

U.S. Department of Labor

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



BRB No. 24-0016

MEYSON MONTES CANTENO)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
CONSTELLIS GROUP/TRIPLE CANOPY,)	
INCORPORATED)	
)	DATE ISSUED: 09/05/2024
and)	
)	
CONTINENTAL INSURANCE COMPANY)	
c/o CNA INTERNATIONAL)	
)	
Employer/Carrier-)	
Respondents)	DECISION and ORDER

Appeal of Decision and Order on the Record of Christine Hilleren-Wilkins,
Administrative Law Judge, United States Department of Labor.

Meyson Montes Canteno, Lima, Peru.

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

PER CURIAM:

Claimant, without representation,¹ appeals Administrative Law Judge (ALJ)
Christine Hilleren-Wilkins's Decision and Order on the Record (2021-LDA-02141)

¹ Claimant was represented by counsel throughout the entirety of the proceedings
before the Office of Administrative Law Judges (OALJ). His attorneys, Jacob S. Garn and

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). On appeal, Claimant generally challenges the ALJ's denial of benefits; therefore, the Benefits Review Board will review the findings adverse to him and address whether substantial evidence supports the Decision and Order on the Record (D&O).² See *Pierce v. Elec. Boat Corp.*, 54 BRBS 27 (2020). We must affirm the ALJ's decision if it is 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 worked for Employer as a security guard in Iraq from April 2008 to January 2010.³ Claimant's Exhibit (CX) 27 at 6-7; Employer's Exhibits (EXs) 1, 2. He was stationed at Camps Jackson and Olympia for his first contract with Employer beginning in April 2008. CX 27 at 6-7. His second contract with Employer was spent at the embassy hospital in Baghdad starting in April 2009. *Id.* He testified he worked twelve-hour shifts six days per week while providing security coverage outside of the embassy. *Id.* at 8. Upon completion of his second contract, Claimant returned to Peru in 2010 where he worked in shoes sales and took jobs as a gardener, painter, and apartment cleaner. *Id.* at 4, 14, 16, 18.

Claimant alleged he has a work-related psychological injury which caused him to stop work on January 11, 2010. CXs 1, 27 at 7-11; EX 1. He stated he witnessed multiple traumatic events "as a result of being exposed to harsh working conditions in a war zone." EX 2 at 1. In April 2008, he experienced an attack at Camp Jackson, during which he felt fear, and took cover in a bunker. CX 27 at 9-10. He also testified about ongoing mortar

Allison Graber of Attorneys Jo Ann Hoffman & Associates, P.A., filed a notice of appeal to the Benefits Review Board on October 13, 2023; however, on October 19, 2023, they informed the Board they were withdrawing their representation.

² Following counsel's withdrawal of representation, the Board denied Employer's motion to dismiss for abandonment, as claimants without legal representation are not required to file briefs or statements in support of their appeals. The Board will review this appeal under the general standard of review. 20 C.F.R. §§802.211(e), 802.220; Order (Jan. 2, 2024).

³ 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 located in New York. 33 U.S.C. §921(c); *McDonald v. Aecom Tech. Corp.*, 45 BRBS 45 (2011); see also *Global Linguist Solutions, L.L.C. v. Abdelmeged*, 913 F.3d 921 (9th Cir. 2019).

attacks and car bombs at Camp Olympia in 2008 that caused him to cry and fear for his life. *Id.* Further, he described an incident when a car bomb detonated during which Iraqis sought his help. *Id.* at 10. Moreover, in June or July of 2009, he witnessed a mortar attack near the embassy hospital which caused him fear. *Id.*

Claimant stated he began experiencing fear-related headaches and difficulty sleeping during his work with Employer. CX 27 at 4-5, 10. He reported his headaches to his supervisor in December 2009, received medication, and ultimately returned to Peru in 2010. From 2010 to 2019, he indicated his symptoms were “milder,” as his headaches diminished, and he addressed his nightmare-induced insomnia with over-the-counter medication. *Id.* at 7-8, 10-11. He also stated that maintaining employment in Peru was difficult because his headaches were exacerbated by co-workers who raised their voices and “g[ot] on [his] nerves.” *Id.* at 15.

On July 5, 2019, Claimant first met with his treating psychologist, Dr. Pedro Chirino Ruiz, who diagnosed him with “disorder due to specific trauma,” “severe depressive episode with psychotic symptoms,” “mixed depressive-anxious disorder,” “generalized anxiety disorder,” and “psychopathy,” and prescribed multiple medications for his headaches and insomnia. CXs 21 at 2-4, 28, 65, 27 at 12-13. Claimant met with Dr. Ruiz monthly until May 30, 2021, during which he discussed his childhood history, family relationships, and work with Employer in Iraq. CXs 21 at 91, 27 at 14-19. Dr. Ruiz opined Claimant’s psychological injury is the result of his working conditions in Iraq. CX 21 at 19, 24, 27, 34, 40, 49, 58, 64, 67, 73, 76, 85, 94.

Claimant also met with Dr. Gustavo R. Benejam, a clinical psychologist, for an evaluation on February 16, 2022. He diagnosed Claimant with post-traumatic stress disorder (PTSD), major depressive disorder, and generalized anxiety disorder based on Claimant’s test results. CX 22 at 8-10, 14-15. Dr. Benejam opined Claimant’s psychological injuries are a result of his work in Iraq with Employer. *Id.* He further determined Claimant “does not appear to be fit to work in war-related jobs” and he is unable to engage in work involving stress or significant interaction with others. *Id.* at 16. He also authored a supplemental report dated February 24, 2022, reiterating his opinion. EX 6.

At Employer’s request, Dr. Moises Valdemar Ponce Malaver, a forensic psychiatrist, examined Claimant on September 6, 2021, and administered various tests to assess Claimant’s psychological condition. EX 5 at 2, 13. Dr. Malaver reported Claimant does not present diagnostic criteria for PTSD, anxiety, or depressive episode with psychotic symptoms. *Id.* at 23. He further opined some of Claimant’s symptoms and behaviors were exaggerated and malingered, which, he stated, indicates Claimant is seeking secondary gain. *Id.* at 12-13, 27. Thus, Dr. Malaver opined Claimant has no mental disorder related to his work with Employer and can work without restrictions. *Id.* at 23, 25. He also

authored a supplemental report dated May 12, 2022, reiterating his conclusions and findings. EX 6.

Claimant filed a claim under the Act on August 14, 2020, seeking benefits for his alleged work-related psychological condition. CX 1; EX 1. Employer, who first received notice through an Office of Workers' Compensation Programs (OWCP) letter dated August 25, 2020, CX 2, controverted the claim on October 13, 2020, EX 3. The case was forwarded to the Office of Administrative Law Judges (OALJ), where the parties agreed to a decision and order based on the written record. 18 C.F.R. §18.21(b).

On September 12, 2023, the ALJ issued her Decision and Order, finding Claimant did not establish his psychological symptoms were caused by his work for Employer. The ALJ found Claimant established a prima facie case of compensable injury and invoked the Section 20(a) presumption, 33 U.S.C. §920(a), by proffering documentation of a PTSD diagnosis along with evidence that his work for Employer in Iraq could have caused his psychological condition. However, she determined Employer rebutted the presumption with Dr. Malaver's medical opinion that Claimant does not have PTSD or a psychological condition causally related to his work. D&O at 26-28.

On considering the evidence as a whole, the ALJ assigned diminished weight to Claimant's subjective reports regarding his symptoms, treatment, history of trauma, work history, and personal information because she found his subjective reports were not fully credible. D&O at 17-19, 33. She also found Dr. Ruiz's opinion entitled to limited weight, and she assigned partial weight to the opinions of Drs. Benejam and Malaver. *Id.* at 19-23, 31-33. Based on this assessment, she determined the evidence is "evenly balanced." *Id.* at 33. As Claimant bears the burden of persuasion, she found Claimant did not establish a work-related psychological condition on the record as a whole and denied benefits.⁴ *Id.* Claimant, without representation, appeals the ALJ's decision. Employer has not filed a response brief.

If a claimant invokes the Section 20(a) presumption that his injury is work-related, as is the case here, the burden shifts to the employer to produce substantial evidence that the claimant's condition is not work-related. *Rose v. Vectrus Systems Corp.*, 56 BRBS 27 (2022) (en banc), *appeal dismissed* (MDFL Aug. 24, 2023); *see Rainey v. Director, OWCP*, 517 F.3d 632, 634 (2d Cir. 2008); *American Stevedoring, Ltd. v. Marinelli*, 248 F.3d 54, 64 (2d Cir. 2001); *Jones v. Aluminum Co. of America*, 35 BRBS 37, 40 (2001); *O'Kelley*

⁴ Having denied benefits for lack of a compensable injury, the ALJ did not address the other issues in dispute, such as timeliness of the notice, timeliness of the claim, and the nature and extent of the alleged disability. D&O at 33.

v. Dep't of the Army/NAF, 34 BRBS 39 (2000). Substantial evidence is the amount of evidence which a reasonable mind would accept as adequate to support a conclusion. *Rainey*, 517 F.3d at 634; *Noble Drilling Co. v. Drake*, 795 F.2d 478, 481 (5th Cir. 1986). The employer's burden at this stage is one of production, not persuasion. *Rainey*, 517 F.3d at 637; *see also American Grain Trimmers, Inc. v. Director, OWCP [Janich]*, 181 F.3d 810, 817 (7th Cir. 1999) (en banc), *cert. denied*, 528 U.S. 1187 (2000); *Rose*, 56 BRBS at 35; *Suarez v. Serv. Employees Int'l, Inc.*, 50 BRBS 33, 36 (2016).

The ALJ found Dr. Malaver's opinion that Claimant does not have PTSD, generalized anxiety, depressive episode with psychotic symptoms, or any mental condition related to his work for Employer sufficiently rebuts the Section 20(a) presumption. D&O at 22-23, 32-33; *see* EXs 5 at 23, 6 at 18. We agree. Dr. Malaver reported that Claimant does not have PTSD based on his psychometric testing results and diagnostic criteria contained in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders. EXs 5 at 12-13, 22-23, 6 at 17. He concluded the causes for Claimant's symptoms were "non-work-related" due to mood swings and insomnia causing family, social, and work problems. EX 5 at 24. Dr. Malaver also recognized possible implications of confinement related to the COVID-19 pandemic on Claimant. *Id.* at 26. However, from his testing and examination, Dr. Malaver concluded Claimant did not meet any of the criteria for a PTSD or mental disorder diagnosis and he did not show any evidence of mental health issues related to his work with Employer. *Id.* at 21-22, 27. Dr. Malaver's opinion constitutes substantial evidence to rebut the Section 20(a) presumption. *Carswell v. E. Pihl & Sons*, 999 F.3d 18, 28, 32 (1st Cir. 2021), *cert. denied*, 142 S.Ct. 1110 (2022); *O'Kelley*, 34 BRBS at 41. We therefore affirm the ALJ's finding that Employer rebutted the Section 20(a) presumption. *Id.*

Because Employer successfully rebutted the presumption, Claimant is no longer entitled to it, and the issue of causation must be resolved on the evidence of the record as a whole with the claimant bearing the burden of persuasion by a preponderance of the evidence. *Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 271 (1994); *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 262 (4th Cir. 1997); *Rose*, 56 BRBS at 39; *Bolden v. G.A.T.X. Terminals Corp.*, 30 BRBS 71 (1996). If the evidence is in equipoise, the claimant must lose. *Greenwich Collieries*, 512 U.S. at 271; *Santoro v. Maher Terminals, Inc.*, 30 BRBS 171, 174 (1996). In evaluating the evidence as a whole, the ALJ is entitled to weigh the medical evidence and draw her own inferences from it and is not bound to accept the opinion or theory of any particular medical expert. *Mijangos v. Avondale Shipyards, Inc.*, 948 F.2d 941, 945 (5th Cir. 1991); *Perini Corp. v. Heyde*, 306 F. Supp. 1321, 1325-26 (D.R.I. 1969). The Board is not free to re-weigh the evidence or to make credibility determinations. *Sealand Terminals, Inc. v. Gasparic*, 7 F.3d 321, 323 (2d Cir. 1993).

The record supports the ALJ's according "diminished credit" to Claimant's accounts of his symptoms, treatment, and past events he experienced, as she found numerous inconsistencies in his deposition testimony and his reports to his doctors.⁵ D&O at 17-19. *Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 1339 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). Turning to the medical evidence, the ALJ permissibly gave limited weight to Dr. Ruiz's opinions, finding his reports contained limited background information on Claimant, only briefly referencing his employment in Iraq, and reported symptoms without additional context. She also found they provided "fluctuating" diagnoses without clinical psychological testing and with few objective observations. D&O at 19, 31; CX 21. Further, she concluded Dr. Ruiz's reports are based entirely on Claimant's narrow, subjective, and inconsistent reporting without documented and objective corroboration, and they contained medical questionnaires that reflected the doctor's inconsistent responses. D&O at 19, 31; CX 21 at 19, 24, 34, 40, 49, 58, 67, 76, 85, 94. Therefore, the ALJ found Dr. Ruiz's opinion is not well reasoned or documented. D&O at 19, 31; *see Heyde*, 306 F. Supp. at 1325-26.

The ALJ also did not give Dr. Benejam's opinion full weight. D&O at 21-22, 31-32. She noted some of the information Claimant provided to Dr. Benejam is subjective and inconsistent with statements Claimant made elsewhere.⁶ *Id.* at 22, 32. In addition, she

⁵ For example, Claimant testified he worked for Employer as a security guard in Iraq from 2007 to October 2008, CX 27 at 6-7, but then stated he began working for Employer in April 2008 and signed a second contract with Employer in April 2009. *Id.* at 7. Additionally, Claimant recounted an attack at Camp Jackson in 2008 but later clarified he did not recall any specific traumatic events while at Camp Jackson, even though he described an October 2007 attack there to Dr. Malaver. CXs 5 at 3, 27 at 9. Claimant also testified he felt fear from the attack, but he also stated he did not feel fear because it was far away. CX 27 at 9. Further, Claimant initially testified he began experiencing fear-related headaches during his first contract with Employer in 2007 or 2008; later he stated his headaches started during his second contract while he was stationed at the embassy hospital. *Id.* at 4-5, 10. He also stated his headaches began due to "fear and concern for himself," but he told Drs. Benejam and Malaver they commenced after he bumped into a co-worker and hit his head. CXs 22 at 4, 27 at 7; EX 5 at 3. Moreover, there are inconsistencies with some of the symptoms he reported to his doctors, including suicidal thoughts and auditory hallucinations. *See* CXs 21 at 1-98, 22 at 4, 12; EX 5 at 11, 14. Claimant also testified he had no communication with former co-workers, but he later indicated his former co-worker recommended he file a workers' compensation claim in 2019. CX 27 at 9, 16.

⁶ For instance, the ALJ observed Claimant reported auditory hallucinations to Dr. Benejam, but he did not mention such symptoms in his deposition, and he told Dr. Malaver

found Dr. Benejam's explanation for the adjustment in Claimant's inconsistent test results not well-reasoned or explained.⁷ *Id.* Consequently, the ALJ also found Dr. Benejam's opinion is entitled to only partial weight. D&O at 22, 32; *see Heyde*, 306 F. Supp. at 1325-26.

Considering the evidence as a whole, the ALJ found Claimant did not satisfy his burden of persuasion. D&O at 33. Based on Claimant's diminished credibility, the limited weight the ALJ afforded to Dr. Ruiz's opinion, and the partial weight she assigned to the opinions of Drs. Benejam and Malaver,⁸ the ALJ rationally found the evidence is "evenly balanced." D&O at 33; *see Santoro*, 30 BRBS at 174. In reaching this determination, she adequately discussed the relevant evidence and drew reasonable inferences from the evidence based on her credibility determinations. *Mijangos*, 948 F.2d at 945; *Heyde*, 306 F. Supp. at 1325-1326. As Claimant bears the burden to persuade at this point in the causation analysis, and the ALJ rationally found the evidence of record is in equipoise and is not persuasive, we affirm her conclusion that Claimant has not established by a preponderance of the evidence that his psychological condition is work-related. *Greenwich Collieries*, 512 U.S. at 271; *Santoro*, 30 BRBS at 174. Therefore, we affirm the ALJ's conclusion that Claimant is not entitled to benefits as it is rational, supported by substantial evidence, and in accordance with law. *Sistrunk v. Ingalls Shipbuilding, Inc.*, 35 BRBS 171,

he never experienced hallucinations. D&O at 21-22, 31-32; *see CX 22* at 6; *EX 5* at 14. Also, the ALJ found that while Claimant told Dr. Benejam the intensity of his symptoms had increased over time, he testified in his deposition that it had "lowered" over time. *Id.*; *see CXs 22* at 4, 27 at 13.

⁷ Specifically, the ALJ determined Dr. Benejam dismissed objective findings that contradicted his opinion because he relied on Claimant's subjective reporting. In doing so, he drew conclusions that were inconsistent with Claimant's M-FAST and SIMS test scores – scores which suggested malingering. The ALJ rejected Dr. Benejam's reasoning that Claimant's symptoms were consistently reported and, therefore, that the test results warranted adjustment. D&O at 22, 32; *see CX 22* at 8-10.

⁸ The ALJ assigned partial weight to Dr. Malaver's opinion, finding he administered fewer assessments than Dr. Benejam and focused his testing on symptom validity. D&O at 32-33. Although Dr. Malaver conducted the same M-FAST and SIMS tests that Dr. Benejam criticized and adjusted, she determined his analysis and explanations of Claimant's diagnostic testing lacked adequate detail. D&O at 32-33; *CX 22* at 8-10; *EX 5* at 12-14, 22-24.

174 (2001); *Coffey v. Marine Terminals Corp.*, 34 BRBS 85, 87 (2000); *Duhagon v. Metro. Stevedore Co.*, 31 BRBS 98 (1997), *aff'd*, 169 F.3d 615 (9th Cir. 1999).

Accordingly, we affirm the ALJ's Decision and Order on the Record.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge