

U.S. Department of Labor

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



BRB No. 23-0055

GEZIM SHABANI)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
PAE HOLDING RISK MANAGEMENT)	
OFFICE)	
)	DATE ISSUED: 03/21/2024
and)	
)	
STARR INDEMNITY & LIABILITY)	
COMPANY)	
)	
Employer/Carrier-)	
Respondents)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Christopher Larsen,
Administrative Law Judge, United States Department of Labor

Lara D. Merrigan (Merrigan Legal), Sausalito, California, for Claimant.

Timothy Pedernana (Flicker, Garelick & Associates, LLP), New York, New
York, for Employer/Carrier.

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

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Christopher Larsen’s Decision
and Order Denying Benefits (2021-LHC-04325) rendered on a claim filed pursuant to the
Longshore and Harbor Workers’ Compensation Act, 33 U.S.C. §§901-950, as extended by

the Defense Base Act, 42 U.S.C. §§1651-1655 (DBA or Act).¹ 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 is a citizen of Kosovo who worked for Employer as a firefighter in Iraq from January 20, 2020, until February 10, 2020. EX 4; EX 6 at 12.² On January 26, 2020, Claimant was called to respond to a fire caused by a rocket attack on a dining facility within the United States Embassy where he lived. EX 5 at 7.³ After the incident, Claimant began worrying about his safety and feared not making it home to his family. *Id.* On February 10, 2020, Claimant took emergency leave to return to Kosovo because his father was ill. EX 6 at 12. Once his father recovered, Claimant decided not to return to Iraq because he was still concerned about his father's health and because he was experiencing anxiety and nightmares. EX 5 at 8; EX 6 at 14.

Claimant began treating with Dr. Bahri Goga⁴ on February 25, 2020. During treatment, Claimant reported various psychological and physical symptoms, which he attributed to his overseas employment. Dr. Goga diagnosed post-traumatic stress disorder (PTSD), prescribed medication,⁵ and opined Claimant is "not fit" or "not capable" to work. CX 2 at 2, 4, 6, 9-10, 13, 16-17, 19. Beginning May 27, 2021, Claimant contemporaneously treated with clinical psychologist Mr. Sci. Valbona Hajdari-Zeka, who

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 (2011).

² Claimant previously worked in Afghanistan and Iraq for different employers from 2006 to 2011. EX 5 at 2-4; EX 6 at 7, 15. At his deposition, he testified he was exposed to rocket attacks, EX 6 at 15, and during a psychological evaluation with Dr. Michael C. Hilton reported experiencing several stressful, specific incidents. EX 5 at 4-6.

³ The ALJ noted that Dr. Michael C. Hilton documented in his psychological report that Claimant reported he went out to the firetruck and put on his firefighting gear, but ultimately did not have to go to the fire and returned to his living quarters once he heard the all-clear signal. Decision and Order at 6; EX 5 at 7.

⁴ In the medical records, Dr. Goga is separately referred to as a "Specialist of Family Medicine," "Neuropsychiatrist," or "Specialist of Neuropsychiatry." *See generally* CX 2.

⁵ Dr. Goga prescribed a combination of Ansilan, Neorelax, Fluoxetine, Diazepam, Neurobex, Ibuprofen, Propranolol, and Melatonin. *See generally* CX 2.

opined Claimant is not able to work and recommended physical activity and continuous psychological treatment. CX 6 at 70-71, 75, 78, 81, 88.

On December 31, 2020, Claimant attended a psychological examination with Employer's psychiatrist, Dr. Michael C. Hilton, via video with the assistance of an Albanian interpreter.⁶ Dr. Hilton reviewed Claimant's medical records, interviewed Claimant, administered MMPI-2 psychological testing, and diagnosed "Unspecified Anxiety Disorder" based on the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5). EX 5 at 11. Dr. Hilton noted Claimant's subjective reports of his nightmares increasing over time, "as opposed to having improved over time," was inconsistent with PTSD. EX 5 at 13. He opined Claimant "has mild symptoms of anxiety" of an unknown origin,⁷ but "does not suffer from a disabling psychiatric condition." *Id.*⁸ He concluded Claimant can return to work without "psychiatric limitations," including warzone environments, and does not require psychiatric treatment. *Id.*⁹

On May 20, 2020, Claimant filed a claim for PTSD due to his overseas employment,¹⁰ CX 1; EX 1, and Employer controverted the claim. EX 3. After the district

⁶ Dr. Hilton reported Claimant speaks English well and most of the examination occurred in English "with just a little assistance from the interpreter." EX 5 at 9.

⁷ Based on the timing and nature of Claimant's anxiety symptoms, Dr. Hilton suggested Claimant's anxiety was due in part to his father's illness. He wrote:

[Claimant] has mild symptoms of anxiety. I am not sure where these issues are coming from. Information obtained from psychological testing suggested he is excessively focused on health concerns. The timing of this suggests it may have developed in part because of his father's poor health.

EX 5 at 13.

⁸ Dr. Hilton reasoned Claimant's decision to resign from his overseas employment was "a lifestyle decision" he made after speaking with his wife "based on the risks versus reward of money and danger," as opposed to work-related stress. EX 5 at 13.

⁹ Dr. Hilton noted the psychological testing indicated "defensiveness and unwillingness or inability to share information," which he opined was a "complicating factor to [Claimant's] presentation." EX 5 at 13.

¹⁰ Presumably, the claim was due to the specific rocket attack incident, as he listed January 26, 2020, as the date of injury. CX 1; EX 1.

director referred the matter to the Office of Administrative Law Judges, the parties opted for a decision on the record, 29 C.F.R. §18.70(c), and submitted their respective exhibits and briefs.

On October 20, 2022, the ALJ issued a Decision and Order Denying Benefits (D&O). The ALJ found Claimant invoked the Section 20(a) presumption, 33 U.S.C. §920(a), via the “credible history” he reported to Dr. Hilton, coupled with the opinions of his treating providers in Kosovo. D&O at 10. He found Employer failed to rebut the Section 20(a) presumption through Dr. Hilton’s report because Dr. Hilton diagnosed generalized anxiety disorder but did not address causation. *Id.* at 11. Consequently, the ALJ determined Claimant’s “present mental condition” is work-related.

The ALJ next discussed the nature and extent of Claimant’s “mental condition” and “its effect on his ability to work,” finding the evidence “in dispute.” *Id.* He determined Claimant’s providers’ opinions regarding his ability to work were “conclusionary” and “not well-documented or well-reasoned,” as the treatment notes lack any details “beyond a recitation of symptoms and observations to support that opinion.” *Id.* at 12. Ultimately, the ALJ credited Dr. Hilton’s opinion regarding Claimant’s condition and ability to work, finding the doctor “well-qualified” and his opinion based on “the most detailed history” in the evidentiary record. He therefore denied Claimant’s claim for benefits. *Id.*

On appeal, Claimant contends the ALJ irrationally credited Employer’s psychiatrist who found him not disabled due to his anxiety disorder and erred in not awarding medical benefits for treatment of his work-related psychological condition. Employer responds, urging affirmance.

Disability

Claimant contends the ALJ erred in finding Claimant is not disabled from his job as a firefighter in a war zone because it is neither supported by substantial evidence nor sufficiently explained. Cl. Brief at 16. Specifically, he contends Dr. Hilton’s failure to address causation renders his assessment of Claimant’s ability to return to work in a war zone “foundationless.” Cl Brief at 17. We disagree.

The claimant bears the burden of establishing the nature and extent of his work-related disability. To establish a prima facie case for total disability, the claimant must initially prove he cannot return to his usual employment due to his work-related injury. *Pietrunti v. Director, OWCP*, 119 F.3d 1035, 1041 (2d Cir. 1997); *Palombo v. Director, OWCP*, 937 F.2d 70, 73 (2d Cir. 1991); *Rice v. Service Employees Int’l*, 44 BRBS 63, 64 (2010); *Wheeler v. Newport News Shipbuilding and Dry Dock Co.*, 39 BRBS 49, 53 (2005). In the instant case, the ALJ found Claimant’s work-related psychological condition does not affect his ability to perform his usual employment or any other employment. D&O at

13. In doing so, the ALJ permissibly rejected Claimant's providers' opinions that he is unable to work, finding their treatment notes "not well-documented or well-reasoned" and their opinions "conclusionary." *Id.* at 12.

Contrary to Claimant's contentions, the ALJ sufficiently explained "the persuasive value" of Claimant's providers' opinions was "considerably less than it could be" because there was no documentation confirming Claimant's treating providers' credentials, and no testimony from Claimant to corroborate his alleged inability to work.¹¹ D&O at 12. Consequently, the ALJ rationally afforded greater weight to Dr. Hilton's assessment of Claimant's ability to return to his usual employment, finding the doctor "well-qualified" and his report and opinion "well-documented" and based on the "most extensive and detailed history" in the evidentiary record. *Id.* at 11-12. As it is within the ALJ's discretion to evaluate the credibility of the witnesses, accept or reject all or any part of a witness's testimony, and weigh the competing evidence in the record, *Pietrunti*, 119 F.3d at 1042, we decline to disturb the ALJ's rational determinations. *See also Cordero v. Triple A Mach. Shop*, 580 F.2d 1331, 1335 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979).

Moreover, we reject Claimant's assertions that, pursuant to *Rice*, the ALJ's finding of a work-related condition *de facto* establishes a prima facie case of total disability. *Morin v. Bath Iron Works Corp.*, 28 BRBS 205, 210 (1994) (mere diagnosis of an occupational condition does not render the employee disabled). Unlike in *Rice*, where the two examining physicians opined the claimant should not return to work in a war zone,¹² in this case there is a genuine dispute between Claimant's providers and Dr. Hilton, which the ALJ permissibly resolved by rejecting Claimant's providers' opinions that Claimant cannot

¹¹ Specifically, the ALJ expressed concern for how "abbreviated" the factual record was. D&O at 12 n.8.

¹² In *Rice*, the Board reversed the ALJ's finding of no disability and held the claimant established a prima facie case of total disability where both psychologists of record stated the claimant should not return to work in a war zone and opined that a return to work in a war zone was contraindicated due to the likelihood of a recurrence of symptoms. In addition, neither physician provided a full duty work release to the claimant, which the employer required for the claimant's re-deployment. *Rice*, 44 BRBS at 65. In the present claim, although Dr. Hilton stated he was "not sure" about its cause, he specifically agreed Claimant suffers from a psychological condition, anxiety, but opined that condition is not disabling, including from working in a war zone. EX 5 at 13. The ALJ permissibly credited Dr. Hilton's opinion regarding the disabling nature of Claimant's anxiety, despite finding the doctor did not address its cause. *Pietrunti*, 119 F.3d at 1042; *Pimpinella v. Universal Maritime Serv., Inc.*, 27 BRBS 154, 157 (1993).

return to work in a warzone, CXs 2, 6, and affording more weight to Dr. Hilton's opinion that Claimant is not disabled by his anxiety and can return to his usual employment without "psychiatric limitations," EX 5 at 13.

Contrary to Claimant's contentions, where the evidence the ALJ credits does not establish disability or the likelihood of reinjury upon Claimant's return to his usual employment, the fact that Claimant's psychological condition can be attributed to conditions of his overseas employment does not, of itself, establish disability or the likelihood that Claimant "will again suffer a further injury" or "at the least run a high risk of exacerbating" his condition upon re-deployment, Cl. Brief at 19. Because the ALJ rationally rejected Claimant's providers' opinions and afforded more weight to Dr. Hilton's assessment of Claimant's ability to return to his usual employment, the ALJ's finding that Claimant is not disabled by his work-related psychological condition is rational, supported by substantial evidence in the record, and in accordance with law. *See generally Chong v. Todd Pac. Shipyards Corp.*, 22 BRBS 242, 245 (1989), *aff'd mem. sub nom. Chong v. Director, OWCP*, 909 F.2d 1488 (Table) (9th Cir. 1990); *Peterson v. Washington Metro. Area Transit Auth.*, 13 BRBS 891, 896-897 (1981). Accordingly, we affirm the ALJ's determination that Claimant is not disabled due to his work injury.

Section 7 Medical Benefits

Claimant next contends he is entitled to medical benefits because he established a work-related "mental health condition" and "there was no evidence his course of treatment is unwarranted or unreasonable." Cl. Brief at 15-16. Employer responds, asserting Claimant misapprehends his burden of establishing the reasonableness and necessity of his course of treatment with his chosen providers, and it contends the ALJ's rejection of Claimant's treatment records as not well-documented or well-reasoned substantiates the ALJ's disregard of the providers' opinions and recommendations. Emp. Brief at 17 n.5.

Initially, we agree with Claimant that the ALJ erred in not adequately addressing his claim for medical treatment. Where a claimant sustains a work-related injury, as is the case here, Section 7 provides, in pertinent part, that an employer "shall furnish such medical, surgical, and other attendance or treatment ... for such period as the nature of the injury or the process of recovery may require." 33 U.S.C. §907(a); *see also* 20 C.F.R. §702.402. The work-related injury need not be economically disabling in order for a claimant to be entitled to Section 7 medical benefits. *Crawford v. Director, OWCP*, 932 F.2d 152, 154 (2d Cir. 1991) (citing *Romeike v. Kaiser Shipyards*, 22 BRBS 57, 59 (1989)).

Although the ALJ explicitly found Claimant has a work-related psychological condition and denied Claimant's claim for disability compensation, he did not adjudicate

Claimant's claim for medical treatment.¹³ Because the ALJ has the duty to adjudicate all the issues presented before him, *see* 20 C.F.R. §702.338, and set forth in his decision a statement of "findings and conclusions, and the reasons or basis therefor[e], on all the material issues of fact, law, or discretion presented on the record," 5 U.S.C. §557(c)(3)(A)-(B); *see* 33 U.S.C. §919(c)-(d); 20 C.F.R. §702.348, we remand the case to the ALJ to address Claimant's entitlement to medical benefits for his work-related psychological condition.

However, we agree with Employer that Claimant misapprehends his burden of establishing the reasonableness and necessity of his medical treatment. Contrary to Claimant's assertion that the lack of evidence establishing his medical treatment was unreasonable or unnecessary establishes his entitlement to medical benefits, Cl. Brief at 15-16, it is Claimant's burden to establish the reasonableness and necessity of the medical benefits he seeks. *Schoen v. U.S. Chamber of Commerce*, 30 BRBS 112, 113-114 (1996); *see also Turner v. Chesapeake and Potomac Telephone Co.*, 16 BRBS 255, 257-258 (1984) (where a physician, as defined by 20 C.F.R. §702.404, indicates treatment was necessary for a work-related condition, a claimant establishes his prima facie case for compensable medical treatment). While the ALJ weighed the medical opinions of record and afforded more weight to Dr. Hilton's "assessment of [Claimant's] ability to work" (and Dr. Hilton opined Claimant "is not in need of psychiatric treatment"), the ALJ did not specifically discuss or make findings with respect to Claimant's providers' or Dr. Hilton's opinions regarding Claimant's entitlement to medical treatment for his work-related condition. D&O at 7, 11-12; EX 5 at 13. Therefore, on remand, the ALJ also must address whether Claimant's medical treatment course with his providers in Kosovo is reasonable and necessary for his work-related psychological condition, in accordance with Section 7, 33 U.S.C. §907.

¹³ We reject Employer's assertion that Claimant did not argue below that he is entitled to past and future medical treatment. Emp. Brief at 16 n.4. In his brief before the ALJ, Claimant included entitlement to medical benefits as an issue, Cl. Trial Brief at 2, requested a finding that he is entitled to "reasonable and necessary medical treatment of her [sic] disease, including reimbursement of his expenses," Cl. Trial Brief at 17, and included receipts for medications prescribed by Dr. Goga within the treatment notes. CX 2 at 20, 23, 28, 31, 34, 37, 40, 43, 46, 49, 52, 55, 58, 61.

Accordingly, we vacate the ALJ's denial of medical benefits and remand the case for him to consider Claimant's claim for medical benefits. In all other respects, we affirm the ALJ's Decision and Order.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge