**U.S. Department of Labor**

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

BRB No. 21-0576

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| PETER CHIMENTO | ) | |
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| Claimant-Petitioner | ) | |
| | ) | |
| v. | ) | |
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| PORT NEWARK CONTAINER TERMINAL, INCORPORATED | ) | DATE ISSUED: 11/14/2022 |
| | ) | |
| and | ) | |
| | ) | |
| PORTS INSURANCE COMPANY, INCORPORATED | ) | |
| | ) | |
| Employer/Carrier-Respondents | ) | DECISION and ORDER |

Appeal of the Decision and Order Denying Benefits of Lauren C. Boucher, Administrative Law Judge, United States Department of Labor.

Jorden N. Pedersen, Jr. (Javerbaum, Wurgaft, Hicks, Kahn, Wikstrom & Sinins, P.C.) Elizabeth, New Jersey, for Claimant.

Christopher J. Field (Field & Kawczynski, LLC) Jamesburg, New Jersey, for Employer/Carrier.

Before: BOGGS, Chief Administrative Appeals Judge, ROLFE, and JONES, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Lauren C. Boucher's Decision and Order Denying Benefits (2020-LHC-00375) rendered on a claim filed pursuant to the

Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (Act). 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 law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).[1]

Claimant was employed as a holdman for Employer, when, on February 4, 2015, a block of ice fell from an overhead crane, landing on Claimant's head, neck, and back, causing him to fall to the ground.[2] EX 1. An ambulance took him to the hospital, where he was ultimately diagnosed with a concussion and sent home. CX 3 at 11. On February 5, 2015, Claimant went to Morrison Medical Center, again reporting head, neck, and back pain. CX 4 at 6. On May 18, 2015, Claimant filed a claim for compensation, seeking benefits for injuries to his head, neck, back, face, left shoulder, hips, knees, and legs. CX 1. Claimant's cervical and lumbar spinal injuries were treated by Dr. George Naseef; he performed multiple surgeries on Claimant's cervical and lumbar spine between 2015 and 2017. CX 13. Claimant was also treated by several other physicians and received physical therapy for shoulder, hip, and knee pain. EX 10 at 1.

Conceding Claimant sustained neck and back injuries in the accident, Employer voluntarily paid temporary total disability benefits from February 6, 2015, until March 27, 2019, and then controverted the claim on September 5, 2019.[3] EXs 2-4. Employer contended Claimant could return to work as his work-related injuries had resolved, and it disputed Claimant's shoulder, knees, ankle, and hips sustained work-related injuries. On November 6, 2020, the ALJ held a formal hearing. Claimant and Employer filed a number of stipulations, leaving only the issues of whether the shoulder, hip, knee, and ankle/foot

[1] In October 2018, Claimant was diagnosed with Stage IV metastatic colon cancer, EXs 15, 18; TR at 58. Claimant died on May 9, 2021. In a letter dated June 24, 2021, the parties informed the ALJ Claimant had died of non-work-related causes. Joint Letter. Claimant's estate is pursuing this claim on his behalf.

[2] Claimant's work as a holdman required him to prepare ships for loading and unloading. He was required to install shoes, which are locking machinery used to attach containers together. TR at 33. Shoes typically weigh from 20 to 25 pounds, and Claimant was required to lift the shoes to attach them onto the containers. This required him to bend, twist, and push with his body. *Id.* at 33-37.

[3] Employer also voluntarily paid medical benefits for the neck and back injuries as well as for Claimant's face and dental injuries. With respect to a disputed medical charge, the ALJ noted the parties had reached an agreement on that issue.

conditions were work-related, and the nature and extent of Claimant's work-related disability.

The ALJ issued her Decision and Order Denying Benefits on July 27, 2021. Decision and Order (D&O) at 1. She discussed at length Claimant's medical treatments with Drs. John Dellorso, David Greifinger, Andrew Willis, Wayne Colizza, Christopher Spagnuola, George Naseef, Michael Bercik, Alena Polesin, Stephen Kocaj, Stephen Hunt, Henry Magliato, Adam Wagshul, and Daniel Hennessy. D&O at 7-10; CXs 5, 8, 9, 13, 16, 17, 18, 19, 24, and 29. The ALJ found Claimant invoked the Section 20(a) presumption, 33 U.S.C. §920(a), relating his injuries to his work because he established he suffered harm to those body parts; the record also "generally supports that the accident occurred as Claimant described it at the hearing" and as such could have caused his injuries. D&O at 12.

She then discussed the medical evidence Employer presented in rebuttal. She found the opinions of Drs. Dellorso, Greifinger, Willis, Colizza, Spagnuola, Hunt, Kocaj, and Bercik constituted substantial evidence showing those injuries were not work-related. D&O at 15. The ALJ weighed the evidence and found Claimant did not establish by a preponderance of the evidence that his right foot/ankle, hips, knees, and left shoulder were injured in the work accident.

The ALJ gave greater weight to the physicians who, after examining Claimant and his medical records, found no injury causally related to the February 2015 incident. The ALJ gave less weight to Drs. Magliato and Kocaj because their opinions regarding causation were based solely on Claimant's statements. D&O 25. Moreover, the ALJ found Claimant's work-related spine condition reached maximum medical improvement (MMI) "no later than December 14, 2018" based on the opinions of Drs. Naseef and Kopacz, and based on Dr. Kopacz's opinion, she found Claimant could return to work without restrictions as of that date. D&O at 32. Consequently, she concluded Claimant did not establish a work-related inability to return to work after mid-December 2018 and denied benefits after that point in time. *Id*.

Claimant appeals the denial of benefits and argues the ALJ erred in finding his knee, hip, ankle, foot, and shoulder pain was not caused by the February 2015 incident and in finding he could have returned to work after December 14, 2018. Claimant's Petition (Cl. Pet.) at 9. He seeks remand for an award of benefits. Employer responds, urging affirmance.

## Causation

Once the Section 20(a) presumption, 33 U.S.C. §920(a), has been invoked, as here, the burden shifts to the employer to rebut the presumption by offering substantial evidence

that severs the relationship between the injury and the work. *C & C Marine Maint. Co. v. Bellows*, 538 F.3d 293, 42 BRBS 37(CRT) (3d Cir. 2008). If the employer rebuts the presumption, the question of whether the cause of an injury is work-related must be decided on the record as a whole, with the claimant bearing the burden of establishing the work-relatedness of his injury by a preponderance of the evidence. *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994); *Hawaii Stevedores, Inc. v. Ogawa*, 608 F.3d 642, 44 BRBS 47(CRT) (9th Cir. 2010). The factfinder must consider all of the evidence relevant to the causation issue. *MacDonald v. Trailer Marine Transp. Corp*., 18 BRBS 259 (1986), *aff'd mem. sub nom*. *Trailer Marine Transp. Corp. v. Benefits Review Board*, 819 F.2d 1148 (11th Cir. 1987). She has the authority and discretion to weigh, credit, and draw her own inferences from the evidence of record; she is not bound to accept the opinion or theory of any particular expert. *See Calbeck v. Strachan Shipping Co*., 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403 (2d Cir. 1961); *Perini Corp. v. Heyde*, 306 F. Supp. 1321 (D.R.I. 1969).

The ALJ stated: "[o]verall, Claimant's medical records following the accident throw factual doubt on whether his shoulder, knee, hip, and foot/ankle pain were caused by the February 2015 accident." D&O at 14. She stated this was especially notable because Claimant initially "made virtually no complaints" about his shoulder, knees, hips, or foot pain. *Id.* For example, the day of the incident, at Neward Beth Israel Medical Center, he complained of head, back, and shoulder pain only. CX 3. The next day while visiting Morristown Medical Center, Claimant only complained of pain in his head, neck and back. CX 4 at 3. On February 6, 2015, just two days after the accident, Claimant visited the Airport Medical Offices at Newark Airport and complained only of neck and back pain. CX 5 at 1.

Claimant contends the ALJ erred in finding Employer submitted substantial evidence to rebut the Section 20(a) presumption linking his left shoulder, hips, knees, and right foot/ankle conditions to his work. He also challenges the ALJ's weighing of the evidence as it relates to each of those conditions to find they are not work-related. We address each condition individually.

Left Shoulder

Claimant first contends the ALJ erred in relying on Drs. Willis and Spagnuola to determine he did not sustain a work-related shoulder injury. He argues those opinions are erroneous and inconclusive. Three months after the accident, on May 26, 2015, Dr. Willis's physical examination of Claimant and x-rays caused him to conclude Claimant's shoulder pain was due to the cervical injury, as there was no "intrinsic injury or internal

derangement of the shoulders directly," and no further shoulder treatment was necessary. CX 8 at 3; EX 9 at 3. Dr. Willis examined Claimant and took x-rays of both shoulders. He stated he was unable to reproduce the pain of which Claimant complained, which was likely radiating pain due to the cervical injury, and the x-rays showed Claimant's left shoulder had mildly symptomatic degenerative changes with "no evidence of fracture, dislocation, or bony abnormalities, or other irregularities." *Id.* In March 2017, Dr. Spagnuola found a normal shoulder range of motion and, based on the 2016 MRI of Claimant's left shoulder, concluded Claimant's complaints are "due to age-related degenerative changes and not due to the traumatic work injury that occurred on 2/4/15." EX 7 at 12. His conclusion was based on examining Claimant, noting the particular pain he was complaining of started more than one year after the accident and could not be reproduced on examination, and reviewing medical records, particularly considering Dr. Willis's findings dated a few months after the accident. *Id.* Additionally, Dr. Bercik examined Claimant in 2020 and stated his left shoulder had full range of motion with no deformity. EX 17 at 16. He also concluded in his deposition that Claimant did not injure his shoulder in the 2015 accident. EX 26 at 48; *see* D&O at 14. The ALJ found these opinions constituted substantial rebuttal evidence establishing Claimant's shoulder condition is not work-related.[4] D&O at 15.

The ALJ is correct in finding Employer rebutted the Section 20(a) presumption with respect to Claimant's left shoulder injury. *Moore*, 126 F.3d 256, 31 BRBS 119(CRT). On weighing the shoulder evidence as a whole, the ALJ discussed the doctors' opinions, acknowledging Drs. Naseef, Magliato, and Kocaj attributed Claimant's shoulder condition, which as of January 2017 was diagnosed by MRI as a rotator cuff tear, to his 2015 work injury. D&O at 22-24; CXs 5 at 11, 13 at 25, 17, 24. However, she gave greater weight to Dr. Willis, who, in May 2015 and the closest in time to the accident, was the first to determine Claimant did not suffer any injury to his shoulder as a result of the work accident. She also gave weight to Dr. Spagnuola's opinion, based in part on a 2016 MRI, which reflected degenerative and not traumatic changes to Claimant's shoulder.[5] D&O at 24.

[4] In October 2017, Dr. Kocaj reported Claimant stated he could not recall a shoulder injury, but pain had gradually increased over time "with overhead activities and sleep." CX 17 at 17. In 2020, Dr. Bercik also noted Claimant's subjective complaints allegedly due to the 2015 accident, but he found there were only "minimal findings on examination" consistent with the prior right shoulder arthroscopy. EX 17 at 18.

[5] That Dr. Willis did not see the later MRIs is of no moment; contemporaneous to the accident, he determined Claimant's shoulder did not suffer injury. It is not unreasonable to conclude any injury Claimant may have suffered to his shoulder over one and a half years later is not related to that accident. That Dr. Spagnuola may have been

Although Claimant initially complained of shoulder pain after the accident, and Dr. Naseef referred Claimant to Dr. Willis, Claimant thereafter did not complain of shoulder pain between June 2015 and June 2016. Based on this gap and the opinions of Drs. Willis and Spagnuola, the ALJ did not credit Dr. Naseef's opinion of work-relatedness. She found Dr. Magliato's opinion "vague and insufficient" because it relied only on Claimant's initial shoulder complaints without referencing any causal reasoning and Dr. Kocaj's opinion "conclusory and unpersuasive" because it reflected treatment years after the accident without addressing Claimant's inability to identify a specific injury or giving any explanation connecting the injury to the accident.[6] D&O at 25. Substantial evidence (the medical opinions of Drs. Willis and Spagnuola) supports the ALJ's conclusion that Claimant's shoulder condition is not work-related.[7] *See Hice v. Director, OWCP*, 48 F. Supp. 2d 501 (D. Md. 1999).

Hips

Claimant next argues the ALJ erred in holding his hip condition was not causally related to the accident, asserting neither Dr. Colizza nor Dr. Hunt rendered an opinion that satisfied Employer's rebuttal burden.

The ALJ stated Claimant first mentioned hip pain to Dr. Greifinger two weeks after the work accident. Dr. Greifinger found Claimant's hip range of motion "was without associated pain" and his reflexes were normal. EX 5 at 1-2. One week later, Dr. Reiter evaluated Claimant but assessed no hip injury. He said Claimant had guarded movements, but the hips had "full range of motion without pain, subluxation, or crepitation." CX 6 at 2.

Dr. Colizza examined Claimant in August 2016. He found Claimant's hip had full, pain-free range of motion and showed no injury or requirement for treatment. He stated the x-rays of both hips "are completely normal." EX 10 at 3. He concluded there is no

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mistaken about saying there was an absence of initial shoulder complaints does not render his diagnosis based on an examination and an MRI unreliable.

[6] Dr. Magliato specifically opined Claimant's shoulder injury must be "accepted as being related to his accident since the records do seem to indicate that from the beginning he reported all of these injuries to his physicians." D&O at 23. The ALJ found this unpersuasive because it was not based on his examination but only on the Claimant's statements. D&O at 25.

[7] The ALJ did not give any weight to Dr. Bercik's opinion. D&O at 25.

significant injury to the hips, though there are "minimal and scant objective findings" such that he could not "within a reasonable degree of medical certainty, ascribe any particular work-related diagnosis" to the February 2015 accident, and he would not investigate this complaint further. EX 10 at 3. In March 2017, Dr. Hunt elicited a hip history from Claimant which included a right hip injury in 2011 and the 2015 accident where Claimant alleged injury to both hips. CX 19 at 1. Dr. Hunt examined Claimant and reviewed tests. He determined Claimant's hips "demonstrate CAM deformities and slight narrowing of the joint space," no signs of "necrosis or other significant abnormalities," "degenerative labral tearing with paralabral cyst greater on the right than the left," and "bilateral bursitis." *Id.* at 3. In reporting to Dr. Naseef, Dr. Hunt concluded Claimant suffered from degenerative conditions (degenerative labral tears, early degenerative arthritis, and abductor tendinopathy); "no clear-cut injury" could be "definitively attributed" to the 2015 accident. *Id.* at 5. And, in October 2017, Dr. Polesin stated Claimant's hip symptoms were due to severe bilateral hip osteoarthritis. D&O at 19; CX 23.

The ALJ reasonably found the opinions of Drs. Colizza, Hunt, Greifinger, Reiter, and Polesin constitute sufficient evidence rebutting the presumption that Claimant's hip condition is work-related. We affirm this finding. Even omitting Dr. Colizza's opinion, sufficient medical rebuttal evidence remains. A physician's testimony regarding the lack of a causal nexus, rendered to a reasonable degree of medical certainty, is sufficient to rebut the presumption. *Bourgeois v. Director, OWCP*, 946 F.3d 263, 53 BRBS 91(CRT) (5th Cir. 2020); *O'Kelley v. Dep't of the Army/NAF*, 34 BRBS 39 (2000).

The ALJ also gave these opinions the greatest weight and found Claimant did not establish by a preponderance of the evidence that his hip injury is work-related.[8] D&O at 19-20. While the delayed hip complaints were not far distant from the accident, the ALJ found this "does not weigh in favor" of finding a causal relationship, especially as, on evaluation, Dr. Griefinger found full range of motion with no pain. D&O at 18. As the ALJ has the authority and discretion to weigh the evidence, accepting any medical opinion in whole or in part, this conclusion is also supported by substantial medical evidence. *Moore*, 126 F.3d 256, 31 BRBS 119(CRT); *Donovan*, 300 F.2d 741; *Hice*, 48 F. Supp. 2d 501; *Santoro v. Maher Terminals, Inc.*, 30 BRBS 171 (1996).

[8] Claimant's reports of hip pain to Dr. Naseef commenced in April 2015 and resulted in his referring Claimant to other doctors for evaluation. The ALJ found the referrals and deference to other doctors' opinions diminished the weight of Dr. Naseef's opinion on the matter. D&O at 18-19. Although Dr. Magliato attributed Claimant's hip condition to his work injury, the ALJ found his opinion was unexplained and unpersuasive. D&O at 19.

Knees

On February 17, 2015, Dr. Griefinger examined Claimant. He noted Claimant complained of pain in his neck and back; nevertheless, he conducted a general evaluation, and in doing "motor testing in the lowers" he determined Claimant's "[r]eflexes were normoactive at the knees, flat at the ankles[, and t]here were no sensory changes." EX 5 at 2. In his concluding impression, he did not render any diagnosis related to Claimant's knees. The ALJ stated Dr. Colizza was the first to specifically examine Claimant's knees based on pain complaints following the 2015 accident, doing so in August 2016, and he found no significant injury and would do no further investigation. He also stated a review of the records revealed no direct knee injury and no "particular work related diagnosis." D&O at 20; EX 10. Dr. Colizza stated Claimant's range of motion in his knees was from 0-120 degrees with no effusion, instability, swelling, redness, or warmth, though there was diffuse tenderness. He reported x-rays revealed a normal left knee and "very subtle patellofemoral spurring" and "lateral compartment narrowing with tibial osteophytes" in the right knee.[9] EX 10 at 3. As with Claimant's hips, Dr. Colizza stated he could not, "within a reasonable degree of medical certainty, ascribe any particular work-related diagnosis" to Claimant's knees. *Id.* Additionally, in 2017, Dr. Kocaj diagnosed Claimant with bilateral knee osteoarthritis based on examination and on MRIs showing degenerative changes. CX 17 at 19-20.[10] In 2020, Dr. Bercik examined Claimant and reviewed his medical history. He concluded "there were no findings on examination to correlate with his complaints." EX 17 at 18.[11] The opinions of Drs. Griefinger, Colizza, and Kocaj constitute substantial rebuttal evidence. *See generally Ortco Contractors, Inc. v. Charpentier*, 332 F.3d 283, 37 BRBS 35(CRT) (5th Cir. 2003), *cert. denied*, 540 U.S. 1056 (2003) (rebuttal evidence need not rule out or unequivocally or affirmatively state there is no work-relatedness; need only be substantial evidence); *Victorian v. International-Matex Tank Terminals*, 52 BRBS 35 (2018), *aff'd sub nom. International-Matex Tank Terminals*

[9] There is evidence Claimant had a right knee injury at work in 2009 or 2010 and surgery after which he returned to his usual work. CX 16 at 1, 355; CX 24 at 3.

[10] Two years later, and in one conclusory sentence, Dr. Kocaj offered his opinion on causation for the first time, stating Claimant's bilateral knee condition was due to the February 2015 injury. CX 17 at 6.

[11] While Dr. Bercik related Claimant's lumbar and cervical spine injuries to the February 2015 accident, he stated the remaining injuries were only "allegedly sustained" as a result of that accident, and he concluded "the patient has reached the Maximum Medical Improvement and has sustained no permanent physical impairments." EX 17 at 18. He presented no specific opinion on the cause of Claimant's complaints.

*v. Director, OWCP*, 943 F.3d 278, 53 BRBS 79(CRT) (5th Cir. 2019) (reports of the absence of injury or the full range of motion are sufficient rebuttal evidence).

On weighing the evidence as a whole, the ALJ found Claimant first reported knee pain to Dr. Naseef three months after the work accident, and this "weighs against a finding of causation." D&O at 20. She gave greatest weight to Dr. Colizza's opinion, as he was the first to address Claimant's knee complaints, and he reasonably explained his conclusion based on x-rays showing degenerative changes. D&O at 21-22. The ALJ's permissible weighing of the evidence is supported by substantial evidence and is affirmed. *Moore*, 126 F.3d 256, 31 BRBS 119(CRT); *Donovan*, 300 F.2d 741; *Hice*, 48 F. Supp. 2d 501.

Foot/Ankle

Claimant contends the ALJ's reliance on Dr. Bercik regarding the right foot/ankle injury is misplaced because he concluded there was no permanent injury to the foot/ankle and did not address its cause. Claimant asserts the absence of contemporaneous complaints is insufficient to rebut the presumed work-related, causal connection. Although Claimant argues he sustained a right foot/ankle injury as a result of the February 2015 accident, the ALJ found he first complained of right foot/ankle pain in June 2016 – well after the accident in February 2015. D&O at 16; CXs 3-6; CX 13 at 18. The record contains evidence of a prior right ankle injury sometime between 2008 and 2012, EX 17, possibly in 2010, EX 16 at 166. In 2017, Dr. Wagshul reported Claimant's statement that he had experienced right ankle pain since the 2010 injury which he believes he re-injured in 2015. EX 16 at 166. As of late 2016, Claimant was diagnosed with Achilles tendonitis. CX 15; CX 24 at 4. Dr. Magliato stated there was a right Achilles tendon problem in 2017, but he stated the cause was "unclear" because of the prior 2010 injury. On examination in 2018, Dr. Magliato found Claimant's ankle had good flexion, no evidence of a tendon tear, and no need for surgery. CX 24. In 2020, Dr. Bercik opined Claimant had no foot or ankle injury when he examined him.[12] CX 24; EX 17. This constitutes substantial evidence rebutting the Section 20(a) presumption. *Ceres Gulf, Inc. v. Director, OWCP [Plaisance]*, 683 F.3d 225, 231, 46 BRBS 25, 28-29(CRT) (5th Cir. 2012) (the employer need not "demonstrate" the absence of a causal connection by showing a deficiency in the claimant's prima facie case; all it must do is "advance evidence to throw factual doubt on the claimant's prima facie case."); *see generally Swinton v. J. Frank Kelly, Inc.*, 554 F.2d 1075, 1082, 4 BRBS 466, 475 (D.C. Cir.), *cert. denied*, 429 U.S. 820 (1976) (specific and comprehensive negative

[12] Dr. Bercik stated Claimant's right foot and ankle had no findings to correlate to the subjective complaints as there was no deformity, swelling, or tenderness, and there was full range of motion. EX 17 at 17-18.

evidence may be substantial evidence); *Victorian*, 52 BRBS 35; *Holmes v. Universal Mar. Serv. Corp*., 29 BRBS 18 (1995) (Decision on Recon.).

On weighing the evidence as a whole, the ALJ emphasized the lack of foot/ankle complaints until more than one year after the accident, stating it "casts serious doubt" on this condition being work-related. D&O at 17. The ALJ rejected Claimant's assertion that it was reasonable for him to delay reporting this injury, especially because he reported the other injuries sooner. Further, although Claimant complained of foot/ankle pain in June 2016, Dr. Naseef made no mention of it in his September 2016 causation assessment, and Dr. Bercik found no foot/ankle injury.

The ALJ acknowledged Drs. Wagshul and Hennessey found Claimant sustained a foot/ankle injury, CXs 18, 29; however, she stated neither addressed the cause of that injury. She concluded whether there is a foot/ankle injury or not, there is no evidence tying that injury to the February 2015 work accident. D&O at 18. The ALJ has the discretion to weigh the competing opinions of various physicians. *Global Linguist Solutions, L.L.C. v. Abdelmeged*, 913 F.3d 921, 52 BRBS 53(CRT) (9th Cir. 2019).

Here, the ALJ provided thorough reasoning for finding rebuttal and weighing the medical opinions. Consequently, we affirm the findings that Employer rebutted the Section 20(a) presumption, and Claimant has not established by a preponderance of the evidence that his shoulder, hip, knee, and foot/ankle conditions are work-related. The ALJ properly denied benefits for those injuries.

Disability

After finding only the neck and back injuries work-related, the ALJ addressed the parties' dispute regarding the nature and extent of Claimant's disability as related to those injuries. *Macklin v. Huntington Ingalls, Inc.*, 46 BRBS 31 (2012). Based on her review of the medical evidence, the ALJ found Claimant's work-related spine conditions reached maximum medical improvement (MMI) no later than December 14, 2018.[13] D&O at 32.

[13] The ALJ stated: "Having determined Claimant reached MMI in December 2018, the critical question is whether Claimant's disability was temporary or permanent – *i.e.*, whether Claimant had any residual disability after December 14, 2018." D&O at 32. MMI is the date when a temporary disability changes to permanent. *See Stevens v. Director, OWCP*, 909 F.2d 1256, 23 BRBS 89(CRT) (9th Cir. 1990); *Ezell v. Direct Labor, Inc.*, 33 BRBS 19 (1999). So, contrary to her statement, she already determined permanency, and this is not the "critical question" remaining. The second part of her sentence is accurate, however, as the question remaining is whether Claimant had any residual disability rendering him unable to return to his usual work. *See Macklin v. Huntington Ingalls, Inc.*,

She then credited Dr. Kopacz's opinion over Dr. Naseef's and found Claimant's conditions had fully resolved, and he could return to work with no restrictions as of that date. *Id.* at 35-36. Claimant contends the ALJ erred in finding he was able to return to his usual work without restrictions as of December 14, 2018.

The ALJ reviewed the reports of Drs. Naseef, Kopacz, Bercik, Costomiris, and Magliato with regard to the disability issue.[14] She found Claimant's neck and back conditions reached MMI no later than December 14, 2018. Dr. Naseef opined Claimant's condition was permanent as of December 6, 2018, and he would have permanent restrictions which would prevent him from returning to work. CX 13 at 60-62. While he stated Claimant's condition stabilized, he acknowledged Claimant may need additional spine surgeries to prevent further deterioration. CX 13 at 60. Dr. Kopacz determined Claimant's cervical and lumbar conditions reached MMI on October 5, 2018, and on December 14, 2018, he reported Claimant could return to work without restrictions. EX 8. On October 11, 2018, Dr. Magliato stated Claimant's cervical spine condition had resolved, and he had no significant lumbar complaints. CX 24 at 10-12. These medical opinions constitute substantial evidence supporting the ALJ's finding that Claimant's cervical and lumbar spine conditions reached MMI no later than December 14, 2018. *Misho v. Global Linguist Solutions,* 48 BRBS 13 (2014); *Miranda v. Excavation Constr., Inc.*, 13 BRBS 882 (1981).

With regard to whether Claimant had any residual work-related disability preventing him from returning to work, the ALJ addressed the opinions of Drs. Naseef and Kopacz. She acknowledged Dr. Naseef, Claimant's treating physician, consistently reported Claimant was totally disabled and could not return to work. D&O at 32; CX 13 at 60-65, 82. However, she gave Dr. Naseef's opinion little weight due to his bias.[15] In

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46 BRBS 31 (2012); *Rivera v. United Masonry, Inc.*, 24 BRBS 78 (1990), *aff'd*, 948 F.2d 774, 25 BRBS 51(CRT) (D.C. Cir. 1991); *Williams v. Gen. Dynamics Corp.*, 10 BRBS 915 (1979).

[14] She rejected the disability opinions of Dr. Costomiris for his unexplained conclusion and of Dr. Bercik, who adopted Dr. Kopacz's opinion, examined Claimant in 2020, and was not in a position to opine on Claimant's condition as of 2018. D&O at 34.

[15] Dr. Naseef admitted bias on Claimant's behalf and frustration with delays in his treatment. CX 35 at 72. The ALJ stated this bias does not negate Dr. Naseef's opinion entirely but does "lessen[] the probative value of his opinion" and "negate[] any special weight due to [his] status as Claimant's treating physician" because she could not "know at what point or to what extent his admitted bias affected those opinions." D&O at 32-33.

contrast, she gave great weight to Dr. Kopacz's opinion based on his own examination of Claimant and his review of the September 2018 CT scan, cervical MRI, and x-rays.[16] Dr. Kopacz also considered a job description Employer provided in rendering his decision on Claimant's ability to perform his usual work. EX 8 at 5-6. In further support, the ALJ noted Dr. Magliato's October 2018 conclusion that Claimant's condition "completely resolved" corroborated Dr. Kopacz's opinion. D&O at 33; CX 24.

As mentioned above, the ALJ has the discretion to weigh, evaluate, credit, or discredit the medical evidence presented before her. *Abdelmeged*, 913 F.3d 921, 52 BRBS 53; *Donovan*, 300 F.2d 741. Her discretionary weighing in this case was well-founded, well-reasoned, and supported by the record. *Id.; see also Gindville v. Director, OWCP*, 524 F. App'x 784, 788 (3d Cir. 2013). Consequently, we affirm the findings that Claimant's work-related neck and back conditions reached MMI and are fully resolved. We also affirm the findings that Claimant can return to his usual employment without restrictions related to those conditions and, as such, has not established a prima facie case of total disability after MMI. The ALJ's findings are supported by substantial evidence, are rational, and are in accordance with law. *See generally Ramos v. Global Terminal & Container Services, Inc.*, 34 BRBS 83 (1999); *Gacki v. Sea-Land Service, Inc.*, 33 BRBS 127 (1998); *Chong v. Todd Pac. Shipyards Corp.*, 22 BRBS 242 (1989), *aff'd mem. sub nom. Chong v. Director, OWCP*, 909 F.2d 1488 (9th Cir. 1990).

[16] The ALJ rejected Claimant's assertion that she should give less weight to Dr. Kopacz's opinion because he did not review the September 2018 lumbar MRI. She explained while this "may detract marginally from his opinion," his examination and review of other records resulted in a "credible medical opinion." D&O at 33. She also noted Dr. Kopacz's credibility is strengthened because in 2017 he recommended Claimant undergo surgery on his cervical spine. D&O at 34 n.26; EX 6.

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

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge