

U.S. Department of Labor

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



BRB No. 22-0540

ROBERT KAYINJA)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
DELTA 9 INTERNATIONAL)	
)	
and)	
)	
INSURANCE COMPANY OF THE STATE)	DATE ISSUED: 03/13/2024
OF PENNSYLVANIA)	
)	
Employer/Carrier-)	
Respondents)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Evan H. Nordby, Administrative Law Judge, United States Department of Labor.

Andrew Nyombi (KNA Pearl), Silver Spring, Maryland, for Claimant.

Dana Ladner and John C. Elliott (Schouest, Bardas, Soshea, BenMaier & Eastham), Houston, Texas, for Employer/Carrier.

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

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Evan H. Nordby’s Decision and Order Denying Benefits (2020-LDA-00415 and 2020-LDA-00692) rendered on consolidated claims 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). The Benefits Review Board's scope of review is defined by statute. 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.¹ 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant, a Ugandan citizen, allegedly sustained physical and psychological injuries as a result of his work for Employer in Kabul, Afghanistan, as a machine and heavy equipment operator from March 1, 2017, to April 30, 2018. Claimant's Exhibits (CX) 2 at 12, 15 at 2, 17 at 28-29, 32; Employer's Exhibit (EX) 14. Regarding his alleged physical injuries, Claimant reported his back and legs became numb while he was crushing an armored car with an excavator on April 28, 2018. CX 17 at 30-34. He also alleged he sustained chest pain, head pain, and erectile dysfunction as a result of his work for Employer. CX 1 at 1. He returned to Uganda in May 2018 and has not worked since, he asserts, because of his ongoing medical conditions. CX 17 at 65-66. Claimant alleged he began experiencing sleeping problems one month later. CX 18 at 22-24. He attributed these problems to nightmares caused by exposure to stressful and traumatic conditions while working for Employer. *Id.* at 14, 17-21.

Claimant testified he sought treatment for his physical injuries immediately after he returned to Uganda in May 2018. Decision and Order Denying Benefits (D&O) at 7. However, the record contains no medical records of treatment before June 2019. *Id.*; CXs 5, 8, 9. On June 14, 2019, Claimant sought treatment for psychological symptoms from Musuto Bwonya² at the China-Uganda Friendship Hospital (CUFH). CXs 8, 18. Mr. Bwonya diagnosed Claimant with post-traumatic stress disorder (PTSD) and depression. CX 8 at 1. In addition, Mr. Bwonya listed a diagnosis of a prolapsed disc L5-S1 and osteoarthritis, even though his examination of Claimant predates Claimant's x-ray imaging. *Id.*; see CX 9.

¹ 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, 47 (2011).

² Mr. Bwonya's qualifications are not in the record, but the ALJ determined he is "a registered Psychiatric Clinical Officer." Decision and Order Denying Benefits (D&O) at 8.

Claimant obtained x-rays of his knees and lumbar spine at the Iran Uganda Hospital on July 8, 2019. CX 9 at 1-3. Hellen Sempa³ interpreted the spine x-ray as showing “prolapsed intervertebral disc space L4-L5 and L5-S1 and signs of spondylosis.” CXs 8 at 8, 9 at 7. Subsequently, Claimant presented to Tamale Duke⁴ at Surs Healthcare, who listed the same diagnoses as Ms. Sempa as well as osteoarthritis in both knee joints. CX 5 at 9. In addition to providing regular physiotherapy treatment, Mr. Tamale noted PTSD symptoms and recommended a psychological referral. *Id.* at 6, 10.

