U.S. Department of Labor

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

BRB No. 23-0342

GORDON GENDRON	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED: 08/13/2024
	)	
ELECTRIC BOAT CORPORATION	)	
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Timothy J. McGrath, Administrative Law Judge, United States Department of Labor.

Robert P. Audette and Mary Ann Violette (Audette, Audette & Violette, L.L.C.), East Providence, Rhode Island, for Claimant.

Jeffrey E. Estey, Jr., and Christopher M. Romero (McKenney, Clarkin & Estey, LLP), Providence, Rhode Island, for Self-Insured Employer.

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

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Timothy J. McGrath's Decision and Order Denying Benefits (2021-LHC-01309) rendered on a claim filed pursuant to the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §§901-950 (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 sustained an injury to his right knee, which he maintains resulted in a meniscal tear and aggravated his alleged pre-existing osteoarthritic condition, while working for Employer as a welding instructor on May 20, 2015. The injury purportedly occurred when he was climbing three levels of steep stairs and felt a popping and "a sharp pain, a twinge, almost like [his right knee] was going to give out."[1] Hearing Transcript (Tr.) at 31-32; Employer's Exhibit (EX) 1 at 21-22; Claimant's Exhibit (CX) 4 at 2. He asserts he immediately felt weakness in his right knee and then it stiffened up through the day as Claimant continued to work.[2] Tr. at 32-33, 35, 44, 48; EX 1, Dep. at 21-22; CX 4 at 2.

On the following day, Claimant went to Employer's Occupational Health Clinic (Employer's Clinic), where he saw physician's assistant Mr. William Tavares, who diagnosed a right knee "strain and sprain" based on Claimant's complaint of a deep pain in his lower lateral knee that increased from complete flexion to full extension.[3] Tr. at 33-35; EX 1, Dep. at 22-23; CX 4 at 2. Mr. Tavares did not observe any "redness, tenderness, swelling, or bruising" on Claimant's knee, discussed light-duty options with him, and indicated he could return to work with no work restrictions provided.[4] CX 4 at 2-3. On June 2, 2015, Claimant had a follow-up appointment with Mr. Tavares, who noted he was "progressively improving" with "intermittent soreness" and a right "knee [that] feels much better now" as Claimant could complete a range of movement without pain and move from a "[f]ull squat to a standing position while holding [a] desk for support." *Id.* Although Claimant testified his right knee continued to bother him from May 2015 onward, he did not take any time off from his usual welding instructor work, Tr. at 37, or seek further

[1] This case arises within the jurisdiction of the United States Court of Appeals for the First Circuit because Claimant sustained his alleged injury in Rhode Island. 33 U.S.C. §921(c); *see Roberts v. Custom Ship Interiors*, 300 F.3d 510 (4th Cir. 2002); 20 C.F.R. §702.201(a); CX 4 at 1.

[2] Claimant indicated he had been "putting more strain on the right knee" because his left knee was "bad to begin with[.]" CX 4 at 3; *see* Tr. at 43.

[3] Although the record contains no evidence of an emergency room visit in 2015, Claimant testified he "remembers going to the emergency room back at that time because [his] knee was very swollen…[and] they ended up draining it at that time[.]" Tr. at 14.

[4] Mr. Tavares noted Claimant had lower lateral knee pain during the McMurray's meniscus test. CX 4 at 2. On June 2, 2015, Claimant had negative Lochman's and McMurray's meniscus tests. *Id.* at 3.

treatment for it until April 2020,[5] EX 1, Dep. at 28-29. Claimant retired from Employer's employ on January 24, 2020, but he continued to work part-time as a welding instructor at New England Tech. Tr. at 13; EX 1, Dep. at 32.

On April 22, 2020, Claimant saw Dr. Franklin Mirrer, a board-certified orthopedic surgeon, for persistent right knee pain. CX 1 at 6-7. He opined Claimant "may have torn his meniscus back in 2015" when walking up the stairs at Employer's premises as such an injury would contribute to the current symptoms he had "been tolerating [] over the years with occasional flareups."[6] *Id.*; CX 3, Dep. at 8, 12, 19; EX 1, Dep. at 29. On May 27, 2020, Dr. Mirrer diagnosed him with moderate to moderately severe tricompartmental arthritis.[7] CXs 1 at 4; 3 at 13, 15. Claimant had follow-up appointments with Dr. Mirrer on July 9, September 2, and September 24, 2020.[8]

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[5] On December 15, 2016, Claimant completed a "OSHA [Occupational Safety and Health Administration] Medical Evaluation Questionnaire," indicating he had difficulty squatting but no difficulty bending at his knees or climbing a flight of stairs or ladder while carrying more than twenty-five pounds. EX 9 at 8. On March 31, 2018, while seeking treatment for his significant ongoing left knee pain with Dr. Robert Marchand, his orthopedist, Claimant requested an x-ray to obtain an "assessment of both knees to determine where [he] was regarding needing a full knee replacement." EX 1, Dep. at 29; *see also* Tr. at 38; EX 10. The right knee x-ray revealed "medial and patellar degenerative change with chondrocalcinosis suggesting CPPD arthropathy," whereas the left knee x-ray revealed a continuation of ongoing degenerative changes, EX 10, which culminated with Claimant's total left knee replacement in June 2019. On December 13, 2018, Claimant completed another OSHA Questionnaire, where he again indicated he had difficulty bending at his knees, but no difficulty squatting, climbing stairs, or climbing a ladder. EX 9 at 4.

[6] Dr. Mirrer concluded Claimant's 2015 work "injury would contribute to his symptoms in 2020" based on "the history he gave me that he had an injury that day, that he has had pain ever since, and then he presented to me for evaluation of that same knee." CX 3, Dep. at 18-19.

[7] Dr. Mirrer relied on radiographs but "did not make any notation as to when those radiographs were done, and [he] did not do them in the office that day." CX 3, Dep. at 7.

[8] The radiologist administering Claimant's September 15, 2020 magnetic resonance imaging (MRI) believed Claimant's torn anterior cruciate ligament (ACL) in his knee was from an acute injury. He found: "ACL rupture…complex tear of the medial meniscus; horizontal cleavage tear of the lateral meniscus; moderate to severe medial compartment

Employer thereafter sent Claimant to see Drs. Clinton Jambor and Daniel Gaccione.[9] EXs 2, 3, 8. Dr. Jambor conducted a records review and concluded Claimant did not sustain a meniscus tear or significant injury in 2015 based on his minimal treatment and the reports from Employer's Clinic. EX 3 at 3. On April 1, 2021, Dr. Gaccione examined Claimant, reviewed x-ray reports, and administered a McMurray's meniscus test. EXs 2 at 1, 3; 8 at 18. Based on his examination and records review, Dr. Gaccione concluded there is no causal relationship between the May 20, 2015 incident and Claimant's ongoing arthritis and degenerative issues in his right knee, as he had a normal meniscus exam on June 2, 2015, shortly after the incident and did not require ongoing care. EXs 2 at 3; 8 at 21-23.

Claimant filed a claim seeking medical benefits and authorization for right knee arthroscopic surgery. Tr. at 6, 10. Employer controverted the claim, and the case was forwarded to the Office of Administrative Law Judges for a formal hearing, which the ALJ conducted via Microsoft Teams on March 22, 2022.

The ALJ found Claimant invoked the Section 20(a) presumption, 33 U.S.C. §920(a), linking his current right knee condition and corresponding need for surgery to his 2015 work injury, but Employer established rebuttal of the presumption with the opinions of Drs. Jambor and Gaccione and the 2015 records from Employer's Clinic. D&O at 17. Weighing the evidence as a whole, the ALJ found Claimant's testimony was generally credible, and the medical evidence supports finding he experienced a work-related right knee injury in 2015 and currently suffers from osteoarthritis in his right knee. However, the ALJ gave weight predominantly to the credible opinions of Drs. Jambor and Gaccione to establish there was no connection between the May 2015 incident, Claimant's

