



BRB Nos. 17-0001

ABDULRAOUF ABDELMEGED)
)
 Claimant-Respondent)
)
 v.)
)
 GLOBAL LINGUIST SOLUTIONS,)
 L.L.C.)
)
 and)
)
 ZURICH AMERICAN INSURANCE)
 COMPANY)
)
 Employer/Carrier-)
 Petitioners)

DATE ISSUED: Aug. 14, 2017

DECISION and ORDER

Appeal of the Decision and Order on Remand of Jonathan C. Calianos, Administrative Law Judge, United States Department of Labor.

John S. Evangelisti, Denver, Colorado, for claimant.

Jonathan A. Tweedy and Pierce C. Azuma (Brown Sims), New Orleans, Louisiana, for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, BOGGS and BUZZARD, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order On Remand (2012-LDA-00654) of Administrative Law Judge Jonathan C. Calianos rendered on a claim filed pursuant to the provisions of 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.* (the Act). We must affirm the administrative law judge's findings of fact and conclusions of law if they are rational, supported by substantial evidence, and in accordance with law. 33 U.S.C. §921(b)(3); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965). This case is before the Board for the second time.

Claimant worked as a linguist/translator for employer during four tours of duty in Iraq. He testified that he saw and experienced a number of traumatic incidents during these deployments. Decision and Order on Remand at 4-6; HT at 103-104, 110-119, 131-144. In November 2009, following a physical altercation, claimant was treated at the medical clinic for chest pains. While there, Dr. Oliver diagnosed claimant with Hepatitis C and sent claimant state-side for treatment. CX 1 (Tabs 9-10). Claimant was granted a leave of absence from November 9, 2009, through February 8, 2010, for treatment of his Hepatitis C. Upon completing that treatment, claimant was cleared by Dr. Garcia to return to work on January 27 and February 3, 2010. CX 5. Claimant, however, did not return to work for employer due to a mix up with his paperwork, and employer “acknowledged claimant’s resignation” effective July 28, 2010. CX 53.

Claimant filed a claim for benefits in October 2011 for injuries to his low back, heart, feet and legs. On December 16, 2011, Dr. Pock, a psychiatrist, diagnosed post-traumatic stress disorder (PTSD) and depression and stated that claimant cannot return to work in Iraq or in any war zone. JX 1 at 55; CX 7. Because he claimed he suffered a psychological injury due to his employment, but had only belatedly been diagnosed with a psychological injury, claimant amended his claim for benefits to include a psychological injury, as well as Hepatitis C. CX 10. Employer denied the claims.

The administrative law judge found, among other things,¹ that claimant is entitled to the Section 20(a) presumption, 33 U.S.C. §920(a), with regard to his psychological injury, which employer did not rebut. The administrative law judge found that because claimant’s psychiatrist, Dr. Pock, and employer’s expert, Dr. Moe, stated that claimant cannot return to work in Iraq, claimant established a prima facie case of total disability. Decision and Order at 16. The administrative law judge found that employer did not establish the availability of suitable alternate employment, and he awarded claimant ongoing temporary total disability benefits commencing November 9, 2009. *Id.* at 18.

Employer appealed, and claimant cross-appealed, the administrative law judge’s decision. BRB Nos. 14-0257/A. The Board affirmed the administrative law judge’s finding that claimant was totally disabled due to his psychological injury as of December 16, 2011, but vacated the administrative law judge’s award of temporary total disability benefits commencing November 9, 2009, because he did not discuss relevant evidence or explain how he determined that November 9, 2009, was the date claimant’s psychological disability began. *Abdelmeged v. Global Linguist Solutions, LLC*, BRB No. 14-0257/A (Mar. 27, 2015) (unpub.) (Buzzard, J., concurring and dissenting). The Board thus

¹The administrative law judge found that claimant did not establish a prima facie case for his alleged back, cardiac, blood pressure, and Hepatitis C injuries.

remanded the case for the administrative law judge to determine the onset date of claimant's work-related psychological disability. *Id.*, slip op. at 7-10. In all other respects, the Board affirmed the administrative law judge's Decision and Order.

On remand, the administrative law judge found that the work events claimant experienced leading up to his November 9, 2009 leave of absence either caused his psychological injury or aggravated his pre-existing psychological condition, which rendered claimant totally disabled from that date. The administrative law judge therefore reinstated the previous award of ongoing temporary total disability benefits, commencing November 9, 2009.

Employer appeals the award of temporary total disability benefits for the period from November 9, 2009 to December 16, 2011. Claimant responds, urging affirmance of the administrative law judge's award of benefits. Employer has filed a reply brief.

Employer contends that the administrative law judge erred in concluding that claimant suffered from a disabling psychological condition between November 9, 2009 and December 16, 2011. On remand, the administrative law judge reviewed a chronology of the traumatic events claimant encountered while working in Iraq,² personal issues he experienced upon returning to the United States,³ and the opinions of Drs. Pock and Moe.⁴ The administrative law judge found this evidence demonstrates that since

²The administrative law judge described "the constant barrage of tragic events" which claimant encountered while working for employer in Iraq, including specific incidents showing that claimant was regularly exposed to shootings and explosions and subjected to poor treatment by Iraqis and United States military personnel. *See* Decision and Order on Remand at 4-6; JX 3 at 38, 86-87, 122-126, 130-133, 139-140; HT at 103-104, 110-111, 114-119, 131-144.

³The administrative law judge found claimant credibly testified that once stateside: 1) he had nightmares about the war every night and felt weak all the time; 2) he had suicidal ideations and no appetite; 3) he sleeps only two to three hours per night; 4) he goes crazy at the slightest noise, such as a vacuum in the house, big car, or even a fly; 5) his children are afraid of him, and he often has difficulty with memory and concentration; 6) he frequently gets lost and misses appointments; and 7) he has flashbacks to his time overseas, and that even at the mention of Iraq, he can forget where he is and "just lose it." Decision and Order on Remand at 6-7.

⁴Dr. Pock opined that claimant's work-related PTSD rendered claimant incapable of returning to work since his November 2009 return to the United States from Iraq. CX 7 at 5; JX 1, Dep. at 55. While Dr. Moe did not believe claimant sustained any psychological condition directly as a result of his work for employer in Iraq and felt that

November 9, 2009, claimant's psychological injury related to his work in Iraq has rendered him incapable of performing his usual work. The administrative law judge stated that while claimant was unaware of his condition until December 16, 2011, claimant "certainly exhibited" symptoms of PTSD by the time he returned to the United States in November 2009. Decision and Order on Remand at 8. The administrative law judge noted that while claimant may have believed, in November 2009, that he was capable of returning to work for employer as an interpreter in Iraq or of holding a steady job, those beliefs were unreasonable given his psychological injury and his lack of self-awareness of his psychological state. The administrative law judge thus reinstated his award of ongoing temporary total disability benefits from November 9, 2009.

It is well established that an administrative law judge has considerable discretion in evaluating and weighing the evidence of record. *Duhagon v. Metropolitan Stevedore Co.*, 169 F.3d 615, 33 BRBS 1(CRT) (9th Cir. 1999); *Goldsmith v. Director, OWCP*, 838 F.2d 1079, 21 BRBS 30(CRT) (9th Cir. 1988). The Board is not empowered to reweigh the evidence but must accept the administrative law judge's conclusions if they are rational and supported by substantial evidence. See *Hawaii Stevedores, Inc. v. Ogawa*, 608 F.3d 642, 44 BRBS 47(CRT) (9th Cir. 2010); *Rhine v. Stevedoring Services of America*, 596 F.3d 1161, 44 BRBS 9(CRT) (9th Cir. 2010). In this case, the administrative law judge, in accordance with the Board's remand instructions, discussed all the relevant evidence and addressed employer's contentions.⁵ Decision and Order on

"claimant is capable of returning to his pre-injury employment as a linguist," EX M, he nonetheless conceded that claimant's work for employer in Iraq may have caused a temporary manifestation of his pre-existing psychological condition and opined that claimant "is not capable of performing such duties in Iraq or any other country where there is the risk of significant violence." *Id.* Dr. Moe also opined that claimant is unable to return to Iraq because the risk of violence would be excessively burdensome on his pre-existing psychological condition and likely cause flare-ups in those symptoms. JX 2, Dep. at 5.

⁵Contrary to employer's contention, the administrative law judge sufficiently reviewed "all relevant facts," including claimant's testimony, Decision and Order on Remand at 4-7, the opinions of Drs. Pock and Moe, *id.* at 7, claimant's failure to seek immediate treatment for his psychological condition, *id.*, and claimant's attempts to procure employment after November 2009, *id.* at 8. Moreover, the administrative law judge rationally found that the passage of two years in claimant's seeking treatment for his psychological condition "was caused by [claimant's] inability to be self-aware of his own mental health as explained by Dr. Moe." *Id.* at 7. Dr. Moe stated that not all those with mental illness seek treatment for a "bunch of reasons" including a lack of self-awareness ["you don't really know that you have a condition that lends itself to

Remand at 8. The administrative law judge rationally concluded that the totality of the evidence establishes that claimant’s work-related psychological condition precluded a return to his usual employment duties as an interpreter in Iraq with employer as of November 9, 2009. *See Mijangos v. Avondale Shipyards, Inc.*, 948 F.2d 941, 25 BRBS 78(CRT) (5th Cir. 1991). Dr. Pock, claimant’s treating psychiatrist, expressly stated that claimant “has been unable to work since the time he returned from Iraq.” CX 7 at 5. The administrative law judge found this opinion supported by claimant’s credible testimony regarding his experiences while working for employer in Iraq and the difficulties he had upon returning to the United States, *see Cordero v. Triple A Machine Shop*, 580 F.2d 1331, 8 BRBS 744 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979), as well as Dr. Moe’s opinion that claimant cannot return to his usual employment out of concern that work exposures could exacerbate his pre-existing psychological condition. Decision and Order on Remand at 7-8; JX 2 at 5. Employer has not established error in the administrative law judge’s consideration of this evidence and the administrative law judge’s conclusion is supported by substantial evidence in the record as a whole. Therefore, we affirm the administrative law judge’s conclusion that claimant established that he has been totally disabled since November 9, 2009. *See J.R. [Rodriguez] v. Bollinger Shipyard, Inc.*, 42 BRBS 95 (2008), *aff’d sub nom. Bollinger Shipyards, Inc. v. Director, OWCP*, 604 F.3d 864, 44 BRBS 19(CRT) (5th Cir. 2010).

Accordingly, the administrative law judge’s Decision and Order on Remand is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

treatment”] and/or resources, the stigma attached with such an illness, and an individual’s stoicism. JX 2, Dep. at 14.

GREG J. BUZZARD
Administrative Appeals Judge