At Employer’s request, Dr. Kuteesa Hillary examined Claimant on March 20, 2020. CX 14. Dr. Kuteesa stated he was the first psychiatrist Claimant had seen, and Claimant had not received “any systematic trauma focused psychotherapy from a qualified psychologist.” *Id.* at 9. Initially, Dr. Kuteesa diagnosed PTSD, major depressive disorder, and somatic symptom disorder based on Claimant’s reported symptoms and previous medical records. *Id.* at 7. However, Dr. Kuteesa maintained doubts about Claimant’s credibility, noting inconsistencies between his medical records and pain symptom history. *Id.* at 11. Specifically, he stated Claimant’s delay in seeking medical help was suspicious. *Id.* He also opined Claimant was “exaggerating his pain symptoms for secondary gain (to increase the likelihood of ... compensation).” *Id.*

In a supplemental report, Dr. Kuteesa stated he “relinquished all dependence” on Mr. Tamale’s medical report after learning he is not a licensed medical provider. EX 32 at 2 (unpaginated). Further, Dr. Kuteesa stated Claimant’s report to him of the traumatic events that occurred while working for Employer were contrary to and inconsistent with what he had reported in his deposition. *Id.* at 952-955. As a result of considering new information, Dr. Kuteesa changed his diagnosis from PTSD/depression to malingering. *Id.* at 955.

In October 2020, Claimant presented to orthopedic surgeon Dr. Tonny Mutanda, who interpreted Claimant’s spine x-ray as showing severe degenerative lumbar disease with pain radiating down to his knees, but he opined the x-rays of Claimant’s knees were

³ The ALJ found Ms. Sempa’s qualifications are not in the record, and her credentials of “SOO” or “SCO” are unknown and undefined. D&O at 7 n.3.

⁴ Mr. Tamale has a Bachelor of Science in Medical Radiography, a Certificate in Recent Advances in Oncology and Cancer Care, and an Advanced Certificate in Radiotherapy Technique, among other certificates. CX 12. The ALJ noted that because he is registered with the National Council of Traditional Healers and Herbalists Associations, he may hold himself out as a “Doctor of Alternative & Complementary Medicine” or a “Doctor of Wellness.” D&O at 9-10.

normal and did not show osteoarthritis. CXs 11, 12 at 59-61, 127-30. Additionally, Dr. Mutanda interpreted Claimant's lumbar spine magnetic resonance imaging (MRI), which was taken in 2020, as showing L4-L5 and L5-S1 disc herniations. CX 12 at 61.

Conversely, Dr. Bendt Petersen, an orthopedic and neurological spine surgeon who reviewed Claimant's diagnostic imaging at Employer's request, found no objective evidence of any knee or back injury. EXs 34, 35, 39. Dr. Petersen opined Claimant's MRI and x-rays of his knees and back were normal. EX 34. Specifically, he opined the x-rays "definitively establish" Claimant had no evidence of lumbar degenerative disc disease or osteoarthritis in his knees. EX 34 at 962 (unpaginated). He further "found no objective evidence" of lower back pain, knee pain, or injury requiring wheelchair use. *Id.* He opined the radiographs do not support a pre-existing injury to the lumbar spine or knees, specifying there "is no work-related anatomic injury." *Id.* Although he did not physically examine Claimant, he concluded Claimant's alleged injuries were a "medical impossibility" based on the objective testing. *Id.* In his deposition, Dr. Petersen testified "[a]bsolutely nothing" would allow Claimant to be injured or paralyzed from an explosion, then travel by plane unassisted, and then lose mobility over the course of the next year absent an intervening injury. Dr. Peterson was adamant Claimant's objective testing was normal and revealed no injuries. EX 39 at 21-23.

Based on the medical evidence, the ALJ found Claimant invoked the Section 20(a) presumption of compensability, 33 U.S.C. §920(a), with respect to his alleged psychological,⁵ back, and knee injuries,⁶ and found Employer rebutted the presumption with substantial evidence. D&O at 38-40. Weighing the evidence as a whole, the ALJ found Claimant did not establish a causal relationship between his psychological and physical injuries and his work for Employer in Afghanistan. *Id.* at 40-43. Therefore, the ALJ denied benefits.

On appeal, Claimant contends the ALJ erred in finding Employer rebutted the Section 20(a) presumption and in weighing the evidence as a whole, particularly in crediting Employer's physicians over those Claimant chose. Employer responds, urging affirmance of the denial of benefits.

⁵ The ALJ included erectile dysfunction as part of Claimant's psychological claim. D&O at 10-11.

⁶ The ALJ found Claimant failed to establish a prima facie case of injury with respect to his alleged head and chest injuries. D&O at 38. We affirm this finding as it is unchallenged on appeal. *Scalio v. Ceres Marine Terminals, Inc.*, 41 BRBS 57, 58 (2007).

Section 20(a) Rebuttal

The ALJ found Employer rebutted the Section 20(a) presumption for Claimant's psychological injuries with Dr. Kuteesa's opinion and for his physical injuries with Dr. Petersen's opinion. D&O at 39-40. Claimant generally argues the ALJ erred in doing so. Claimant's Brief (CB) at 21. We disagree.

Once, as here, the Section 20(a) presumption is invoked, the burden shifts to the employer to rebut it with 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); *American Stevedoring, Ltd. v. Marinelli*, 248 F.3d 54, 64-65 (2d Cir. 2001); *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 v. Vectrus Sys. Corp.*, 56 BRBS 27, 30 (2022) (Decision on Recon. en banc), *appeal dismissed* (M.D. Fla. Aug. 24, 2023); *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). 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. *Rainey*, 517 F.3d at 637. The presumption may be rebutted with evidence disproving the existence of the alleged injury. *See, e.g., Bourgeois v. Director, OWCP*, 946 F.3d 263, 265 (5th Cir. 2020) (affirming that the presumption was rebutted by a medical opinion stating the claimant did not suffer a labral tear to his right shoulder immediately following an accident at work and therefore the accident did not cause the claimant's later-discovered tear). In addition, it is well settled that 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 Dr. Kuteesa's supplemental opinion that Claimant has no psychological injury but is malingering constitutes substantial evidence sufficient to rebut the Section 20(a) presumption as to Claimant's psychological injury. D&O at 39.⁷

⁷ Although the ALJ initially stated Dr. Kuteesa's opinions are "somewhat equivocal" because he first determined Claimant had a psychological problem and then changed his mind, EXs 31-32, the ALJ rationally found Dr. Kuteesa's supplemental opinion rebuts the presumption. The supplemental opinion is sufficiently unambiguous, as he referenced his prior doubts about Claimant's inconsistencies and considered new information to definitively revise his opinion. EX 32.

Likewise, he found Drs. Petersen's and Mutanda's opinions sufficient to rebut the Section 20(a) presumption as to the claimed knee injury, as both physicians found no objective evidence of such an injury. *Id.*; CXs 11-12; EX 34. The ALJ also found Dr. Petersen's statements that Claimant's lumbar MRI was normal was sufficient to rebut the presumption as to the claimed back injury. D&O at 39-40; EXs 34, 39.

In evaluating Drs. Kuteesa's and Petersen's opinions at this second stage of the Section 20(a) analysis, the ALJ erred by imposing upon Employer a heightened burden of persuasion, rather than the burden of production. *Rainey*, 517 F.3d at 637. Nevertheless, this error is harmless because to the extent the ALJ found the medical opinions of Drs. Kuteesa and Petersen meet a burden of persuasion, they also meet Employer's burden of producing substantial evidence that there is no injury, thus rebutting the presumption as to each of the claimed injuries. *Cairns v. Matson Terminals, Inc.*, 21 BRBS 252, 256 (1988); *Reed v. The Macke Co.*, 14 BRBS 568, 571 (1981); *Novak v. I.T.O. Corp. of Baltimore*, 12 BRBS 127, 130 (1979). Contrary to Claimant's arguments, substantial evidence of record satisfies Employer's burden of production; therefore, we affirm the ALJ's finding that Employer rebutted the Section 20(a) presumption for Claimant's alleged psychological and physical injuries. *Rainey*, 517 F.3d at 637; *Rose*, 56 BRBS at 30.

Weighing the Evidence as a Whole

Because Employer rebutted the Section 20(a) presumption, it drops out of the analysis, and the issue of causation must be resolved based on the evidence of record as a whole with Claimant bearing the burden of persuasion. *Rainey*, 517 F.3d at 634; *Marinelli*, 248 F.3d at 65; *Santoro v. Maher Terminal, Inc.*, 30 BRBS 171, 174 (1996); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 276 (1994). Claimant asserts the ALJ erred in weighing the evidence as to both the psychological and physical injuries. As to the claimed psychological injuries, he argues the ALJ erred in finding Dr. Kuteesa adequately explained his change of opinion, and in failing to recognize Dr. Kuteesa's original opinion was consistent with Claimant's own testimony and initial treatment. CB at 21-24. As for the back injury, Claimant argues the ALJ erred in crediting Dr. Petersen's opinion over Dr. Mutanda's because Dr. Petersen did not physically evaluate Claimant. CB at 24-28. We disagree.

It is well established the ALJ is entitled to weigh the evidence and draw his own inferences and conclusions from it. *See John W. McGrath Corp. v. Hughes*, 289 F.2d 403, 405 (2d Cir. 1961); *see also Calbeck v. Strachan Shipping Co.*, 306 F.2d 693, 695 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741, 742 (5th Cir. 1962). Questions of witness credibility are for the ALJ as the trier-of-fact, and the Board must respect his evaluation of all testimony, including that of medical witnesses. *Calbeck*, 306 F.2d at 695; *Hughes*, 289 F.2d at 405. 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); *see generally Bis Salamis, Inc. v. Director, OWCP [Meeks]*, 819 F.3d 116, 130 (5th Cir. 2016) (Board may not second-guess an ALJ’s factual findings or disregard them merely because other inferences could have been drawn from the evidence). It is impermissible for the Board to reweigh the evidence or to substitute its own views for those of the ALJ. *Sealand Terminals v. Gasparic*, 7 F.3d 321, 323 (2d Cir. 1993); *Volpe v. Ne. Marine Terminals*, 671 F.2d 697, 700 (2d Cir. 1982). Rather, if the ALJ’s conclusion upon weighing the evidence is rational and supported by substantial evidence, as it is here, it must be affirmed. *Carswell v. E. Pihl & Sons*, 999 F.3d 18, 28 (1st Cir. 2021), *cert. denied*, 142 S.Ct. 1110 (2022).

The ALJ comprehensively discussed and weighed all evidence regarding Claimant’s alleged injuries and assessed the credibility of each medical opinion. D&O at 40-44. Regarding Claimant’s alleged psychological injuries, the ALJ permissibly credited Dr. Kuteesa’s supplemental report based on the physician’s discussion of the discrepancies within Claimant’s reporting of his alleged injuries,⁸ discrepancies the ALJ found supported by other documentary evidence,⁹ as well as his own assessment of Claimant’s credibility.¹⁰

⁸ In his initial report, Dr. Kuteesa noted his doubts about Claimant’s credibility. CX 14. Specifically, he stated Claimant’s delay in seeking medical treatment is suspicious. *Id.* He noted Claimant reported a “dire need for money” and an arrangement with his lawyer to pay the physiotherapist after he received his compensation. *Id.* Dr. Kuteesa opined Claimant was exaggerating his symptoms to increase the likelihood of compensation. *Id.* In his supplemental report, Dr. Kuteesa noted several additional inconsistencies, based on his review of Claimant’s deposition. EX 32. He noted Claimant testified he was not exposed to daily gunfire and mortar shelling, contrary to his report to Dr. Kuteesa. *Id.* at 952-53 (unpaginated); *see also* CX 18 at 11-13. Claimant also testified he did not see colleagues die by bombs. EX 32 at 952-53; *see also* CX 18 at 41-42. Lastly, he did not testify about alleged bombings, gunman attacks, and driving over explosives. EX 32; *see* CX 18.

⁹ The ALJ found the medical records from the China Uganda Friendship Hospital not well-reasoned or documented because the providers “unquestionably accepted” Claimant’s self-reported symptoms. D&O at 36. The initial record also tied Claimant’s complaints to work in Iraq, not Afghanistan. *Id.* Mr. Bwonya diagnosed PTSD and depression, yet Claimant did not recall discussing psychological complaints with him. CXs 8 at 1; 18 at 27-29.

¹⁰ The ALJ found Claimant’s testimony about why he left Afghanistan not credible because contemporaneous documentary evidence demonstrates he left because his visa and

Because the ALJ thoroughly explained his credibility determinations and they are not unreasonable, we affirm his conclusion that Claimant did not establish a work-related psychological injury. *Gasparic*, 7 F.3d at 323; *Volpe*, 671 F.2d at 700; D&O at 43.

Regarding Claimant's alleged back injury, the ALJ permissibly gave less weight to the providers who relied solely on Claimant's descriptions, which he found incredible, or whose credentials are not established. *Calbeck*, 306 F.2d at 695. He also gave Dr. Mutanda's opinion that Claimant has a work-related back injury based on the objective imaging less weight because he "does not regularly interpret imaging" and because he relied on Claimant's representations of pain which are "untrustworthy" given Claimant's lack of credibility and "the implausibility of his reported symptoms." D&O at 41-42. In contrast, the ALJ rationally credited Dr. Petersen's interpretation of the MRIs that Claimant's back is normal because he has the most experience interpreting such data. The ALJ also credited Dr. Petersen's opinion that, if Claimant actually had a traumatic L4-L5 disc prolapse, it would be medically impossible for him to travel without assistance but then lose mobility over the course of the year without an intervening injury. *Gasparic*, 7 F.3d at 323; *Volpe*, 671 F.2d at 700; *Hughes*, 289 F.2d at 405. These findings, in conjunction with Claimant's lack of credibility, support the ALJ's conclusion that Claimant does not have a work-related back injury. *Carswell*, 999 F.3d at 28; EX 39 at 21-22; D&O at 42.

Likewise, with respect to Claimant's alleged knee injury, the ALJ permissibly credited the opinions Drs. Mutanda and Petersen that Claimant's objective imaging does not show any knee injury. *Gasparic*, 7 F.3d at 323; *Volpe*, 671 F.2d at 697; *Hughes*, 289 F.2d at 405; D&O at 40. While Dr. Mutanda opined any knee pain may be secondary to Claimant's alleged back injury, we have affirmed the ALJ's finding that there is no work-related back injury. *Gasparic*, 7 F.3d at 323; CX 12 at 128-29; D&O at 40.

Because the ALJ's credibility determinations are not "inherently incredible or patently unreasonable," *Cordero*, 580 F.2d at 1335, and his factual findings are rational and supported by substantial evidence in the record, *Carswell*, 999 F.3d at 32, we affirm

passport were expiring on April 28, 2018. D&O at 30. He found Claimant generally denied leaving for this reason but could not explain the inconsistency with the documents. *Id.* In addition, the ALJ discredited Claimant's testimony that he sustained a work-related injury on April 28, 2018, because he reported to Dr. Mutanda that he continued to work after his injury but testified he returned to Uganda immediately. *Id.* The ALJ permissibly found Claimant "dishonest" and motivated by financial incentives because he was consistently unable to describe symptoms and reported contradictory narratives of events in Afghanistan to Drs. Mutanda and Kuteesa. D&O at 40-43; *see Cordero*, 580 F.2d at 1335.

the ALJ's conclusion that Claimant has not established a compensable injury and therefore affirm his denial of disability and medical benefits.

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

MELISSA LIN JONES
Administrative Appeals Judge