U.S. Department of Labor

Benefits Review Board
P.O. Box 37601
Washington, DC 20013-7601

BRB No. 17-0440

ROBERT BABA	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
SOS INTERNATIONAL, LLC	)	
	)	DATE ISSUED: Jan. 30, 2018
and	)	
	)	
ALLIED WORLD ASSURANCE COMPANY, c/o BROADSPIRE	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order Denying Compensation and Benefits of Richard M. Clark, Administrative Law Judge, United States Department of Labor.

David C. Barnett (Barnett, Lerner, Karsen & Frankel, P.A.), Fort Lauderdale, Florida, for claimant.

Raymond H. Warns, Jr., and Megan Larrondo (Holmes Weddle & Barcott, PC), Seattle, Washington, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Compensation and Benefits (2015-LDA-00761) of Administrative Law Judge Richard M. Clark 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. §1641 *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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant was born in Iraq and moved to the United States in 1970. EX 7 at 7. From 2008 to 2014, he worked in Iraq for various employers as a linguist or a translator. He first worked for L3 Communications as a linguist, which involved work "outside-the-wire," including interrogation of prisoners. EX 7 at 30-32. Claimant recalled the work as being very dangerous, including one occasion where his base was hit by an IED and a piece of a rocket flew into claimant's room through the window. *Id*. at 50-52.

Claimant started working for employer in September 2013 and was stationed at the military base in Taji, Iraq. EX 7 at 40. He worked on badging and security and as an interpreter when necessary. *Id*. at 41-43. He did not work "outside the wire" because it was too dangerous and they did not have soldiers to protect them. *Id*. Claimant recalled that he was exposed to explosions and gun fire when insurgents attacked the jail on the premises. *Id*. at 47-49. Claimant testified that at some point while working for employer, he injured his knee and his finger when he was running from an explosion.[1] *Id*. at 58-60.

Claimant returned to the United States in June 2014, after which employer told him that he would be furloughed until further notice because the base might be evacuated for safety reasons. EX 7 at 62. Employer terminated claimant on August 31, 2014, due to lack of work, but he remained eligible for rehire. EX 2 at 11. Claimant has not returned to work in any capacity, however. On November 10, 2014, Claimant filed a claim for "depression, anxiety, sleeplessness, irritability, nightmares, right knee injury." EX 1.1.

On November 25, 2014, Claimant was diagnosed by his treating physician, Dr. Moghaddam, as suffering from symptoms of post-traumatic stress disorder (PTSD), including short-term memory loss, insomnia, depression, and anxiety. CX 14 at 63. On December 2, 2015, he underwent a psychological evaluation by Dr. Stuart Meisner, a clinical psychologist. Dr. Meisner concluded there is no evidence that claimant suffers from a mental disorder and that claimant "grossly exaggerated symptoms, impairment, and the severity of traumatic exposure."[2] EX 5 at 69.

[1] The current appeal does not involve either the knee or the finger injury.

[2] In his report, Dr. Meisner inexplicably began referring to claimant as Mr. BBBB. Claimant contends this indicates Dr. Meisner "cut and pasted" his report from somewhere else, but the report appropriately refers to claimant's previous statements and his history.

Claimant also underwent a comprehensive evaluation by Dr. David Friedman, a psychiatrist, on March 15, 2016. CX 20. Dr. Friedman diagnosed claimant with chronic PTSD and opined that claimant is unable to work because of his psychiatric condition. *Id.* at 7-8. He stated that claimant's psychiatric condition was "a cumulative effect of that which he witnessed and experienced during the course of his employment in Iraq." *Id.* at 9.

The administrative law judge found that claimant's testimony was not very credible because of inconsistent statements and exaggerated symptoms, and therefore gave claimant's testimony little weight. Decision and Order at 15-16. The administrative law judge found Dr. Friedman to be a credible expert witness but gave Dr. Friedman's opinion less weight because he found that Dr. Friedman "downplayed the importance of objective test results which clearly showed malingering and over-relied on Claimants [sic] subjective self-reporting." *Id.* He also discounted Dr. Friedman's opinion because he found it is not well supported or explained by other compelling evidence in the record. *Id.* at 17. The administrative law judge noted that Dr. Meisner's credentials were not entered into the record but stated that he was satisfied that Dr. Meisner could be accepted as an expert witness. He found Dr. Meisner's report to be "thorough, detailed and well-documented." *Id.* at 18.

The administrative law judge concluded that claimant established a prima facie case and invoked the Section 20(a), 33 U.S.C. §920(a), presumption based on Dr. Moghaddam's diagnosis of PTSD and because the warlike conditions witnessed by claimant could have caused the injury. The administrative law judge determined, however, that the presumption was rebutted by Dr. Meisner's opinion that claimant does not suffer from a mental disorder. Decision and Order at 19-20. Dr. Meisner said claimant does not meet the criteria for PTSD or major depression. EX 5.73. The administrative law judge also cited Dr. Meisner's opinion that "if claimant had a mental disorder, it would be highly unlikely that a work related condition caused it." Decision and Order at 20. In weighing the evidence as a whole, the administrative law judge discounted Dr. Moghaddam's diagnosis of PTSD as he found that there is no evidence to indicate that Dr. Moghaddam has the expertise to render a mental health diagnosis. *Id.* at 21. Accordingly, the administrative law judge considered only the conflicting opinions of Dr. Friedman and Dr. Meisner. The administrative law judge concluded that Dr. Meisner's opinion was detailed, well reasoned, and better explained in the context of the diagnostic testing, and therefore entitled to greater weight than the opinion of Dr. Friedman. *Id.* at 23. The administrative law judge found that the evidence does not establish that claimant suffers from a compensable psychological injury and, accordingly, denied the claim for benefits. *Id.*

Claimant appeals the administrative law judge's decision, contending the administrative law judge erred in concluding that Dr. Meisner's opinion is sufficient to

rebut the Section 20(a) presumption. Claimant argues that Dr. Meisner's opinion is equivocal and that Dr. Meisner's credentials were not presented into evidence. Employer responds, urging affirmance.

Once, as here, claimant has established a prima facie case, the Section 20(a) presumption applies to link the injury to the employment conditions. *Hawaii Stevedores, Inc. v. Ogawa*, 608 F.3d 642, 44 BRBS 47(CRT) (9th Cir. 2010). The burden shifts to employer to rebut the presumed causal connection by producing substantial evidence that the injury is not related to the employment. The evidence must be "specific and comprehensive enough to sever the potential connection between the disability and the work environment." *Ramey v. Stevedoring Services of America*, 134 F.3d 954, 959, 31 BRBS 206, 210(CRT) (9th Cir. 1998). Employer must produce "evidence that could satisfy a reasonable factfinder that the claimant's injury was not work-related." *Ogawa*, 608 F.3d at 651, 44 BRBS at 50(CRT).

We reject claimant's contention that the administrative law judge erred in weighing Dr. Meisner's qualifications. The administrative law judge noted that Dr. Meisner's resume was not in evidence but found that Dr. Meisner's report indicates that he is licensed in California as a clinical psychologist and that Dr. Friedman found Dr. Meisner's report is well reasoned and his conclusions are "not way out." Decision and Order at 18; EX 5; CX 20 at 16; *see* ALJX 3 at 5. Claimant admitted that Dr. Meisner was a statutory "medical provider." Claimant has not otherwise provided any reason to cast doubt on Dr. Meisner's qualifications and, in any event, we emphasize that it is well within the purview of the administrative law judge, as the fact-finder, to determine the weight to be given to the evidence of record. *See Ogawa*, 608 F.3d at 648, 44 BRBS at 49(CRT).

We also affirm the administrative law judge's finding that Dr. Meisner's opinion is sufficient to rebut the Section 20(a) presumption. Dr. Meisner stated that claimant does not suffer from any mental disorder. Dr. Meisner administered psychological tests and stated that claimant's "[o]verreporting of psychiatric symptoms was plainly evident" because "[e]ven individuals with genuine severe psychological problems who report symptoms credibly, do not show this level of endorsement of rarely endorsed items." EX 5 at 67. Dr. Meisner concluded that "neither [claimant's] report nor behavior under voluntary control should be considered substantial evidence of mental disorder or impairment. The clinical observations are not sufficiently remarkable to prove that mental disorder is present in addition to exaggeration." *Id.* at 79. When asked about causation, Dr. Meisner opined, "[i]f substantial evidence of a mental disorder were to arise, it is especially unlikely that a work-related condition could account for it" and also "if substantial evidence should eventually arise of a mental disorder in addition to the documented exaggeration, there are potential post-employment stressors that could account for symptoms." *Id.* at 76-77.

Claimant specifically challenges the sufficiency of Dr. Meisner's opinion to rebut the Section 20(a) presumption because Dr. Meisner acknowledged that even claimant's "pervasive exaggeration does not rule out mental disorder" and that it was possible for individuals who exaggerate to also suffer from a mental disorder. EX 5.72. Claimant's argument is unavailing. An employer is not required to rule out the possibility of a causal connection in order to rebut the presumption. *See Ortco Contractors, Inc. v. Charpentier*, 332 F.3d 283, 37 BRBS 35(CRT) (5th Cir.), *cert. denied*, 540 U.S. 1056 (2003). In addition, the Board has previously stated that a doctor's opinion acknowledging "possibilities" is not enough to render the opinion equivocal because "absolute certainty is a difficult concept in the medical profession." *See O'Kelley v. Dep't of the Army/NAF*, 34 BRBS 39, 42 (2000). Dr. Meisner was unequivocal in concluding that, in his opinion, rendered within a reasonable degree of certainty, claimant does not suffer from a mental disorder at all. EX 5 at 79. He explained that it would be "exceedingly unlikely" that claimant suffered from a mental disorder judging from claimant's behavior. *Id.* at 72.

The administrative law judge rationally found that Dr. Meisner's opinion constitutes substantial evidence rebutting the Section 20(a) presumption. Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Rhine v. Stevedoring Services of America*, 596 F.3d 1161, 44 BRBS 9(CRT) (9th Cir. 2010). The administrative law judge permissibly found that Dr. Meisner's opinion is adequate to support the conclusion that claimant does not suffer from a mental disorder at all. The administrative law judge's determination that employer rebutted the Section 20(a) presumption is supported by substantial evidence and therefore it is affirmed. *Ogawa,* 608 F.3d at 651-652, 44 BRBS at 50-51(CRT). As claimant does not challenge the administrative law judge's finding that he did not establish the existence of a work-related psychological injury based on the record as a whole, we affirm the denial of benefits.

Accordingly, the administrative law judge's Decision and Order Denying Compensation and Benefits is affirmed.

SO ORDERED.

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BETTY JEAN HALL, Chief
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge

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JONATHAN ROLFE
Administrative Appeals Judge