U.S. Department of Labor

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

BRB No. 23-0083

JONATHAN S. DELOTTA	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
GFC CRANE CONSULTANTS, INCORPORATED	)	
	)	
and	)	
	)	DATE ISSUED: 05/20/2024
ALMA MUTUAL	)	
	)	
Employer/Carrier-Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Awarding in Part, Denying in Part of Francine L. Applewhite, Administrative Law Judge, United States Department of Labor.

Jonathan S. DeLotta, Davie, Florida.

Heather E. Sosnowski (Taylor, Day, Grimm & Boyd), Jacksonville, Florida, for Employer/Carrier.

Jennifer Stocker (Seema Nanda, Solicitor of Labor; Barry H. Joyner, Associate Solicitor; Jennifer Feldman Jones, Deputy Associate Solicitor; Mark A. Reinhalter, Counsel for Longshore), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: BOGGS, BUZZARD, and JONES, Administrative Appeals Judges.

PER CURIAM:

Claimant, without representation,[1] appeals Administrative Law Judge (ALJ) Francine L. Applewhite's Decision and Order Awarding in Part, Denying in Part (D&O) (2019-LHA-00123) rendered on a claim filed pursuant to the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §§901-950 (Act). In an appeal filed without representation, the Benefits Review Board reviews the ALJ's decision to determine if the findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with applicable law.[2] 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359, 361-62 (1965).

Claimant sustained left knee and abdominal injuries as a result of a ladder collapsing under him while troubleshooting a crane's spreader bar on December 4, 2017. Joint Exhibit (JX) 1 at 39-40. His initial pain complaints included "severe" left knee pain and "moderately severe" abdominal pain. Employer's Exhibit (EX) 13 at 1. Claimant came under the care of providers with Associates MD Medical Group (Associates MD),[3] who referred Claimant to a general surgeon for hernia surgery and to an orthopedist for his left knee. EX 14 at 2. Dr. Ralph Guarneri[4] performed surgery to repair the umbilical hernia

[1] Claimant was represented by counsel throughout the entirety of the proceedings before the Office of Administrative Law Judges (OALJ) but is pursuing this appeal without that representation. Claimant's Brief at 1.

[2] This case arises within the jurisdiction of the United States Court of Appeals for the Eleventh Circuit because Clamant sustained his injury in Fort Lauderdale, Florida. 33 U.S.C. §921(c); 20 C.F.R. §702.201(a); *see Roberts v. Custom Ship Interiors*, 35 BRBS 65, 67 n.2 (2001), *aff'd*, 300 F.3d 510 (4th Cir. 2002), *cert. denied*, 537 U.S. 1188 (2003); Joint Exhibit (JX) 5.

[3] Claimant was primarily treated by Dr. Ann David, whose credentials are not in the record. EX 14.

[4] Dr. Ralph Guarneri is a critical care surgeon and specialist. JX 3.

on January 15, 2018, and Dr. Erol Yoldas[5] performed left knee surgery to repair a meniscus tear and chondral damage on May 23, 2018. Hearing Transcript (HT) at 21-22, 27; JXs 3 at 8, 4 at 11. Employer stipulated to the compensability of the left knee and hernia injuries and paid temporary total disability (TTD) benefits from December 4, 2017, to August 28, 2018. HT at 6-7.

In February 2018, Claimant presented to Associates MD with complaints of back, left shoulder, left hip, and left elbow pain and numbness in his left foot. EX 14 at 18, 24. Dr. Ann David referred Claimant to a pain management physician to address his knee, shoulder, back, and abdomen pain, and also to an orthopedic specialist to address his knee, back, and left shoulder pain. EX 14 at 19, 21, 26. She indicated these referrals were work-related. EX 14 at 22, 28. On April 16, 2018, Claimant reported to Dr. Yoldas that he had injured his left shoulder in February 2018 while using the cane provided to him after his hernia surgery. JX 4 at 5. Dr. Yoldas diagnosed a pre-existing left shoulder rotator cuff tear, which his hernia surgery aggravated, as well as left elbow pain of "unclear etiology." *Id.* On May 4, 2018, Dr. Yoldas recommended Claimant seek treatment from a pain management specialist due to his "multiple medical issues." *Id*. at 10. On August 14, 2018, Dr. Yoldas released Claimant from care as to his left knee, but noted he continued to complain of hip pain and recommended Claimant seek treatment as it was "certainly not helping his knee." *Id.* at 18.

On August 28, 2018, Dr. Kenneth Taylor,[6] who examined Claimant at Employer's request, opined Claimant's left shoulder, left hip, left elbow, cervical spine, and lumbar spine symptoms are not related to the December 2017 work accident, but instead are related to injuries or conditions that predated it. EX 1 at 3. As for Claimant's work-related left knee injury, Dr. Taylor opined it had reached maximum medical improvement (MMI) with no permanent impairment, and any future medical treatment would not be related to the workplace accident, but rather would be due to pre-existing osteoarthritis as documented in the December 8, 2017 MRI and arthroscopic findings. *Id.*

On August 31, 2018, Dr. Guarneri opined Claimant was completely recovered from hernia surgery and able to return to his regular work and discharged him from care. JX 3 at 17. Nevertheless, Claimant sought treatment for abdominal pain in September 2018,

[5] Dr. Erol Yoldas is a board-certified orthopedic surgeon with a subspeciality in sports medicine. Claimant's Exhibit (CX) 2 at 6.

[6] The ALJ stated the letterhead of Dr. Taylor's report indicated he is a medical doctor, but noted his credentials are not in the record. Decision and Order (D&O) at 4 n.4.

presenting to Dr. Jerrold Young[7] with persistent pain on the right side of his abdomen. EX 15. Dr. Young opined there is no evidence of a recurring hernia and no objective findings to explain the pain. *Id.* at 2. Based on Dr. Taylor's medical report, Employer terminated all benefits as of August 28, 2018. Employer also controverted liability for disability benefits and medical treatment related to Claimant's left hip, left shoulder, and low back pain. EX 17 at 2.

Claimant nevertheless continued to seek treatment for these conditions. On October 12, 2018, he began treating with orthopedic surgeon Dr. Carl Eierle,[8] who treated Claimant's left hip, left elbow, and left shoulder. Claimant's Exhibit (CX) 6; HT at 26-27. Dr. Eierle ordered magnetic resonance imaging (MRI) of Claimant's hip and opined it showed "degenerative change of the bilateral hips with the right being worse than left" and a "degenerative anterior labral tear." CX 6 at 9. Dr. Eierle also opined an x-ray of Claimant's elbow dated October 15, 2018, showed lateral epicondylitis. *Id.* at 34. On December 14, 2018, Dr. Eierle performed a left shoulder arthroscopy, open rotator cuff repair, and open subacromial decompression. *Id.* at 22.

In November 2018 Claimant began treating with orthopedic surgeon Dr. Craig Steiner[9] for his neck and back pain and pain management physician Dr. Phung Pham[10] for his left elbow, left shoulder, left hip, and lower back pain. CXs 5, 7; HT 26-27. Dr. Pham diagnosed Claimant with rheumatoid arthritis, long-term use of opiate analgesics, lumbar spondylosis, inflammation of left sacroiliac joint, bursitis of the hip, and sacroiliitis. CX 5 at 3. On December 24, 2019, orthopedic surgeon Dr. Barry Schapiro[11] conducted an orthopedic examination of Claimant at his counsel's request. CX 1 at 9. Claimant reported prior lower back and neck injuries from his time in the miliary in 1977, and a prior left shoulder injury and a rotator cuff tear from 2010. *Id.* at 9-10. Dr. Schapiro diagnosed Claimant with superior labral tear and trochanteric bursitis in his left hip, cervical spondylosis, lumbar spondylosis with disc herniation, and left elbow lateral epicondylitis.

---

[7] Dr. Jerrold Young's credentials are not in the record. *See* EX 15 at 1-5.

[8] Dr. Eierle's credentials are not in the record. *See* CX 6.

[9] Dr. Steiner is an orthopedic surgeon who works out of the same practice as Dr. Eierle, the Orthopaedic Center of South Florida. CX 7 at 6-7.

[10] Dr. Pham's credentials are not in the record. *See* CX 5.

[11] Although the ALJ refers to this physician as Dr. "Shapiro," the record reveals the proper spelling of his name is "Schapiro." CX 1.

Id. at 22. He opined these injuries were caused or aggravated by the December 4, 2017 workplace accident. *Id.*

On March 6, 2020, Dr. Paul Meli,[12] who examined Claimant at Employer's request, opined Claimant exhibited "over-dramatization" regarding his left shoulder, left elbow, left hip, right hip, lumbar spine, and left knee symptoms, all of which he found related to pre-existing chronic conditions. EX 3 at 3. Dr. Meli concluded Claimant suffered a medial meniscus tear to his left knee as a direct result of the December 2017 work accident, but determined this condition was treated appropriately and requires no further treatment. *Id.* at 15.

On April 7, 2021, Claimant underwent an MRI of his left knee which showed "increased horizontal signal extending to the tibial articular surface of the diminutive posterior horn medial meniscus." JX 4 at 23. On July 12, 2021, Dr. Yoldas read the April 2021 MRI as showing post-operative changes in the "meniscus medially" but "delamination and chondral damage laterally." *Id.* at 26. He recommended a second knee surgery to repair the chondral damage. *Id.*

Claimant initially requested his claim be referred to the Office of Administrative Law Judges (OALJ) for adjudication regarding his entitlement to medical benefits for allegedly work-related injuries to his lower back, left knee, left elbow, left hip, left shoulder, and hernia. *See* Claimant's Form LS-18 Pre-Hearing Statement dated October 9, 2018. He sought authorization for medical treatment with an orthopedic specialist, neurologist, GI specialist, and pain management specialist, as well as authorization for a left knee scope, left knee ice pack, and physical therapy. *Id.* Claimant subsequently submitted an amended and updated Pre-Hearing Statement, wherein he added as contested issues to be adjudicated the nature and extent of his disability for all work-related injuries and his entitlement to benefits. *See* Claimant's Form LS-18 Pre-Hearing Statement dated February 24, 2020.

The ALJ conducted a formal hearing on December 16, 2021, noting the parties stipulated to the compensability of Claimant's left knee and hernia injuries. HT at 7. She identified the contested issues before her as, *inter alia*, "causation, nature and extent of the asserted injuries, and that's including an alleged neck, lower back, left hip, left knee, another hernia which I'm not – we're not sure of, left shoulder and left upper extremity…. The extent of medical treatment and medically necessary and related to the accident, if any." *Id.* at 8.

[12] The ALJ found Dr. Paul Meli's credentials are not in the record, although he signed his report with "M.D." after his name. D&O at 5 n.5.

Both parties submitted post-trial briefs. Claimant's post-trial brief focused on the nature and extent of his disability and his entitlement to medical benefits. Claimant's Post-Hearing Trial Memorandum (Cl. PH Br.) at 9-15 (unpaginated). He requested the ALJ rely on Dr. Schapiro's medical report to find him totally disabled; alternatively, he argued the medical reports of Drs. Steiner, Pham, and Eierle show he is at least partially disabled. *Id*. at 12-13. Nevertheless, he maintained Employer's labor market survey failed to establish suitable alternate employment, and therefore he is entitled to TTD benefits. *Id* at 14-15. Claimant further argued Employer unreasonably denied him care for his lower back, left hip, left shoulder, and left arm despite referrals from Dr. David and Dr. Yoldas, and requested the ALJ authorize and require Employer to pay for the necessary treatment provided by Drs. Pham, Steiner, and Eierle. *Id*. at 9.

Employer framed the "primary issue" as being the compensability of the alleged injuries to Claimant's neck, lower back, left upper extremity and left hip. Post-hearing Brief of GFC Crane/ALMA/AEU (ER's PH Br.) at 17 (unpaginated). Employer urged the ALJ to credit the opinions of Drs. Taylor and Meli and find each of these alleged injuries were caused by pre-existing conditions, not his employment, and are thus non-compensable. *Id*. at 17-21. With respect to Claimant's left knee and hernia injuries, however, Employer "accepted [them] as compensable" work injuries but argued any further medical treatment is unwarranted because the work-related injuries have resolved and any necessary treatment relates to pre-existing conditions. *Id*. at 21-24. Lastly, Employer argued the medical and vocational evidence shows Claimant's work-related injuries have reached MMI, and he is capable of returning to his pre-injury work and not entitled to any further disability benefits; alternatively, Employer asserted it established the availability of suitable alternate employment. *Id*. at 24-29.

The ALJ issued a Decision an Order on September 29, 2022. She found Claimant invoked the Section 20(a) presumption of compensability, 33 U.S.C. §920(a), with respect to his left hip, cervical spine, lumbar spine, left shoulder, left elbow, and left knee injuries.[13] She also found Employer successfully rebutted the presumption for each condition with the medical opinions of Drs. Taylor and Meli. D&O at 10-11. Weighing the evidence as a whole, she found only Claimant's left shoulder injury is compensable, based on Dr. Yoldas's medical opinion that Claimant's pre-existing rotator cuff tear was aggravated by his use of crutches following hernia surgery and the fact that neither Dr. Taylor nor Dr.

[13] The ALJ found Claimant did not establish a prima facie case regarding his ongoing conditions from his abdominal/hernia injury. D&O at 10.

Meli considered whether Claimant's pre-existing shoulder condition could have been aggravated by his December 2017 work accident.[14] *Id.* at 12.

The ALJ found Claimant's left shoulder disability was temporary in nature until the date he was scheduled to complete physical therapy, on or around August 19, 2019. *Id*. at 15. Further, she found Employer rebutted Claimant's prima facie case of total disability with a labor market survey showing available suitable alternate employment within his restrictions. *Id.* at 15-17. Therefore, the ALJ awarded temporary partial disability (TPD) benefits at a compensation rate of $1,018.25 per week,[15] as well as Section 7 medical benefits for the left shoulder from August 28, 2018, to August 19, 2019. *Id.* at 18-19. Claimant timely filed a Motion for Reconsideration of the denial of benefits with respect to his left knee injury, which the ALJ summarily denied on December 1, 2022. *See* Order Denying Motion for Recon.

On appeal, Claimant generally challenges the ALJ's denial of benefits for his left hip, lumbar spine, cervical spine, left elbow, and left knee injuries.[16] Employer responds, urging affirmance of the ALJ's denial of benefits. It also contends Claimant failed to preserve his appeal of the denial of benefits because he only appealed the ALJ's denial of his motion for reconsideration. The Director, Office of Workers' Compensation Programs (the Director), filed a limited response, urging the Board to vacate the ALJ's finding that Employer rebutted the Section 20(a) presumption for Claimant's left hip, lumbar spine, left

[14] The ALJ found Claimant did not establish a causal relationship between his left hip, cervical spine, lumbar spine, left elbow, and left knee injuries and his work for Employer. D&O at 11-15. The ALJ also found Claimant did not establish a causal relationship between his ongoing abdominal/hernia injury and his work for Employer as this injury was "completely resolved." *Id.* at 14.

[15] The parties stipulated to Claimant's average weekly wage (AWW) of $2,139.77. The ALJ found his residual wage-earning capacity to be $612.40 per week, based on the average earnings of the jobs identified in Employer's labor market survey, resulting in a lost wage-earning capacity of $1,527.37 per week and a corresponding compensation rate of $1,018.25 per week. D&O at 18-19.

[16] Claimant's Petition for Review and supporting brief, filed without the assistance of counsel, state he is appealing the Order Denying Reconsideration. Claimant's Brief at 1.

elbow, and left knee injuries, and to reverse the ALJ's finding Claimant did not establish his current left knee symptoms are work-related as a matter of law.

Procedural Issue

Initially, we address Employer's contention that Claimant only appealed the ALJ's Order Denying Reconsideration, thereby precluding any review of the ALJ's Decision and Order Awarding in Part, Denying in Part. Employer's Brief at 6-7, 12. We disagree.

The Board obtains jurisdiction over a case when an aggrieved party files a timely notice of appeal. 20 C.F.R. §§702.391, 802.201, 802.208. The appeal must raise a substantial question of law or fact. 20 C.F.R. §702.392. The notice of appeal shall contain information identifying the decision or order being appealed. 20 C.F.R. §802.208(a)(4), (5). The regulations state that "any written communication which reasonably permits identification of the decision from which an appeal is sought and the parties affected or aggrieved thereby, shall be sufficient notice" for timely filing an appeal. 20 C.F.R. §802.208(b).

The Board's review is properly invoked when the appealing party assigns specific allegations of legal or factual error in the ALJ's decision. 20 C.F.R. §702.392; *see Tucker* v. *Thames Valley Steel*, 41 BRBS 62, 65 (2007). The regulations governing a notice of appeal "do not give form priority over substance." *See* 20 C.F.R. §802.208(b); *Tucker*, 41 BRBS at 65. Where "it is clear that [an appeal is] seeking review of all of the administrative law judge's decisions," and "[a]s the regulations give the Board the discretion to ascertain the decisions being appealed, . . . it [is] reasonable" and "proper[]" for the Board to consider a "notice of appeal as being an inclusive notice of appeal of all of the administrative law judge's decisions." *Tucker*, 41 BRBS at 65, 68. Therefore, as Claimant has appealed the Order Denying Reconsideration and his brief cites specific error in the underlying Decision and Order, review of both decisions is appropriate.

Moreover, in his Motion for Reconsideration, Claimant argued the ALJ should reverse her decision because she erred in finding the opinions of Drs. Taylor and Meli sufficient to rebut the Section 20(a) presumption of compensability. In her Order Denying Reconsideration, the ALJ declined to change her underlying Decision and Order. As Claimant argues on appeal that the ALJ erred in denying his motion for reconsideration, review of whether the ALJ erred necessitates review of the underlying Decision and Order regardless of whether Claimant specifically identified it as the decision he was appealing in his Notice of Appeal. Consequently, we reject Employer's suggestion that review of both decisions is improper.

Compensability of Abdominal/Hernia Injury and Left Knee Injury

The ALJ found Claimant failed to invoke the Section 20(a) presumption of compensability with respect to his alleged ongoing abdominal/hernia symptoms because he did not present any evidence showing that his ongoing hernia treatment was the "natural and unavoidable result" of the December 2017 work accident. D&O at 10. As for Claimant's left knee injury, she found Claimant invoked the Section 20(a) presumption, Employer rebutted it with Dr. Taylor's and Dr. Meli's medical opinions, but Claimant failed to show his "knee injury in 2021 was a natural and unavoidable result of his December 4, 2017 workplace injury" and, therefore, "his knee treatment is no longer compensable." *Id*. at 10-11, 13. We hold the ALJ misapplied the legal standard.

The "natural and unavoidable result" standard the ALJ applied arises in the context of determining causation under Section 20(a) when an employer rebuts the presumption of compensability by "producing substantial evidence that [the] claimant's disabling condition was caused by a subsequent event[,]" not the work injury. *See, e.g., White v. Peterson Boatbuilding Co.*, 29 BRBS 1 (1995). In those cases, an ALJ appropriately considers whether "the second injury is the natural or unavoidable result" of the work injury. *Plappert v. Marine Corps Exchange*, 31 BRBS 13, *aff'd on recon. en banc*, 31 BRBS 109 (1997). In the present claim, however, the parties neither alleged a secondary knee or hernia injury nor identified evidence that secondary injuries occurred.

Rather, as the ALJ previously acknowledged in her decision, the parties stipulated to the compensability of both Claimant's abdominal/hernia injury and his left knee injury. Decision and Order at 2. The parties' post-hearing briefs confirm the only issue with respect to Claimant's compensable left knee and hernia injuries is whether he is entitled to additional medical treatment, and potentially additional indemnity benefits once he undergoes that medical treatment.[17] Consequently, as the parties stipulated, and she accepted their stipulation, it was error for the ALJ to evaluate the compensability of the abdominal/hernia and left knee injuries under Section 20(a). *Mitri v. Global Linguist Solutions*, 48 BRBS 41 (2014) ("stipulations are binding upon those who enter into them"). The question before the ALJ was not the compensability of the abdominal/hernia and left

[17] The Director argues the ALJ improperly found Employer rebutted the Section 20(a) presumption as to Claimant's ongoing secondary left knee injury, as her rebuttal analysis failed to apply the standard required for secondary injuries. DB at 11-14. This argument fails to appreciate the disputed issues in this case. As discussed, there is no allegation of a secondary knee injury. The dispute is over the reasonableness and necessity of additional treatment to the stipulated compensable left knee injury.

knee injuries under Section 20(a) but whether Claimant is entitled to additional medical treatment for these compensable injuries under Section 7, 33 U.S.C. §907.[18]

The Act requires an employer to pay for all reasonable and necessary medical expenses arising from a work-related injury "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 burden is on the claimant to show the medical expense is reasonable and necessary for the treatment of the work injury at issue. *Id.*; *Davison v. Bender Shipbuilding & Repair Co., Inc.*, 30 BRBS 45, 47 (1996); *Romeike v. Kaiser Shipyards*, 22 BRBS 57, 60 (1989); 20 C.F.R. §702.402. Whether a particular medical expense is necessary is a factual issue within the ALJ's authority to resolve. *See Weikert v. Universal Maritime Serv. Corp.*, 36 BRBS 38, 39-40 (2002). Section 20(a) does not aid a claimant in establishing entitlement under Section 7. *Schoen v. U.S. Chamber of Commerce*, 30 BRBS 112, 113-114 (1996).

As the ALJ erroneously analyzed the compensability of Claimant's abdominal/hernia injury and left knee injury under Section 20(a), we vacate those findings and remand for evaluation of whether Claimant is entitled to continued treatment of these injuries under Section 7, i.e., whether the treatment is reasonable and necessary for the work-related injuries.

Section 20(a) Rebuttal – Left Hip, Lumbar Spine, Cervical Spine, Left Shoulder, and Left Elbow Injuries

The ALJ found Claimant invoked the Section 20(a) presumption with respect to the alleged left shoulder, left hip, left elbow, lumbar spine, and cervical spine injuries. D&O at 10. Once the Section 20(a) presumption is invoked, as here, the burden shifts to the employer to rebut it by producing substantial evidence that the claimant's working conditions did not cause or aggravate his injury. *Brown v. Jacksonville Shipyards Inc.*, 893 F.2d 294, 297 (11th Cir. 1990); *see also Ceres Gulf, Inc. v. Director, OWCP* [*Plaisance*], 683 F.3d 225, 229 (5th Cir. 2012). The ALJ's task at rebuttal "is to decide, as a legal matter, whether the employer submitted evidence that could satisfy a reasonable factfinder

[18] Significantly, the ALJ failed to note Claimant returned to Dr. Guarneri in June 2021 for "a smaller hernia above the prior mesh." JX 3 at 19. Dr. Guarneri indicated this was not "wholly unusual," and because it was not symptomatic, he did not recommend surgery. *Id.* However, he recommended Claimant address his orthopedic issues and return in six months. *Id.*

that the claimant's injury was not work-related." *See generally Ogawa*, 608 F.3d at 650-651.

The ALJ relied on the medical opinions of Drs. Taylor and Meli to find Employer rebutted the Section 20(a) presumption as to all alleged aggravation injuries. *See* EXs 1, 3. Dr. Taylor concluded Claimant's left hip, lumbar spine, cervical spine, left shoulder, and left elbow injuries predate the work accident. EX 1 at 3. Similarly, Dr. Meli opined his left hip, lumbar spine, cervical spine, left shoulder, and left elbow injuries are pre-existing. EX 3 at 15. The ALJ found the opinions of Drs. Taylor and Meli constituted substantial evidence that Claimant's left hip, lumbar spine, cervical spine, left shoulder, and left elbow injuries were not caused or aggravated by the December 2017 work accident, and therefore Employer successfully rebutted the Section 20(a) presumption as to all these alleged injuries. D&O at 11.

The Director argues the ALJ erred in failing to address the aggravation rule in her rebuttal analysis. Director's Brief (DB) at 9-14. We agree. When aggravation is raised, as in this case, the evidence the employer offers on rebuttal must address aggravation. *See Newport News Shipbuilding & Dry Dock Co. v. Holiday*, 591 F.3d 219, 225 (4th Cir. 2009).

The ALJ only addressed Drs. Taylor's and Meli's rationales for opining Claimant's left hip, lumbar spine, cervical spine, and left elbow injuries predate the December 2017 work accident. D&O at 10-11. In doing so, she addressed the "disease process," but not "whether the condition would have become symptomatic" absent the work-related accident. *Bath Iron Works Corp. v. Fields*, 599 F.3d 47, 54 (1st Cir. 2010). This inquiry is crucial in an aggravation claim, as an aggravation of symptoms can be found compensable even if the pre-existing condition is not work-related. *Id*. at 55; *see also Obert v. John T. Clark and Son of Maryland*, 23 BRBS 157, 160 (1990) ("If claimant's work played any role in the manifestation of the disease, then the non-work-relatedness of the disease…[is] irrelevant; the entire resulting disability is compensable.").

Consequently, the ALJ erred in failing to address whether the doctors' opinions discuss whether the December 2017 work accident aggravated Claimant's pre-existing injuries. *See Brown*, 893 F.2d at 297; *Myshka v. Elec. Boat Corp*., 48 BRBS 79, 81 (2015); D&O at 11. Therefore, we vacate the ALJ's finding that Employer rebutted the Section 20(a) presumption as to the alleged aggravation injuries to Claimant's left hip, left elbow, cervical spine and lumbar spine,[19] and remand the case for her to address whether Employer

[19] Although the ALJ failed to address aggravation at the rebuttal stage of her analysis with respect to the left shoulder, her error as to this specific injury is harmless, as she considered all relevant evidence and addressed aggravation prior to making her supported

produced substantial evidence that Claimant's December 2017 work accident did not aggravate, contribute to, or hasten his pre-existing conditions.[20] *L.W.* [*Washington*] *v. Northrop Grumman Ship Sys., Inc.*, 43 BRBS 27, 32 (2009); *Jones*, 35 BRBS at 40; *O'Kelley*, 34 BRBS at 41; *Quinones v. H.B. Zachary, Inc.*, 32 BRBS 6, 8 (1998).

Nature and Extent of Disability

The ALJ's analysis of the nature and extent of Claimant's disability was limited to his compensable left shoulder injury. D&O at 15-18. As such, she evaluated the nature of Claimant's disability based solely on medical records of left shoulder treatment and assessed the suitability of Employer's proffered alternate employment based only on the restrictions Dr. Schapiro assigned following his first examination of Claimant in December 2019.[21] D&O at 15, 17. As we are remanding the case for re-evaluation of the compensability of Claimant's alleged aggravation injuries, it may be necessary for the ALJ to re-evaluate the nature and extent of Claimant's work-related disability. Therefore, we vacate the ALJ's findings with respect to the nature and extent of Claimant's work-related

---

finding that causation was established. *Price v. Stevedoring Services of Am.*, 36 BRBS 56, 60 (2002), *aff'd in pert. part and rev'd on other grounds*, No. 02-71207, 2004 WL 1064126, 38 BRBS 34(CRT) (9th Cir. May 11, 2004), *and aff'd and rev'd on other grounds*, 382 F.3d 878 (9th Cir. 2004), *cert. denied*, 544 U.S. 960 (2005); *Thompson v. Lockheed Shipbuilding & Constr. Co.*, 21 BRBS 94, 96 (1988); *Novak v. I.T.O. Corp. of Baltimore*, 12 BRBS 127, 130 (1979); D&O at 12. Consequently, we affirm the ALJ's finding as to the compensability of Claimant's left shoulder injury.

[20] Because we have vacated the ALJ's finding that Employer rebutted the Section 20(a) presumption for Claimant's aggravation injuries, we need not address Claimant's argument regarding the ALJ's weighing of the evidence for these injuries at the third step of the Section 20(a) analysis, as it is premature. *See Ramsay Scarlett & Co. v. Director, OWCP* [*Fabre*], 806 F.3d 327, 331 (5th Cir. 2015); *Suarez v. Serv. Emps. Int'l, Inc.*, 50 BRBS 33, 36 (2016); Claimant's Brief at 1-2.

[21] The ALJ did not consider Dr. Schapiro's re-examination of Claimant in November 2021, where he opined Claimant was unable to engage in any employment due to his orthopedic symptoms. D&O at 4. The ALJ also did not consider Dr. Yoldas's testimony as to Claimant's physical restrictions, because it did not address Claimant's shoulder, *id.* at 4, 16 (citing CX 2 at 10), or Dr. Eierle's and Dr. Steiner's opinions as to Claimant's restrictions and functional capabilities, *see* CX 6 at 2-6; CX 7 at 1-6.

left shoulder disability and remand the case for re-evaluation based on her causation findings on remand.[22]

Section 7 Medical Benefits

The ALJ awarded medical benefits for Claimant's left shoulder but only for "shoulder care from December 4, 2017 until August 19, 2019," the date he completed physical therapy. She found compensability for the left shoulder injury ceased at that time. D&O at 19. This was error, as it improperly ties Employer's liability for medical expenses to his economic disability, thereby limiting Employer's liability to only those medical costs incurred during the period of temporary partial disability determined by the ALJ. *See Ballesteros v. Willamette W. Corp.*, 20 BRBS 184, 186-187 (1988); D&O at 19.

Section 7 of the Act does not require an injury to be economically disabling in order for a claimant to be entitled to medical expenses; it requires only that the injury be work-related and the treatment be reasonable and necessary. 20 C.F.R. §702.402; *Weikert*, 36 BRBS at 39; *Ballesteros*, 20 BRBS at 186-187. As we have affirmed the ALJ's finding that Claimant's left shoulder injury is work-related, Claimant is entitled to all reasonable and necessary medical expenses related to that injury without reference to his economic disability. *See* 20 C.F.R. §702.402; *Ballesteros*, 20 BRBS at 186-187. Because the ALJ did not adequately adjudicate Claimant's claim for medical benefits for his left shoulder injury,[23] we vacate her finding on the issue of medical benefits and remand the case for

[22] Additionally, the ALJ erred in failing to use the date of the labor market survey as the date Employer established suitable alternate employment. D&O at 16-17. She found Claimant was entitled to temporary partial disability benefits beginning August 28, 2018, the date Employer stopped paying temporary total disability benefits and found Claimant's left shoulder injury was resolved by August 19, 2019. *Id.* at 18. However, the first of Employer's labor market surveys is dated January 27, 2020. *Id.*; see EX 18. Therefore, it was error for the ALJ to find Claimant partially disabled on August 28, 2018, when Employer did not establish suitable alternate employment until January 27, 2020. *See Palombo v. Director, OWCP*, 937 F.2d 70, 77 (2d Cir. 1991) ("partial disability status commences on the earliest date that the employer shows suitable alternative employment to be available"); *see also Director, OWCP* [*Dollins*] *v. Bethlehem Steel Corp.*, 949 F.2d 185, 186 (5th Cir. 1991) ("[T]he capacity to do alternative work does not bring about a change in status of total permanent disability until suitable alternative work is actually available."); *R.V.* [*Vina*] *v. Friede Goldman Halter*, 43 BRBS 22, 26 (2009). We note there is also no indication the ALJ reviewed Claimant's vocational evidence. *See* CX 4.

[23] The ALJ has the duty to adjudicate all the issues presented before her, *see* 20 C.F.R. §702.338, and set forth in her decision a statement of "findings and conclusions,

evaluation of Claimant's entitlement to medical treatment after August 19, 2019, for his work-related left shoulder condition, i.e., whether the treatment is related to that injury and is necessary and reasonable. *Id*.

Remand Instructions

We affirm the ALJ's findings with respect to the compensability of Claimant's left shoulder injury. However, we vacate her determination that Claimant failed to invoke the Section 20(a) presumption as to his abdominal/hernia injury, and that Employer successfully rebutted the Section 20(a) presumption with respect to Claimant's left knee, left hip, left elbow, cervical spine, and lumbar spine conditions. On remand, the ALJ must reexamine the record to determine whether Employer produced substantial evidence to rebut the Section 20(a) presumption that Claimant's December 4, 2017, work accident contributed to, aggravated, or hastened his left hip, left elbow, cervical spine, and lumbar spine injuries. As for the abdominal/hernia and left knee injuries, given that the parties have already stipulated to their compensability, she should evaluate whether the additional treatment recommended by various medical providers is reasonable and necessary for treatment of the work-related conditions in accordance with Section 7.

If the ALJ finds Employer rebutted the presumption as to any of the claimed aggravation injuries, she must then weigh the evidence in the record as a whole to determine whether Claimant's physical injuries are work-related, with Claimant bearing the burden of persuasion. *See, e.g., Suarez v. Serv. Emps. Int'l, Inc.*, 50 BRBS 33, 36 (2016). If she finds Employer has not rebutted the presumption, then Claimant has established a work-related injury as a matter of law, and the ALJ must then address the nature and extent of any disability stemming from Claimant's work-related injuries, including the left shoulder aggravation injury and any other injury she finds compensable on remand. *See, e.g., Ramsay Scarlett & Co. v. Director, OWCP* [*Fabre*], 806 F.3d 327, 331 (5th Cir. 2015).

The ALJ must also address Claimant's entitlement to reasonable and necessary medical benefits for all compensable injuries. 33 U.S.C. §907. On remand, the ALJ must explain the bases for her findings in accordance with the Administrative Procedure Act.[24] 5 U.S.C. §557(c)(3)(A).

---

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.

[24] The Administrative Procedure Act, 5 U.S.C. §§500-591, requires that every adjudicatory decision include a statement of "findings and conclusions and the reasons or

Accordingly, we affirm the compensability of Claimant's left shoulder injury. In all other respects, we vacate the ALJ's Decision and Order and remand the case for further consideration consistent with this opinion.

SO ORDERED.

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

basis therefor, on all the material issues of fact, law, or discretion presented…." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *Santoro v. Maher Terminals, Inc.*, 30 BRBS 171, 172 (1996).