

U.S. Department of Labor

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



BRB No. 24-0228

REINALDO AYALA MINAYA )

Claimant-Petitioner )

v. )

CONSTELLIS GROUP )

and )

CONTINENTAL INSURANCE COMPANY )

Employer/Carrier- )  
Respondents )

**NOT-PUBLISHED**

DATE ISSUED: 12/09/2024

DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Stephen R. Henley,  
Chief Administrative Law Judge, United States Department of Labor.

Allison T. Graber and Jacob S. Garn (Attorneys Jo Ann Hoffman &  
Associates, P.A.), Lauderdale-By-The-Sea, Florida, for Claimant.

Michael T. Quinn, Edwin B. Barnes, and Scott L. McCrary (Thomas Quinn,  
L.L.P.), San Francisco, California, for Employer/Carrier.

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

PER CURIAM:

Claimant appeals Chief Administrative Law Judge (ALJ) Stephen R. Henley's  
Decision and Order Denying Benefits (2021-LDA-04328) 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).

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 Peruvian citizen, alleges he sustained psychological injuries while working for Employer as a security guard/escort driver in Iraq between December 2007 and July 2010.<sup>1</sup> CX 31 at 9-11. During his deployments to Iraq, Claimant experienced rocket attacks and explosions which, he stated, traumatized him to the extent that when his contract with Employer ended in July 2010, he returned to Peru and declined subsequent offers of similar work in Iraq. *Id.* at 11. He maintained that while in Iraq, he was stressed, depressed, and afraid for his life, and he experienced intermittent nightmares, headaches, and difficulty sleeping. *Id.* at 12-13, 19.<sup>2</sup>

Claimant stated his symptoms worsened upon his return to Peru, prompting a series of visits with a Peruvian military doctor in 2010.<sup>3</sup> CX 31 at 12-13, 27-28. During these visits, he informed medical personnel of his experiences in Iraq. They performed tests which, Claimant stated, led to them diagnosing post-traumatic stress disorder (PTSD) caused by his work in Iraq and prescribing medication for depression. *Id.* at 27-30, 39. He believed his ongoing visits to the military hospital once or twice per month and the prescription medication improved his symptoms between 2011 and 2020.<sup>4</sup> *Id.* at 30, 32-33. Meanwhile, he began working as a taxi driver around November 2011 because he

---

<sup>1</sup> 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); *see also Global Linguist Solutions, L.L.C. v. Abdelmeged*, 913 F.3d 921 (9th Cir. 2019).

<sup>2</sup> Despite these symptoms, Claimant stated he did not seek any medical treatment while in Iraq because he was generally calm. CX 31 at 15, 20. However, Claimant also testified varyingly that he sought medical attention and obtained pills once and "many times" while in Iraq for stress, headaches, and ringing in his ears caused by the rocket attacks. CX 31 at 25.

<sup>3</sup> Claimant served as an aircraft mechanic with the Peruvian Air Force from approximately 1978 until retiring in 2004. CX 31 at 4-5. His military service/retirement provided him with a pension and the ability to utilize a military hospital for health issues. *Id.*

<sup>4</sup> Claimant stated he did not have access to records of his visits to the military hospital because they are "confidential" and "cannot leave that facility." CX 31, Dep. at 64-65.

needed money, and he continued to work part-time through the date of his February 8, 2023 deposition. CX 31 at 37-38.

On August 11, 2020, Claimant began treating with a psychiatrist, Dr. Julian Valderrama Escalante. CX 21. Dr. Valderrama noted an onset of symptoms dating to 2011, including a state of vegetative hyperactivity with hypervigilance, an increase in startle reaction, insomnia, anxiety, depression, and panic attacks. He diagnosed Claimant with PTSD and prescribed medications and biweekly psychotherapy to manage his symptoms - treatment which continued through November 2021. *Id.* Subsequently, Dr. Valderrama opined Claimant's PTSD was caused by his employment in Iraq and represents a chronic medical condition he will have for the rest of his life, resulting in a permanent disability. *Id.* at 63-64, 69-70.

At Employer's request, psychiatrist Dr. Moises Ponce Malaver performed a psychiatric assessment of Claimant on November 8, 2021. EX 2. Based on a clinical interview, mental status examination, and review of Claimant's treatment with Dr. Valderrama, Dr. Malaver concluded Claimant does not meet the diagnostic criteria for PTSD and does not exhibit any mental disorder or condition. *Id.* at 24. Specifically, he opined Claimant did not suffer any psychological injury as a result of his overseas work with Employer. *Id.*

On July 22, 2022, Dr. Gustavo R. Benejam, a licensed clinical psychologist, evaluated Claimant, conducting a clinical interview, mental status examination, and objective testing. He also reviewed records from Drs. Valderrama and Malaver and Claimant's overseas employment file. CX 22. Dr. Benejam diagnosed Claimant with an unspecified trauma and stressor-related disorder and a major depressive disorder related to his work in Iraq for Employer. *Id.* at 20. In addition, Dr. Benejam raised concerns about Dr. Malaver's 2021 report leading him to opine that Dr. Malaver's conclusions lacked support. *Id.* at 11-13. This prompted supplemental reports from Drs. Malaver and Benejam.<sup>5</sup> EXs 4, 6; CX 23.

---

<sup>5</sup> In response, Dr. Malaver wrote a supplemental addendum report dated September 2, 2022, expressing reservations about Dr. Benejam's 2022 report and stating his 2021 conclusions about Claimant remained unchanged. EX 4 at 21-22. Dr. Benejam then issued a January 30, 2023 addendum report reiterating his initial concerns regarding Dr. Malaver's assessment and stating that Dr. Malaver's "inaccurate, incorrect" addendum did nothing to change his prior conclusions. CX 23 at 5. Finally, Dr. Malaver wrote a second addendum on February 6, 2023, again criticizing Dr. Benejam's reports and reiterating his own conclusions. EX 6.

On October 16, 2020, Claimant filed his claim seeking benefits for a work-related psychological injury. CX 1. Employer controverted the claim, EX 13, and the case was forwarded to the Office of Administrative Law Judges (OALJ), where the parties opted for the claim to be adjudicated by submission of the evidence in lieu of a hearing. The parties each submitted exhibits and filed briefs. On February 27, 2024, the ALJ issued his Decision and Order Denying Benefits (D&O), finding Claimant did not establish his psychological symptoms were caused by his work for Employer.

The ALJ found Claimant entitled to the Section 20(a) presumption, 33 U.S.C. §920(a), that his psychological injury is related to his work in Iraq for Employer and Employer established rebuttal of the presumption. The ALJ then determined Claimant did not show he has a psychological injury caused by his work with Employer based on the record as a whole. Accordingly, he denied Claimant's claim.

On appeal, Claimant challenges the ALJ's findings that Employer rebutted the Section 20(a) presumption and that he did not meet his causation burden based on the record as a whole. Employer responds, urging affirmance. Claimant filed a reply brief, reiterating his contentions.

Claimant first asserts the ALJ made a mistake of fact and misapplied the law in finding Dr. Malaver's opinion rebuts the Section 20(a) presumption.<sup>6</sup> He maintains the ALJ did not adequately consider Dr. Malaver's failure to administer any diagnostic tests or that the doctor did not ascribe significant weight to testing which showed Claimant was not malingering. Further, Claimant asserts the ALJ applied an incorrect legal standard by merely requiring that Employer offer sufficient, rather than substantial, evidence and by accepting Dr. Malaver's opinion on its face without any analysis as to how the doctor's report meets the substantial evidence threshold for rebutting the Section 20(a) presumption. Because of these errors, Claimant maintains the ALJ's rebuttal finding is not adequately explained in accordance with the Administrative Procedure Act (APA), 5 U.S.C.

---

<sup>6</sup> Claimant suggests the ALJ's findings on rebuttal and after weighing the record as a whole are erroneous, in part, because he "did not construe anything liberally" or resolve any factual doubts in his favor. CI's Br. at 5. He asserts the ALJ improperly chose to give Dr. Malaver automatic deference rather than construing the evidence in his favor as the Act requires. *Id.* at 11. We reject Claimant's position as it represents an incorrect statement of the law. *Director, OWCP v. Greenwich Collieries*, 512 U.S. 267 (1994) (the "true doubt" rule violates Section 7(c) of the Administrative Procedure Act, 5 U.S.C. §556(d)); *see also Rainey v. Director, OWCP*, 517 F.3d 632, 637 (2d Cir. 2008) (Employer's burden on rebuttal is one of production, not persuasion); *Rose v. Vectrus Sys. Corp.*, 56 BRBS 27, 30 (2022) (Decision on Recon. en banc), *appeal dismissed* (M.D. Fla. Aug. 24, 2023) (same).

§557(c)(3)(A), and, therefore, his denial of benefits must be reversed. We reject Claimant's arguments.

Once the Section 20(a) presumption is invoked, as here, 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 (2d Cir. 2008); *O'Kelley v. Dep't of the Army/NAF*, 34 BRBS 39, 41 (2000). Substantial evidence is the amount of evidence which a reasonable mind could accept as adequate to support a conclusion. *Rainey*, 517 F.3d at 637. The employer's burden on rebuttal is one of production, not persuasion. *Id.*; *Rose*, 56 BRBS at 30; *Victorian v. Int'l-Matex Tank Terminals*, 52 BRBS 35, 41 (2018), *aff'd sub nom. Int'l-Matex Tank Terminals v. Director, OWCP*, 943 F.3d 278 (5th Cir. 2019); *Suarez v. Serv. Emps. Int'l, Inc.*, 50 BRBS 33, 36 n.4 (2016); *Cline v. Huntington Ingalls, Inc.*, 48 BRBS 5, 7 (2013). An employer need only 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. *Rainey*, 517 F.3d at 637. In addition, a medical opinion of non-causation rendered to a reasonable degree of medical certainty is sufficient to rebut the presumption. *See O'Kelley*, 34 BRBS at 41.

The ALJ found Employer, through Dr. Malaver's opinion, rebutted the Section 20(a) presumption that Claimant has a work-related psychological condition. We affirm that finding. In his November 8, 2021 report, Dr. Malaver opined, "with a reasonable degree of medical certainty," that "Claimant does not meet the diagnostic criteria for [PTSD]" and that his reported symptoms, which the doctor identified as "changes in character, combined with anxiety and depression," are not related to his work for Employer but instead "to his retirement, his adjustment to his new lifestyle, and his physical conditions." EX 2 at 23-24. Specifically, Dr. Malaver opined: "Claimant does not exhibit any mental disorder or condition," let alone any psychological "injuries caused by his employment with the Employer during his work overseas." *Id.*, at 24, 25. Dr. Malaver's opinion constitutes substantial evidence rebutting the Section 20(a) presumption. *Cline*, 48 BRBS at 7 (2013); *O'Kelley*, 34 BRBS at 41.

We also reject Claimant's assertions that the ALJ's Section 20(a) rebuttal analysis does not accord with law and that his consideration of Dr. Malaver's opinion is incomplete. First, the ALJ properly stated Employer's burden on rebuttal is "to produce *substantial evidence* that the injury was not caused or aggravated by the employment." D&O at 19 (emphasis added). His statement that "Employer offered sufficient evidence to rebut the presumption," *id.*, when considered in context with his entire rebuttal analysis, rationally reflects the ALJ's conclusion that Dr. Malaver's opinion constitutes "substantial evidence" and thus is sufficient to meet Employer's burden on rebuttal. The ALJ's rebuttal discussion and decision, therefore, comport with the APA as he provided a detailed summary of Dr. Malaver's opinion and satisfactorily explained why it rebuts the Section 20(a) presumption. 5 U.S.C. §557(c)(3)(A); *Santoro v. Maher Terminals, Inc.*, 30 BRBS 171, 172-173 (1996).

Second, Claimant's remaining arguments regarding Dr. Malaver's opinion go to the weight to be accorded to his opinion and not to whether Employer established rebuttal by producing substantial evidence. *Rainey*, 517 F.3d at 637; *Rose*, 56 BRBS at 30. Therefore, we affirm the ALJ's finding that Employer rebutted the Section 20(a) presumption regarding Claimant's alleged psychological injury. *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, with the claimant bearing the burden of persuasion by a preponderance of the evidence. *Rainey*, 517 F.3d at 634; *Santoro v. Maher Terminals, Inc.*, 30 BRBS at 174; *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 276 (1994). In evaluating the evidence as a whole, the ALJ is entitled to weigh the lay and expert opinion evidence and draw his own inferences from it, and he is not bound to accept the opinion or theory of any particular medical expert. *See Pietrunti v. Director, OWCP*, 119 F.3d 1035, 1042 (2d Cir. 1997); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403, 405 (2d Cir. 1961). The Board may not re-weigh the evidence, make credibility determinations, or substitute its inferences for the ALJ's. *Sealand Terminals, Inc. v. Gasparic*, 7 F.3d 321, 323 (2d Cir. 1993).

Weighing the evidence as a whole, the ALJ initially found Claimant "generally lacks credibility" due to inconsistencies in his testimony regarding his medical treatment and its timeline, as well as "major discrepancies" regarding his employment in Iraq and activities after returning to Peru.<sup>7</sup> D&O 20-22. Comparing Drs. Malaver's and Benejam's reports, he accorded greater weight to Dr. Malaver's opinion, finding it "the most well-reasoned" and "most supported by the record as a whole." *Id.* at 24-25. In contrast, the ALJ determined Dr. Benejam's analysis and conclusions are "incomplete" because his report does not demonstrate that he "meaningfully considered" all the record evidence prior to reaching his conclusions. *Id.* at 23-24. He further found Dr. Benejam did not adequately explain the rationale for his conclusions or why he relied on certain information in lieu of contrary evidence in the record. Moreover, the ALJ found Dr. Benejam's critique of Dr. Malaver's report flawed as it focused "exclusively" on the evidence that supported his own conclusions while ignoring significant discrepancies and contrary facts in the record. *Id.* at 23. Consequently, relying on Dr. Malaver's opinion that Claimant did not suffer any psychological injuries caused by his work with Employer, the ALJ found Claimant did not establish a work-related psychological condition based on the record as a whole and denied benefits. *Id.* at 25.

---

<sup>7</sup> The ALJ gave "limited probative value" to Dr. Valderrama's treatment records because they included "minimal useful information" and were "largely conclusory." *Id.* at 22-23. We affirm this finding as it is unchallenged on appeal. *Scalio v. Ceres Marine Terminals, Inc.*, 41 BRBS 57, 58 (2007).

Claimant contends the ALJ erred in weighing the evidence, and his decision to credit Dr. Malaver's opinion over Dr. Benejam's is not supported by the evidence. He contends Dr. Malaver's opinion is flawed because it: completely disregards the impact of the traumatic events Claimant experienced in his overseas employment; does not adequately explain the doctor's conclusions, particularly in arbitrarily attributing Claimant's symptoms, including anxiety and depression, entirely to his retirement and diabetes; and does not sufficiently address Claimant's extensive psychological treatment or whether it indicates Claimant had a work-related psychological injury which has improved.<sup>8</sup> Claimant further asserts the ALJ erred in finding Dr. Benejam did not sufficiently consider the test results or adequately explain how Claimant continued to work despite his significant symptomatology. Moreover, he maintains it is unclear how the ALJ, despite categorizing Dr. Benejam's medical evaluation as "thorough," concluded it was of "limited probative value" and "incomplete."

Contrary to Claimant's contentions, Dr. Malaver's opinion neither disregards the traumatic events Claimant encountered while working for Employer<sup>9</sup> and the treatment he

---

<sup>8</sup> Claimant also asserts the ALJ mischaracterized Dr. Malaver's report as being an "independent medical evaluation" and deferred to his conclusions on that basis. To the contrary, although the ALJ discussed Dr. Malaver's November 8, 2021 report under the heading "*Independent Medical Evaluation Report*," D&O at 13, the record reflects he was merely summarizing the title of that document. The ALJ consistently recognized Dr. Malaver as Employer's "medical expert" rather than, as Claimant suggests, an independent medical evaluator. *Id.* at 13, 19, 20. Additionally, in assessing the evidence as a whole, the ALJ's decision reflects that he appropriately evaluated the underlying reasoning and documentation of each medical opinion to determine its respective weight. *Id.* at 22-25.

<sup>9</sup> As the ALJ noted, Dr. Malaver's November 8, 2021 report documents the traumatic events Claimant described he experienced in his work for Employer, D&O at 13; *see also* EX 2 at 3-5, and discusses why, in his opinion, Claimant's symptoms are not impacted by those events. *Id.*

received,<sup>10</sup> nor does it fail to provide an explanation for the conclusions he reached.<sup>11</sup> Additionally, we reject Claimant's contention that the ALJ erred in his consideration of Dr. Benejam's opinion. The ALJ reviewed Dr. Benejam's report in detail, including the underlying logic the doctor provided. D&O at 9-13, 23-24. The ALJ found that, although Dr. Benejam conducted "a thorough evaluation of Claimant" in that he described the objective tests he used, including their underlying purpose and how he interpreted them, "it is not clear that Dr. Benejam probed the results for those tests" or "adequately explain[ed]" his conclusions in the face of conflicting evidence.<sup>12</sup> D&O at 23-24. In this

---

<sup>10</sup> Dr. Malaver's opinion notes Claimant's general description of his "treatment with the [Peruvian] Air Force doctors" for "some depressive symptoms" between 2010 and 2020, as well as his ongoing treatment thereafter with Dr. Valderrama, including the psychopharmacological treatment he received, EX 2 at 7, 9, 12. Dr. Malaver also reviewed Dr. Valderrama's treatment records and November 8, 2020 report. *Id.* at 19-21.

<sup>11</sup> Dr. Malaver stated his opinion is based on Claimant's recitation of his personal and professional histories, as well as the history of his present illness, including his symptoms and psychiatric history and treatment, mental state and psychological exams, a review of the medical records of Dr. Valderrama, and Dr. Malaver's own "knowledge, training, and experience in Clinical and Forensic Psychiatry." EX 2 at 27. He explained Claimant's description of his anxiety and depressive symptoms relate to "changes in his character" akin to those produced by his retirement (Claimant "describes depressive symptoms much like retirement symptoms" which began following his return from Iraq – "during the period of adjustment to his new work situation, i.e., his full retirement from his lifelong profession, describing symptoms typical of retirement combined with depressive symptoms which then get worse") and diabetes mellitus (e.g., loss of interest in daily activities, feelings of sadness and hopelessness, back pain, headaches). *Id.* at 9, 10. Further, he explained Claimant did "not describe [his symptoms] as a consequence of something he went through, but as a result of reminiscing on his experiences as a professional or as a human being." EX 2 at 7. Moreover, he stated Claimant's willingness to work until July 2010 and failure to report any symptoms during his final two months of overseas work "suggests that his levels of anxiety and stress did not surpass his ability to control them," *id.* at 5.

<sup>12</sup> For example, the ALJ found Dr. Benejam did not adequately explain his statement that Claimant "presents with significant impairments in the occupational area" in light of "the fact that Claimant has worked consistently as a taxi driver since he returned from Iraq." D&O at 23; *see* CX 22 at 5, 9, 19 (Dr. Benejam first stated Claimant "has not worked since he came back from Iraq due to symptoms" but then stated the jobs he engaged in "have required significant psychological and emotional effort due to symptomatology.").



regard, the ALJ found some of Claimant's test results with Dr. Benejam did not correspond with other aspects of his life.<sup>13</sup>

The ALJ has the authority to determine which opinions are entitled to great, or even determinative, weight based on their reasoning. *See, e.g., Director, OWCP v. Newport News Shipbuilding & Dry Dock Co.*, 138 F.3d 134, 140 (4th Cir. 1998) (The ALJ should "examine the logic" of physicians' conclusions and "evaluate the evidence upon which their conclusions are based."); *Pisaturo v. Logistec, Inc.*, 49 BRBS 77, 81 (2015) (ALJ has discretion to discredit a medical opinion where it fails to provide a sufficient explanation for the conclusion reached). Because his credibility determinations are rational and supported by substantial evidence in the record, *Pietrunti*, 119 F.3d at 1042; *Gasparic*, 7 F.3d at 323; *Hughes*, 289 F.2d at 405; *Pisaturo*, 49 BRBS at 81, we affirm the ALJ's

---

<sup>13</sup> The ALJ noted Claimant's WHODAS 2.0 results from Dr. Benejam's evaluation indicated he is moderately to extremely impaired with respect to his participation in society and moderately to severely impaired in terms of getting along with people and working. The ALJ determined that these findings appear contradictory to the fact that Claimant has "worked consistently as a taxi driver since he returned from Iraq" and Dr. Benejam did not adequately discuss this discrepancy. Moreover, he found Dr. Benejam provided an inconsistent account of Claimant's employment since his return from Iraq, as the doctor stated Claimant had not worked since he returned but then also stated Claimant has worked but the jobs required significant psychological and emotional effort. Thus, the ALJ determined Dr. Benejam did not adequately address how Claimant's ability to work consistently after returning to Peru factored into his diagnosis. D&O at 23.

finding that Claimant's psychological condition is not work-related. *Sistrunk v. Ingalls Shipbuilding, Inc.*, 35 BRBS 171, 174 (2001); *Coffey v. Marine Terminals Corp.*, 34 BRBS 85, 87 (2000).

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

GREG J. BUZZARD  
Administrative Appeals Judge