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osteoarthritis; mild to moderate patellofemoral compartment osteoarthritis; mild lateral compartment osteoarthritis; and large volume synovitis." CX 1 at 10. On September 24, 2020, Dr. Mirrer reviewed the MRI, stating it "demonstrates quite a bit of damage to the knee," and noted Claimant's "medial meniscus appears to be broken up into several fragments" with "significant articular cartilage damage in the medial compartment, a horizontal cleavage tear in the lateral meniscus, and a torn ACL." CXs 1 at 1; 3 at 13, 15. He disagreed with the radiologist's finding that the ACL tear was the result of an "acute event" and believed it to be more "chronic in nature." CXs 1 at 1; 3 at 15-16. He therefore recommended a right knee "arthroscopy with debridement of the medial meniscus tear" and debridement of the ACL tear and lateral meniscus. *Id.*

[9] Dr. Jambor's credentials are not in the record, but his letterhead reveals he practices in orthopedics. EX 3. Dr. Gaccione is a Board-certified orthopedic surgeon. EXs 7-8.

osteoarthritis, and his current right knee symptoms. *Id.* at 18-19. Because Claimant did not demonstrate, by a preponderance of the evidence, that the "osteoarthritis in his right knee was caused, contributed to, hastened, or aggravated by his work," *id.* at 20, the ALJ denied Claimant's request for medical benefits and surgery. *Id.*

On appeal, Claimant challenges the ALJ's finding that his current right knee condition is not work-related, as well as the denial of benefits, asserting the ALJ erred in finding Employer rebutted the Section 20(a) presumption and in weighing the evidence as a whole. Employer responds, urging affirmance of the ALJ's decision.

Section 20(a) Rebuttal

If a claimant invokes the Section 20(a) presumption by producing some evidence of a harm and working conditions that could have caused, aggravated, or accelerated the harm, as here, his injury is presumed to be work-related. *Rose v. Vectrus Systems Corp.*, 56 BRBS 27, 37 (2022) (en banc), *appeal dismissed*, (M.D. Fla. Aug. 24, 2023); *see, e.g., Bath Iron Works Corp. v. Fields*, 599 F.3d 47, 55 (1st Cir. 2010). Once the presumption of causation has been invoked, the burden shifts to the employer to rebut that presumption by introducing "substantial evidence" showing workplace conditions did not cause, contribute to, or aggravate the claimant's condition. *Carswell v. E. Pihl & Sons*, 999 F.3d 18 (1st Cir. 2021), *cert. denied*, 142 S. Ct. 1110 (2022); *Fields*, 599 F.3d at 55; *Bath Iron Works Corp. v. Preston*, 380 F.3d 597, 602 (1st Cir. 2004); *Sprague v. Director, OWCP*, 688 F.2d 862, 865 (1st Cir. 1982); *Rose*, 56 BRBS at 38; *O'Kelly v. Dep't of the Army/NAF*, 34 BRBS 39, 41 (2000). The employer's burden on rebuttal is one of production, not persuasion, and is not dependent on credibility. *See Truczinkas v. Director, OWCP*, 699 F.3d 672, 678 (1st Cir. 2012) ("At the presumption-rebuttal stage, the credibility of the witnesses is not in issue."); *Fields*, 599 F.3d at 55 (same);[10] *Rose*, 56 BRBS at 35; *Suarez v. Serv. Employees Int'l, Inc.*, 50 BRBS 33, 36 (2016). 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. *Fields*, 599 F.3d at 55; *Preston*, 380 F.3d at 605 n.2.

Moreover, an employer is not required to "rule out any possible causal relationship between the claimant's employment and his condition." *Bath Iron Works Corp. v. Director, OWCP* [*Shorette*], 109 F.3d 53, 56 (1st Cir. 1998). A medical opinion of non-causation rendered to a reasonable degree of medical certainty is sufficient to rebut the presumption, *O'Kelley*, 34 BRBS at 41-42. If the employer rebuts the Section 20(a)

[10] For this reason, we reject Claimant's contentions that the ALJ did not adequately assess the credibility of Employer's experts in addressing whether their opinions rebutted the Section 20(a) presumption. *Truczinkas*, 699 F.3d at 678; *Fields*, 599 F.3d at 55.

presumption, it no longer applies, and the issue of causation must be resolved on the record as a whole, with the claimant bearing the burden of persuasion. *Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 271 (1994); *Santoro v. Maher Terminals, Inc*., 30 BRBS 171 (1996).

Contrary to Claimant's contention, the ALJ correctly found Employer rebutted the Section 20(a) presumption. Although he asserts the record includes evidence in his favor stating he could have experienced increased pain and symptoms from the May 20, 2015 incident and that his work could have aggravated or caused his arthritis to become symptomatic, that is irrelevant for rebuttal.[11] As stated above, Employer need only present evidence a reasonable mind could accept as showing the injury is not work-related. *Fields*, 599 F.3d at 55; *Preston*, 380 F.3d at 605 n.2.

The ALJ found Employer rebutted the presumption with the opinions of Drs. Gaccione and Jambor, in conjunction with the contemporaneous 2015 treatment records from Employer's Clinic. D&O at 17. As described above, Mr. Tavares examined Claimant's right knee on May 21, 2015, and June 2, 2015, at Employer's Clinic and diagnosed a right knee strain and sprain with "[n]o redness, tenderness, swelling or bruising," and complete range of movement. CX 4 at 2-3. Although Claimant initially had pain in his lower lateral knee during the McMurray's test, on his return visit to Employer's Clinic, the test was negative as he was able to move from a full squat to standing position while holding a desk for support. *Id.*

Dr. Gaccione opined there was no causal relationship between Claimant's ongoing "extensive degenerative change[s]" or the arthritic issues presently experienced in his right knee and the May 20, 2015 incident, as he had a normal follow-up examination in 2015 and his 2018 x-rays "look reasonably good compared to the later ones." EXs 2 at 3; 8 at 21-23. Additionally, Dr. Gaccione opined the meniscal changes present on Claimant's 2020 MRI are not related to his 2015 work injury because he did not have the type of rotational injury that would result in significant meniscal pathology and necessitate care

[11] There is no dispute Claimant sustained a work-related right knee injury on May 20, 2015. The issue, as Claimant argued both before the ALJ and now on appeal, is whether the 2015 work-related injury either caused a meniscal tear or aggravated his alleged pre-existing osteoarthritis in his right knee, thereby contributing, at least in part, to his present right knee condition and the resulting need for surgery. *See* Tr. at 10; Cl's Post-Hearing Br. at 1, 15; Cl's P/R Br. at 9, 19.

going forward.[12] Rather, he opined Claimant's present meniscal condition is degenerative in nature due to his "advanced [right knee] tricompartmental osteoarthritis." EX 2 at 3; EX 8, Dep. at 21. Dr. Gaccione further explained Claimant's increasing symptoms, meniscal tear, and developing osteoarthritis, the underlying reasons for right knee surgery, are more likely due to his advancing age, obesity, and left knee osteoarthritis that necessitated a total knee replacement surgery.[13] EXs 2 at 3-4; 8 at 22.

Dr. Jambor opined, "I am unable to state within a reasonable degree of medical probability" that Claimant's present meniscal tear and current need for right knee surgery in 2020 "is related to his injury" while working for Employer. EX 3 at 3.[14] These opinions, as supported by Employer's Clinic records from 2015, constitute substantial evidence on rebuttal. *Truczinkas*, 699 F.3d at 678; *Rose*, 56 BRBS at 35; *Cline v. Huntington Ingalls, Inc*., 48 BRBS 5, 7 (2013); *O'Kelley*, 34 BRBS at 41-42. Therefore, we affirm the ALJ's conclusion that Employer rebutted the Section 20(a) presumption. *Rose*, 56 BRBS at 35; *O'Kelley*, 34 BRBS at 41-42.

Weighing the Evidence as a Whole

Once the Section 20(a) presumption is invoked and rebutted, as here, the presumption no longer controls, and the ALJ is required to resolve the causation issue based on the whole record, with Claimant bearing the burden of persuasion. *Greenwich Collieries*, 512 U.S. at 271; *Truczinkas*, 699 F.3d at 678; *Fields*, 599 F.3d at 53; *Rose*, 56 BRBS at 38; *Santoro*, 30 BRBS at 173. The ALJ has the authority and discretion to weigh the evidence, accepting any medical opinion in whole or in part, and to draw reasonable inferences therefrom. *Carswell*, 999 F.3d at 27-28; *Moore*, 126 F.3d 256, 31 BRBS 119(CRT); *Santoro*, 30 BRBS at 173. The Board may not reweigh the evidence or

[12] Asked whether he agreed with Dr. Mirrer's opinion that Claimant's "right knee injury at [Employer's facility] on May 20, 2015, contributed to his current right knee symptoms," Dr. Gaccione replied "[n]o." EX 8, Dep. at 22-23.

