**U.S. Department of Labor**

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

BRB No. 22-0264

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| NAIM SADIKU | ) | |
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| Claimant-Petitioner | ) | |
| | ) | |
| v. | ) | |
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| DYNCORP INTERNATIONAL, LLC | ) | |
| | ) | DATE ISSUED: 7/17/2023 |
| and | ) | |
| | ) | |
| INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA | ) | |
| | ) | |
| | ) | |
| Employer/Carrier-Respondent | ) | DECISION and ORDER |

Appeal of the Decision and Order Denying Benefits and Order Granting Employer/Carrier's Motion for Partial Summary Decision of Theodore W. Annos, Administrative Law Judge, United States Department of Labor.

Phillip M. Davis (The Law Office of Phillip M. Davis), Dallas, Texas, for Claimant.

Billy J. Frey and Melanie R. Allen (Thomas Quinn, LLP), Houston, Texas, for Employer/Carrier.

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

PER CURIAM:

Claimant appeals District Chief Administrative Law Judge (ALJ) Theodore W. Annos's Decision and Order Denying Benefits[1] (2019-LDA-00969) rendered on a claim filed pursuant to the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (Act), as extended by the Defense Base Act, 42 U.S.C. §1651 *et seq.* (DBA).[2] 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 law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

From September 2010 until March 2014, Claimant, a citizen of Kosovo, worked for Employer in Afghanistan, where he was responsible for driving to and from military bases. Claimant's Exhibit (CX) 11 at 149-150. In 2014, Employer informed Claimant the base he was assigned to was closing, at which point he was sent to Kandahar to fill out paperwork and then return home to Kosovo. Joint Exhibit (JX) 1 at 4. After returning to Kosovo, Claimant did not seek out employment because "he was not interested." *Id.* at 5.

On March 8, 2016, Claimant visited psychiatrist Dr. Ramadan Halimi, who diagnosed him with Post-Traumatic Stress Disorder (PTSD) and recommended he not return to work. CX 11; Employer's Exhibit (EX) 6. Dr. Halimi continued to periodically treat Claimant, and recommended medication and psychotherapy. CX 11 at 151.

Claimant filed a claim for compensation on December 26, 2018, seeking benefits under the DBA for his alleged employment-related PTSD. CX 2. In response, Employer filed a notice of injury on January 2, 2019, and subsequently controverted the claim on January 4, 2019, and April 25, 2019.

Employer filed a motion for summary decision arguing Claimant was not entitled to benefits because his claim was untimely filed and because it received untimely notice of his injury. In support of its argument, Employer stated Claimant knew or should have known of his psychological condition and its connection to his employment by March 8, 2016, when Dr. Halimi diagnosed him. As Claimant did not file his claim for benefits until December 26, 2018, and Employer did not have notice until December 28, 2018, Employer

[1] Although the opening paragraph of Claimant's Petition for Review seeks reversal of the ALJ's Decision and Order Denying Benefits issued on February 25, 2022, the substance of his Brief in Support of the Petition for Review is limited to the ALJ's Order Granting Employer/Carrier's Motion for Partial Summary Decision issued on March 10, 2020. Claimant's Petition for Review (Cl. PR) at 1; Claimant's Brief in Support of Petition for Review (Cl. PR Br.) at 2, 10-12.

[2] 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).

argued there was no genuine issue of material fact as to untimeliness under Sections 12 and 13 of the Act. 33 U.S.C. §§912, 913. Claimant, in opposition, argued a genuine issue of material fact existed as to whether Employer complied with the requirement to designate an official responsible for receiving notice of an injury under Section 912(c) of the Act, 33 U.S.C. §912(c), and post that information at the worksite under 20 C.F.R. §702.211(b). He thus argued his untimely notice and filing should be excused because of Employer's failure to comply with these requirements.

On March 10, 2020, the ALJ issued an Order Granting Employer/Carrier's Motion for Partial Summary Decision. The ALJ found Claimant's argument that his untimely notice and filing should be excused was unconvincing. Further, the ALJ found there was no genuine factual dispute as to the untimeliness of Claimant's claim because, *inter alia*, Claimant was diagnosed with PTSD on March 8, 2016, Claimant's medical records and his deposition show he knew his PTSD was disabling as of March 8, 2016, and Employer did not have knowledge of Claimant's injury until he filed his claim on December 26, 2018. Order Granting Partial Summary Decision (PSD Order) at 7-12. Given a claimant may still receive medical benefits for an otherwise time-barred claim under the Act, *Siler v. Dillingham Ship Repair*, 28 BRBS 38 (1994) (decision on recon. en banc), the only remaining issues before the ALJ involved Claimant's entitlement to medical benefits for the same alleged psychological injury.

No formal hearing was held; rather, the parties jointly requested the case be tried on submission of evidence in lieu of a hearing. In his decision dated February 25, 2022, the ALJ found Claimant invoked the Section 20(a) presumption, 33 U.S.C. §920(a), and Employer rebutted it with Dr. Aaron Hervey's opinion that Claimant did not have PTSD or any work-related psychiatric injury. In weighing the evidence as a whole, the ALJ found Dr. Halimi's opinion was less credible because it was based entirely on Claimant's improbable self-reporting, and the record lacked evidence of Dr. Halimi's credentials. Conversely, he found Dr. Hervey's opinion more credible because he used a number of assessment and validity tests and provided a well-reasoned and well-documented opinion. D&O at 17-18. Thus, the ALJ concluded Claimant did not establish a work-related psychological injury by a preponderance of the evidence and denied his remaining claim for medical benefits for the same alleged injury for which he had already denied Claimant's claim for compensation.

Claimant's appeal before the Board solely addresses the ALJ's findings and conclusions of law in his Order Granting Employer/Carrier's Motion for Partial Summary Decision, which dealt with the limited issue of timeliness under Sections 12 and 13 of the Act, 33 U.S.C. §§912, 913. He argues he did not have reason to realize the full and permanent nature of his condition more than two years before he filed his claim for compensation. Cl. PR Br. at 2. In addition, he argues the ALJ erred in failing to either

apply or cite *Dyncorp Int'l. v. Director, OWCP [Mechler]*, 658 F.3d 133, 138 45 BRBS 61(CRT) (2d Cir. 2011), and did not address Claimant's assertion that timely notice and timely filing are "intertwined into a causal chain, complete with conditions precedent for moving onto the next step and set up to ensure that injured workers were both notified of their rights and motivating injured workers to not sleep on their rights." Cl. PR Br. at 11. Asserting Employer failed to comply with the posting and designation requirements pursuant to Section 12(c) of the Act and Section 702.211(b) of the regulations, Claimant argues his untimely notice and filing should be excused. *Id.*

Employer responds, arguing the issue of timeliness is moot because the ALJ determined Claimant did not suffer from the alleged work-related psychological injury in his subsequent Decision and Order. Thus, without a compensable injury, Employer contends the timeliness issues Claimant raises are no longer relevant. Additionally, it asserts Claimant waived the issue of compensability because he did not raise it on appeal before the Board.

Although Claimant's Petition for Review states he seeks review of the ALJ's Decision and Order Denying Benefits, the only actual issue he raises is the timeliness of his notice and claim (Cl. PR Br. at 2). This limits the Board's review to the ALJ's Order Granting Employer/Carrier's Motion for Partial Summary Decision. *See* 20 C.F.R. §802.301 (the Board is not empowered to review a case de novo); *Norwood v. Ingalls Shipbuilding, Inc.*, 26 BRBS 66, 69 n.3 (1992) (where the Board noted it is "well-settled that errors not raised by a party will not be addressed," and to raise issues *sua sponte* "would serve to abolish the doctrine of waiver…[and] would undermine the adversary system and jeopardize the appearance of impartiality which is crucial to the administration of justice"). Under these circumstances, we need not consider the merits of the ALJ's decision to grant summary decision to Employer on the timeliness issue, as it is rendered moot by his subsequent decision in which he concluded Claimant did not establish a work-related psychological injury by a preponderance of the evidence for the same injury, a finding we must affirm as unchallenged on appeal. *See Scalio v. Ceres Marine Terminals, Inc.*, 41 BRBS 57 (2007).

When an ALJ finds an injury is not work-related, arguments regarding timeliness are considered moot. *Ranks v. Bath Iron Works Corp.*, 22 BRBS 302, 306 n.5 (1989) (the Board's affirmance of an ALJ's no causation finding renders all other arguments, including those relating to the timeliness of the claim, moot); *see also generally Bis Salamis, Inc. v. Director, OWCP [Meeks]*, 819 F.3d 116, 130 n.9, 50 BRBS 29, 38 n.9(CRT) (5th Cir. 2016) ("Because we uphold the ALJ's determination that [… the claimant] failed to invoke the [Section 20(a)] presumption, we need not reach the rest of the LHWCA analysis."). In this case, the ALJ determined Claimant did not sustain a work-related psychological injury. D&O at 19. As the injury underlying the claim has been deemed unrelated to Claimant's

employment, and Claimant has not appealed that finding, any arguments regarding the timeliness of the claim are moot. *Ranks*, 22 BRBS at 306 n.5; *see also generally Meeks*, 819 F.3d at 130 n.9, 50 BRBS at 38 n.9(CRT). We therefore affirm the ALJ's denial of Claimant's claim.

Accordingly, we affirm the ALJ's Decision and Order Denying Benefits.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge