U.S. Department of Labor

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

BRB No. 23-0142

DAEJINKWON PHILPOT-HILL	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
VIRGINIA INTERNATIONAL TERMINALS, LLC	)	
	)	
	)	DATE ISSUED: 05/08/2024
and	)	
	)	
SIGNAL MUTUAL INDEMNITY ASSOCIATION, LTD	)	
	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order of Dana Rosen, Administrative Law Judge, United States Department of Labor.

Charlene A. Morring (Morring Law, PLLC), Norfolk, Virginia, for Claimant.

Lawrence P. Postol (Postol Law Firm, P.C.), McLean, Virginia, for Employer/Carrier.

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

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Dana Rosen's Decision and Order (2020-LHC-00811) rendered on a claim filed pursuant to the Longshore and Harbor

Workers' Compensation Act, as amended, 33 U.S.C. §§901-950 (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 began working as a longshoreman in 2014. Hearing Transcript (HT) at 25. On May 1, 2019, while working the forklift job of paper clamp operator, Claimant injured his back and neck when the forklift came to an abrupt stop. HT at 48; Claimant's Exhibit (CX) 25 at 1; Employer's Exhibit (EX) 50 at 8. Claimant was transported to the hospital, x-rayed,[2] and diagnosed with a lumbar strain.[3] EX 10 at 4-5. He subsequently came under the care of orthopedic surgeon Dr. Arthur Wardell, who diagnosed lumbar and cervical spine sprains, took him off work, obtained additional diagnostic testing,[4] prescribed physical therapy and medications, and eventually recommended Claimant see a neurosurgeon. CXs 11, 12; HT at 55-56.

On November 26, 2019, neurosurgeon Dr. Grant Skidmore evaluated Claimant at Employer's request.[5] EX 16. He reviewed the May 2019 accident report as well as all post-injury medical evidence available to date and physically examined Claimant. *Id*. at 1-2. He concluded Claimant suffered a lumbar strain as a result of the May 2019 workplace accident, but it was minor and likely resolved within three months. *Id*. at 2-3. His review

[1] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because Claimant sustained his injury in Newport News, Virginia. 33 U.S.C. §921(c); *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); 20 C.F.R. §702.201(a).

[2] X-rays showed pars defects at L5 (likely chronic in nature according to the radiology report), disc disease at L4-5, and no evidence of spondylolisthesis. Employer's Exhibit (EX) 10 at 4.

[3] Employer paid Claimant temporary total disability (TTD) benefits from May 8, 2019, to October 10, 2019. Claimant's Exhibit (CX) 25 at 1. Employer terminated benefits as of October 10, 2019, due to Claimant's failure to attend its scheduled defense medical evaluation with orthopedic surgeon Dr. Bryan Fox. EX 3.

[4] Dr. Wardell ordered a lumbar MRI; that June 27, 2019 MRI showed bilateral pars defects with minimal grade 1 anterior spondylolisthesis, mild L4-L5 disc bulge, and no high-grade central or foraminal stenosis. CX 13 at 2. He also ordered an EMG; that July 11, 2019 EMG showed mild L5 radiculopathy on the right side. EX 14.

[5] Dr. Skidmore's report is dated December 7, 2019. EX 16 at 1.

of the MRI showed "chronic longstanding" bilateral pars defects, but he opined they were not traumatic in nature. *Id*. He concluded Claimant required no further medical treatment as a result of the May 2019 injury and encouraged him to return to full duty work. *Id*. at 3.

Claimant's first evaluation with his chosen treating neurosurgeon, Dr. Paul Mitchell, took place on January 23, 2020. CX 14 at 6. Dr. Mitchell diagnosed Claimant with lumbar pars defect, recommended additional diagnostic testing[6] and epidural steroid injections, and kept Claimant off work. CX 14 at 5-9.

