J. Pitt, Au.D. (doctor of audiology), conducted an audiogram, found it demonstrated mild sensorineural hearing loss bilaterally, and assigned a 6.5% disability rating. EX 20 at 1-2. Claimant entered into a Section 8(i) settlement agreement, 33 U.S.C. §908(i), on December 5, 2018, pursuant to which he was to receive $13,000 for any and all past and future compensation benefits and $1,000 for medical reimbursements and any and all past and future medical benefits. EX 24 at 2, 4. The district director issued a compensation order approving the settlement agreement on December 14, 2018. EX 24.

[3] Dr. Pitt's report does not specify whether this disability rating is to be applied bilaterally.

through his testimony regarding his employment-related noise exposure and audiograms that both demonstrated hearing loss and conformed to the regulations. D&O at 6, 22; *see* 33 U.S.C. §920(a); 20 C.F.R. §702.441. But he found Dr. Richardson's audiogram and Dr. Zambas's report constituted substantial evidence sufficient to rebut the Section 20(a) presumption. *Id.* at 23. Upon weighing the evidence, he gave great weight to Dr. Zambas's opinion and found Claimant failed to demonstrate work-related hearing loss by a preponderance of the evidence. *Id.* at 25, 27-28.

Claimant appeals, arguing neither Dr. Richardson's nor Dr. Zambas's reports constitute substantial evidence sufficient to rebut the Section 20(a) presumption. Alternatively, Claimant argues the ALJ erred in finding he failed to establish work-related hearing loss by a preponderance of the evidence. Employer responds urging affirmance, and Claimant submitted a reply brief, reiterating his contentions.

Section 20(a) Rebuttal

Once the Section 20(a) presumption is invoked, as in this case, the burden shifts to the employer to rebut it by producing substantial evidence that the claimant's working conditions did not cause or aggravate his injury. *Brown v. Jack. Shipyards Inc.*, 893 F.2d 294, 297 (11th Cir. 1990); *see also Ceres Gulf, Inc. v. Director, OWCP* [*Plaisance*], 683 F.3d 225, 229 (5th Cir. 2012); *Newport News Shipbuilding & Dock Co. v. Holiday*, 591 F.3d 219, 225 (4th Cir. 2009); *O'Kelley v. Dep't of the Army/NAF*, 34 BRBS 39, 41 (2000). Substantial evidence is the kind of evidence which a reasonable mind could accept as adequate to support a conclusion. *Plaisance*, 683 F.3d at 228-229; *Holiday*, 591 F.3d at 226; *Jones v. Aluminum Co. of Am.*, 35 BRBS 37, 40 (2001); *O'Kelley*, 34 BRBS at 41-42.

In this case, the ALJ found Employer presented substantial evidence sufficient to rebut the Section 20(a) presumption through the medical reports of Dr. Richardson, who determined Claimant had no ratable hearing impairment, and Dr. Zambas, who opined Dr. Richardson's audiogram was the most reliable and agreed with Dr. Richardson's conclusion that Claimant's hearing was within normal limits. D&O at 23. Claimant argues Dr. Richardson's audiogram cannot constitute substantial evidence sufficient to rebut the Section 20(a) presumption because it does not comply with 20 C.F.R. §702.441(b)(1), which requires the report accompanying an audiogram to identify the method of testing. Cl.'s Br. at 6. According to Claimant, the ALJ erroneously assumed Dr. Richardson's method of testing was "air conduction and bone conduction," but asserts this simply describes the standards of how sound transmits to the brain, not the method or process of testing which is either ascending or descending. *Id.* at 6-7. Because Dr. Richardson did not indicate anywhere on her audiogram or report what method was used, Claimant maintains her audiogram is legally invalid and cannot be relied upon to rebut the Section 20(a) presumption. *Id.* at 7-8.

We disagree. Claimant is correct in that 20 C.F.R. §702.441(b) lists the requirements necessary for an audiogram to qualify as presumptive evidence of the amount of hearing loss, one of which requires that the audiogram be accompanied by a report that "set[s] forth the testing standards used and describe[s] the method of evaluating the hearing loss." 20 C.F.R. §702.441(b)(1); *see also* 33 U.S.C. §908(c)(13)(C). However, audiograms which do not qualify as "presumptive evidence" of hearing loss under the Act or regulations are not automatically invalid. *R.H. [Harris] v. Bath Iron Works Corp.*, 42 BRBS 6, 8 (2008). Rather, as long as the submitted audiograms were conducted in accordance with the AMA *Guides*, the ALJ has the authority to weigh them and determine the appropriate weight to be given to each.[4] *Id.* at 8-9; *see also* 33 U.S.C. §908(c)(13)(E); 20 C.F.R. §702.441(d); *Steevens v. Umpqua River Navigation*, 35 BRBS 129, 133 (2001); *Norwood v. Ingalls Shipbuilding, Inc.*, 26 BRBS 66, 68 (1992). Consequently, even if, as Claimant alleges, the ALJ erred in finding Dr. Richardson's audiogram qualified as presumptive evidence of hearing loss in accordance with 20 C.F.R. §702.441(b), there is nothing in the Act or regulations that would bar him from considering it as substantial evidence sufficient to rebut the Section 20(a) presumption. *G.K. [Kunihiro] v. Matson Terminals, Inc.*, 42 BRBS 15, 18 (2008); *Harris*, 42 BRBS at 8-9. As Dr. Richardson concluded Claimant demonstrated no ratable hearing impairment, her opinion, audiogram, and report constitute substantial evidence sufficient to rebut the Section 20(a) presumption. *O'Kelley*, 34 BRBS at 41-42.

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[4] Unlike Section 8(c)(13)(C) of the Act and Section 702.441(b) of the regulations, which explain when an audiogram constitutes presumptive evidence of hearing loss, Section 8(c)(13)(E) of the Act and Section 702.441(d) of the regulations require audiograms to be conducted in accordance with the AMA *Guides* in order to be determinative of hearing loss. 33 U.S.C. §§908(c)(13)(C), (E); 20 C.F.R. §§ 702.441(b), (d); *Harris*, 42 BRBS at 8-9. Thus, as the Board explained in *Harris*:

> [A]n administrative law judge evaluating a claim under Section 702.441 may credit an audiogram as determinative evidence of hearing loss so long as it complies with Section 702.441(d). If the audiogram meets the additional requirements of Section 702.441(b), it may further serve as "presumptive evidence" of a hearing loss.

42 BRBS at 9. As Claimant is not arguing Dr. Richardson's audiogram is not compliant with Section 702.441(d), the ALJ had the authority to consider it in determining the extent of Claimant's hearing loss. *Id.*, *see also Green-Brown v. Sealand Servs., Inc.*, 586 F.3d 299, 303 (4th Cir. 2009); *G.K. [Kunihiro] v. Matson Terminals, Inc.*, 42 BRBS 15, 18 (2008).

While Dr. Richardson's opinion alone is sufficient to rebut the Section 20(a) presumption, Claimant argues Dr. Zambas's opinion is also insufficient to rebut the Section 20(a) presumption because it is speculative and lacks foundation. Cl.'s Br. at 8. Dr. Zambas opined he would not have expected Claimant's hearing loss to almost triple after two years of noise exposure absent trauma or a medical condition and that Claimant's July 2018, October 2020 and March 2021 audiograms failed to demonstrate the type of pattern typical for noise-induced hearing loss. EX 15 at 1-2; EX 21 at 1; EX 25 at 14-16. Claimant contends these opinions are flawed because they are based on Dr. Zambas's experiences working for a different company at a different work location where employees were required to wear hearing protection. Cl.'s Br. at 9-12. Further, Claimant argues Dr. Zambas relies too heavily on the results of otoacoustic emissions (OAE) testing, a "nonessential and optional" test that is not truly objective. *Id.* at 15-16.

We disagree. Claimant's assertion that Dr. Zambas's opinion is flawed and speculative goes to its weight, which is not an appropriate consideration at the rebuttal stage of the Section 20(a) analysis because Employer's burden at this stage is one of production, not persuasion. *Am. Grain Trimmers, Inc. v. Dir., OWCP [Janich]*, 181 F.3d 810, 816-817 (7th Cir. 1999) (en banc); *Rose v. Vectrus Sys. Corp.*, 56 BRBS 27, 32 (2022) (en banc); *Suarez v. Serv. Emps. Int'l, Inc.*, 50 BRBS 33, 36 n.4 (2016); *Cline v. Huntington Ingalls, Inc. (Avondale Ops.)*, 48 BRBS 5, 7 (2013). Dr. Zambas's opinion meets Employer's burden of production, as his reports and testimony constitute substantial evidence casting doubt on the existence of a ratable hearing impairment and the presumed connection between Claimant's alleged hearing loss and his employment. *O'Kelley*, 34 BRBS at 41-42; *see Bourgeois v. Director, OWCP*, 946 F.3d 263, 265 (5th Cir. 2020) (a medical opinion stating the evidence showed no proof of the alleged injury was sufficient to rebut the Section 20(a) presumption). We therefore affirm the ALJ's finding that Dr. Zambas's opinion also rebuts the Section 20(a) presumption.

Weighing the Evidence as a Whole

If a claimant invokes the Section 20(a) presumption that his injury is work-related and the employer successfully rebuts the presumption, as in this case, it drops out of the analysis, and the issue of causation must be resolved based on the evidence of record as a whole with the claimant bearing the burden of persuasion by a preponderance of the evidence. *Rainey v. Director, OWCP*, 517 F.3d 632, 634 (2d Cir. 2008); *Universal Mar. Corp. v. Moore*, 126 F.3d 256, 262 (4th Cir. 1997); *Santoro v. Maher Terminals, Inc.*, 30 BRBS 171, 175 (1996); *see also Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 281 (1994). In evaluating the evidence, the ALJ is entitled to weigh the expert opinion evidence and draw his own inferences from it, and he is not bound to accept the opinion or theory of any particular medical expert. *See Pietrunti v. Director, OWCP*, 119 F.3d 1035, 1042 (2nd Cir. 1997); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403, 405

(2d Cir. 1961); *Kkunsa v. Constellis Grp./Triple Canopy, Inc.*, 59 BRBS 1, 3-4 (2025); *Coffey v. Marine Terminals Corp.*, 34 BRBS 85, 87 (2000). The Benefits Review Board is not free to re-weigh the evidence or substitute its opinion for that of the ALJ even if the evidence could support other inferences or conclusions. *See Sealand Terminals, Inc. v. Gasparic*, 7 F.3d 321, 323 (2d Cir. 1993); *Volpe v. Ne. Marine Terminals*, 671 F.2d 697, 700 (2d Cir. 1982). Moreover, the Board will not interfere with the ALJ's credibility determinations unless they are "inherently incredible or patently unreasonable." *Cordero v. Triple A Mach. Shop*, 580 F.2d 1331, 1335 (9th Cir. 1978); *see also Gasparic*, 7 F.3d at 323; *Newport News Shipbuilding & Dry Dock Co. v. Tann*, 841 F.2d 540, 543 (4th Cir. 1988).

The ALJ found Claimant credibly testified about his exposure to loud noises at work, and his daughter credibly testified about his noticeable hearing difficulties. D&O at 24; Hearing Transcript (HT) at 10, 36-40. Nevertheless, he found their testimony alone insufficient to carry Claimant's burden of persuasion and evaluated the audiograms. D&O at 24. He noted there were four in the record, each with a different hearing impairment rating, conducted by three different providers.[5] Therefore, the primary issue before the ALJ was which of the audiograms provided the most reliable measurement of Claimant's hearing capacity. *Id.*

The ALJ first weighed Dr. Pitt's July 2018 audiogram. D&O at 25; EX 20. He noted Dr. Pitt indicated the audiogram was reliable but found his failure to explain his conclusions undermined the audiogram's weight. *Id.* at 11, 25; *see* EX 20 at 1. Further, he found Dr. Pitt's reliability assessment undermined by Dr. Zambas's review of the audiogram. D&O at 25. Dr. Pitt concluded the OAE testing was consistent with the audiometry, but Dr. Zambas opined this was an inaccurate interpretation of the data because the audiometry recorded hearing loss but the OAE results indicated hearing within normal limits. *Id.*; *see* EX 20 at 1; EX 21 at 1. The ALJ noted both Drs. Zambas and MacMillan explained that OAE testing is an objective measure and if the results are positive, it indicates "normal" hearing thresholds with measurements no lower than 25 to 30 dB, but Dr. Pitt's audiogram results recorded thresholds above that frequency. D&O at

[5] The ALJ found all three providers – Drs. Pitt, Richardson, and MacMillan – conducted additional tests for Speech Recognition Thresholds (SRTs), Pure Tone Averages (PTAs), tympanometry, and the presence of otoacoustic emissions (OAEs), which he determined lent credence to Dr. Zambas's testimony that an evaluation of hearing impairment required looking at the "whole picture." D&O at 24-25; EXs 6, 7, 9, 20, 25 at 10, 13.

25; *see* EX 9 at 1; EX 15 at 1; EX 22 at 2-3; EX 25 at 14, 17. Consequently, the ALJ gave minimal weight to the July 2018 audiogram. D&O at 25.

The ALJ gave minimal weight to Dr. Pitt's October 2020 audiogram for the same reason: despite Dr. Pitt's indication of reliability, the audiogram results, which recorded 21.2% hearing loss, did not match the OAE testing results, which were positive. D&O at 25-26; *see* EX 6; EX 15 at 1; EX 25 at 14, 17. The ALJ credited Dr. Zambas's statement that he had never seen hearing loss impairment almost triple over a span of approximately two years absent acoustic trauma or a medical condition, both of which Claimant denied. D&O at 26; *see* EX 21 at 1; EX 25 at 16. In addition, the ALJ found the audiogram results undermined by Claimant's testimony that he was suffering from a cold or sinus infection at the time it was conducted. D&O at 26; *see* HT at 19.

The ALJ gave great weight to Dr. Richardson's January 2021 audiogram, which documented hearing within normal limits, despite finding Dr. Richardson failed to adequately explain how she determined her testing had good reliability or the implications of the additional testing she performed. D&O at 12, 26-27; EX 7. Instead, the ALJ relied on Dr. Zambas's interpretation of Dr. Richardson's testing, which was that the SRT testing, PTA testing, and OAE testing from Dr. Richardson all aligned with the audiometry results. D&O at 26; *see* EX 15 at 2. The ALJ also relied on Dr. MacMillan's statement that the "robust" positive otoacoustic emissions Dr. Richardson recorded most accurately reflected Claimant's hearing at the time of testing. D&O at 26; *see* EX 22 at 3.

Finally, the ALJ gave minimal weight to Dr. MacMillan's March 2021 audiogram based primarily on the doctor's own assessment of the test as unreliable and her failure to provide an impairment rating. D&O at 16, 27; *see* CX 2 at 2; EX 9; EX 22 at 3.

Overall, the ALJ gave the greatest weight to Dr. Richardson's audiogram, which demonstrated a 0% impairment rating. D&O at 27; *see* EX 7 at 2. He rejected Claimant's argument that the October 2020 and March 2021 audiograms should have been found reliable based on their similarity because of Dr. MacMillan's opinion that her own testing yielded unreliable results. D&O at 27; *see* CX 2 at 2; EX 9 at 2. The ALJ concluded that even if he had found Drs. Pitt's and MacMillan's audiograms reliable, neither provider opined as to the cause of the documented hearing loss. D&O at 27; *see* CX 2; EXs 6, 9, 20. Rather, he credited Dr. Zambas's testimony that the audiometric patterns Drs. Pitts and MacMillan recorded - both of which were flat - were not typical of noise-induced hearing loss. D&O at 17-18; *see* EX 6 at 1; EX 9 at 1; EX 15 at 1-2; EX 20 at 1; EX 25 at 14-15. He further found Dr. MacMillan's opinion that it would be unlikely for Claimant not to have some degree of hearing loss related to his occupational history equivocal and outweighed by both Dr. Zambas's opinion and Dr. MacMillan's documentation of

Claimant's hearing loss pattern as flat. D&O at 27; *see* CX 2 at 2; EX 9 at 1; EX 15; EX 25 at 14-15.

Claimant argues the ALJ erred in weighing the evidence by "irrationally supplanting his own and Dr. Zambas's judgment for that of the other audiologists." Cl.'s Br. at 18. He argues the ALJ improperly relied on Dr. Zambas's characterization of OAE testing as "objective" because, Claimant asserts, OAE test results are subject to the interpretation of the tester and because literature about the testing indicates there is always a "zone of uncertainty." *Id.* at 18-19 (citing EX 23 at 5). Claimant maintains the ALJ irrationally relied on Dr. Zambas's testimony about the rate at which Claimant's hearing loss increased because the doctor's observations were based on his experience with employees who were required to wear hearing protection. *Id.* at 19. Finally, Claimant contends it was irrational for the ALJ to dismiss the similarities between the October 2020 and March 2021 audiograms and that the Act does not require audiologists to opine as to causation. *Id.* at 20-21.

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. Rather, because the ALJ permissibly exercised his discretion in weighing the medical opinions, provided full explanations, and his credibility determinations are rational and supported by substantial evidence, we affirm his finding that Claimant failed to establish a compensable, work-related hearing loss. *Pietrunti*, 119 F.3d at 1042; *Hughes*, 289 F.2d at 405; *Kkunsa*, 59 BRBS at 3-4; *Coffey*, 34 BRBS at 87; *Norwood v. Ingalls Shipbuilding, Inc.*, 26 BRBS 66, 68 (1992); *Bruce v. Bath Iron Works Corp.*, 25 BRBS 157, 160 (1991).

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

MELISSA LIN JONES
Administrative Appeals Judge