[13] Based on the March 31, 2018 x-ray report, Dr. Gaccione noted Claimant had medial and lateral compartment chondrocalcinosis, which is known to cause arthritis in knees. EX 8, Dep. at 12, 22. The doctor testified that Claimant's complex medial tear is a "degenerative type tear because it's torn in different directions." *Id.* at 37-38.

[14] As documented by Employer's 2015 Clinic records, Dr. Jambor explained Claimant's minimal treatment after the May 2015 incident indicates he did not sustain a significant injury. EX 3. Additionally, he found it important to note that Claimant "is currently seeking treatment for a medial meniscal tear" but "his initial [2015] pain was on the other side of his knee." *Id.* at 3.

disregard the ALJ's choice between reasonable inferences. *Burns v. Director, OWCP*, 41 F.3d 1555 (D.C. Cir. 1994); *Mijanjos v. Avondale Shipyards, Inc.*, 948 F.2d 941, 945 (5th Cir. 1991) ("The choice between reasonable inferences is left to the ALJ and may not be disturbed if it is supported by the evidence."). Nor will the Board interfere with an ALJ's credibility determinations unless they are "inherently incredible or patently unreasonable." *Cordero v. Triple A Mach. Shop*, 580 F.2d 1331, 1335 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). If the ALJ's conclusion upon weighing the evidence is rational and supported by substantial evidence, it must be affirmed. *Carswell*, 999 F.3d at 27-28.

Claimant contends the record contains no evidence to contradict the fact that he sustained a work-related meniscal knee injury in 2015 and continued to experience symptoms in his right knee. He maintains this undisputed evidence, in conjunction with Dr. Mirrer's opinion and Dr. Gaccione's testimony as to the meniscal pathology and the occupational health records, establishes the work accident led to the need for surgical intervention. Further, he maintains the ALJ erred in relying on the location of his right knee pain in 2015, particularly because neither Dr. Gaccione nor Dr. Jambor "ruled out" a meniscal injury in 2015, nor did they dispute he sustained a work-related right knee injury at that time.[15] Finally, citing *Fields*, 599 F.3d at 55, Claimant maintains the ALJ erred in failing to find his continued work for Employer aggravated the osteoarthritis in his right knee and contributed to his current symptomatology and pain, requiring surgical intervention.[16] We reject Claimant's contentions.

[15] Claimant also asserts Dr. Jambor's opinion is not entitled to any weight as he argues it lacks any supporting foundation because he never performed a physical examination of Claimant, his report was submitted without a curriculum vitae, and it did not identify the records upon which his "conclusory" opinion was based.

[16] Claimant relies on the following: Dr. Gaccione's testimony that if Claimant had pre-existing arthritis, the May 2015 work injury could have aggravated that underlying condition to the point where Claimant began experiencing ongoing symptoms, EX 8, Dep. at 35-36, 41; Dr. Mirrer's explanation that it is impossible to know if someone has pre-existing asymptomatic tricompartmental arthritis as diagnostic imaging, including an x-ray, would not be recommended without complaints or symptoms, CX 3, Dep. at 24; Drs. Gaccione's and Mirrer's agreement that Claimant's radiographs from 2018 to 2020 revealed progression of osteoarthritis while he continued to work for Employer, EX 8, Dep. at 13; CX 3, Dep. at 20; and Dr. Gaccione's testimony that if Claimant continued to work for Employer and experience pain, his work activities could contribute to his symptomatology. EX 8, Dep. at 41.

When weighing the evidence as a whole, the ALJ found Dr. Mirrer's opinion "is somewhat equivocal" and predominantly based on Claimant's subjective reports of pain. D&O at 18. He found Dr. Mirrer, without any reference to medical evidence or documentation, opined Claimant "may have torn his meniscus back in 2015" and stated it "would make sense" that the right knee was injured based on the history Claimant provided him and that such injury "would contribute to [Claimant's] symptoms in 2020." *Id.* (citing CX 1 at 7; CX 3, Dep. at 18-19). The ALJ further found Dr. Mirrer's reliance on Claimant's reporting of the 2015 injury does not align with documentation from Employer's Clinic records.[17] Moreover, the ALJ stated it is unclear from the record whether Dr. Mirrer had access to Employer's Clinic records,[18] as well as to other "critical aspects" of Claimant's work and medical history.[19]

In contrast, the ALJ found Dr. Gaccione's conclusions were generally thorough, well-reasoned, and based on his "extensive experience" in treating knee problems. He found persuasive the fact that Dr. Gaccione considered the totality of the medical evidence before him, including Claimant's age, obesity, and left total knee replacement, the 2015 records from Employer's Clinic, the 2018 x-ray report noting the presence of chondrocalcinosis, and Dr. Mirrer's 2020 medical records detailing the progression of Claimant's osteoarthritis. The ALJ found it significant that Dr. Gaccione "spent considerable time" discussing the meniscus, including the types of tears and relationship between such tears and a patient's arthritic symptomology and pain.[20] D&O at 19 (citing

[17] The ALJ found Claimant told Dr. Mirrer that his right knee was "quite swollen" and that an x-ray was taken immediately following the 2015 work injury, whereas Mr. Tavares, at both the May 21, 2015 and June 2, 2015 clinic visits, reported no redness or swelling and his notes indicated an x-ray was unnecessary. CX 1 at 6; EX 4 at 2.

[18] The ALJ raised this concern because he found Dr. Mirrer's testimony did not address Claimant's apparent recovery as detailed by the June 2, 2015 follow-up appointment.

[19] The ALJ found it significant that Dr. Mirrer did not fully address Claimant's ability to continue working as a welding instructor for the next five years without taking any time off or seeking medical treatment for his right knee, particularly given his testimony that while a person could have asymptomatic mild arthritis, it would be unusual for him to not have any symptoms after a traumatic meniscus tear such as the one Dr. Mirrer opined Claimant may have suffered in 2015.

[20] Although Claimant accurately points to Dr. Gaccione's testimony that the instability of the meniscus, rather than the location of the tear, causes the symptoms, we reject his contention that the ALJ erred in relying on the location of his pain as a factor.

EX 8, Dep. at 36-41).[21] He further found Dr. Gaccione specifically explained the type of meniscal tears Claimant suffered from in 2020 were characteristically associated with degenerative arthritis, rather than acute trauma, and Claimant's description of the 2015 work accident indicated his injury was neither rotational in nature nor severe enough to result in a significant meniscal tear, EX 8, Dep. at 19-21. Based on his analysis of the evidence, the ALJ found Dr. Gaccione's "comprehensive and well-founded" opinions are more persuasive than those proffered by Dr. Mirrer. He therefore accorded greatest weight to Dr. Gaccione's opinion, which he noted included consideration of "the records review from [Dr.] Jambor,"[22] D&O at 12, 19, and he concluded Claimant's May 2015 work-related right knee injury did not contribute to his osteoarthritis or the need for surgery.

The ALJ next found the record does not support Claimant's arguments that his work as a welder until 2009 caused the arthritis in his right knee or that his pre-existing arthritis may have been asymptomatic until aggravated by his May 2015 work injury. He found Claimant provided no evidence demonstrating he had arthritis in his right knee, symptomatic or not, prior to his 2018 diagnosis of mild arthritis, nor has he provided a

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Drs. Gaccione and Jambor reported Claimant initially complained of pain only on the lateral side of his right knee in 2015 and then on the medial side in 2020 and 2021 – reasonably indicating two different injuries. *Greenwich Collieries*, 512 U.S. at 271; *Carswell*, 999 F.3d at 32; Cl.'s Br. at 20-21; D&O at 19; EX 3 at 3.

[21] As Claimant contends, although Dr. Gaccione recognized Claimant's 2016 and 2018 OSHA Respiratory Medical Evaluation Questionnaires both indicated Claimant had "difficulty squatting to the ground," he gave them little weight in rendering his opinion because he found there is nothing in them about knee complaints or pain, and there is "not really clarity" on what the issue is with squatting which "could have been related to something besides the knee." EX 8, Dep. at 45-47. Additionally, Dr. Gaccione stated the questionnaires do not "say related to the knees specifically" nor do they specifically identify whether the problem is related to Claimant's significant non-work-related left knee condition, his right knee, or a combination of both. *Id.*, Dep. at 46-49.

[22] The ALJ acknowledged he did not have Dr. Jambor's "curriculum vitae in the record before [him]," D&O at 10 n.11, 18, and recognized Dr. Jambor "performed a records review" and identified the records upon which he relied in reaching his opinion. *Id.* at 10. As such, the ALJ was keenly aware of the potential foundational failings accompanying Dr. Jambor's report and, in contrast to Claimant's assertion, properly considered those factors in assessing the weight to be given to that evidence. *Id.* at 12, 19.

medical opinion connecting his 2018 diagnosis with his work as a welder.[23] He further determined that Claimant's account of periodic pain, did not establish his work as a welding instructor from 2018 to 2020 aggravated his arthritis. The ALJ found Claimant informed both Drs. Mirrer and Gaccione that his last position before retirement as a welding instructor, a position he held from 2009 to 2020, was "sessile" and mostly "desk work," as it no longer required frequent kneeling, crawling into confined spaces, or climbing ladders with heavy equipment, but instead primarily involved standing during periods of classroom instruction and sitting while completing administrative tasks.[24] D&O at 20; CX 3 at 6; EX 8, Dep. at 18.

In conclusion, the ALJ rationally found Claimant did not demonstrate by a preponderance of the evidence that the osteoarthritis in his right knee was caused, contributed to, hastened, or aggravated by his work with Employer. We reject Claimant's contentions that the ALJ erred in his weighing of the evidence. The ALJ thoroughly summarized the medical evidence of record, including the opinions of Drs. Gaccione, Mirrer and Jambor, and permissibly gave greatest weight to Dr. Gaccione's opinion that Claimant's right knee condition is not work-related but, instead, is due to general, non-work factors such as Claimant's increasing age, obesity, and tendency towards arthritis as demonstrated by his non-work-related left total knee replacement and presence of chondrocalcinosis, a known cause of arthritis. *Carswell*, 999 F.3d at 27-28; *Santoro*, 30 BRBS at 173. Additionally, the ALJ permissibly rejected Claimant's remaining contentions and concluded Claimant did not meet his burden of establishing his right knee condition was caused, aggravated, or exacerbated by his pre-injury or post-injury

[23] The ALJ also noted Dr. Mirrer's acknowledgement that a person can develop osteoarthritis regardless of his occupation and that the disease worsens over time as a person ages. D&O at 19 (citing CX 3, Dep. at 23-24).

[24] We reject Claimant's assertion that Dr. Gaccione opined his work could have worsened his condition. Rather, Dr. Gaccione testified, "I think going up stairs *if* you had significant arthritis in your knee it could cause some increase in symptoms, but it wouldn't really change the course of the arthritis." EX 8, Dep. at 36 (emphasis added); Cl.'s P/R Br. at 18 (citing *Bath Iron Works Corp. v. Fields*, 599 F.3d 47, 55 (1st Cir. 2010)). Dr. Gaccione further clarified he "wouldn't use the term 'aggravation.' "Like I said, it would just make his symptoms appear, but not necessarily make the process progress or be aggravated." EX 8, Dep. at 41. While Dr. Gaccione's interpretation is not an accurate use of the term "aggravation" under the Longshore Act, *see generally Gardner v. Director, OWCP*, 640 F.2d 1385, 1389 (1981), the ALJ correctly found there is no record evidence of arthritis pre-existing the 2015 incident so there is nothing to support a claim of a condition that could have been aggravated.

employment with Employer. *Carswell*, 999 F.3d at 27-28; *Santoro*, 30 BRBS at 173. As the ALJ's findings are supported by substantial evidence, we affirm them.

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