

U.S. Department of Labor

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



BRB No. 22-0472

YOWERI BYAMUKAMA	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
SOC, LLC	)	
	)	DATE ISSUED: 03/11/2024
and	)	
	)	
CONTINENTAL CASUALTY COMPANY	)	
	)	
Employer/Carrier-	)	
Respondents	)	DECISION and ORDER

Appeal of the Decision and Order on the Record of Angela F. Donaldson, Administrative Law Judge, United States Department of Labor

Michael T. Wawrzycki (Mainstay Law LLC), Seattle, Washington, for Claimant.

Krystal L. Layher and Kathleen R. Schwarz (Brown Sims, P.C.), Houston, Texas, for Employer/Carrier.

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

GRESH, Chief Administrative Appeals Judge, and JONES, Administrative Appeals Judge:

Claimant appeals Administrative Law Judge (ALJ) Angela F. Donaldson’s Decision and Order on the Record (2021-LDA-00372) rendered on a claim filed pursuant to the

Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §§901-950, as extended by the Defense Base Act, 42 U.S.C. §§1651-1655 (DBA or Act).<sup>1</sup> 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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant is a Ugandan citizen who worked for Employer as an armed security guard in Iraq from January 15, 2007 to November 2007. JX 1 at 10-11; Joint Stips. 2-3. During his employment, Claimant routinely experienced explosions and incoming attacks. JX 1 at 12-14, 19-20. He testified that following these events, he developed headaches, hearing loss, nightmares, and flashbacks. *Id.* at 12-14, 19-20. In addition, he testified that since returning to Uganda, his symptoms have prevented him from seeking formal employment.<sup>2</sup> *Id.* at 6.

Claimant sought treatment for his headaches when he was still in Iraq and continued to do so when he returned home. *Id.* at 13-14. Upon a friend's recommendation, Claimant eventually sought psychological treatment at Mengo Medical Centre in May 2020 and was seen by Cliffe Atukuuma,<sup>3</sup> who diagnosed post-traumatic stress disorder (PTSD) and prescribed "Amityptline [sic] for depression." *Id.* at 13-14; JX 13 at 1-2. Mr. Atukuuma opined Claimant's condition was a result of his employment in Iraq, and his later-developed depression was a result of "becoming unemployed because of his mental status." JX 13 at 2. Claimant continued seeing Mr. Atukuuma approximately once every four months for medication refills and counseling. JX 1 at 14-16; JX 13. He testified he feels 60% to 70% recovered since treating with Mr. Atukuuma. JX 1 at 15-16. Prior to this treatment, Claimant was not familiar with PTSD and did not know his symptoms were a psychological condition or related to his employment. *Id.* at 8, 13. He testified Mr.

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<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).

<sup>2</sup> During his deposition and psychological evaluations, Claimant gave varying statements regarding his employment endeavors since returning to Uganda. *See* JX 1 at 6 (testifying he worked on his family's farm); JX 15 at 4 (during Dr. Bahar Safaei-Far's evaluation, reporting he did not work in any capacity); JX 19 at 5 (during Dr. Sylvia Nshemerirwe's evaluation, reporting he tried to re-establish a clothing store); *see also* D&O at 19.

<sup>3</sup> As the ALJ noted, the record does not contain any medical credentials or reference to a medical degree for Mr. Atukuuma. Decision and Order on the Record (D&O) at 5 n.4.

Atukuuma recommended ongoing treatment and told him he will recover if he keeps taking his medication. *Id.* at 16.

On June 10, 2021, Claimant attended a psychological evaluation with Employer's psychologist, Dr. Bahar Safaei-Far. Dr. Safaei-Far conducted the evaluation via telehealth through a translator.<sup>4</sup> JX 15 at 2. Based on Claimant's performance on psychological assessments, Dr. Safaei-Far opined Claimant did not meet the diagnostic criteria for a mental disorder and therefore did not sustain a work-related psychological injury. *Id.* at 5-6. At her deposition, Dr. Safaei-Far testified that while some of Claimant's self-reported symptoms, if true, meet the diagnostic criteria for PTSD, his medical records, performance on symptom validity measures, presentation during her evaluation, and other self-reported symptoms were inconsistent and atypical of PTSD or "any known psychiatric disorder." JX 2 at 8-12, 14-15.

