U.S. Department of Labor

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

BRB No. 22-0267

NEXHAT ELEZI	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
FLUOR CONOPS, LIMITED	)	
	)	DATE ISSUED: 9/27/2023
and	)	
	)	
INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA	)	
	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of Decision and Order Denying Benefits of Theodore W. Annos, Administrative Law Judge, United States Department of Labor.

Phillip M. Davis (The Law Office of Phillip M. Davis), Dallas, Texas, for the Claimant.

James M. Mesnard (Postol Law Firm, P.C.), McLean, Virginia, for the Employer/Carrier.

Before: BOGGS, BUZZARD, and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Theodore W. Annos's Decision and Order (2019-LHC-00974) rendered on a claim filed pursuant to the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (Act), as

extended by the Defense Base Act, 42 U.S.C. §1651 *et seq*. (DBA).[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 native of Kosovo, began working for Employer as a warehouseman in Afghanistan in December 2010. Employer's Exhibit (EX) 9 at 9; Claimant's Exhibit (CX) 5. Claimant worked at four different camps in Afghanistan: Bagram (until around March 2011), Dehdadi (for the longest stretch, until the summer of 2012), Marmal (for about three months), Konduz (until summer 2013), and then back to Bagram (until his resignation in July 2014). EX 9 at 22-24; EX 7 at 2. He testified he was exposed to frequent rocket attacks during both stints at Bagram, occurring every two to three days. *Id*. at 25-26, 39-42. However, he testified Dehdadi, Marmal, and Konduz were "very calm" (*id*. at 30, 34, 38) except for two incidents. While at Dehdadi, Claimant heard a soldier had committed suicide; he did not know the soldier and denied witnessing the incident, but he started having dreams where a face would come to him and say, "now I am calm." *Id*. at 31. While at Konduz, he was in the materials building when the Taliban blew up two fuel trucks at the entrance to the base. He did not witness or hear the explosion, but he immediately saw the black smoke. *Id*. at 34-38.

Claimant testified because of these incidents he began suffering from sleeplessness, loss of appetite, accelerated heartbeat, bad dreams, disorientation, and lack of concentration. EX 9 at 26, 27, 29, 31, 38, 43. Claimant testified he resigned from his employment because of the "problems in his head." *Id*. at 22, 44, 59. He testified he did not report his symptoms at that time because he wanted to get back to Kosovo as soon as possible. *Id*. at 59-60. About two weeks after he returned to Kosovo, he began seeking treatment at the general hospital in Ferizaj because he could not sleep. *Id*. at 44-45. He visited the hospital 7 or 8 times, where medical providers would give him an injection to calm him down. *Id*. at 44-45. Claimant testified he attempted to return to work in Kosovo about 6 or 7 times between 2014 and 2016, but he was unable to complete more than half a day on the job because he would start to feel bad. *Id*. at 53-57.

Claimant first sought treatment from a psychiatrist on June 20, 2016, when he was evaluated by Dr. Ramadan Halimi. EX 9 at 46; CX 6. He told Dr. Halimi he was suffering from bad headaches, sleeplessness, nightmares, forgetfulness, irritability, difficulty focusing, and negative thoughts. EX 9 at 47-48; CX 6 at 171-172. He confirmed Dr. Halimi told him at his initial visit that he was suffering from Post-Traumatic Stress

[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).

Disorder (PTSD) with moderate depressive disorder as a result of his employment in Afghanistan. EX 9 at 50; CX 6 at 172. He further confirmed Dr. Halimi told him, at this visit, that he was unable to work as a result of this diagnosis. EX 9 at 50-51; CX 6 at 173. Dr. Halimi has continued to treat Claimant, with advice and medications. EX 9 at 51; CXs 7-28.

Claimant filed a claim for compensation for employment-related PTSD on November 16, 2018. CX 29. The ALJ issued a Notice of Hearing and Pre-Hearing Order on August 15, 2019, scheduling the hearing for March 31, 2020, with a discovery deadline of February 26, 2020, and a deadline for expert disclosures of March 4, 2020.

On December 6, 2019, Claimant was evaluated in Kosovo by Employer's expert psychiatrist Dr. Geoff Isaacs. EX 12 at 2. Dr. Isaacs issued a report on December 10, 2019, wherein he concluded, based upon his interview of Claimant and review of Claimant's medical records, *id*. at 1-9, that Claimant did not suffer from PTSD or any psychological condition related to his employment in Afghanistan. *Id*. at 10-11. He confirmed this opinion via an addendum report dated January 10, 2020, and was deposed on February 4, 2020. EXs 13, 15.

On February 14, 2020, the ALJ granted Employer's Motion for Partial Summary Decision.[2] *See* Order Granting Employer/Carrier's Motion for Partial Summary Decision. The ALJ dismissed Claimant's claim for disability compensation, finding the uncontroverted evidence establishes the claim was untimely filed pursuant to Section 13 of the Act, 33 U.S.C. §913. *Id*. A dispute remained, however, over Claimant's entitlement to medical benefits under Section 7 of the Act, 33 U.S.C. §907.

On March 13, 2020, the Chief ALJ issued an *Administrative Notice*, 2020-MIS-00004, suspending all in-person hearings due to the pandemic. On March 17, 2020, upon agreement between the parties, the ALJ issued an order canceling the hearing scheduled for March 31, 2020, and granting the parties until April 10, 2020, to exchange and submit trial exhibits and until May 29, 2020, to submit closing briefs. *See* Order Cancelling Hearing and Establishing Dates for Trial by Submission.

On April 10, 2020, both parties exchanged exhibits. Notably, Claimant's submission identified two exhibits – CXs 35 and 36 – as "pending." *See* Nexhat Elezi's Exhibit List for Formal Hearing by Submission, dated April 10, 2020. The first exhibit, CX 35, was identified as the transcript of Dr. Isaacs's deposition; this was provided by Employer as EX 15. The second exhibit, CX 36, was identified as "Response of Dr. R.

[2] Employer filed its Motion for Partial Summary Decision on January 15, 2020. Claimant did not submit a response.

Halimi to Dr. G. Isaacs' Report of December 10, 2019." *Id*. at 3. Included within Claimant's exhibit list was a request to submit CX 36 upon receipt, as the "current global pandemic has resulted in significant disruptions to his ability to communicate with his treating physician, Dr. Ramadan Halimi, and that such disruptions have hampered his ability to obtain Dr. Halimi's response to Dr. Isaacs's report." *Id*.

Three days later, on April 13, 2020, Claimant submitted CX 36, a letter report from Dr. Halimi dated April 11, 2020, along with an Amended Exhibit List. On April 15, 2020, Employer filed an objection to CX 36 on the grounds that it was untimely, as it was provided after the deadlines for expert disclosures and for submission of trial exhibits. Claimant did not respond.

After considering the record and the parties' closing briefs, the ALJ issued a Decision and Order Denying Benefits (D&O) on February 25, 2022. He first addressed the evidentiary dispute over admission of CX 36, Dr. Halimi's written response to Dr. Isaacs's medical report. D&O at 4. Although he acknowledged the difficulties presented by the global pandemic, the ALJ stated he could not understand how these difficulties had any impact on Claimant's ability to communicate with Dr. Halimi, given that the deadlines for discovery and expert disclosures (February 26, 2020, and March 4, 2020, respectively), as established by the original Pre-Hearing Order, expired prior to the "well-known timeline of events surrounding the pandemic." *Id*. The ALJ noted Claimant provided no clarification or details as to how the pandemic affected his ability to comply with these deadlines; in fact, the letter sent to Dr. Halimi requesting his report was "noticeably" undated, and "therefore [did] not substantiate the assertion of pandemic-related delays." *Id*. at 4-5. Consequently, as Claimant failed to seek relief either prior to or following expiration of the discovery and expert deadlines, instead improperly seeking leave in his exhibit list, and in light of the potential prejudice to Employer if the exhibit was admitted, the ALJ excluded CX 36 from the record. *Id*. at 5.

As to the merits of Claimant's claim for Section 7 medical benefits, 33 U.S.C. §907, the ALJ found Claimant failed to establish a work-related injury and thus denied the claim. D&O at 20. He found Claimant established a prima facie case of compensability under Section 20(a) of the Act, 33 U.S.C. §920(a), through his own testimony and the medical reports of Dr. Halimi, and that Employer successfully rebutted this presumption with Dr. Isaacs's medical report. *Id*. at 9-11. Upon weighing the evidence, he found Claimant lacked credibility, particularly regarding his descriptions of his experiences in Afghanistan and his medical treatment upon returning to Kosovo. *Id*. at 11-13. The ALJ also credited the medical opinion of Dr. Isaacs, which he found to be well-reasoned and well-documented, over that of Dr. Halimi, which he found conclusory and deficient. *Id*. at 13-20. The ALJ concluded Claimant failed to establish a work-related injury by a preponderance of the evidence and denied the claim for benefits. *Id*. at 20.

Claimant appeals, arguing the ALJ erred in: excluding CX 36; finding Claimant lacked credibility; assigning no weight to Dr. Halimi's medical reports; failing to "consider the implications of Kosovar law upon the collection and introduction of evidence," particularly with respect to Dr. Isaacs's examination of Claimant; and granting Employer's motion for partial summary decision on the issue of timeliness. Employer responds, urging affirmance.

Exclusion of Evidence

Claimant maintains the ALJ erred in excluding CX 36 – Dr. Halimi's response to Dr. Isaacs's report – arguing 20 C.F.R. §702.338 mandates all relevant and material evidence be admitted. Claimant's Brief in Support of Petition for Review (Cl. PR Br.) at 13. However, Section 23(a) of the Act, 33 U.S.C. §923(a), states the ALJ is not bound by common law or statutory rules of evidence or procedure but may conduct the hearing "in such manner as to best ascertain the rights of the parties." *See also* 20 C.F.R. §702.339. Thus, the ALJ has great discretion concerning the admission of evidence, *Hughes v. Bethlehem Steel Corp*., 17 BRBS 153, 155 n.1 (1985), and any decisions regarding the admission or exclusion of evidence are reversible only if arbitrary, capricious, an abuse of discretion, or not in accordance with law. *Irby v. Blackwater Security Consulting*, 44 BRBS 17 (2010); *Cooper v. Offshore Pipelines Int'l, Inc.*, 33 BRBS 46 (1999). Moreover, despite the regulation requiring admission of relevant and material evidence, 20 C.F.R. §702.338, the Board has held it is within the ALJ's discretion to exclude even relevant and material testimony for failure to comply with the terms of a pre-hearing order.[3] *Durham v. Embassy Dairy*, 19 BRBS 105 (1986); *Williams v. Marine Terminals Corp.*, 14 BRBS 728, 733 (1981); *see also G.K. [Kunihiro] v. Matson Terminals, Inc.*, 42 BRBS 15, 17 (2008), *aff'd sub nom. Director, OWCP v. Matson Terminals, Inc.*, 442 F. App'x 304 (9th Cir. 2011); *Picinich v. Seattle Stevedore Co.*, 19 BRBS 63, 64-65 (1986).

Without submitting a formal motion as required by 29 C.F.R. §18.33, Claimant requested leave to file an untimely expert report, over one month after the deadlines for both discovery and expert disclosures had passed, because the global pandemic had allegedly prevented him from communicating with Dr. Halimi and obtaining his response to Dr. Isaacs's reports. However, Dr. Isaacs's reports, and his deposition testimony, were

[3] While Claimant relies on Section 702.338's requirement for ALJs to admit all relevant evidence, the regulation also states ALJs have discretion to determine the "order in which evidence and allegations shall be presented and the procedures at the hearings generally" so long as they "afford the parties a reasonable opportunity for a fair hearing." 20 C.F.R. §702.338. Thus, the text of the regulation does not support Claimant's assertion that the ALJ lacks authority to exclude untimely submitted evidence.

provided and/or obtained well before the discovery and expert disclosure deadlines, which had passed prior to the OALJ *Administrative Notice* suspending hearings due to the pandemic. We note that Dr. Isaacs's initial report was submitted in 2019. Claimant provided no evidence of his allegedly failed attempts to contact Dr. Halimi, other than the undated letter requesting his response to Dr. Isaacs's reports. Based on this evidence and considering Claimant's failure to properly seek relief or a continuance prior to or after expiration of the deadlines, as well as the potential prejudice to Employer if the late submission was allowed, the ALJ permissibly found Claimant "failed to demonstrate good cause and excusable neglect so as to permit the admission of the untimely Response." D&O at 5 (citing 29 C.F.R. §18.32(b)(2)). As this discretionary finding is neither arbitrary nor capricious, but is supported by the evidence, we affirm the exclusion of CX 36 from the record. *Irby*, 44 BRBS 17; *Cooper*, 33 BRBS 46.

Compensability under Section 20(a)

To be entitled to the Section 20(a) presumption linking his injuries to his employment, a claimant must sufficiently allege: 1) he has sustained a harm; and 2) an accident occurred or working conditions existed which could have caused or aggravated the harm. *Rose v. Vectrus Systems Corporation*, 56 BRBS 27 (2022) (Decision on Recon. en banc), *appeal dismissed* (M.D. Fla. Aug. 24, 2023); *see, e.g., American Stevedoring, Ltd. v. Marinelli*, 248 F.3d 54, 35 BRBS 41(CRT) (2d Cir. 2001); *O'Kelley v. Dep't of the Army/NAF*, 34 BRBS 39 (2000). If the Section 20(a) presumption is invoked, the burden shifts to the employer to produce substantial evidence that the claimant's condition was not caused or aggravated by his employment. *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). If the employer rebuts the Section 20(a) presumption, it no longer controls and the issue of causation must be resolved on the evidence of record as a whole, with the claimant bearing the burden of persuasion by a preponderance of the evidence. *Rainey*, 517 F.3d at 634, 42 BRBS at 12(CRT); *Marinelli*, 248 F.3d at 65, 35 BRBS at 49(CRT); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994).

The ALJ has the authority and discretion to weigh the evidence, accepting any medical opinion in whole or in part. *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997); *Santoro v. Maher Terminals, Inc.*, 30 BRBS 171 (1996); *see also Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962). The Board cannot re-weigh the evidence; rather, if the ALJ's conclusion upon weighing the evidence is rational and supported by substantial evidence, it must be affirmed. *Carswell v. E. Pihl & Sons*, 999 F.3d 18, 55 BRBS 27(CRT) (1st Cir. 2021), *cert. denied*, 142 S.Ct. 1110 (2022).

After finding the presumption invoked and rebutted, the ALJ weighed the evidence and found Claimant lacked credibility based on several discrepancies in his testimony,

discovery responses, and reports to physicians. He found Dr. Halimi's notation in his initial evaluation report indicating Claimant had "witnessed the death of friends" in Afghanistan was inconsistent with Claimant's deposition testimony and his interview with Dr. Isaacs, wherein he did not describe or mention witnessing any deaths but rather confirmed he did not witness the death of any individual while in Afghanistan. D&O at 12; *see* CX 6 at 172; EX 9 at 41; EX 12 at 6. Additionally, the ALJ found Claimant indicated in discovery responses that he was "very close" to the fuel truck explosion at Konduz, but in his deposition testified it occurred about 300 to 400 meters away on the other side of the camp, and he did not hear the explosion. *Id*.; *see* EX 9 at 35-37; EX 16 at 25. The ALJ noted Claimant told Dr. Isaacs he did not discuss his Afghanistan experiences with his family until after he began treatment with Dr. Halimi, yet Dr. Halimi's initial evaluation report noted Claimant had sought treatment through "alternative healers," who Claimant later clarified consisted of his family members. *Id*.; *see* CX 6 at 171; EX 9 at 49; EX 12 at 5. Finally, the ALJ found Claimant's testimony that he "immediately" and "very often" sought treatment from a local hospital upon his return to Kosovo undermined by the absence of any such indication of treatment in Dr. Halimi's reports, as well as his failure to disclose this treatment in his discovery responses. *Id*. at 13; *see* CXs 6-28; EX 9 at 44-45; EX 12 at 5; EX 16 at 2-10.

Claimant argues the ALJ's determination that he lacks credibility is erroneously based on misstatements and mischaracterizations of the evidence, and therefore must be overturned. Claimant maintains Dr. Halimi's indication in his initial evaluation that Claimant "witnessed the death of friends," was not evidence of inconsistency but was more likely a mistake on the part of Dr. Halimi. Cl. PR Br. at 14-15. Claimant argues the ALJ oversimplified his testimony regarding the fuel truck explosion at Konduz, and that it represented a "reasonable description of a chaotic event in a chaotic environment." Cl. PR Br. at 19. Finally, Claimant cites his own testimony acknowledging he could not remember the name of the hospital and/or physicians he saw from 2014 until 2016 as explanation for his failure to identify them in discovery responses and argues the ALJ's determination that he failed to report this treatment to Dr. Halimi constituted an improper "assumption" and "speculation." *Id*. at 19-20.

The ALJ is accorded broad discretion in making credibility determinations. *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). Questions of witness credibility are for the ALJ as the trier-of-fact, and the Board must respect his evaluation of all testimony, including that of medical witnesses. *Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961). The Board will not interfere with credibility determinations unless they are "inherently incredible or patently unreasonable." *Cordero v. Triple A Mach. Shop*, 580 F.2d 1331, 1335, 8 BRBS 744, 747 (9th Cir. 1978), *cert.*

denied, 440 U.S. 911 (1979); *see generally Bis Salamis, Inc. v. Director, OWCP [Meeks]*, 819 F.3d 116, 130, 50 BRBS 29, 37(CRT) (5th Cir. 2016) (Board may not second-guess an ALJ's factual findings or disregard them merely because other inferences could have been drawn from the evidence). Considering the broad discretion accorded ALJs in weighing credibility, *Gasparic*, 7 F.3d 321, 28 BRBS 7(CRT), and as the ALJ's determination is supported by substantial evidence and is not "inherently incredible or patently unreasonable," we affirm his finding Claimant's credibility undermined by several discrepancies between his testimony, statements, and other evidence in the record. *Cordero*, 580 F.2d at 1335, 8 BRBS at 747(CRT); *see also Carswell*, 999 F.3d 18, 55 BRBS 27(CRT); *Calbeck*, 306 F.2d 693.

Claimant also maintains the ALJ erred in assigning more weight to Dr. Isaacs's medical opinion than that of Dr. Halimi. He points to Dr. Isaacs's not conducting psychological testing, compared to Dr. Halimi's professed administration of the Harvard Trauma Questionnaire and Beck Depressive Inventory. He maintains his treating physician's opinion should be granted considerable weight, relying upon *Pietrunti v. Director, OWCP*, 119 F.3d 1035, 31 BRBS 84(CRT) (2d Cir. 1997), *Amos v. Director, OWCP*, 153 F.3d 1051 (9th Cir. 1998), *amended*, 164 F.3d 480, 32 BRBS 144(CRT) (9th Cir. 1999), *cert. denied*, 528 U.S. 809 (1999), and *Rivera v. Harris*, 623 F.2d 212, 216 (2d Cir. 1980). Cl. PR Br. at 21-22.

However, unlike *Pietrunti*, *Amos*, and *Rivera*,[4] this case involves conflicting medical opinions on the issue of causation. The ALJ permissibly and rationally weighed

[4] *Pietrunti*, *Amos*, and *Rivera* are distinguishable from the case before us in that the treating physicians' opinions on the issue of causation were uncontradicted or causation was not in dispute. In *Pietrunti*, the United States Court of Appeals for the Second Circuit vacated the ALJ's finding of insufficient credible evidence to support a causal link between the claimed psychological injury and the work-related arm injury, holding the ALJ impermissibly substituted his own judgment for that of the claimant's treating physician, whose opinion as to causation was uncontradicted. *Pietrunti*, 119 F.3d at 1044, 31 BRBS at 91(CRT). In *Amos*, the dispute on appeal involved the reasonableness and necessity of surgery to treat the work-related condition, not whether the condition itself was work-related. *Amos*, 153 F.3d at 1054, 32 BRBS at 147(CRT). The claimant's treating physician recommended surgery, but the employer's two experts recommended against surgery. *Id*., 153 F.3d at 1052-1053, 32 BRBS at 145-146(CRT). Because all the physicians' recommendations were valid and reasonable, the court held it was for the claimant and his doctor, not the employer or the ALJ, to decide how to proceed with his medical care. *Id*., 153 F.3d at 1054, 32 BRBS at 147(CRT). Finally, in *Rivera*, a Social Security Disability benefits claim, the issue in dispute was whether the claimant was able to work; as the

Dr. Isaacs's causation opinion against the causation opinion of Claimant's treating physician, Dr. Halimi, and found Dr. Halimi's opinion less convincing, as it was neither well-documented nor well-reasoned. *See Calbeck*, 306 F.2d 693; *Donovan*, 300 F.2d 741; *Hughes*, 289 F.2d 403; *Perini Corp. v. Heyde*, 306 F. Supp. 1321 (D.R.I. 1969).

The ALJ acknowledged Dr. Halimi professed to administer psychological testing but noted the absence of any results. D&O at 15; *see* CX 6 at 172. He further found Dr. Halimi's PTSD assessment under the DSM-V criteria appeared incomplete, and his records lacked any details regarding Claimant's allegedly traumatic experiences, other than indicating there were "many," which was contradicted in part by Claimant's testimony that his stints at Dehdadi, Marmal, and Konduz, where he was stationed from Spring 2011 through Summer 2013, were "very calm." *Id*. at 15-16; *see* CX 6 at 172-173; EX 9 at 30, 33-34, 38. The ALJ noted the only specific traumatic experience included in Dr. Halimi's report was "witness[ing] the death of friends," which was contrary to Claimant's testimony and his reports to Dr. Isaacs, and further undermined his diagnosis. *Id*.; *see* CX 6 at 172; EX 9 at 41; EX 12 at 6. He also found Dr. Halimi's subsequent treatment records to be conclusory, containing nothing beyond a diagnosis, medication list, recommendation for continued treatment, and statement as to Claimant's inability to work. *Id*. at 16; *see* CXs 7-28.

In contrast, the ALJ found Dr. Isaacs's report to include documentation of Claimant's personal, work, and medical history, and identification of Claimant's alleged symptoms and traumatic experiences. *Id*. at 17; *see* EX 12 at 10-12. He relied upon Dr. Isaacs's explanations upon being deposed of his findings, the data upon which he relied, and how that data supported his conclusions. *Id*. at 19-20; *see* EX 15 at 27-29, 33, 38-43, 45, 47, 49-51.

As the ALJ's credibility determination with respect to the medical experts is rational and supported by substantial evidence, we affirm his findings. *Cordero*, 580 F.2d at 1335, 8 BRBS at 747(CRT); *see also Carswell*, 999 F.3d 18, 55 BRBS 27(CRT); *Calbeck*, 306 F.2d 693.

Foreign Blocking Statute

Claimant seeks remand so the ALJ can "consider the implications of Kosovar law upon the collection and introduction of evidence in this case," specifically regarding Dr. Isaacs's examination of Claimant in Kosovo. For support, Claimant points to the Chief ALJ's *Administrative Notice* of October 5, 2021, advising litigants in cases involving

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treating physicians' opinions failed to show she could not work, the Second Circuit affirmed the denial of benefits. *Rivera*, 623 F.2d at 216.

foreign parties, witnesses, or evidence, to take note of foreign law as well as the Hague Convention on the Taking of Evidence Abroad in Civil and Commercial Matters.[5] Cl. PR Br. at 22-23. We reject Claimant's arguments.

Under the OALJ Rules, a claimant has 14 days to object to an employer's notice of physical examination. 29 C.F.R. §18.62(1)(4). Moreover, if a claimant does object to an examination by the employer's physician, Board precedent outlines the legal framework to be applied: the employer has the burden to show a refusal to submit is unreasonable, whereupon the burden shifts to the claimant to show the refusal is justified. *Malone v. Int'l Terminal Operating Co., Inc.*, 29 BRBS 100 (1995); *Hrycyk v. Bath Iron Works Corp.*, 11 BRBS 238 (1979). However, in this case, Claimant submitted to Dr. Isaacs's examination without objection; in particular, there is no evidence Claimant objected to Dr. Isaacs's examination on the grounds that it potentially violated Kosovar law at any point before or after it occurred, until his Notice of Appeal. By appearing for and submitting to Dr. Isaacs's examination and failing to object to that examination prior to this appeal, Claimant waived his objection. *Sylejmani v. Fluor ConOps, Ltd.*, 57 BRBS 25 (2023).

Like the claimant in *Sylejmani,* Claimant in this case fails to identify a Kosovar law or statute prohibiting Dr. Isaacs from examining Claimant in Kosovo. Rather, Claimant "of his own volition" sought benefits under U.S. law:

> In doing so, he agreed to have his claim adjudicated in accordance with the DBA, its accompanying regulations, and the general rules, procedures, and practices encountered in the American administrative benefits process [which] involves providing all parties an opportunity to be heard in a meaningful manner and at a meaningful time[.]

Id. at 30 (citing *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976)). In this case, Claimant placed his own psychological condition into controversy by alleging employment-related PTSD and seeking benefits under U.S. law for this condition. Notably, he is seeking payment of and reimbursement for medical treatment, also obtained in Kosovo, from a physician of his choosing. Like the claimant in *Sylejmani*, it is "disingenuous" for Claimant to rely on a diagnosis from his own doctor, whom he saw in Kosovo, as a basis for entitlement to benefits under U.S. law; voluntarily attend the Employer's second medical opinion evaluation in Kosovo; "have his claim fully adjudicated by the ALJ"; and then "call foul…pursuant to an unidentified law" after his claim was denied. *Id.* Like

[5] According to Claimant, Kosovo is not a signatory to this Hague Convention. Cl. PR Br. at 18 (citing The United States Department of State, *Kosovo Judicial Assistance Information*, TRAVEL.STATE.GOV, https://travel.state.gov/content/travel/en/legal/Judicial-Assistance-Country-Information/kosovo.html (last updated Nov. 20, 2018)).

Sylejmani, Claimant has failed to persuade us "Kosovar law prohibits the consideration of [Dr. Isaacs's already provided medical report], particularly since no Kosovar law has been cited and no U.S. court or tribunal ordered Claimant" to attend Dr. Isaacs's examination. *Id*.

Timeliness

Finally, Claimant argues the ALJ erred in granting Employer's partial summary decision on the issue of timeliness, as he failed to "apply or cite" the precedent of the United States Court of Appeals for the Second Circuit in *Dyncorp Int'l v. Director, OWCP [Mechler]*, 658 F.3d 133, 45 BRBS 61(CRT) (2d Cir. 2011). However, Claimant's appeal of the ALJ's Order Granting Employer/Carrier's Motion for Partial Summary Decision is untimely. Section 21(a), 33 U.S.C. §921(a), provides that a compensation order either awarding benefits or rejecting the claim becomes effective when filed in the district director's office as required by Section 19(e), 33 U.S.C. §919(e), and becomes final unless appealed within 30 days after the date of filing. *See also* 20 C.F.R. §§702.348, 702.350, 802.205. Any appeal filed after the 30-day period must be dismissed as untimely filed; this provision is jurisdictional, and the Board lacks authority to review an untimely appeal. *Jeffboat v. Mann*, 875 F.2d 660, 22 BRBS 79(CRT) (7th Cir. 1989); *Ins. Co. of N. Am. v. Gee*, 702 F.2d 411, 15 BRBS 107(CRT) (2d Cir. 1983); 20 C.F.R.§802.205(c). Therefore, any appeal of the ALJ's February 14, 2020 Order, which dismissed Claimant's claim for disability benefits, had to be filed by March 15, 2020, in order to be timely. Claimant's appeal filed on March 30, 2022, is therefore untimely.[6]

[6] Moreover, the ALJ's denial of the claim due to lack of compensability under Section 20(a), 33 U.S.C. §920(a), which we hold to be rational, supported by substantial evidence, and in accordance with the law, renders the issue of timeliness moot. *Ranks v. Bath Iron Works Corp.*, 22 BRBS 302, 306 n.5 (1989).

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

SO ORDERED.

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge