U.S. Department of Labor

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

BRB No. 24-0021

ARBEN ZYBERI	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	**NOT-PUBLISHED**
	)	
TOIFOR HUNGARY KFT/KBR GOVERNMENT OPERATIONS	)	
	)	DATE ISSUED: 11/14/2024
and	)	
	)	
INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA	)	
	)	
Employer/Carrier-Respondents	)	
	)	DECISION and ORDER

Appeal of the Decision and Order Denying Compensation and Benefits of Richard M. Clark, Administrative Law Judge, United States Department of Labor.

Michael T. Wawrzycki and Shelbi F. Gatlin (Mainstay Law), Seattle, Washington, for Claimant.

Lawrence P. Postol and Naomi Allen (Postol Law Firm, P.C.), McLean, Virginia, for Employer and its Carrier.

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

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Richard M. Clark's Decision and Order Denying Compensation and Benefits (2020-LDA-02172) rendered on a claim

filed pursuant to the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §§901-950, as extended by the Defense Base Act, 42 U.S.C. §§1651-1655 (DBA or Act).[1] We must affirm the ALJ's findings of fact and conclusions of law if they are rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant is a citizen of Kosovo who worked for Employer as a driver in Iraq from March 15, 2004, until May 2011.[2] TR at 32-33, 38-39, 42-45, 48-50, 53, 59-60, 120-121, 185; JXs 4, 5, 7-9, 12 at 16-26, 15 at 7. During his employment, he experienced and witnessed explosions, attacks, threats, and other traumatic events that made him fear for his life. TR at 61-63, 111-119, 121-125, 127-140, 193-198; JX 9; JX 12 at 50-69; JX 13 at 6. Though Claimant intended to continue working for Employer in Iraq, he stopped working in May 2011 because he wanted to be home.[3] TR at 48, 140-141, 176-179.

Claimant testified he felt well when he returned to Kosovo and did not think about the traumatic events he experienced in Iraq. TR at 140-143. Instead, he helped his family with farming and did not seek other employment because he wanted to rest, relax, and spend more time with his family. *Id.* at 143,155-156; JX 12 at 72-73. When he began having health problems in 2012, he felt he was unable to work. TR at 143-144, 155-156; JX 12 at 73-77. He testified he started experiencing headaches, dizziness, stomach pain, and apathy in 2012, which prompted him to seek treatment with Dr. Shukri Gerxhaliu, a family doctor. TR at 144-146, 167-168; JX 12 at 42-43, 74, 77, 79-80, 83; *see generally* JX 10. On November 25, 2016, Dr. Gerxhaliu referred Claimant to an internist, Dr. Pajazit Pllana, TR at 145-147, 149-150; JX 10 at 8; JX 12 at 85, with whom he began treatment

[1] This case arises within the jurisdiction of the United States Court of Appeals for the Second Circuit because the office of the district director who filed the ALJ's decision is in New York. 33 U.S.C. §921(c); *McDonald v. Aecom Tech. Corp.*, 45 BRBS 45 (2011).

[2] Claimant was employed by Toifor, which was affiliated with Kellogg, Brown & Root (KBR). TR at 42-43, 49-58, 185, 196. During his time in Iraq, Claimant worked at various U.S. military bases and camps, including Camp Victoria, Al-Asad Airbase, Camp Anaconda, and Abu Ghraib prison camp. He also traveled around the country in convoys protected by the U.S. military. *Id.* at 44-45, 52, 61, 126-127; JX 7.

[3] At his deposition, Claimant gave additional reasons for why he stopped working in Iraq: his salary was reduced, and he did not want to work in a war zone anymore. At the hearing, he denied leaving his employment because his salary decreased. *Compare* JX 12 at 70-72, *with* TR at 140-141,176-179.

on January 9, 2017. JX 11. Claimant initially complained of stomach pain, apathy, and dizziness and was prescribed medication. *Id.* at 1-2; *but see* TR at 150-152, 168. Over time, he started to develop other symptoms, such as anxiety, fear, rapid heartbeat, nervousness, and nightmares, TR at 169-172, 205; JX 12 at 42-43, 87, but these symptoms became apparent sometime in 2018 or 2019. TR at 170-172; JX 12 at 87-91; *see also* JX 13 at 3. On September 18, 2018, Dr. Pllana recommended Claimant see a psychiatrist. JX 11 at 4; TR at 154-155, 168-170.

Claimant began treating with his neuropsychiatrist, Dr. Bahri Goga, on October 19, 2018. Dr. Goga initially diagnosed him with mixed anxiety and depressive disorder and prescribed medication. JX 6 at 1-4; *see also* JX 13 at 2. On October 3, 2019, Dr. Goga changed Claimant's diagnosis to post-traumatic stress disorder (PTSD).[4] JX 6 at 5-8. In a March 11, 2020 report, Dr. Goga noted the events in Iraq caused Claimant "many mental health disorder [sic]" and concluded he is "not fit for work" and will require treatment "for a longer period of time." *Id.* at 9-10. In an April 9, 2021 report, Dr. Goga stated that "after a detailed and structured psychiatric interview the client has met the diagnostic criteria; DSM-5" for PTSD.[5] *Id.* at 24.

On February 15, 2021, Claimant was evaluated by Employer's neuropsychologist, Dr. John Tsanadis, via video through an Albanian translator. JX 13; JX 17 at 11. Based on Claimant's employment, medical treatment, and symptom histories, a clinical interview,

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[4] Claimant testified no new symptoms developed between when he was first treated by Dr. Goga and when Dr. Goga diagnosed him with PTSD. JX 12 at 86-91.

[5] Claimant testified he has issues with memory, concentration, sleep, and socialization, as well as headaches, stomachaches, nightmares, dizziness, rapid heartbeat, fear, anxiety, stress, anger, and sadness due to the traumatic events he experienced while working in Iraq. TR at 159-165; JX 12 at 35-41, 74-78, 89-92. He stated Dr. Goga informed him he is suffering from PTSD caused by his work in Iraq and that he is unable to work because he needs treatment for his condition. TR at 155, 157-158, 164-165. Claimant continues to treat with Dr. Goga, approximately once a month, but he does not know whether his condition has improved since he started treatment. *Id.* at 157-158, 171; JX 12 at 94-96. He testified medication improves his condition and treatment with Dr. Goga "sometimes" helps his symptoms. TR at 164, 171; JX 12 at 95-96. Claimant's goal in treatment is "to get better," but Dr. Goga has not told him when his treatment might end. TR at 165. He stated he "rarely" helps his family with farming because he "feel[s] tired" and is "unable to." *Id.* at 189-190, 205-206.

and his performance on psychological assessments and validity measures administered during the evaluation,[6] Dr. Tsanadis opined Claimant "does not have nor ever had PTSD" or any other work-related psychiatric condition. JX 13 at 8. He concluded Claimant is "[p]robably [m]alingering" because there is "unequivocal evidence" he is "misrepresenting his symptom and functional status." *Id.* at 7.

On April 13, 2020, Claimant filed a claim for a psychological injury, and Employer denied the claim.[7] JX 1. The claim was referred to the Office of Administrative Law Judges, JX 20, and the ALJ held a formal hearing on May 10 and May 20, 2021, during which Claimant and Dr. Tsanadis testified.

On September 29, 2023, the ALJ issued his Decision and Order Denying Compensation and Benefits (D&O). He first found documentary evidence of Claimant's employment with Toifor through 2008, coupled with Claimant's testimony regarding his employment through 2011, sufficient to establish an employer/employee relationship at the time of the injury. D&O at 16-17. He then found Claimant invoked the Section 20(a) presumption, 33 U.S.C. §920(a), and Employer rebutted it with substantial evidence that Claimant does not have a work-related psychological injury. *Id.* at 19-20. After weighing the evidence as a whole, the ALJ found Claimant did not establish by a preponderance of the evidence that he has a work-related psychological injury. *Id.* at 20-28.

On appeal, Claimant contends the ALJ erred in finding Employer rebutted the Section 20(a) presumption and in weighing the evidence as a whole. Employer responds, urging affirmance. Claimant filed a reply brief.

Claimant challenges the ALJ's determination that Employer rebutted the Section 20(a) presumption on several grounds. He first contends the ALJ did not apply the correct legal standard as to the kind of evidence that constitutes "substantial evidence." Citing *Dyncorp Int'l v. Director, OWCP* [*Mechler*], 658 F.3d 133, 137-138 (2d Cir. 2011), he

[6] Dr. Tsanadis utilized the following assessment procedures: Medical Record Review; Clinical Interview; PTSD Symptom Scale-Interview for DSM-5 (PSS-I-5); Quick Inventory of Depressive Symptomatology-Clinician Rated (QIDS-C); Zung Anxiety Scale (SAS); Zung Depression Scale (SDS); Post-traumatic Checklist (PCL-5); Test of Memory Malingering (TOMM); Atypical Response Scale (ATR); Pain Catastrophizing Scale (PCS); and Modified Somatic Perceptions Questionnaire. JX 13 at 1.

[7] The record does not contain a notice of controversion (LS-207); however, Employer disputed whether an employer/employee relationship existed on the date of the alleged injury, and the parties stipulated Employer was not paying compensation or medical benefits. TR at 18-20.

asserts the United States Court of Appeals for the Second Circuit defines "substantial evidence" as such evidence that a "reason*ing* mind rather than a reason*able* mind" would consider adequate to support a particular finding or conclusion. Claimant's Brief (Cl. Br.) at 3, 30, 48 (emphasis in original). In this regard, he argues the ALJ failed to properly scrutinize Dr. Tsanadis's opinion, specifically, the scientific authority upon which Dr. Tsanadis relied, the methods he used, the reliability, validity, and applicability of the psychological tests he administered in a cross-cultural context, and the potential for translation errors. Cl. Br. at 5-27. We are not persuaded by Claimant's arguments.

When a claimant invokes the Section 20(a) presumption by producing some evidence or allegation of a harm and working conditions that could have caused, aggravated, or accelerated the harm, as here, his injury is presumed to be work-related. *Rose v. Vectrus Systems Corp.*, 56 BRBS 27, 37 (2022) (en banc), *appeal dismissed,* (M.D. Fla. Aug. 24, 2023); *see, e.g.*, *American Stevedoring Ltd. v. Marinelli*, 248 F.3d 54, 64-65 (2d Cir. 2001).[8] Once invoked, the burden shifts to the employer to rebut the presumption by producing "substantial evidence" showing workplace conditions did not cause, contribute to, or aggravate the claimant's condition. *Rainey v. Director, OWCP*, 517 F.3d 632, 637 (2d Cir. 2008); *O'Kelly v. Dep't of the Army/NAF*, 34 BRBS 39, 41 (2000). If the employer rebuts the Section 20(a) presumption, it no longer applies, and the issue of causation must be resolved on the record as a whole with the claimant bearing the burden of persuasion. *Director, OWCP v. Greenwich Collieries*, 512 U.S. 267 (1994); *Santoro v. Maher Terminals, Inc.*, 30 BRBS 171 (1996).

Employer relied on its neuropsychologist, Dr. Tsanadis, who opined "to a reasonable degree of psychological certainty" that Claimant does not have PTSD or any other work-related psychiatric condition. JX 13 at 8; EX 2 at 2-3; TR at 95-98; JX 17 at 67. Dr. Tsanadis reviewed Dr. Goga's treatment notes and reports, interviewed Claimant about his employment, medical, and symptom history, and administered various psychological assessments to gauge the validity of his self-reported symptoms and effort on the tests. He opined there is "no consistent and/or reliable evidence" to support the presence of a mental health condition, work-related or otherwise.[9] EX 2 at 2; JX 13 at 7-

[8] We affirm as unchallenged on appeal the ALJ's finding that Claimant invoked the Section 20(a) presumption, 33 U.S.C. §920(a). *Scalio v. Ceres Marine Terminals, Inc.*, 41 BRBS 57, 58 (2007).

[9] Dr. Tsanadis opined that the latency period between Claimant's exposure to the traumatic events and his manifestation of symptoms is "just simply too long of a latency period" that "just doesn't make any sense." He testified that "there's just simply no way that his mental health problems were related to events that occurred so long ago … [i]t's just implausible." TR at 84, 95-96. He also stated there were "numerous examples of

8. The ALJ found Dr. Tsanadis "was unwavering and clear in his assessment" and concluded his "unequivocal opinion" constitutes "substantial evidence sufficient to rebut the Section 20(a) presumption." D&O at 20.

We reject Claimant's argument that the ALJ applied an improper or incorrect standard for determining whether Dr. Tsanadis's opinion qualifies as substantial evidence sufficient to rebut the presumption. Substantial evidence means "such relevant evidence as a *reasonable* mind *might* accept as adequate to support a conclusion." *Biestek v. Berryhill*, 597 U.S. 97, 103 (2019) (quoting *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938) (emphasis added and internal quotations omitted)).[10] A physician's unequivocal opinion that no relationship exists between the alleged injury and a claimant's employment is sufficient to rebut the presumption. *Suarez v. Serv. Employees Int'l, Inc.*, 50 BRBS 33, 36 (2016); *Cline v. Huntington Ingalls, Inc.*, 48 BRBS 5, 6-7 (2013); *O'Kelley*, 34 BRBS at 41-42; *Duhagon v. Metropolitan Stevedore Co.*, 31 BRBS 98, 100 (1997), *aff'd*, 169 F.3d 615 (9th Cir. 1999); *Holmes v. Universal Maritime Serv. Corp.*, 29 BRBS 18, 20 (1995).[11]

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over[-]reporting and misrepresenting symptoms" during the validity assessment portion of his evaluation, such that, the only conclusion he could draw is that Claimant was "more likely than not … malingering." *Id.* at 96.

[10] Claimant's reference to *Mechler* is not persuasive. In *Mechler*, a case addressing the date the claimant became aware of her disability, the Second Circuit noted: "[c]ommentators have suggested" there might be a distinction between referring to a "reasoning" mind and a "reasonable" mind because "the inquiry requires evaluation of the judgment used arriving at a finding or conclusion, not the ultimate correctness . . . of that finding." *Mechler*, 658 F.3d at 137-138. However, the court did not adopt the commentators' suggestion or modify the definition of "substantial evidence." Rather, it used the terms interchangeably in finding that the evidence in that case was "not of the quantity or character that would allow a reasonable (reasoning) mind" to reach the ALJ's conclusion. *Id*. But even if a meaningful distinction can be made between the two terms, the evidence in the present claim is that which the ALJ, as a reasonable *or* reasoning mind, could accept as adequate to support his conclusions.

[11] To the extent Claimant argues Dr. Tsanadis's opinion is legally insufficient to rebut the presumption because he perceives Dr. Tsanadis's opinion as biased or scientifically unreliable, that argument is premature at the rebuttal stage. An employer's burden on rebuttal is one of production and does not concern the persuasiveness of the witness's opinion. *See Truczinskas v. Director, OWCP*, 699 F.3d 672, 678 (1st Cir. 2012); *Rainey*, 517 F.3d at 637; *Rose*, 56 BRBS at 35; *see also Bath Iron Works Corp. v. Fields*,

As Dr. Tsanadis's opinion directly contradicts the presumption that Claimant's alleged psychological injury is related to his employment and is the kind of evidence "a reasonable mind might accept as adequate" to support that conclusion, it constitutes substantial evidence that is legally sufficient to rebut the presumption. *Rainey*, 517 F.3d at 637; *Cline*, 48 BRBS at 6-7; *Suarez*, 50 BRBS at 36; *O'Kelley*, 34 BRBS at 41-42; *Duhagon*, 31 BRBS at 100; *Holmes*, 29 BRBS at 20. Consequently, we affirm the ALJ's determination that Employer rebutted the Section 20(a) presumption with Dr. Tsanadis's opinion. Thus, the presumption drops from the case, and the decision must be based on consideration of the record as a whole with Claimant bearing the burden of persuasion. *Greenwich Collieries*, 512 U.S. 267.

Claimant next contends the ALJ erred in weighing the evidence by irrationally and inconsistently assessing Claimant's credibility, affording too much weight to Dr. Tsanadis's opinion and testimony, and failing to consider Employer's credibility when weighing the evidence. Cl. Br. at 36, 52. We reject each of Claimant's contentions.

The ALJ is entitled to evaluate the credibility of the witnesses, *Pietrunti v. Director, OWCP*, 119 F.3d 1035, 1042 (2d Cir. 1997); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403, 405 (2d Cir. 1961), accept parts of a witness's testimony while rejecting others, *Banks v. Chicago Grain Trimmers Ass'n*, 390 U.S. 459, 467 (1968); *Pimpinella v. Universal Mar. Serv. Inc.*, 27 BRBS 154, 157 (1993), and draw his own inferences and conclusions from the evidence. *Compton v. Avondale Indus., Inc.*, 33 BRBS 174, 176-177 (1999). The Benefits Review Board will not interfere with an ALJ's credibility determinations unless they are "inherently incredible or patently unreasonable." *Cordero v. Triple A Mach. Shop*, 580 F.2d 1331, 1335 (9th Cir. 1978). Moreover, it is well-established that the Board may not reweigh the evidence or substitute its opinion for that of the ALJ but must accept the ALJ's weighing of the medical evidence if it is rational and supported by substantial evidence. *See Mendoza v. Marine Pers. Co., Inc.*, 46 F.3d 498, 500-501 (5th Cir. 1995); *Mijangos v. Avondale Shipyards, Inc.*, 948 F.2d 941, 944 (5th Cir. 1991). If the ALJ's conclusion upon weighing the evidence is rational and supported by substantial evidence, it must be affirmed. *Carswell v. E. Pihl & Sons*, 999 F.3d 18, 27 (1st Cir. 2021), *cert. denied*, 142 S. Ct. 1110 (2022).

Contrary to Claimant's first contention, the ALJ acted within his discretion when assessing Claimant's credibility. While the ALJ initially credited Claimant's testimony

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599 F.3d 47, 55 (1st Cir. 2010) (whether employer produced substantial evidence of non-causation is an "objective test") (citing *Bath Iron Works Corp. v. Preston*, 380 F.3d 597, 605 n.2 (1st Cir. 2004)); *Bath Iron Works Corp. v. Director, OWCP* [*Hartford*], 137 F.3d 673, 675 (1st Cir. 1998)).

regarding his work for Employer and the traumatic events he experienced,[12] he permissibly found Claimant's testimony regarding his symptoms and functionality "appeared to be exaggerated" and his testimony as to when his symptoms began[13] and why he stopped working "inconsistent."[14] *Banks*, 390 U.S. at 467 (ALJ has discretion to credit part of witness's testimony without accepting it all). Overall, the ALJ concluded Claimant is "only minimally credible."[15] D&O at 20-21.

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[12] The ALJ credited Claimant's testimony regarding his work in finding an employer/employee relationship existed because there was documentation of an earlier employment relationship, and Employer failed to produce evidence showing Claimant did not work for it. D&O at 21. He also found Claimant's deposition and hearing testimony regarding the traumatic events was "generally consistent." *Id.*

[13] At his deposition, Claimant testified his memory issues began when he started seeing Dr. Goga in 2018. JX 12 at 39-41. He stated he began experiencing headaches, stomach pain, and a sleep disorder in 2012, which prompted him to seek treatment with Dr. Gerxhaliu. *Id.* at 42-43. He then testified his bad dreams, stomach pain, and sleep disorder began while he was in treatment with Dr. Pllana, in 2017. *Id.* at 46. He testified he had dizziness and bad dreams about the events in Iraq sometime in 2012 and 2013. *Id.* at 76-77. But then he testified he was not having bad dreams in 2012—his symptoms at that time were stomach pain and headaches. *Id.* at 77. Later, he testified his problems started in 2012 and have been increasing since. *Id.* at 87. He also testified that some of his symptoms developed after his first or second visit with Dr. Goga. However, he then stated he reported no new symptoms between when he initially saw Dr. Goga in 2018 and when Dr. Goga changed his diagnosis to PTSD in 2019, because the symptoms he is currently experiencing were also present "at the time [he] saw Dr. Goga." *Id.* at 87-91. Further, at the hearing, he testified his PTSD symptoms started in 2019. TR at 170-172. To Dr. Tsanadis, he reported he occasionally had bad dreams prior to 2018, but his intrusive thoughts and bad dreams became problematic in 2018 or 2019. JX 13 at 2-3.

[14] At his deposition, Claimant testified he left his employment in 2011 because he was tired of working in a war zone, his salary changed, and he wanted to be home with his family. JX 12 at 70-72. At the hearing, he denied leaving his employment because his salary decreased. He stated the reason he left was because he wanted to be home to spend time with his family, TR at 176-179, which is what he reported to Dr. Tsanadis, JX 13 at 3.

[15] As the ALJ noted, his assessment of Claimant's credibility was supported by Dr. Tsanadis's conclusion that Claimant was "more likely than not, malingering." D&O at 22.

As for the medical evidence, the ALJ considered Dr. Tsanadis "well-qualified to render an opinion on whether Claimant suffers from PTSD or a work-related mental health condition," and found his opinion and report "well-explained, well-supported, and based on a thorough review of the record."[16] The ALJ afforded Dr. Tsanadis's opinion and report "significant weight." D&O at 23.

Contrarily, the ALJ found Dr. Goga's reports and treatment records "generic, unexplained, conclusory" and "do not appear to challenge Claimant at all or probe for potential over-reporting."[17] D&O at 24. He found Dr. Goga's description of the traumatic events "broad and non-specific;"[18] his discussion of PTSD criteria "abbreviated, non-specific," and "lacking a detailed discussion or explanation of how Dr. Goga determined

[16] Based on his experience supervising and conducting neuropsychological assessments at the Southern Arizona Department of Veterans' Affairs (VA) Health Care System, TR at 70-75; JX 14, Dr. Tsanadis testified that most individuals who are exposed to trauma develop a condition called "acute stress disorder" where they may experience nightmares, sleep disturbance, intrusive thoughts, and dissociative experiences which will "disappear[] within a few weeks," but "a small percentage" of those individuals will continue to have symptoms and will be diagnosed with PTSD. TR at 73-74. He also explained that delayed onset PTSD is a condition where an individual is exposed to a trauma but does not meet full criteria for PTSD in the typical period of time—"usually days, at most weeks … of experiencing the trauma." He testified the "clearest and most well-documented" examples of delayed PTSD are individuals who experienced chronic abuse as children and are later triggered by something that causes them to develop the full criteria for PTSD as adults. *Id.* at 74-75; *see also* JX 17 at 17. In Dr. Tsanadis's opinion, it was "implausible" that Claimant started having intrusive thoughts and bad dreams in 2018 and 2019, "so many years after returning home in the absence of anything specific happening to him." TR at 84. Unlike cases of PTSD in individuals who experienced childhood abuse where many years have elapsed, Dr. Tsanadis testified that individuals who are in a war zone and exposed to traumatic events "are re-experiencing the events that happened" and therefore "know exactly what caused their symptoms." *Id.* at 85; *see also* JX 17 at 18.

[17] The ALJ noted there is no evidence in the record regarding Dr. Goga's credentials or experience, though he considered it "less important." D&O at 24.

[18] The ALJ determined Dr. Goga's failure to document the details of Claimant's traumatic exposures "significantly lessens the value" of his reports. D&O at 24-25.

Claimant suffered from PTSD;"[19] and his treatment plan and work restrictions "sparse" and lacking information and explanation regarding Claimant's condition and the treatment being rendered. *Id.* at 25. In addition, the ALJ found Dr. Tsanadis's concerns about the sufficiency, thoroughness, and objectivity of Dr. Goga's reports and evaluation of Claimant to be persuasive.[20] Consequently, the ALJ determined Dr. Goga's reports are neither well-reasoned nor well-documented and do not outweigh Dr. Tsanadis's opinion regarding causation.[21]

The ALJ further rejected Claimant's assertion that Dr. Tsanadis is biased because he was hired by Employer. Noting Dr. Tsanadis's "extensive experience" performing neuropsychological assessments at the Southern Arizona Department of Veterans' Affairs (VA) Health Care System for 13 years, the ALJ found him "well-qualified" to offer an opinion and the fact that he is often a defense expert does not detract from his credibility.[22] D&O at 23; *see also* JX 14; TR at 69-72. The ALJ also considered Claimant's argument that Dr. Tsanadis's evaluation and opinion are tainted by translation errors and cultural

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[19] In Dr. Goga's June 4, 2021 response to Dr. Tsanadis's report, he stated the PTSD diagnosis was "done on the basis of DSM-[5]." JX 24. The ALJ observed there is no "additional explanation" beyond this statement. D&O at 25.

[20] Dr. Tsanadis stated he would "expect there to be some report of the symptoms that the person was presenting with, not just a diagnosis and the medications [] provided." TR at 80, 97-98; *see also* JX 17 at 18; EX 2 at 3. He emphasized it is implausible that Claimant had been under Dr. Goga's care for two-and-a-half years without improvement because that is "completely inconsistent with the outcomes of PTSD," a condition that "responds to treatment" or improves without treatment. TR at 97; *see also* JX 17 at 23. He opined it was necessary to consider "secondary gain" and "other factors" that may be contributing to Claimant's "maintenance of symptoms" despite being in treatment for two--and-a-half years. TR at 97. The ALJ noted an explanation of Dr. Goga's PTSD evaluation "would have been especially important" given the latency between Claimant's overseas employment and his manifestation of symptoms. D&O at 26-27.

[21] The ALJ observed "nearly identical" phrasing and "[t]he same or nearly identical symptoms" throughout Dr. Goga's reports for other patients, which Employer submitted into evidence. The ALJ, however, did not give the similarities "significant weight." D&O at 26; *see* EX 1.

[22] The ALJ acknowledged Dr. Tsanadis "typically performs evaluations for the defense" but found this factor did not "significantly detract[] from his credibility." D&O at 23; *see also* TR at 101; JX 17 at 3-7.

differences but found there is no evidence of translation errors. D&O at 27. In addition, he credited Dr. Tsanadis's testimony regarding the steps he takes to mitigate language and cultural misunderstandings[23] and determined "any cultural disconnect" does not "weigh[] heavily" against Dr. Tsanadis's opinion.[24] *Id.* Finally, the ALJ addressed Claimant's objections to Dr. Tsanadis's use of validity measures but found the doctor's discussion concerning the validity assessment and his conclusion that Claimant was over-reporting his symptoms are "well-explained, well-supported, and compelling."[25] *Id.*

The ALJ was "less convinced" of Dr. Tsanadis's conclusion that evidence of DSM-5 Criterion A events in this case was "equivocal" given Claimant's credible testimony of frequently experiencing dangerous events. However, the ALJ also noted Dr. Tsanadis's testimony that his reference to "equivocal" with respect to Category A events means that the person may have been in close proximity to dangerous events but there is "no strong evidence that they experienced symptoms" or were "inclined to leave the war zone after the events." TR at 91-92. Thus, in the absence of additional medical evidence on the

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[23] Dr. Tsanadis testified at his deposition that he commonly performs evaluations with the assistance of a translator and has a "good system of checks and balances" to mitigate potential translation errors:

> You have to ask the same question multiple times, multiple ways, look for consistencies, throw some curves balls to see how the person reacts so that you know … you're getting the gist of it and that things are coming through the way they should. You should also learn to simplify things and do things in a very structured, basic format.

JX 17 at 11. With respect to the validity assessments he administered during the evaluation, Dr. Tsanadis stated he is "more careful" with the cutoff scores because there can be a cultural aspect to the results, and he did not use certain tests because there is "too much of a cultural impact." *Id.* at 14-15.

[24] The ALJ was not convinced Dr. Tsanadis understood Kosovar culture because of his family heritage; however, he noted Dr. Tsanadis had spent time in Kosovo. D&O at 27.

[25] Dr. Tsanadis testified there were "numerous examples of over[-]reporting and misrepresenting symptoms" during the validity assessment portion of his examination. He stated he needed "to be a little bit cautious about how to interpret the data," considering it was a "cross-culture evaluation." However, he stated Claimant's scores were "unequivocally invalid across all measures" and "weren't even close" to the cutoff scores used to determine over-reporting from not over-reporting. TR at 95.

Criterion A requirements, the ALJ inferred that Dr. Tsanadis's explanation meant there is insufficient evidence showing Claimant experienced significant symptoms in Iraq or had to leave Iraq because of them.[26] In this regard, he found Claimant did not endorse any symptoms while he was in Iraq and that Criterion A "may be equivocal on that basis."[27] D&O at 28. Nonetheless, he determined this portion of Dr. Tsanadis's opinion "does not render his entire opinion unreliable" or "poorly reasoned in general." *Id.* at 27-28.

The ALJ addressed all of Claimant's arguments, thoroughly discussed all the relevant evidence in the record, and adequately explained his findings. His credibility determinations are not "inherently incredible" or "patently unreasonable," *Pietrunti*, 119 F.3d at 1042; *Cordero*, 580 F.2d at 1335, and his conclusions upon weighing the evidence are also rational, supported by substantial evidence in the record, and in accordance with law, *Mendoza,* 46 F.3d at 500-501. We thus affirm his findings.

[26] Dr. Tsanadis testified a Criterion A event is where a person "was in realistic immediate danger of being killed or hurt very badly," "saw someone in a situation where they were killed or hurt very badly," or found out someone "very close" to them was "hurt very badly or killed," and the question is "whether they truly believed that they were in immediate danger at that moment of being hurt very badly or killed." TR at 91-92.

[27] Dr. Tsanadis opined the time between when the traumatic events occurred (16 or 17 years ago) and when Claimant reported that his symptoms became significant (2018 or 2019) "is an implausible latency for a Criterion A event to result in trauma-related symptomatology." JX 13 at 6. He explained PTSD is the only diagnosis in the DSM that has a specific cause (Criterion A event) and when someone experiences a Criterion A event, it would not be expected that they would remain in the war zone afterwards. TR at 91-92; *see also* JX 17 at 59-60, 82-83.

Accordingly, we affirm the ALJ's Decision and Order Denying Compensation and Benefits.[28]

SO ORDERED.

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

[28] As the Board is not empowered to accept or consider evidence not contained in the record below, we reject Claimant's invitation to reweigh the medical evidence based on evidence and argument he did not present to the ALJ. *Miffleton v. Briggs Ice Cream Co.*, 12 BRBS 445,450 (1980), *aff'd*, 659 F.2d 252 (D.C. Cir. 1981) (table); *Hansley v. Bethlehem Steel Corp.*, 9 BRBS 498, 499 (1978). The articles, websites, manuals, and purported authorities that Claimant relies upon were not admitted into the record and were not addressed by the health professionals or other witnesses in this case. *See Wilder v. Chater*, 64 F.3d 335, 337 (7th Cir. 1995) ("[H]ealth professionals, in particular psychiatrists, not lawyers or judges, are the experts on [mental illness]."). Accordingly, the Board may not consider them. *See* 20 C.F.R. §802.301.

Additionally, Claimant's *Daubert* challenge to Dr. Tsanadis's opinion and testimony is misplaced. *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993) concerns the admissibility of expert testimony; however, the admissibility of evidence under the Act is not governed by the Federal Rules of Evidence or the *Daubert* rule concerning the admission of scientifically-based evidence. 33 U.S.C. §923(a); *Casey v. Georgetown Univ. Medical Center*, 31 BRBS 147, 153 (1997). While *Daubert* as such does not apply, objections to the reliability of scientific evidence are to be considered by the ALJ, and the Board will review the ALJ's consideration of those objections if they were first raised before the ALJ. *See Long v. Director, OWCP*, 767 F.2d 1578, 1583 (9th Cir. 1985). Because Claimant did not raise the objections below that he now raises to the Board, we cannot consider them in the first instance. *Id.*; *Johnston v. Hayward Baker*, 48 BRBS 59, 63 (2014).