On December 3, 2021, Claimant's attorney referred him to Dr. Sylvia Nshemerirwe for an in-person psychological evaluation in Uganda. Dr. Nshemerirwe conducted the evaluation in Claimant's native language, Runyankore. JX 19 at 9. She diagnosed PTSD and opined Claimant's psychological condition is related to his employment in Iraq. *Id.* at 6-7. Further, she noted his depressive symptoms had improved without treatment. *Id.* at 7-8.

On July 6, 2020, Claimant filed a claim for PTSD, psychological injury, and hearing loss. JX 3. Employer controverted the claim, contesting timeliness and causation. JX 5. After the case was forwarded to the Office of Administrative Law Judges, the parties opted for a decision on the record, 29 C.F.R. §18.70(c), and filed joint exhibits and their respective briefs.

On July 13, 2022, the ALJ issued her Decision and Order on the Record (D&O), denying Claimant's claims for PTSD, psychological injury, and hearing loss. With respect to Claimant's alleged PTSD and psychological injury, the ALJ found Claimant invoked the Section 20(a) presumption, 33 U.S.C. §920(a), and Employer rebutted it. D&O at 27, 28-29. After weighing the evidence as a whole, the ALJ found Claimant did not establish "the existence of any compensable psychological injury." *Id.* at 30.

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<sup>4</sup> Claimant's native language is Runyankore, but he can speak Luganda and "some English." JX 1 at 7.

On appeal, Claimant contends the ALJ erred in finding Employer rebutted the Section 20(a) presumption and in weighing the evidence as a whole. Employer responds, urging affirmance. Claimant filed a reply brief.<sup>5</sup>

### **Rebutting the Presumption**

Claimant first contends the ALJ erred in finding Dr. Safaei-Far's opinion and report constituted substantial evidence to rebut the Section 20(a) presumption because Dr. Safaei-Far's opinion was "poorly reasoned," "not rational," and not reliable. Cl. Brief at 7-8. Specifically, Claimant contends the reliability of Dr. Safaei-Far's evaluation and report was undermined by bias,<sup>6</sup> language barriers,<sup>7</sup> cultural differences,<sup>8</sup> her limited review of the medical records,<sup>9</sup> and her lack of consideration for self-reporting diagnostic measures.<sup>10</sup> *Id.* at 7-21. In response, Employer urges affirmance and argues that under the guise of an appeal, Claimant is attempting to relitigate the same facts and application of law he presented to the ALJ, which the ALJ already considered and addressed. Emp. Brief at 10-15 ("Claimant's appeal is merely a request for the Board to engage in *de novo* review to substitute its weighing of the facts over the determinations made by the trier of fact.").

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<sup>5</sup> We affirm, as unchallenged on appeal, the ALJ's finding that Claimant did not establish work-related hearing loss. *Scalio v. Ceres Marine Terminals, Inc.*, 41 BRBS 57, 58 (2007).

<sup>6</sup> Because Employer hired Dr. Safaei-Far, Claimant avers it was a "defense medical examination" rather than an "independent" medical examination. Cl. Brief at 8. Regardless, Employer was entitled to have Claimant examined by a physician of its choosing, and we cannot infer bias simply because the doctor rendered an opinion supportive of Employer's defense.

<sup>7</sup> Claimant contends language barriers between him and Dr. Safaei-Far led to misunderstandings and inaccuracies concerning his family life and the circumstances of his termination from employment with Employer. *Id.* at 8-9.

<sup>8</sup> Claimant contends the tests Dr. Safaei-Far administered (TOMM, MENT, and M-FAST) also suffer from language barriers because they are not "non-verbal" tests. Moreover, he asserts they are not validated for use in Uganda. *Id.* at 10, 12-14.

<sup>9</sup> Claimant contends Dr. Safaei-Far "was only provided some of [Claimant's] PTSD treatment records." *Id.* at 10.

<sup>10</sup> Claimant contends Dr. Safaei-Far did not conduct a DSM-5 analysis. *Id.* at 11-21.

Despite the similarities between Claimant’s brief to the Board and his brief to the ALJ, his appellate brief at least identifies his perceived errors with the ALJ’s decision, and we shall address them.

If a claimant invokes the Section 20(a) presumption by producing some evidence or allegation 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., American Stevedoring Ltd. v. Marinelli*, 248 F.3d 54, 64-65 (2d Cir. 2001). Once invoked, the burden shifts to the employer to rebut the presumption by producing “substantial evidence” showing workplace conditions did not cause, contribute to, or aggravate the claimant’s condition. *Rainey v. Director, OWCP*, 517 F.3d 632, 637 (2d Cir. 2008); *Rose*, 56 BRBS 27; *O’Kelly v. Dep’t of the Army/NAF*, 34 BRBS 39 (2000). If the employer rebuts the Section 20(a) 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 (1994); *Santoro v. Maher Terminals, Inc.*, 30 BRBS 171 (1996).

Here, the ALJ rationally found Employer rebutted the Section 20(a) presumption with Dr. Safaei-Far’s opinion. In both her report and deposition testimony, she opined there was no reliable data to support diagnosing Claimant with a psychological condition, work-related or otherwise. JX 2 at 12-13, 15-16; JX 15 at 5-6. She stated she relied on Claimant’s performance on symptom validity measures showing over-reporting and exaggeration of symptoms, his vague and inconsistent reporting of information to her and what his treating provider documented, his presentation during her interview, and his endorsement of “both rare symptoms and symptom combinations” that are “inconsistent with recognized psychiatric disorders.” JX 2 at 12-13; JX 15 at 5-6. Contrary to Claimant’s contentions, Employer’s burden on rebuttal is one of production, rather than persuasion, and is not dependent on credibility. *Rose*, 56 BRBS at 35; *Cline v. Huntington Ingalls, Inc.*, 48 BRBS 5, 6-7 (2013). Consequently, the ALJ was not required to assess Dr. Safaei-Far’s credibility or the reliability of her evaluation and opinion at the rebuttal stage.<sup>11</sup> As Dr. Safaei-Far unequivocally expressed her opinions to a reasonable degree of medical certainty, JX 2 at 16; JX 15 at 7, it was reasonable for the ALJ to accept her opinion that

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<sup>11</sup> Prior to discussing Section 20(a), the ALJ made her credibility determinations and assigned weight to relevant evidence. Though she erred in considering Claimant’s credibility when determining whether he established his prima facie case, the error is harmless because she determined Claimant invoked the Section 20(a) presumption despite his “questionable” credibility. D&O at 27. We will address Claimant’s challenges to the ALJ’s credibility determinations based on the ALJ’s weighing of the record as a whole.

Claimant does not have a psychological condition, *Rainey*, 517 F.3d at 637. Accordingly, we affirm the ALJ's finding that Employer rebutted the Section 20(a) presumption with Dr. Safaei-Far's opinion.

### **Weighing the Evidence**

Claimant next contends the ALJ erred in weighing the evidence as a whole because she gave Dr. Safaei-Far's "flawed" opinion "too much weight," Cl. Brief at 22-23, inconsistently analyzed Claimant's credibility, *id.* at 30-31, "failed to address the role of translators" when discussing discrepancies in Claimant's reporting and testimony, *id.* at 32, and inconsistently found Claimant's evidence sufficient to invoke the Section 20(a) presumption but insufficient to establish a work-related psychological injury based on the record as a whole, *id.* at 34. We disagree with Claimant's assertions.<sup>12</sup>

The ALJ is entitled to evaluate the credibility of the witnesses, *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), accept parts of a witness's testimony while rejecting others, *Banks v. Chicago Grain Trimmers Ass'n*, 390 U.S. 459, 467 (1968); *Pimpinella v. Universal Mar. Serv. Inc.*, 27 BRBS 154, 157 (1993), and draw her own inferences and conclusions from the evidence. *Compton v. Avondale Indus., Inc.*, 33 BRBS 174, 176-177 (1999). The Board will not interfere with 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 v. E. Pihl & Sons*, 999 F.3d 18, 27 (1st Cir. 2021), *cert. denied*, 142 S. Ct. 1110 (2022).

Contrary to Claimant's assertions, the ALJ thoroughly addressed each of his contentions as to why Dr. Safaei-Far's opinion was not reliable. She permissibly credited Dr. Safaei-Far's explanation of the efforts she made to mitigate potential issues that could arise due to language barriers and cultural differences. Specifically, the ALJ noted Dr. Safaei-Far's acknowledgement that it would have been preferable to conduct the examination in Claimant's native language but credited her testimony that she followed telehealth guidelines to ensure she, Claimant, and the translator could clearly see and hear one another. D&O at 21-22; *see also* JX 2 at 4-5, 7, 14. The ALJ also accepted Dr. Safaei-Far's understanding that the symptom validity tests she administered were not validated for use in Uganda. Nevertheless, she credited Dr. Safaei-Far's testimony that she chose nonverbal tests validated for use in other countries where illiteracy and intellectual deficits

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<sup>12</sup> We note that Claimant, throughout his brief, points us to no specific errors.

may be a concern, as well as Dr. Safaei-Far's explanation of the efforts she made to ensure Claimant understood any verbal components of the tests. The ALJ credited Dr. Safaei-Far's categorization of the images displayed during the tests as "not unique to American culture," and further found there was no evidence in the record to indicate Claimant did not understand questions posed during Dr. Safaei-Far's evaluation. D&O at 21-22; *see also* JX 2 at 7, 10-15.<sup>13</sup> In addition, the ALJ recognized Dr. Safaei-Far did not have some of Claimant's medical notes from Mengo Medical Centre to review but found Claimant did not identify any material information contained in those records that would potentially alter Dr. Safaei-Far's opinions. D&O at 22; *see also* JX 2 at 9.<sup>14</sup>

Moreover, the ALJ specifically addressed and rejected Claimant's contention that Dr. Safaei-Far's failure to conduct a DSM-5 analysis rendered her opinion unreliable. In doing so, the ALJ credited Dr. Safaei-Far's explanation that despite there being some evidence to meet certain DSM-5 criteria for PTSD, persistence and validity of self-reported symptoms is required but was lacking based on Claimant's performance on symptom validity tests. D&O at 22; *see also* JX 2 at 8-10, 12-13. Consequently, we reject Claimant's assertions that the ALJ did not, or did not properly, consider all his arguments.

We likewise reject Claimant's contentions that the ALJ's assessment of his credibility and weighing of the evidence was inconsistent or "incorrect." Cl. Brief at 30-34. The ALJ initially found, when concluding Claimant invoked the Section 20(a) presumption, that he was "generally credible about the type of symptoms he experienced" and "credited that he has experienced some mental harm." D&O at 17, 27.<sup>15</sup> However, the

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<sup>13</sup> We reject Claimant's assertion that the ALJ erred in finding the TOMM and MENT were nonverbal tests. Cl. Brief at 13-14. In support of this assertion, Claimant cites websites and purported authorities he did not present to the ALJ or seek to admit into the evidentiary record. *See* 20 C.F.R. §802.301.

<sup>14</sup> As the ALJ found, these records are handwritten and not legible. D&O at 22.

<sup>15</sup> In determining Claimant invoked the Section 20(a) presumption, the ALJ wrote:

I find, at the *prima facie* step, that Claimant has established at least *some* psychological harm within the meaning of the Act, even if it does not rise to the level of any diagnosable psychological condition. His credibility is questionable for several reasons outlined above, but I have credited that he has experienced some mental harm, *i.e.*, symptoms, since his departure from employment overseas.

*Id.* at 27 (emphasis added).

ALJ also found the number of Claimant's inconsistent statements on other relevant matters was "remarkable," reduced his overall credibility, and "affect[ed] the reliability of his statements in general." *Id.* at 17-19.<sup>16</sup> The ALJ considered potential translation issues when discussing Claimant's discrepant reports of his family life but found it "hard to attribute to a possible language barrier" given Claimant's identical reports to Dr. Safaei-Far with a translator, JX 15 at 3, and to Dr. Nshemerirwe without a translator, JX 19 at 5.<sup>17</sup> D&O at 18. Thus, when weighing the evidence in the record, with Claimant bearing the burden of persuasion, the ALJ permissibly gave "little credit to Claimant's testimony and subjective reports" as she found "the discrepancies were not insignificant." *Id.* at 29. In light of Claimant's "inconsistent and contradictory testimony," the ALJ permissibly determined Claimant's providers' reliance on his subjective symptoms "significantly diminished the weight that should be afforded to their opinions." *Id.* at 29-30.<sup>18</sup> She instead afforded greater weight to Dr. Safaei-Far's opinion because it was based on "the greatest quantum of evidence" compared to Claimant's providers. *Id.* at 30.<sup>19</sup> Consistent with her

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<sup>16</sup> Specifically, the ALJ found Claimant gave inconsistent reports of when he first noticed his psychological symptoms, what he witnessed while working overseas, how he came to seek treatment for alleged hearing loss, the circumstances of his termination from employment, his family life, and his subsequent employment. *Id.* at 18-19. She further noted Claimant's disparate presentations during the psychological evaluations with Drs. Safaei-Far and Nshemerirwe. *Id.* at 19.

<sup>17</sup> Between the two psychological evaluations, Claimant testified at his deposition, through a translator, that he was married and had one child with his wife, JX 1 at 4, which the ALJ found was inconsistent with his reports to Drs. Safaei-Far and Nshemerirwe that he has no children, and the discrepancy "is not explained elsewhere in the record." D&O at 18.

<sup>18</sup> The ALJ listed several other deficiencies in Claimant's providers' opinions. She found they did not conduct objective tests, did not explain the purpose of the tests they conducted, did not explain their opinions, and did not explain why they credited Claimant's subjective reports. D&O at 29-30.

<sup>19</sup> We reject Claimant's assertion that the ALJ erred in finding Dr. Nshemerirwe did not employ objective tests during her evaluation, Cl. Brief at 34, for the same reasons previously mentioned, *see supra* note 13, but more simply because this is not what the ALJ found. The ALJ assigned less weight to Dr. Nshemerirwe's opinion because she "did not explain the purpose of the assessments she performed," "did not explain why Claimant's performance on the MCMI III indicated honesty and no exaggeration of symptoms," and did not say "why the [MCMI III] is relevant to her opinions." D&O at 23. Later, while acknowledging there is no requirement for objective testing, the ALJ stated objective



credibility determinations, the ALJ rationally concluded Claimant’s evidence was “insufficient to establish a psychological harm.” *Id.*

Contrary to Claimant’s contentions, the ALJ’s allegedly divergent views of the same evidence at each step in her analysis accounts for the operative burdens of proof at each step and is consistent with the law, *see Rose*, 56 BRBS at 35-36. In addition, we are not permitted to disturb the ALJ’s factual findings and credibility determinations where, as in the instant case, they are “adequately anchored in the record.” *Carswell*, 999 F.3d at 28 (quoting *Bath Iron Works Corp. v. Director, OWCP*, 244 F.3d 222, 231 (1st Cir. 2001)). Because the ALJ’s credibility determinations are not “inherently incredible or patently unreasonable,” *Cordero*, 580 F.2d at 1335, and her factual findings are rational and supported by substantial evidence in the record, *Carswell*, 999 F.3d at 32, we affirm the denial of disability compensation and medical benefits.

Accordingly, we affirm the ALJ’s Decision and Order on the Record.

SO ORDERED.

DANIEL T. GRESH, Chief  
Administrative Appeals Judge

MELISSA LIN JONES  
Administrative Appeals Judge

BUZZARD, Administrative Appeals Judge, concurring:

I concur in the result of the majority’s decision to affirm the denial of benefits. While I cannot endorse the majority’s assessment that the Section 20(a) rebuttal analysis is not at all dependent on credibility, *see Rose v. Vectrus Systems Corp.*, 56 BRBS 27, 40 (2022) (en banc) (Buzzard, J., concurring and dissenting) (the substantial evidence standard “necessarily allows for a limited credibility assessment”), I nevertheless agree that Dr. Safaei-Far’s opinion satisfies Employer’s burden to produce substantial evidence breaking the causal connection between Claimant’s alleged injury and his employment. *See Bath Iron Works Corp. v. Fields*, 599 F.3d 47, 55 (1st Cir. 2010) (substantial evidence is simply that which “could satisfy a reasonable factfinder”); JX 15 at 5 (Dr. Safaei-Far: Claimant

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testing was “particularly helpful” in cases “where the claimant’s credibility is suspect” and considered Dr. Safaei-Far’s opinion superior in this regard. D&O at 30.

“does not meet the diagnostic criteria for a mental disorder”). I also agree with the majority that the ALJ, upon weighing the evidence as a whole, permissibly found Dr. Safaei-Far’s opinion more credible than Claimant’s evidence.

GREG J. BUZZARD  
Administrative Appeals Judge