

U.S. Department of Labor

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



BRB No. 21-0527

WILLIAM C. OSTRANDER)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
VIRGINIA INTERNATIONAL)	
TERMINALS, LLC)	
)	DATE ISSUED: 6/23/2022
and)	
)	
SIGNAL MUTUAL INDEMNITY)	
ASSOCIATION, LIMITED)	
)	
Employer/Carrier-)	
Respondents)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits and the Decision and Order Denying Reconsideration of Larry W. Price, Administrative Law Judge, United States Department of Labor.

Gregory E. Camden (Montagna Klein Camden, L.L.P.), Norfolk, Virginia, for Claimant.

Megan B. Caramore (Vandeventer Black LLP), Norfolk, Virginia, for Employer/Carrier.

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

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Larry W. Price's Decision and Order Denying Benefits and the Decision and Order Denying Reconsideration (2020-LHC-01051) rendered on a claim filed pursuant to the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901, *et seq.* (Act). 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 worked on vehicle maintenance for Employer, and on January 9, 2020, was injured while assembling a top loader.¹ Claimant's co-worker, Richard Keiser, witnessed the incident. Transcript (TR) at 12. After receiving medical attention for his injuries, Claimant returned to work the following day and continued to work steadily for the next five months.² *Id.* at 13.

In June of 2020, approximately five months after the incident, Claimant sought psychological help through the assistance of his union representative who suggested he contact Mr. Charles Montagna, an attorney. Mr. Montagna then connected Claimant with Dr. Errol Liebowitz, a licensed clinical psychologist. Claimant met with Dr. Liebowitz on June 1, 2020,³ who stated his general impression was Claimant suffered from post-traumatic stress disorder (PTSD), noted Claimant's alcohol consumption, took Claimant off work, and began psychotherapy treatment. Employer's Exhibit (EX) 3. Dr. Keyhill

¹ Claimant was performing this task while in a man basket which was raised approximately thirty feet in the air. Transcript (TR) at 8. He was strapped in a safety harness and was guiding the two parts of the top loader together when the rigging holding the inner mast broke, causing the mast to collide with the basket. TR at 9. The mast weighed approximately 16,000 pounds. Claimant's Exhibit (CX) 8 at 1. The collision caused Claimant to hit his face multiple times on the metal handrail that enclosed the man basket, resulting in injuries to his right shoulder, neck, nose, and jaw. TR at 11.

² Claimant received treatment for his physical injuries twice following the accident but did not miss any time from work. Employer paid for that treatment. Pre-Trial Stipulations 3-26-2021. Although he performed his usual work, he avoided any work in the basket, and Mr. Keiser covered for him a few times, though there is a discrepancy as to how many times. TR at 17-18 (Claimant says "five to six times"); *see* EX 10 at 26-27 (Keiser says "three times").

³ The ALJ's decision mistakenly states Claimant first met with Dr. Liebowitz on May 28, 2020. (Decision and Order) D&O at 2. Dr. Liebowitz's report indicates he met with Claimant and performed a psychological assessment on June 1, 2020. CX 8 at 1.

Sheorn later evaluated Claimant, and Dr. Laura Dabney reviewed Claimant's records. Both opined Claimant does not have PTSD or any other psychological or mental disorder. EXs 4-8. Claimant filed a claim for medical and disability benefits for his PTSD resulting from the January 2020 incident.

The ALJ held a telephonic hearing on March 29, 2021. The sole issue before the ALJ was whether Claimant suffered a psychological injury as a result of the incident. Decision and Order (D&O) at 2. After summarizing the evidence, invoking the Section 20(a) presumption, 33 U.S.C. §920(a), and finding it rebutted, the ALJ gave less weight to Dr. Liebowitz's opinion because there was no evidence of the doctor's credentials and his opinion relied solely on Claimant's subjective reporting of his symptoms. In addition, the ALJ found Claimant's testimony warranted less weight because his credibility was questionable. The ALJ gave greater weight to Dr. Sheorn's opinion, based on her use of objective testing and her specialized experience and knowledge, and Dr. Dabney's opinion to conclude Claimant does not suffer from PTSD or any other psychological disorder. D&O at 8. Thus, the ALJ denied the claim for benefits, as well as Claimant's motion for reconsideration.⁴ Claimant appeals, contending the ALJ incorrectly found he was not credible and gave less weight to Dr. Liebowitz's opinion. Employer responds, urging affirmance.

Claimant contends the ALJ erred in holding he is not credible and in giving more weight to the opinions of Drs. Sheorn and Dabney. Claimant's Brief (Cl. Br.) at 6. He argues his testimony is supported by, and supports, Mr. Keiser's testimony regarding his post-incident behavior and that congruency is "indicative of mental health symptoms that were not present prior to his work injury." Cl. Br. at 9. Claimant also asserts the ALJ did not provide a rationale for why he relied on some evidence and ignored other evidence. *Id.* Employer asserts the ALJ's decision is supported by substantial evidence.

⁴ On June 25, 2021, Claimant filed a Motion to Reconsider and Motion to Reopen the Record. He sought to admit Dr. Liebowitz's *curriculum vitae* (CV) into evidence. Claimant argued Dr. Liebowitz's CV is new evidence and the ALJ should find Dr. Liebowitz "more than qualified to offer medical opinions regarding his patient, diagnosis and treatment." Cl. M/Recon at 2. On June 29, 2021, Employer filed a response letter and argued Claimant had access to Dr. Liebowitz's CV and could have provided it in a timely fashion but did not do so. Moreover, it asserted the doctor's CV is not a compelling reason to reconsider the issues or reopen the record. Although the ALJ reopened the record to admit Dr. Liebowitz's CV, he found it "pale[d] in comparison" to Dr. Sheorn's credentials and again denied the claim. D&O on Recon. at 1.

Once the Section 20(a) presumption, 33 U.S.C. §920(a), has been invoked and rebutted, as here, the question of whether the cause of an injury is work-related must be decided on the record as a whole, with the claimant bearing the burden of establishing the work-relatedness of his injury by a preponderance of the evidence.⁵ *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994); *Hawaii Stevedores, Inc. v. Ogawa*, 608 F.3d 642, 44 BRBS 47(CRT) (9th Cir. 2010). The fact-finder must weigh all of the evidence relevant to the causation issue. *MacDonald v. Trailer Marine Transp. Corp.*, 18 BRBS 259 (1986), *aff'd mem. sub nom. Trailer Marine Transp. Corp. v. Benefits Review Board*, 819 F.2d 1148 (11th Cir. 1987). He has the authority and discretion to weigh, credit, and draw his own inferences from the evidence of record; he is not bound to accept the opinion or theory of any particular expert. *See Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961); *Perini Corp. v. Heyde*, 306 F. Supp. 1321 (D.R.I. 1969).

Initially, we reject Claimant's assertion that the ALJ erred in his credibility determination. The ALJ found Claimant's "credibility somewhat suspect" due to his high score on the Structured Inventory of Malingered Symptomology (SIMS) scale,⁶ the discrepancies in the number of times Mr. Keiser stood in for him in the man basket,⁷ the frequency of his alcohol consumption,⁸ and whether Mr. Keiser told Claimant to seek

⁵ The ALJ found Claimant presented a prima facie case and is entitled to the Section 20(a) presumption because Employer did not raise an objection. But the ALJ found Employer rebutted the presumption by presenting the medical opinions of Dr. Sheorn and Dr. Dabney. D&O at 5. We affirm these findings as they are not challenged on appeal. *Scalio v. Ceres Marine Terminals, Inc.*, 41 BRBS 57 (2007).

⁶ The SIMS scale is a screening tool for dishonesty. EX 4 at 4-5; D&O at 4. Dr. Sheorn administered this test, and Claimant scored eighteen wrong responses, four more than allowed and double the average of an acceptable score. *Id.* Dr. Sheorn concluded this evidenced malingering. EX 4 at 4-5.

⁷ *See* n.2, *supra*.

⁸ In completing the in-take questionnaire form when meeting with Dr. Liebowitz, Claimant indicated he was drinking daily, and specifically told Dr. Liebowitz "he drinks between one and several beers per day." Dr. Liebowitz considered this "potentially problematic." CX 7 at 6; CX 8 at 2. In his deposition, Claimant stated he misread the question on the in-take form and meant to indicate he drank one to seven beers weekly.

psychological treatment.⁹ D&O at 4. We affirm the ALJ's decision to give less weight to Claimant's subjective complaints due to his questionable reliability, as it is rational and supported by substantial evidence.¹⁰ *Cordero v. Triple A Mach. Shop*, 580 F.2d 1331, 1335, 8 BRBS 744, 747 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979); *see generally Compton v. Avondale Indus., Inc.*, 33 BRBS 174 (1999).

After a thorough review, the ALJ next found the expertise and credentials of Drs. Sheorn and Dabney, and the objective nature of their medical reports, outweighed Dr. Liebowitz's opinion and credentials. D&O at 8; D&O on Recon. at 1. Dr. Sheorn specializes in diagnosing and treating PTSD, is a former president of the Virginia Psychoanalytic Society, and is the Director of the Psychotherapy Training at the Virginia Commonwealth University Department of Psychiatry. EX 5. Dr. Dabney's credentials include a psychiatry residency and board certification in psychiatry. EX 7. In contrast, Dr. Liebowitz has a more general practice in psychology and behavioral science, having given only one presentation on PTSD. D&O Recon. at 1; M/Recon. attachment. Thus, it was rational for the ALJ to find Drs. Sheorn and Dabney more qualified.

In assessing whether Claimant has PTSD, Dr. Sheorn conducted a SIMS test (as noted above), administered a mental status examination, and applied the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM5) criteria. EX 4. In a thorough 13-page clinical exam report, she stated Claimant demonstrated "no evidence of thought disorder" and was "fully oriented and cognitively intact." *Id.* at 9. Based on his exam and answers to questions, she found he did not meet either DSM5 Criterion A or DSM5 Criterion G, so he cannot be diagnosed with PTSD.¹¹ In light of Claimant's "unusual

EX 9 at 17. The intake form asked for Claimant's alcohol consumption, and he wrote the word "daily." CX 7 at 6.

⁹ Claimant stated Mr. Keiser advised him to seek professional help, EX 9 at 15, but Mr. Keiser denied having done so, EX 10 at 22.

¹⁰ We also note Dr. Sheorn, whom the ALJ credited, identified inconsistencies in Claimant's answers on his symptom questionnaire and concluded he lacked any credible symptoms. EX 4.

¹¹ She stated he had a "near-miss [with his accident], and later was shaken to realize what could've happened," but hypothetical scenarios about what could have occurred "do not rise to the level necessary to meet Criterion A." EX 4 at 10. Dr. Sheorn also stated Claimant did not meet Criterion G because his symptoms were not significant enough to

presentation” to her five months after his injury, “extreme self-reporting of critical symptoms,” failure to meet Criteria A and G, high SIMS score showing malingering, and “the absence of any credible symptoms or objective signs[.]” Dr. Sheorn concluded Claimant does not have “PTSD or any other psychiatric disorder.” EX 4 at 10. She further stated “[t]here is no credible documentation that ... he was or is psychologically impaired or unable to perform his regular, full-duty work.” *Id.* at 11.

Dr. Dabney conducted a review of Claimant’s records. She agreed with Dr. Sheorn and stated, “the emotional symptoms he reported do not cause him any functional impairment.” EX 6 at 3. She indicated such functional impairment as being vital not only to meet Criterion G but also for a diagnosis of Major Depressive Disorder or Generalized Anxiety Disorder. *Id.* In addition, Dr. Dabney noted Claimant’s misuse of psychiatric and psychological terminology when referring to his symptoms, most notably his use of the term “flashback,” which Dr. Dabney stated does not accurately describe what Claimant says he experienced and which Dr. Liebowitz did not find. The combination of Claimant’s misuse of psychiatric terminology, delayed reporting, and lack of a functional impairment, among other reasons, led Dr. Dabney to conclude there is not enough objective evidence to diagnose PTSD or any other psychiatric issue. *Id.* at 3-4.

On the other hand, Dr. Liebowitz reviewed Claimant’s intake questionnaire form and conducted a one-hour clinical interview of Claimant. He concluded Claimant “suffers from posttraumatic stress disorder secondary to his work accident. While he has attempted to confront his fears, he has not been successful in overcoming them.” CX 8 at 3. Dr. Liebowitz recommended psychotherapy, participation in his high-functioning PTSD group therapy, and that Claimant no longer go to work because the avoidance strategies Claimant was using at work are “counter-productive long-term.” *Id.* As Dr. Liebowitz based his diagnosis on Claimant’s self-reported statements, which the ALJ found to be unreliable, the ALJ reasonably gave less weight to his opinion and more weight to the opinions of Drs. Sheorn and Dabney.

The ALJ’s determination is reasonable and supported by substantial evidence. *Victorian v. International-Matex Tank Terminals*, 52 BRBS 35, 41 (2018), *aff’d sub nom. International-Matex Tank Terminals v. Director, OWCP*, 943 F.3d 278, 53 BRBS 79(CRT) (5th Cir. 2019); *Coffey v. Marine Terminals Corp.*, 34 BRBS 85, 87 (2000); *Lindsay v. Bethlehem Steel Corp.*, 18 BRBS 20, 23 (1986). We therefore affirm his reliance on the

cause functional impairment, as he returned to work the next day and “has been fully able to manage his complicated life[.]” *Id.*

opinions of Drs. Sheorn and Dabney and his finding that Claimant does not have a work-related psychological injury or PTSD.¹²

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

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

¹² In light of our conclusion, we reject Claimant's assertion that the ALJ ignored evidence from his co-workers of his post-injury behavior as proof of a work-related mental condition.