U.S. Department of Labor

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

BRB No. 22-0288

ALISON B. NABAASA	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
REED INTERNATIONAL, INCORPORATED	)	
	)	
	)	DATE ISSUED: 10/19/2023
and	)	
	)	
INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA c/o AIG GLOBAL CLAIMS	)	
	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Francine L. Applewhite, Administrative Law Judge, United States Department of Labor.

Andrew Nyombi (KNA Pearl Law, LLC), Silver Spring, Maryland, for Claimant.

John C. Elliot, Dana Ladner, and Zach Carabine (Schouest, Bamdas, Soshea, BenMaier & Eastham, PLLC), Houston, Texas, for Employer/Carrier.

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

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Francine L. Applewhite's Decision and Order Denying Benefits (2020-LDA-00378 and 2020-LDA-00469) rendered on claims filed pursuant to the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.*, as extended by the Defense Base Act, 42 U.S.C. §1651 *et seq*. (DBA or Act).[1] 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. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant, a Ugandan citizen, allegedly sustained testicular, musculoskeletal, and psychological injuries as a result of his work for Employer as a security guard at Bagram Airfield in Afghanistan from March 30, 2017, to January 15, 2018. He was terminated by Employer after failing his weapons requalification test and refusing to participate in remedial training. EXs 31-33, 36; HT at 74. Thereafter, he returned to Uganda and has not worked since, he asserts, because of his ongoing medical condition. HT at 13, 41. In terms of his physical injuries, Claimant described experiencing lower abdominal pain on July 22, 2017, prompting his visit to an Ecolog facility where he was diagnosed with epididymitis and prescribed ibuprofen, a cold compress, and levofloxacin. CX 13 at 15. On August 1, 2017, a convoy took him to Kabul, Afghanistan, where Dr. Gran Zwan diagnosed left testicle epididymitis, a condition Dr. Zwan treated through a course of prescription medication. Claimant returned to Bagram Airfield and his regular work the next day. He worked continuously in that capacity until his January 2018 termination.

Claimant also alleged that in January 2018, before he left Bagram Airfield and returned to Uganda, he began experiencing bone, joint, and muscle pain, which he subsequently described as back and knee pain. HT at 30-31, 49-50, 58; CX 8 at 100; *see also* ALJ's Decision and Order (D&O) at 11. He attributed this back and knee pain to the ongoing physical requirements of his work for Employer, HT at 27-32, as well as to a work incident on January 8, 2018, in which he stated he slid and fell from a vehicle and allegedly aggravated his testicle, back, and knee injuries, *id.*, at 26-30, 39. Furthermore, Claimant stated that by the time he returned to Uganda, his "whole body was paining" him but, in particular, he "had a lot of pain in the testicles, a lot of pain in the back, [and] a lot of pain in the knee[s]." *Id.* at 39. This resulted in visits to various medical facilities, including the Surs Medical Center, Mbarara Regional Hospital, Nakasero Hospital, and Chrovia Medical Center. *Id.* at 40.

[1] This case arises within the jurisdiction of the United States Court of Appeals for the Second Circuit because the district director who filed the ALJ's decision is in New York. 33 U.S.C. §921(c); *McDonald v. Aecom Tech. Corp.*, 45 BRBS 45 (2011).

Pertinent to his claims, Dr. Robert Mivule, a physician at Surs Healthcare, issued a report dated January 14, 2020. CX 10. Noting Claimant's complaints, including a "painful and swollen right testis," "general back pain," and "bilateral knee pains," Dr. Mivule diagnosed Claimant with malaria and general mechanical back pain with upper and lower limb parathesis. *Id.* He prescribed medication and intensive physiotherapy and home exercise. *Id.* In addition, Dr. Mivule recommended Claimant see a psychologist, orthopedic surgeon, and urologist. *Id.* Dr. Edward Naddumba, a Senior Consultant Orthopaedic Surgeon at Nakasero Hospital, issued a report dated February 16, 2021, in which he diagnosed Claimant with chronic back pain resulting from multi-level lumbar disc injuries attributable to "his work as an armed security guard." CX 15; EX 7. He also diagnosed a chest respiratory disorder secondary to exposure to desert dust, and post-traumatic stress disorder (PTSD) relating to Claimant's exposure to his "bad experience" while working in the war zone. *Id.* Thus, Dr. Naddumba recommended physiotherapy for Claimant's bilateral knee pain and a psychiatrist to assist him with his PTSD. *Id.* He further opined Claimant was not at maximum medical improvement (MMI) for his diagnosed musculoskeletal injuries, and that even after treatment, he "will never serve again as an armed security guard." *Id.*

Claimant also stated he began experiencing "many nightmares, flashbacks, and horrible dreams of dead people," as well as "hallucinations" after leaving Afghanistan. CX 9, Dep. at 60-61, 65; HT at 38. He initially self-treated these symptoms through "simple medications" he purchased at a local pharmacy, "but nothing worked." CX 9, Dep. at 66. He then went to Mbarara Regional Hospital in June 2019, where he saw Dr. Buhese Wilson, who, according to Claimant, diagnosed him with "mental illness" and put him on medication, *id.*, Dep. at 47, 55, 65-67. Claimant was hospitalized by Dr. Wilson from December 13 through 28, 2020, for "poor sleep, aggressive and violent behavior" and because he was "wandering away from home." CX 17. In the discharge form, Dr. Wilson diagnosed Claimant with PTSD and stress re-actions, noted Claimant "has greatly improved," and provided an at-home treatment plan consisting of prescription medications.[2] *Id.*

At Employer's behest, Claimant was examined and evaluated by a licensed clinical psychologist, Dr. Jake Epker, on August 12, 2020, and by orthopedic specialists, Drs. Patrick Sekimpi and Bendt P. Petersen, on March 5, 2021. Based on his interview of Claimant and the accompanying objective psychological testing conducted, Dr. Epker concluded Claimant "does not meet [the] criteria for a psychiatric diagnosis," and "does not have a psychological condition related to his work in Afghanistan." EX 16. Dr. Epker

[2] This discharge form constitutes the only evidence regarding Claimant's treatment with Dr. Wilson.

further opined Claimant "does not have any impairment" or "work limitations from a psychological perspective" and "he should be able to return to full time work as a security guard and in any capacity for which he has adequate skills, training, or experience." *Id.* Dr. Peterson, who observed Dr. Sekimpi's examination of Claimant and reviewed Claimant's medical records,[3] concluded there was "no objective rational for a diagnosis regarding cervical, thoracic or lumbar spine complaints." EX 18. He opined that, "[g]iven the normalcy of [Claimant's] MRI, significant delay in subjective complaints and lack of injury specificity," Claimant required no further medical treatment and was not precluded from "returning to work in his usual and customary employment." *Id.* Additionally, Dr. J. Abram McBride, a board-certified urologist, opined that based upon a review of Claimant's medical records, Claimant was diagnosed with acute epididymitis in August 2017 and provided "follow up clinical care" in September 2019. EXs 13, 14. In each instance, he stated Claimant was prescribed "the appropriate therapy" for his condition. *Id.* Dr. McBride also noted Claimant's July 2020 medical records indicated follow up physiotherapy treatment but his "assessment is that [Claimant's] initial episode of acute left epididymitis is not related to his physiotherapy and musculoskeletal treatment administered for chronic disability years later in 2019 and 2020." EX 14.

Claimant filed a claim on April 23, 2019, seeking benefits for "testicular and scrotal trauma, chronic abdominal pain, enlarged left testicle, scrotal pain, blood in the urine, [and] Post Traumatic Stress [D]isorder." CX 1. He filed a second claim on September 12, 2019, for psychological injuries, CX 2, and then, on October 4, 2019, he amended his first claim by replacing "Post Traumatic Stress [D]isorder" with "bones, joins [*sic*], [and] muscles." CX 1.

After determining that neither Sections 12 nor 13 of the Act, 33 U.S.C. §§912, 913, barred Claimant's claims for compensation, the ALJ found Claimant entitled to the Section 20(a) presumption, 33 U.S.C. §920(a), relating his testicular, psychological, and back injuries to his work with Employer, but Claimant had not made out a prima facie case with respect to his alleged knee injury. She next found Employer rebutted the presumption regarding all but Claimant's testicular injury and, based on the evidence as whole, found Claimant did not establish a causal relationship between his psychological, bone, joint, and muscle injuries and his work for Employer in Afghanistan. Further, she found that although Claimant's testicular injury is work-related, he is no longer disabled by it and,

[3] Dr. Sekimpi examined Claimant at Ruby Medical Center in Uganda, while Dr. Peterson "virtually" attended the evaluation. EX 18. Dr. Sekimpi expressed the general findings of his physical examination of Claimant but did not offer any specific diagnoses or opinions regarding any possible impairments and Claimant's ability to work, nor as to the cause of any possible impairments. *Id.*

therefore, he is not entitled to any disability or future medical benefits.[4] Accordingly, the ALJ denied Claimant's claims for all physical and psychological injuries.

On appeal, Claimant challenges the ALJ's denial of benefits and resulting denial of an attorney's fee. Employer responds, urging affirmance of the ALJ's decision.[5]

Section 20(a)

Rebuttal

Claimant contends the ALJ erred in finding Employer rebutted the Section 20(a) presumption relating his alleged back and psychological injuries to his work. He maintains the ALJ disregarded substantial evidence in the record, including Claimant's own testimony and the medical opinions of record, which show those injuries arose of out of his work in a zone of special danger. Furthermore, Claimant states application of the zone of special danger doctrine, in conjunction with a comparison of Claimant's pre-deployment medical history showing he was fit and healthy with his post-injury medical records showing he sustained the multiple injuries, establishes his injuries are work-related and therefore compensable.

In determining whether an injury is work-related, a claimant is aided by the Section 20(a) presumption, which is invoked after a claimant establishes he sustained a harm or pain and conditions existed, or an accident occurred at his place of employment, which could have caused the harm or pain. *American Stevedoring, Ltd. v. Marinelli*, 248 F.3d 54, 35 BRBS 41(CRT) (2d Cir. 2001); *Rose v. Vectrus Systems Corp.*, 56 BRBS 27 (2022) (Decision on Recon. en banc), *appeal dismissed* (M.D. Fla. Aug. 24, 2023); *Bolden v. G.A.T.X. Terminals Corp.*, 30 BRBS 71 (1996). Once, as in this case, the Section 20(a) presumption is invoked, the burden shifts to the employer to produce substantial evidence

[4] The ALJ found Claimant provided no proof of any compensable past medical expenses for his testicular injuries. Because Claimant has no compensable past or future medical expenses, the ALJ found he is not eligible for any attorney's fees.

[5] We reject, as moot, Employer's contention in its response brief that Claimant's appeal should be dismissed as his Petition for Review and accompanying brief were neither timely filed nor accepted by the Benefits Review Board into the record. Subsequent to the filing of Employer's July 25, 2022 response, the Board, by order dated July 29, 2022, accepted Claimant's Petition for Review and brief, as well as Employer's response brief, "as part of the record." BRB Order dated July 29, 2022.

that the claimant's condition was not caused or aggravated by his employment.[6] *Rainey v. Director, OWCP*, 517 F.3d 632, 634, 42 BRBS 11, 12(CRT) (2d Cir. 2008); *Marinelli*, 248 F.3d at 64-65, 35 BRBS at 49(CRT); *O'Kelley v. Dep't of the Army/NAF*, 34 BRBS 39 (2000). The employer's burden on rebuttal is one of production, not persuasion, and is not dependent on credibility.[7] *Id.*; *Rose*, 56 BRBS at 35; *Victorian v. International-Matex Tank Terminals*, 52 BRBS 35 (2018), *aff'd sub nom. International-Matex Tank Terminals v. Director*, OWCP, 943 F.3d 278, 53 BRBS 79(CRT) (5th Cir. 2019); *Suarez v. Serv. Employees Int'l, Inc.*, 50 BRBS 33 (2016); *Cline v. Huntington Ingalls, Inc.*, 48 BRBS 5 (2013). All an employer must do is submit "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, 42 BRBS at 14(CRT). The presumption may be rebutted with evidence disproving the existence of the alleged injury. *See, e.g., Bourgeois v. Director, OWCP*, 946 F.3d 263, 53 BRBS 91(CRT) (5th Cir. 2020) (affirming that the presumption was rebutted by a medical opinion stating the claimant did not suffer a labral tear to his right shoulder immediately following an accident at work and therefore the accident did not cause the claimant's later-discovered tear). In addition, it is well settled that a medical opinion of non-causation rendered to a reasonable degree of medical certainty is sufficient to rebut the presumption. *See O'Kelley*, 34 BRBS 39.

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[6] Initially, we reject Claimant's suggestion that the ALJ erred in failing to apply "the zone of special danger" doctrine to conclude that his injuries are work-related as a matter of law. Under the Act, an injury generally occurs in the course of employment if it occurs within the time and space boundaries of the employment and during an activity whose purpose is related to the employment. *Palumbo v. Port Houston Terminal, Inc.*, 18 BRBS 33 (1986); *Mulvaney v. Bethlehem Steel Corp.*, 14 BRBS 593 (1981). However, in cases arising under the DBA, the United States Supreme Court has held the injury may be determined to have occurred within the course of employment even if the injury did not occur within the space and time boundaries of work, so long as the employment creates a "zone of special danger" out of which the injury arises. *O'Leary v. Brown-Pacific-Maxon, Inc.*, 340 U.S. 504, 507 (1951). In this case, the issue does not concern whether Claimant's injuries occurred in the course of his employment but whether they arose out of his employment. *See* 33 U.S.C. §902(2). The "zone of special danger" doctrine does not aid the claimant in this inquiry, although the Section 20(a) presumption, which the ALJ applied to link Claimant's alleged testicular, psychological, and back injuries to his work with Employer, does apply.

[7] For this reason, we reject Claimant's assertions that the ALJ failed to consider the credibility of Employer's experts in addressing whether their opinions rebutted the Section 20(a) presumption.

Back Injury

The ALJ permissibly found Dr. Petersen's opinion constitutes substantial evidence that a reasonable mind could find adequate to support the conclusion that Claimant does not have any back condition. *Victorian*, 52 BRBS 35; *Suarez*, 50 BRBS 33; *Cline*, 48 BRBS 5. Dr. Petersen opined he could "find no objective rationale for a diagnosis regarding cervical, thoracic or lumbar spine complaints" and "no sufficient indication of work causation to suggest rationality or reasonability for a subjective complaint" relating to Claimant's back. The ALJ, therefore, is correct that Dr. Petersen's statements constitute substantial evidence showing either Claimant's back symptoms are not related to his work for Employer or he does not suffer from the claimed harm. *Rochester v. George Washington Univ.*, 30 BRBS 233 (1997). Consequently, we affirm the ALJ's finding that Employer rebutted the Section 20(a) presumption for Claimant's alleged back condition.[8] *Rainey*, 517 F.3d at 637, 42 BRBS at 14(CRT); *Victorian*, 52 BRBS at 41.

Psychological Injuries

The ALJ found Dr. Epker's report, that Employer submitted, rebutted the Section 20(a) presumption that Claimant's alleged psychological injury/PTSD arose out of his work with Employer. Dr. Epker unequivocally opined Claimant "does not meet criteria for a psychiatric" diagnosis and "does not have a psychological condition related to his work in Afghanistan."[9] Thus, his opinion, as the ALJ concluded, constitutes substantial evidence that Claimant "does not have a psychological injury," D&O at 18, and therefore his work for Employer did not cause a psychological injury. *See generally Truczinskas v. Director, OWCP*, 699 F.3d 672, 46 BRBS 85(CRT) (1st Cir. 2012). Consequently, we affirm the ALJ's finding that Employer rebutted the Section 20(a) presumption that Claimant's alleged psychological injury arose out of his work with Employer. *Rainey*, 517 F.3d at 634, 42 BRBS at 12(CRT); *Marinelli*, 248 F.3d at 64-65, 35 BRBS at 49(CRT); *O'Kelley*, 34 BRBS at 41.

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[8] We affirm the ALJ's finding that Claimant "has established a prima facie case for his back injuries only" and resulting inference that Claimant is not entitled to the Section 20(a) presumption in terms of his alleged bilateral knee and/or general bone, joint, and muscle injuries as those inferences are unchallenged on appeal. *Scalio v. Ceres Marine Terminals, Inc.*, 41 BRBS 57 (2007).

[9] Moreover, Dr. Epker observed "there was no indication [Claimant] suffered from a pre-existing mental health condition and there was no evidence of personality disorder," nor did Claimant allege he had any pre-existing conditions, thereby providing rebuttal for any aggravation claim.

Causation as a Whole

If the employer rebuts the Section 20(a) presumption, 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. *Rainey*, 517 F.3d at 634, 42 BRBS at 12(CRT); *Marinelli*, 248 F.3d at 65, 35 BRBS at 49(CRT); *Santoro v. Maher Terminal, Inc.*, 30 BRBS 171 (1996); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994). It is well established the ALJ is entitled to weigh the evidence and draw her own inferences and conclusions from it. *See John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961); *see also Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962). It is impermissible for the Board to reweigh the evidence or to substitute its own views for those of the ALJ. *Sealand Terminals v. Gasparic*, 7 F.3d 321, 28 BRBS 7(CRT) (2d Cir. 1993); *Volpe v. Northeast Marine Terminals*, 671 F.2d 697, 14 BRBS 538 (2d Cir. 1982).

Back Injury

In weighing the evidence as a whole, the ALJ gave greater weight to Drs. Sekimpi and Peterson and lesser weight to Drs. Naddumba and Mivule. In reaching this conclusion, the ALJ found Dr. Peterson interpreted Claimant's cervical, thoracic, and lumbar spine MRI taken the day of Dr. Sekimpi's examination, as normal. In contrast, although Dr. Naddumba interpreted an MRI as indicating multi-lumbar disc injuries, which he attributed to Claimant's work-related wearing of heavy armor, it is unclear when that MRI occurred and it is not in the record. Additionally, she found that while Dr. Mivule noted Claimant's straight leg test was positive for sciatica, he diagnosed him with "general mechanical back pain," and not sciatica or any other injury or disorder. She further stated the credibility of Dr. Mivule's treatment note was diminished by his repeated reference to a patient named "Harrison" rather than to Claimant's given name, Alison. Moreover, the ALJ found Claimant's overall testimony and actions rendered his self-reporting of his symptoms noncredible.

In reaching his conclusion, Dr. Petersen "thoroughly reviewed" Claimant's medical records, including his subjective complaints of experiencing muscle and back pain in 2017 and 2018,[10] and relied on his virtual participation in Dr. Sekimpi's March 5, 2021

[10] Dr. Petersen stated Claimant "comments that he first notices muscle pain in January of 2018" and that "a fall on his knees in October 2017 created knee discomfort with the insidious onset of cervical, thoracic, lumbar and sacral symptoms at some point thereafter." Ex 18. He reviewed a medical report from September 16, 2019, in which "[t]here is no mention of significant cervical, thoracic, lumbar or radicular difficulty" and

examination and personal review of MRIs of Claimant's cervical, thoracic, and lumbar spine "from March 5, 2021." EX 18. Thus, contrary to Claimant's contentions, Dr. Petersen acknowledged and considered Claimant's complaints of muscle and back pain, and unlike his counterpart, Dr. Naddumba, specifically identified the date of the MRI upon which he relied. Additionally, Dr. Petersen explained the foundation of his opinion stating he relied, in part, on "the normalcy of [Claimant's] MRI, significant delay in subjective complaints and lack of injury specificity."[11] *Id.* Recognizing the ALJ's broad discretion in weighing the evidence and making credibility determinations, we affirm her decision to credit Dr. Petersen over Drs. Naddumba and Mivule and her resulting conclusion that Claimant did not establish he sustained a work-related back injury.[12] *Gasparic*, 7 F.3d 321, 28 BRBS 7(CRT); *Volpe,* 671 F.2d 697, 14 BRBS 538.

Psychological Condition

The ALJ reviewed the opinions of Drs. Epker and Naddumba, as well as a treatment note from Mbarra Regional Hospital. Because of his credentials and comprehensive evaluation of Claimant, she accorded great weight to the opinion proffered by Dr. Epker, which she found well documented and reasoned, that Claimant "does not have a psychological condition related to his work in Afghanistan." In this regard, she found Dr. Epker has a Ph.D. in clinical psychology and his report included evaluations of Claimant's "affect/mood, interpersonal interaction, memory and concentration, and his judgement and reasoning" as well as objective testing. In contrast, the ALJ found Dr. Naddumba's diagnosis of PTSD relating to Claimant's "bad experience" working in a war zone suspect,

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one dated January 14, 2020, which represents "the first appearance in the clinical record of lower back discomfort, bilateral knee pain and arm and leg numbness" though "[t]here is no objective examination." *Id.* In addition, he reviewed a July 6, 2020 physiotherapy note which contained "no objective data" but recommended "a continuation of physiotherapy for another six months." *Id.*

[11] Moreover, contrary to Claimant's assertion, it stands to reason that Dr. Petersen did not consider Claimant's complaints of knee and back pain as Cedrak Ategeka reported on July 6, 2020, as that report was excluded from the record by the ALJ's order dated April 21, 2021. *See also* HT at 13-15 (Claimant's counsel stated, "nobody's trying to rely on Dr. Duke on the record or any records that originated from Dr. Duke or Mr. Atakika [*sic*].").

[12] The ALJ also sufficiently explained her rationale for finding "Claimant's self-reporting of his bone, joint, and muscle symptoms noncredible." D&O at 18. In this regard, she permissibly found Claimant's statements and actions in terms of reporting his symptoms and conditions in this case were inconsistent. *Id.*

because he is neither a licensed psychologist nor mental health expert but instead is an orthopedic surgeon, and so he predominantly "relied on the Claimant's self-reported symptoms" in making his assessment. The ALJ also considered and gave "some," though not dispositive, weight to the treatment notes from Mbarra Regional Hospital, which indicated Claimant was hospitalized between December 13-28, 2020, for "PTSD" and "stress reactions," because the underlying symptoms warranting Claimant's hospital stay, in part due to "aggressive and violent behavior" and "wandering away from home," did not appear anywhere else in the record. The ALJ fully weighed the evidence and concluded, upon "considering the cumulative evidence," that Claimant has not established by a preponderance of the evidence that he suffered a psychological injury due to his work for Employer. We affirm this conclusion as it is rational, supported by substantial evidence, and based on credibility determinations that are neither inherently incredible nor patently unreasonable. *See Pietrunti v. Director, OWCP*, 119 F.3d 1035, 1042, 31 BRBS 84, 89(CRT) (2nd Cir. 1997); *Gasparic*, 7 F.3d 321, 28 BRBS 7(CRT).

Nature and Extent of Disability - Testicular Injury

Claimant contends the ALJ erred in finding he "was no longer disabled" by his work-related testicular injury. Citing the reports of Drs. Mivule and Naddumba, as well as his own testimony, Claimant maintains "the record taken as a whole" shows he is disabled by his testicular injury and is entitled to compensation, including past and future medical benefits. He also asserts the ALJ did not adequately consider evidence establishing his testicular injury has not yet reached MMI. In this regard, Claimant asserts the ALJ did not fully address Dr. Naddumba's opinion as well as evidence indicating his testicular injury, which began in August 2017 and has continued up through March 2021, is of such a lasting, indefinite duration that it is permanent. Further, he asserts the ALJ incorrectly found Dr. Naddumba, in February 2021, did not note Claimant's complaints of testicular pain or adequately consider Dr. Naddumba's conclusions that Claimant is not yet at MMI and that, even after completion of treatment, he "will never serve again as an armed security guard."

The employee has the burden of establishing the nature and extent of disability. *Gacki v. Sea-Land Serv., Inc.*, 33 BRBS 127 (1998); *Trask v. Lockheed Shipbuilding & Constr. Co.*, 17 BRBS 56 (1980). A claimant's condition has reached MMI when he is no longer undergoing treatment with a view toward improving his work-related condition or that condition is of a lasting and indefinite duration and beyond a normal healing period. *See Gulf Best Electric, Inc. v. Methe*, 396 F.3d 601, 38 BRBS 99(CRT) (5th Cir. 2004); *Louisiana Ins. Guaranty Ass'n v. Abbott*, 40 F.3d 122, 29 BRBS 22(CRT) (5th Cir. 1994); *Watson v. Gulf Stevedore Corp.*, 400 F.2d 649 (5th Cir. 1968), *cert. denied*, 394 U.S. 976 (1969); *see also McCaskie v. Aalborg Ciserv Norfolk, Inc.*, 34 BRBS 9 (2000). The Board must affirm a finding of fact establishing the date of MMI if it is supported by substantial evidence. *Ezell v. Direct Labor, Inc.*, 33 BRBS 19 (1999); *Mason*

v. Bender Welding & Machine Co., 16 BRBS 307 (1984). To establish a prima facie case of total disability, the claimant must show he cannot return to his regular or usual employment due to his work-related injury. *Palombo v. Director, OWCP*, 937 F.2d 70, 25 BRBS 1(CRT) (2d Cir. 1991).

Dr. McBride, in his initial "case review," opined that the medical records Claimant provided pertaining to his August 2017 epididymitis indicated "the treating physician performed an appropriate diagnostic evaluation and administered appropriate treatment." EX 13. Based on the lack of evidence of any ongoing symptoms of epididymitis or scrotal symptomatology after Claimant's acute episode in August 2017, as well as the fact Claimant "resumed his normal work duties, presumably symptom free, for a duration of 6 months prior to his claim for disability,"[13] Dr. McBride stated the current records do not support Claimant's claim of disability. *Id.* Dr. McBride's "case re-review" stated Claimant had "follow up clinical care" in September 2019 for his epididymitis for which "[i]t seems he was re-prescribed the appropriate therapy" he received in 2017. EX 14. Further, Dr. McBride stated that although additional medical records through July 2020 "indicate ongoing musculoskeletal complaints 3 years after his initial episode of acute left epididymitis," Claimant's initial episode is not related to his physiotherapy and musculoskeletal treatment administered for chronic disability years later in 2019 and 2020. *Id.*

While the ALJ notes in her "*Disability Compensation*" discussion that "Claimant testified at the hearing that his testicle pain continues to prevent him from working," she made no finding as to whether Claimant established a prima facie case of total disability relating to that work injury. Nevertheless, she correctly found that "after January 2020, no doctor diagnosed a medical problem related to [Claimant's] testicles" and the record contains no medical evidence stating that Claimant's epididymitis alone precluded his ability to return to his usual work or limited his ability to perform any work at any time. Dr. Mivule's report contains no statement whatsoever regarding Claimant's limitations

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[13] Speaking generally about epididymis, Dr. McBride stated:

> In those who are diagnosed, medical treatment typically includes a 1-2 week course of an anti-microbial in conjunction with scrotal support, ice, and anti-inflammatory medication. In very rare cases when the initial course of anti-microbial is not sufficient for treatment, the patient's symptoms will persist, and eventually may transition into a chronic pain syndrome.

EXs 13, 14.

and/or ability to work.[14] CX 10. While Dr. Naddumba indicated Claimant told him of his testicular pain and treatment in 2017, the doctor's conclusions and recommendations focus on Claimant's alleged back, knee, and respiratory conditions and PTSD, which he opined all required further treatment and rendered Claimant unable to ever "serve again as an armed security guard." CX 15. Moreover, the record indicates Claimant, in fact, returned to his usual work for Employer, without any limitations or loss in wage-earning capacity, after his initial 2017 episode. Accordingly, we affirm the ALJ's conclusion that Claimant is no longer disabled by his testicular condition as substantial evidence supports the ALJ's finding that Claimant did not establish a prima facie case of total disability related to his work-related testicular condition.[15] *Palombo*, 937 F.2d 70, 25 BRBS 1(CRT).

Medical Benefits

Claimant contends the ALJ erred in denying past and future medical expenses for his testicular injury. He asserts the ALJ "should have awarded medical benefits for all expenses incurred" for his treatment from the date he returned to Uganda, as well as for his future medical treatment. Further, he maintains his testimony that he owes various medical service providers money for treatment of the work-related injuries he sustained with Employer and documentation of his past medical bills adequately supports his claim for medical benefits. At a minimum, Claimant states the ALJ should have remanded the case to the district director to allow him to submit his medical expenses and bills for payment by Employer. He therefore requests the Board reverse the ALJ's decision and "allow" him "to recover all expenses he has incurred on his medical treatment and allow for future medical benefits."

Section 7(a) requires an employer to pay for all reasonable and necessary medical expenses arising from a work-related injury "for such period as the nature of the injury or the process of recovery may require." 33 U.S.C. §907(a). For a medical expense to be

[14] As the ALJ found, while Dr. Mivule noted Claimant's complaint of a "painful and swollen right testis" and "old medical history of painful right testis," he made no diagnosis himself as to that complaint, but only diagnosed malaria and general mechanical back pain with upper and lower limb parathesis.

[15] Regarding the ALJ's finding that Claimant was disabled by his work-related epididymitis in September 2019, we affirm her denial of benefits for that period of disability as it is unchallenged on appeal. *Scalio*, 41 BRBS 57. Moreover, we hold any error in the ALJ's analysis as to the nature and extent of his disability is harmless as there is no evidence that Claimant's work-related testicular condition was an ongoing condition that precluded him from performing any work.

awarded, it must be reasonable and necessary for the treatment of the work injury at issue. 33 U.S.C. §907; *Davison v. Bender Shipbuilding & Repair Co., Inc.*, 30 BRBS 45, 47 (1996); *Romeike v. Kaiser Shipyards*, 22 BRBS 57, 60 (1989); 20 C.F.R. §702.402. The claimant must provide an adequate evidentiary basis sufficient to support the award of medical benefits such as past expenses incurred or evidence of necessary treatment in the future for the work-related injury. *Davison*, 30 BRBS at 47. A claimant may establish his prima facie case for compensable medical treatment when a qualified physician indicates that treatment is necessary for a work-related condition, *see Baker*, 991 F.2d 163, 27 BRBS 14(CRT); *Romeike v. Kaiser Shipyards*, 22 BRBS 57 (1989). Whether a particular medical expense is necessary is a factual issue within the ALJ's authority to resolve. *See Weikert v. Universal Maritime Serv. Corp.*, 36 BRBS 38 (2002); *Wheeler v. Interocean Stevedoring, Inc.*, 21 BRBS 33 (1988). The Board is not empowered to reweigh the evidence but must accept the ALJ's rational inferences and findings of fact which are supported by the record. *See Gasparic*, 7 F.3d 321, 28 BRBS 7(CRT); *Volpe*, 671 F.2d 697, 14 BRBS 538.

In this case, the ALJ found Claimant made no claim that he paid for his 2017 epididymitis treatment and the record contains no specific documentation of, or corresponding medical receipts for, his 2019 treatment.[16] She next found that although Claimant presented medical receipts for physiotherapy appointments at Surs Healthcare for services rendered from January to December 2020, CX 18, that treatment, as Dr. McBride opined, is not connected to Claimant's work-related testicular injuries. Further, she found that because "Claimant is no longer disabled by his testicular condition, he is also not eligible for future medical benefits." D&O at 22. Accordingly, she found Claimant did not establish any compensable past or future medical expenses for this now-resolved injury.

As the ALJ found, the record contains no evidence of any past medical bills Claimant incurred in 2017 for treating his work-related testicular injury. Additionally, there are no medical records, let alone any bills, documenting Claimant's September 2019 treatment for epididymitis. There also is nothing in the record to demonstrate Claimant's 2020 physiotherapy sessions involved any treatment for his work-related epididymitis. Indeed, Dr. Naddumba's 2021 report indicated Claimant's physiotherapy was "for his back, bilateral knee and chest injuries" and recommended Claimant undergo further back and bilateral knee physiotherapy. CX 15. Additionally, Dr. Petersen generally stated he did not believe Claimant "requires any further medical treatment which is the

[16] The ALJ found Claimant received treatment for his initial episode of epididymitis at the Ecolog clinic on July 27, 2017, and at Zwan OPD clinic and Westex Medical Laboratories on August 1, 2017. D&O at 22. She also found, based on Dr. McBride's report, that Claimant was treated again for epididymitis in Uganda in September 2019. *Id.*

responsibility" of Employer, EX 18, and Dr. McBride explicitly opined that Claimant's initial episode of left epididymitis "is not related to his physiotherapy and musculoskeletal treatment administered for chronic disability years later in 2019 and 2020." EX 14. Consequently, we affirm the ALJ's denial of medical benefits for Claimant's work-related epididymitis because Claimant has neither challenged the denial of benefits for the 2019

time frame, nor produced any evidence to support a claim for reimbursement for treatment of that work-related condition.[17] *Davison*, 30 BRBS at 47.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

[17] We therefore also affirm the ALJ's denial of an employer-paid attorney's fee under Section 28(a) of the Act, 33 U.S.C. §928(a), as Claimant's counsel has not achieved a successful prosecution of his claim. 33 U.S.C. §928(a); *Am. Stevedores, Inc. v. Salzano*, 538 F.2d 933, 4 BRBS 195 (2d Cir. 1976); *Clophus v. Amoco Prod. Co.*, 21 BRBS 261 (1988); 20 C.F.R. §702.134(a).