On February 13, 2020, orthopedic surgeon Dr. Bryan Fox evaluated Claimant at Employer's request. EX 17. He reviewed the accident report and all medical records available to him at that date and examined Claimant. *Id*. at 1. He noted evidence of symptom magnification on physical examination, and his review of the diagnostic imaging revealed no evidence of acute structural injury. *Id*. at 2; *see also* EX 31 at 8-11. He agreed with Dr. Skidmore that Claimant suffered a lumbar strain as a result of the May 2019 injury, but that the condition resolved within three months. *Id*. at 3; *see also* EX 31 at 12-13. He opined the pars defects identified on the x-rays and MRI were chronic in nature and likely not the source of Claimant's pain. *Id*.; *see also* EX 31 at 26-27. He too encouraged Claimant to return to full duty work and concluded no further treatment was necessary for the May 2019 work-related injury. *Id*. at 3-4; *see also* EX 31 at 14.

Drs. Wardell and Mitchell continued to treat Claimant, administering epidural steroid and trigger point injections and keeping him off work. CXs 11, 14; EXs 12, 42, 60, 61. In August 2020, both doctors recommended Claimant undergo a Functional Capacity Evaluation (FCE). EX 60 at 19; CX 14 at 2. Claimant underwent two: one through Wardell Orthopaedics on September 2, 2020 (*see* CX 16), and one through Southeastern Physical Therapy (PT) on September 15, 2020 (*see* CX 17 at 1). The former indicated he demonstrated the capability of performing sedentary to light duty work (CX 16 at 1); the latter indicated he demonstrated an ability to perform light duty work but noted the results were questionable and may underrepresent Claimant's ability due to him exhibiting non-organic signs, avoidance behavior, and self-limiting throughout testing (CX 17 at 1). On September 16, 2020, Dr. Wardell released Claimant to restricted duty work within the

[6] Dr. Mitchell recommended a CT myelogram, which was obtained on June 9, 2020. It showed mild spinal canal stenosis from L2-L3 due to congenitally short pedicles with superimposed small disc bulges, mild to moderate disc spinal canal narrowing at L3-4, spondylosis at L5 with minimal grade 1 anterolisthesis of L5-S1 and moderate right and mild-to-moderate left-sided foraminal stenosis, as well a minimal retrolisthesis of L4 on L5 with mild right and mild-to-moderate left foraminal stenosis. CX 14 at 3; CX 15.

limitations as outlined by the Wardell Orthopaedics FCE.[7] CX 12 at 27. On October 20, 2020, Dr. Mitchell similarly released Claimant to sedentary to light duty work as per the Wardell Orthopaedics FCE results.[8] CX 14 at 1.

Dr. Fox evaluated Claimant again on October 9, 2020, at which time he reviewed all medical records generated since his first evaluation, including the CT myelogram, both FCE results, and an additional EMG obtained on October 1, 2020, which showed no evidence of radiculopathy. EX 23; *see also* EX 31 at 17, 19. He found Claimant uncooperative and "argumentative" and again noted evidence of symptom magnification. *Id*. at 2. He reiterated his original conclusion: Claimant sustained a lumbar strain as a result of the May 2019 accident, which likely resolved within six to eight weeks and required no additional medical treatment. *Id*. at 3. He opined Claimant could return to full duty work. *Id*. Dr. Fox issued addenda to his reports on October 26, 2020, October 30, 2020, February 23, 2021, and April 15, 2021, based on his review of updated medical records. EX 30 at 4; EXs 53, 54. His opinions remained unchanged.

On October 25, 2020, Claimant obtained alternate employment as a carrier for Quest Diagnostics and held that job through October 9, 2021. HT at 62; CX 25 at 1. On November 23, 2021, Dr. Wardell's office released Claimant to return to full duty employment. CX 11 at 61; CX 12 at 36; CX 25 at 1. Claimant returned to his regular employment as a longshoreman on November 30, 2021. CX 25 at 1; HT at 69-70. He filed a claim seeking temporary total disability (TTD) benefits for alleged back and neck injuries from October 11, 2019, to October 25, 2020, and temporary partial disability (TPD) benefits from October 26, 2020, until November 22, 2021, as well as medical benefits. CX 25 at 1-2.

The ALJ issued her Decision and Order (D&O) denying benefits on January 19, 2023. The ALJ found Claimant invoked the Section 20(a) presumption as to the alleged neck injury, as well as his alleged back injury, which she separated into three distinct

[7] There is no indication Dr. Wardell reviewed the results of the Southeastern PT FCE. CXs 11, 12; EXs 12, 42, 60, 61.

[8] Dr. Mitchell testified he did not review the results of the Southeastern PT FCE. CX 22 at 26.

diagnoses/conditions: bilateral pars defect/spondylosis,[9] spondylolisthesis,[10] and ongoing symptoms. D&O at 68, 116. The ALJ found Employer failed to rebut the Section 20(a) presumption as to the initial back and neck injuries[11] but successfully rebutted the presumption as to the bilateral pars defect/spondylosis, spondylolisthesis, and ongoing back and neck conditions. *Id.* at 116. After weighing the evidence as a whole, the ALJ determined Claimant failed to show by a preponderance of the evidence that his chronic bilateral pars defects/spondylosis, spondylolistheses, or ongoing neck and back problems are related to his employment. *Id.*

Turning to the nature and extent of Claimant's compensable initial neck and back injuries, the ALJ found he failed to establish temporary total or temporary partial disability after the first three months following the accident and failed to establish he required additional medical treatment for those initial injuries beyond August 1, 2019.[12] D&O at 100-101, 112, 115-116. Accordingly, the ALJ denied Claimant's claim in its entirety. *Id.* at 116-117.

Claimant appeals, arguing the ALJ erred in finding Employer rebutted the Section 20(a) presumption of compensability with respect to the bilateral pars defects/spondylosis, spondylolisthesis, and ongoing back and neck conditions. Claimant's Petition for Review (Cl. PR) at 11-20. Alternatively, Claimant argues the ALJ erred at the weighing stage of her causation analysis by crediting the opinions of Drs. Fox and Skidmore over the

[9] The ALJ relied upon Dr. Fox's testimony that pars defect and spondylosis are essentially the same condition. D&O at 68 n.18 (citing EX 31 at 12).

[10] Based upon the testimony of Dr. Fox and Dr. Mitchell, the ALJ concluded spondylolisthesis is a distinct condition – separate from pars defect/spondylosis – that occurs when two vertebral bodies do not align and cause compression on the nerve roots which results in symptoms such as neurogenic claudication and radiculopathy. She also concluded spondylolisthesis may be related to or progress from pars defects/spondylosis. D&O at 68 n.18 (citing CX 22 at 6 and EX 31 at 27-28).

[11] Absent rebuttal evidence, the initial neck and back injuries are work-related as a matter of law. *Obadiaru v. ITT Corp.*, 45 BRBS 17, 20 (2011).

[12] To the extent Claimant is also seeking review of the ALJ's findings on the nature and extent of his injuries or his entitlement to medical benefits pursuant to Section 7 of the Act, 33 U.S.C. §907, we need not address those issues because we affirm the ALJ's finding as to lack of causation.

objective medical evidence and the opinions of Drs. Wardell and Mitchell. Cl. PR at 21-32. Employer responds, urging affirmance. Claimant submitted a reply brief.

Rebuttal Evidence

When a claimant invokes the Section 20(a) presumption that his injury is work-related, as here, the burden shifts to the employer to produce substantial evidence that the claimant's injury is not work-related. *Metro Machine Corp. v. Director, OWCP [Stephenson]*, 846 F.3d 680, 684 (4th Cir. 2017); *Ceres Marine Terminals v. Director, OWCP [Jackson]*, 848 F.3d 115, 120-121 (4th Cir. 2016). An employer's burden on rebuttal is one of production, not persuasion. *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 262 (4th Cir. 1997). Employer must "put forward as much relevant factual matter as a reasonable mind would need to accept, as one rational conclusion, that the employee's injury did not arise out of his employment." *Newport News Shipbuilding & Dry Dock Co. v. Holiday*, 591 F.3d 219, 226 (4th Cir. 2009).

Claimant argues the ALJ improperly relied on her determination as to his lack of credibility in finding Employer rebutted the Section 20(a) presumption, particularly with respect to Dr. Wardell's and Dr. Mitchell's medical opinions which she concluded were largely based on Claimant's subjective reporting. Cl. PR at 11-13. He further argues the ALJ erred in relying on evidence of pre-injury car accidents as sufficient to rebut the presumption and in relying on the "speculative" opinions of Drs. Fox and Skidmore, despite the fact they evaluated Claimant only one or two times, months after the injury. Cl. PR at 13-16.

We disagree. The ALJ properly held Employer to a burden of production, not persuasion. *Holiday*, 591 F.3d at 226; *Moore*, 126 F.3d at 262-263. The ALJ found Employer rebutted the Section 20(a) presumption as to the bilateral pars defect/spondylosis through the opinions of Drs. Fox and Skidmore who both opined the condition was a longstanding chronic one that did not arise out of nor was aggravated by the May 2019 work accident. D&O at 68 (citing EX 16 at 2; EX 17 at 2-3; EX 23 at 3; EX 31 at 12). She found Employer rebutted the Section 20(a) presumption as to the spondylolisthesis diagnosis through x-rays taken the day after the May 2019 accident, which specifically indicated the absence of spondylolisthesis, and by the opinions of Drs. Skidmore and Fox, both of whom analyzed diagnostic imaging taken of Claimant's spine and found no evidence of structural changes or neural compression. *Id.* at 68-69 (citing EX 10 at 4, 7; EX 16 at 1-2; EX 17 at 2; EX 31 at 19, 28).

Finally, as to Claimant's ongoing neck and back problems, the ALJ found Employer rebutted the Section 20(a) presumption through evidence of Claimant's three post-injury car accidents (for which he sought neck treatment), Dr. Skidmore's normal physical

examination findings, and Dr. Fox's finding no objective evidence to support Claimant's pain complaints, along with his documentation of evidence of symptom magnification. *Id.* at 69 (citing HT 70-71; EX 16 at 2; EX 17 at 2-3; EX 23 at 3; EX 45; EX 59 at 5, 24, 32). The ALJ reasonably and permissibly found this evidence was sufficient to meet Employer's burden of production on rebuttal. *Holiday*, 591 F.3d at 226; *Moore*, 126 F.3d at 262-263; *Cline v. Huntington Ingalls, Inc.*, 48 BRBS 5, 7 (2013). We therefore affirm her conclusion that Employer successfully rebutted the Section 20(a) presumption relating Claimant's bilateral pars defect/spondylosis, spondylolisthesis, and ongoing back and neck problems to his employment.

Weighing the Evidence

As Employer rebutted the Section 20(a) presumption, the ALJ properly determined it no longer applies, and the issue of causation must be resolved based on the evidence of record as a whole with Claimant bearing the burden of persuasion. D&O at 70; *see Moore*, 126 F.3d at 262. The ALJ is entitled to weigh the evidence and draw her own inferences from it; she has the discretion to determine which of the conflicting opinions is entitled to determinative weight, and the Benefits Review Board is not empowered to reweigh the evidence. *See, e.g.*, *Newport News Shipbuilding & Dry Dock Co. v. Cherry*, 326 F.3d 449, 452 (4th Cir. 2003); *Pittman Mech. Contractors, Inc. v. Director, OWCP [Simonds]*, 35 F.3d 122, 127 (4th Cir. 1994). Moreover, questions of witness credibility are for the ALJ as the trier-of-fact. *Jones Stevedoring Co. v. Director, OWCP [Taylor]*, 133 F.3d 683 (9th Cir. 1997). 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).

Claimant argues the evidence overwhelmingly indicates his employment played some role in his back condition, and the ALJ erred in crediting Employer's experts, Drs. Skidmore and Fox, over his treating physicians, Drs. Wardell and Mitchell. Cl. PR at 18, 21-22, 25. Claimant argues the ALJ also erred in relying on evidence of pre- and post-injury car accidents as sufficient to sever causation given Claimant's testimony that his symptoms from those accidents were indistinguishable from work-related pain symptoms. Cl. PR at 25-26. Finally, Claimant maintains the ALJ improperly drew negative inferences from his testimony due to his uncooperative attitude without taking into account his limited education and lack of understanding of the legal and claims processes. Cl PR. at 27-28, 31-32. For the following reasons, we affirm the ALJ's finding that Claimant did not meet his burden of persuasion.

First, the ALJ permissibly and rationally weighed the conflicting medical opinions and found the opinions of Claimant's treating physicians, Drs. Wardell and Mitchell, less

convincing than the opinions of Drs. Fox and Skidmore.[13] D&O at 76-89; *see 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); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403, 405 (2d Cir. 1961); *Perini Corp. v. Heyde*, 306 F. Supp. 1321, 1325 (D.R.I. 1969). She found neither Dr. Wardell nor his staff explicitly related the diagnoses of bilateral pars defect/spondylosis and spondylolisthesis to the May 2019 work accident, and likewise found Dr. Wardell's sporadic but inconsistent inclusion of spondylolisthesis as a diagnosis was unexplained and unsupported by either Claimant's subjective complaints or diagnostic evidence. *Id*. at 71-73 (citing CX 11 at 1-22, 24-48; EX 12 at 12-24; EX 22; EX 60 at 11, 18-26, 31, 33-38; EX 61 at 1-8).

The ALJ also found it significant that Dr. Wardell did not review the May 2019 accident report or the Southeastern PT FCE results and that there was no evidence Claimant ever told him of his pre-existing back issues, his two pre-injury car accidents, or his three post-injury car accidents, despite contemporaneous treatment. *Id*. at 72, 75 (citing CX 11 at 12-13; EX 18 at 1-5; EX 38 at 1; EX 45; EX 59 at 5, 24, 32, 98, 106, 110-111; EX 60 at 25-26, 31-32; EX 61 at 6). Rather, she noted Dr. Wardell's treatment recommendations and notes were based almost exclusively on Claimant's at times inconsistent, subjective reporting. *Id*. at 74-75 (citing CX 11 at 30, 43-44); *see also* CX 11 at 12, 17; EX 12 at 16-21; EX 60 at 31-32; EX 61 at 10-11, 13.

She likewise found Dr. Wardell's full duty release, issued on November 22, 2021, inconsistent with Claimant's subjective complaints of increased pain and continued numbness during the preceding months, especially considering the absence of any documented change in treatment. *Id*. at 75 (citing EX 61 at 13-24 and EX 62). For these reasons, the ALJ gave little weight to Dr. Wardell's opinions on causation, medical treatment, and work restrictions. *Id*. at 76.

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[13] We reject Claimant's assertion that "medical opinions of treating physicians should be given great weight in determining whether a claimant's injuries are compensable." Cl. Brief at 18 (citing *Marathon Ashland Petroleum v. Williams*, 733 F.3d 182 (6th Cir. 2013)). In addition to lacking precedential value in the Fourth Circuit, where this case arises, *Williams* clearly espoused the rule that an ALJ may accept or reject all or any part of a witness's testimony. *Id.* Indeed, an ALJ is to give a treating physician special deference only when there is a choice to make between two equally reasonable methods of treatment, as the decision of how to treat a work injury is to be left to the claimant and his doctor. *Amos v. Director, OWCP*, 164 F.3d 480 (9th Cir.), *cert. denied*, 528 U.S. 809 (1999). However, when there is conflicting medical evidence on the cause of a claimant's injury, as here, the ALJ has a duty and the discretion to weigh the evidence.

The ALJ also gave little weight to Dr. Mitchell's medical opinion because it was internally inconsistent and based on an inaccurate medical history. D&O at 76, 80. Specifically, she noted Dr. Mitchell testified that Claimant's lack of reported pre-existing back problems was the "key" leading him to conclude Claimant's symptoms were related to the May 2019 injury. *Id*. at 76 (citing CX 22 at 10). However, he then testified that he could not be sure he asked Claimant whether he had a history of back pain, and when presented with evidence of Claimant's documented pre-injury treatment for chronic back issues, Dr. Mitchell testified his causation opinion remained unchanged. *Id*. at 76 (citing CX 22 at 16, 19-22).

The ALJ also found Dr. Mitchell failed to explain how the diagnostic imaging and studies supported his finding that Claimant's bilateral pars defect/spondylosis and spondylolisthesis diagnoses were caused or aggravated by the May 2019 accident, especially considering x-rays taken the day following the workplace accident showed no evidence of spondylolisthesis, and there was no evidence he reviewed the July 2019 EMG, the January 2020 x-rays, or the October 2020 EMG. *Id*. at 76, 78-79 (citing CX 14; EX 10 at 4, 7; EX 12 at 35-36; EX 14 at 3; EX 22). Likewise, although his interpretation of the June 2020 lumbar CT myelogram confirmed pars defect and mild spondylolisthesis, the ALJ found Dr. Mitchell did not explain whether the testing confirmed these conditions were related to Claimant's employment. *Id*. at 79 (citing CX 14 at 3). Rather, the ALJ found he equivocated there was "no way to know" whether the bilateral pars defects/spondylosis was chronic or arose out of employment, and further testified someone with these same diagnostic findings could be asymptomatic. *Id*. at 77, 79 (citing CX 22 at 7-9).

Conversely, the ALJ gave the medical opinions of Drs. Fox and Skidmore significant weight, finding them supported by the evidence of record. D&O at 83. She noted both physicians diagnosed Claimant with a lumbar strain as a result of the May 2019 accident, which was consistent with the diagnoses of Claimant's primary care physician and Dr. Wardell. *Id*. at 80-82, 87 (citing EX 11 at 3; EX 16 at 2-3; EX 17 at 3; EX 31 at 12; *see also* CX 11 at 1). She found Claimant's testimony and the accident report supported both physicians' conclusions that the accident itself was minor. *Id*. at 80-81 (citing HT at 53-54); *see* EXs 7, 8. She also found their opinions that the lumbar strain resolved in three months supported by Dr. Skidmore's physical examination of Claimant at six months post-injury, during which he noted normal gait, good range of motion, and a normal sensory examination. *Id*. at 81 (citing EX 16 at 2-3). She determined these findings were further supported by diagnostic imaging,[14] Dr. Fox's evaluation, and significant evidence of

[14] These included the x-rays taken the day after the work-related event (in which the interpreting radiologist indicated the pars defect was likely chronic in nature), the June

symptom magnification. *Id*. at 81-83, 86-89 (citing EX 17 at 2; EX 31 at 8-11, 14-15, 18, 21).

The ALJ found both Drs. Fox and Skidmore also reviewed all post-injury testing available at the time of their evaluations and provided explanations as to how this diagnostic evidence failed to demonstrate a connection between Claimant's diagnoses and symptoms and his employment. D&O at 80-82 (citing EX 16 at 2; EX 17 at 2; EX 23; EX 30; EX 35). Specifically, she found Dr. Skidmore acknowledged the bilateral pars defects following his review of the June 2019 MRI but noted no evidence of neural compression or signs of structural abnormalities to suggest it was caused or aggravated by a traumatic event, a finding supported by other diagnostic evidence of record including the x-rays taken the day after the accident. *Id*. at 80 (citing EX 10 at 4, 7; EX 16 at 2). She found Dr. Fox likewise concluded these conditions were chronic in nature and likely asymptomatic, based largely on the diagnostic evidence. *Id*. at 82, 86-87 (citing EX 17 at 3; EX 31 at 11-12, 17, 19-21, 27-28).

Beyond weighing the medical opinions, the ALJ also permissibly and reasonably considered Claimant's credibility and found his testimony unpersuasive and inconsistent. D&O at 91. She found he provided different versions of the accident with more detail in his more recent testimony than in the incident report and his first deposition. *Id*. at 91-95 (citing EX 7 at 1; EX 9 at 3; EX 10; EX 28 at 15-18, 23-24; EX 50 at 7-10; HT at 52-55, 91-92). She also found his description of his pain following the accident was inconsistent,[15]

2019 EMG (which showed only slight evidence of radiculopathy), the October 2020 EMG (which was normal), and the CT myelogram (which Dr. Mitchell noted confirmed L5 pars defects and spondylolisthesis). D&O at 81-83, 86-87 (citing EX 10 at 4, 7; EX 12 at 35-36; EX 22; EX 23 at 3; EX 34 at 1).

[15] For instance, Claimant gave varying reports as to the location of his pain following the accident. Immediately following the accident, he reported pain in his middle to lower back (EX 7), during his deposition he testified he immediately felt pain in his lower back with radiation to both legs (EX 50 at 8-9), and at the hearing he testified the pain was in his lower back (HT at 54-55). However, he did not complain of lower back pain or radiating pain into his legs to the paramedics or to providers at the emergency room. EX 10. Claimant also inconsistently reported his pain. At his October 2020 deposition, he could not recall when he began having pain (EX 28 at 6) but testified at the hearing that his pain was immediate and "excruciating" (HT at 54-55). He testified at the hearing that his pain has yet to resolve, and he has experienced pain "just about every day" since the May 2019 accident (HT at 69, 88-89), yet he denied both back and neck pain in August 2019 when he presented to the emergency room for unrelated ailments (EX 32 at 10-11).

as was his testimony regarding pain from his multiple car accidents.[16] *Id*. at 94-95. She further determined he was not forthright about his medical history to his providers, in his depositions, or in discovery; he failed to mention his pre-injury treatment for chronic low back pain or the pre- or post-injury car accidents.[17] *Id*. at 96-99. The ALJ noted Claimant's medical records, particularly those from his treating providers, Dr. Wardell and Dr. Mitchell, failed to include any reference to pre-existing back pain or the longstanding prescription of diclofenac from Claimant's primary care physician. *Id*. at 99 (citing EX 18 vs. CX 11 at 1, HT at 88; CX 22 at 10; EX 16 at 2; EX 31 at 15). Based on these inconsistencies and contradictions, among others, the ALJ found Claimant's testimony unpersuasive and attributed little weight to the medical reports of Drs. Wardell and Mitchell, as they were based largely on Claimant's subjective complaints. *Id*. at 72, 76-77, 99.

We conclude the ALJ adequately discussed all the relevant evidence and rationally found Claimant did not meet his burden to establish that his bilateral pars defect/spondylosis, spondylolisthesis, and ongoing back and neck problems are work-related. *Cherry*, 326 F.3d at 452; *Moore*, 126 F.3d at 262; *Simonds*, 35 F.3d at 127. As her credibility determinations are not inherently incredible or patently unreasonable, *Cordero*, 580 F.2d at 1335, and her conclusion on causation is rational, supported by substantial evidence, and in accordance with the law, *Simonds*, 35 F.3d at 127; *see also*

Claimant also inconsistently testified his alternate employment at Quest Diagnostics both aggravated his back condition (EX 50 at 32) and did not aggravate his back condition (HT at 109-110, 113-114). D&O at 94.

[16] At the hearing Claimant testified he was involved in three post-injury car accidents, and he "could not distinguish the difference of what happened at work and what happened at the accident" (HT at 71, 88); yet he also testified he was able to tell the providers he saw following each car accident about "unrelated" pain stemming from his work accident (HT at 90-91). D&O at 95.

[17] For instance, the ALJ found Claimant at times denied pre-existing back issues or treatment (EX 28 at 3 and EX 50 at 4-5), but subsequently acknowledged them (HT at 36-40, 73-78). He was inconsistent about whether he sought chiropractic treatment for the first time before or after the May 2019 work injury (HT 97-98, 100, 102-103). He failed to recall his various car accidents or disclose them in his discovery responses (EX 26 at 10; EX 28 at 29-30; EX 50 at 22-26; EX 55), but he acknowledged them at the hearing (HT at 40-41, 70-71, 76, 88).

Director, OWCP v. Greenwich Collieries, 512 U.S. 267 (1994), we affirm the ALJ's denial of benefits for Claimant's alleged back and neck injuries.

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

SO ORDERED.

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge