U.S. Department of Labor

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

BRB No. 24-0029

MICHAEL J. OSTEN	)	
	)	
Claimant-Petitioner	)	**NOT-PUBLISHED**
	)	
v.	)	
	)	
ELECTRIC BOAT CORPORATION	)	DATE ISSUED: 11/19/2024
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of Decision and Order on Remand of Jerry R. DeMaio, Administrative Law Judge, United States Department of Labor.

Carolyn P. Kelly (Suisman, Shapiro, Wool, Brennan, Gray & Greenberg, P.C.), New London, Connecticut, for Claimant.

Stephen M. Capracotta (McKenney, Clarkin & Estey, LLP), Providence, Rhode Island, for Self-Insured Employer.

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

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Jerry R. DeMaio's Decision and Order on Remand (2018-LHC-00112 and 2018-LHC-00354) rendered on claims filed pursuant to the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §§901-950 (Act or LHWCA). 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.[1] 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

This is the second time these consolidated claims are before the Benefits Review Board. Claimant suffered six documented back injuries in the course of his employment with Employer in 1992, 1995, 2002, 2005, 2009, and finally on August 23, 2016.[2] Since issuance of the Board's prior Decision and Order, *Osten v. Electric Boat Corp*., BRB No. 19-0306 (Dec. 17, 2019), *recon. denied* (Feb. 13, 2020), the parties submitted additional evidence showing Claimant also suffered two back injuries in the 1980s while in the Army, and he reported an additional work-related back injury to his expert orthopedic surgeon, Dr. Frank Maletz, that he sustained in 2012. Second Hearing Transcript (HT II) at 18-19, 28; Claimant's Exhibit (CX) 44 at 3; Employer's Exhibit (EX) 9 at 63.

Claimant's final documented work-related injury occurred on August 23, 2016, when he fell while climbing a ladder. CX 29. Employer accepted this injury and paid temporary total disability (TTD) benefits from August 24, 2016, through October 23, 2016, and from December 19, 2016, through April 26, 2017. ALJ Exhibit (ALJX) 5. Claimant returned to his regular employment on April 27, 2017, and permanently retired from the workforce on September 20, 2020. *Id*. at 2; HT II at 15. Claimant seeks medical benefits for his alleged work-related lumbar spine injury; specifically, he is requesting Employer authorize and pay for lumbar spine surgery recommended by his treating orthopedic surgeon, Dr. Michael Halperin. ALJX 5 at 2; *see also* Claimant's Post-Trial Brief at 1. Employer disputes the compensability of this treatment on the grounds that the need to undergo surgery is due solely to Claimant's pre-existing chronic degenerative disc disease rather than his work-related injuries. *See* Employer's Post-Trial Brief at 2.

The ALJ issued his original Decision and Order Denying Medical Benefits (ALJ D&O) on February 25, 2019. Noting the claims were for medical benefits under Section 7 of the Act, 33 U.S.C. §907, he conducted a Section 20(a) presumption analysis, 33 U.S.C.

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[1] This case arises within the jurisdiction of the United States Court of Appeals for the Second Circuit because Claimant sustained his injuries in Groton, Connecticut. 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] On January 17, 2018, the ALJ issued an order consolidating Claimant's claims for work-related back injuries that occurred on October 2, 1995, and August 23, 2016. *See* ALJ Exhibit (ALJX) 4; Employer's Post-Trial Brief at 1. We incorporate the history of each documented back injury as set forth in *Osten v. Electric Boat Corp*., BRB No. 19-0306 (Dec. 17, 2019), slip op. at 2-3, *recon. denied* (Feb. 13, 2020).

§920(a), to determine whether Claimant's back condition for which he sought the recommended surgery is work-related. ALJ D&O at 9. He found Claimant established a prima facie case under Section 20(a) because there was no dispute Claimant suffered a harm (i.e., back pain), and Dr. Halperin opined the necessity for surgical intervention was at least partly caused by the August 2016 workplace injury which aggravated Claimant's pre-existing chronic degenerative lumbar spine condition. *Id*. The ALJ further found neither party contested Employer's rebuttal of the Section 20(a) presumption based on the medical opinions of Drs. Thomas Morgan and Mark Palumbo, who both opined Claimant's employment did not cause or aggravate the spinal condition that required surgical intervention. *Id*. at 9-10.

Upon weighing the evidence, the ALJ gave greater weight to Drs. Morgan and Palumbo, finding their opinions well-documented and well-reasoned, over Dr. Halperin's opinion, which the ALJ found to be conclusory and lacking explanation. ALJ D&O at 10-12. The ALJ rejected Claimant's argument that his increased pain following the August 2016 injury was sufficient to establish an exacerbation or aggravation of his chronic degenerative condition so that Employer is liable for the procedure. *Id*. at 13. Therefore, he denied the claims for medical benefits.

Claimant appealed the ALJ's denial of benefits to the Board. On December 17, 2019, the Board affirmed the ALJ's finding that Employer rebutted the Section 20(a) presumption. *Osten*, BRB No. 19-0306, slip op. at 4. However, it vacated the ALJ's denial of medical benefits, holding the ALJ erred in weighing the evidence because he only considered whether the need for surgery was caused by the August 2016 workplace incident, without considering Claimant's alternative theories that the condition requiring surgery "is due at least in part to repetitive trauma or the cumulative effects of [Claimant's] work injuries." *Id*., slip op. at 5. The Board instructed the ALJ on remand to "consider the aggravation rule, which provides that an employer is liable for the entire resultant disability if a work injury aggravates or combines with a preexisting condition (work-related or not)," as well as whether the "cumulative effect of all of claimant's work injuries exacerbated or otherwise contributed to the degenerative condition that now requires surgery." *Id*. at slip op. 6-7. Employer filed a motion for reconsideration, which the Board denied on February 13, 2020. *Osten v. Electric Boat Corp.*, BRB No. 19-0306, (Feb. 13, 2020) (Order on Reconsideration) (unpub.).

On remand, the ALJ granted Claimant's Motion to Reopen the Record. Both parties submitted additional evidence[3] and Claimant provided additional testimony at a second formal hearing.

The ALJ issued his Decision and Order on Remand (Remand D&O) on September 29, 2023. He noted the Board "left undisturbed" his previous findings with respect to Claimant's invocation of the Section 20(a) presumption and Employer's rebuttal, and therefore stated he only needed to weigh the evidence as to the "alternate theories of injury that [the Board] found insufficiently addressed in the original opinion: repetitive trauma and aggravation." Remand D&O at 11.

While the ALJ determined that Claimant's various employment-related strains and sprains over the years "may have added some back pain for a short time, even to the point of temporary disability," he found Claimant failed to prove by a preponderance of the evidence that the recommended surgery was related to any repetitive trauma or increased work-related pain. Remand D&O at 15-16. Weighing Dr. Maletz's report and opinion against Dr. Morgan's, the ALJ gave minimal weight to Dr. Maletz, finding his report conclusory and his testimony unpersuasive. *Id*. at 12-15; *see* CXs 44, 50; EX 5. He gave more weight to Drs. Morgan and Palumbo and found Claimant's symptoms and pain requiring surgery were due solely to his degenerative disease, not his employment. *Id*. at 13-16. Consequently, the ALJ again denied Claimant's claims for medical benefits. *Id*. at 16.

Claimant appeals, contending the ALJ erred in not reassessing whether Employer rebutted the Section 20(a) presumption in light of the new evidence submitted on remand, which he maintains precludes Employer from rebutting the presumption. Claimant's Petition for Review (Cl. PR) at 22-27. Alternatively, assuming Employer did rebut the Section 20(a) presumption, Claimant argues the ALJ committed both factual and legal errors in finding the need for surgery was not caused or aggravated by repetitive work-related trauma. *Id*. at 28-34. Employer responds, urging affirmance.

[3] The new evidence, which was admitted at a new formal hearing, HT II at 7, 11, included medical records from both a U.S. Department of Veterans Affairs hospital and Claimant's primary care physician, updated medical records documenting treatment Claimant received since the prior hearing, a second deposition of Employer's expert Dr. Morgan, medical literature on lumbar degeneration, and the medical report and deposition of Claimant's expert orthopedic surgeon, Dr. Frank Maletz. *See* CXs 41-50; EXs 5, 9-11.

Section 20(a) Rebuttal

In a claim for medical benefits under Section 7, a claimant must establish that the medical benefits are for the treatment of a compensable injury. *Pardee v. Army & Air Force Exch. Serv.*, 13 BRBS 1130, 1138 (1981); *Suppa v. Lehigh Valley R.R. Co.*, 13 BRBS 374, 377 (1981). Whether a specific condition for which the claimant seeks treatment is work-related is a causation issue under Section 2(2), 33 U.S.C. §902(2), and the Section 20(a) presumption applies. Therefore, the ALJ appropriately evaluated whether the condition for which Claimant sought surgery is work-related under Section 20(a). ALJ D&O at 8-9; Remand D&O at 3, 15.

If 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 Sys. 2Corp.*, 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). Once the presumption is invoked, the burden shifts to the employer to rebut the presumption by producing "substantial evidence" that 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'Kelley v. Dep't of the Army/NAF*, 34 BRBS 39, 41 (2000). On remand, the ALJ did not address rebuttal and instead relied on his previous finding that Employer rebutted the Section 20(a) presumption as it was "left undisturbed by the Board." Remand D&O at 11.

On appeal, Claimant argues the ALJ should have reassessed whether Employer presented sufficient evidence to rebut the Section 20(a) presumption because the parties submitted new evidence on remand. Cl. PR at 22. Claimant further maintains this new evidence, in conjunction with the previously submitted evidence, is insufficient to rebut the presumption. *Id*. Specifically, Claimant asserts the opinions of Drs. Palumbo and Morgan, that the August 2016 workplace incident only temporarily exacerbated Claimant's underlying chronic degenerative disc disease, cannot rebut the Section 20(a) presumption. According to Claimant, it does not matter whether the work-related exacerbation was temporary or not; in either case, the entire resulting disability is compensable under the aggravation rule. *Id*. at 25-26.

When a case is before the Board for a second time and the same issue is raised in the second appeal, the Board generally applies the "law of the case" doctrine and therefore will not reexamine that issue. *Schwirse v. Marine Terminals Corp.*, 45 BRBS 53, 55 (2011), *aff'd sub nom. Schwirse v. Director, OWCP*, 736 F.3d 1165 (9th Cir. 2013). But the law of the case doctrine does not apply when there has been a change in the underlying factual situation, intervening controlling authority demonstrates the initial decision was

erroneous, or the first decision was clearly erroneous and to let it stand would produce a manifest injustice. *Kirkpatrick v. B.B.I., Inc*., 39 BRBS 69, 70 n.4 (2005). In this case, the ALJ's decision to re-open the record on remand and allow both parties to submit new causation evidence constitutes such an exception to the law of the case doctrine as it potentially changes the underlying factual situation. *Manente v. Sea-Land Serv., Inc.*, 39 BRBS 1, 3 (2004). Consequently, the ALJ erred in not reassessing whether Employer rebutted the Section 20(a) presumption in light of the new evidence submitted.

Nevertheless, the ALJ's error is harmless as Employer submitted sufficient evidence to rebut the presumption through Dr. Morgan's testimony submitted on remand. *Cairns v. Matson Terminals, Inc.*, 21 BRBS 252, 256 (1988). Specifically, Dr. Morgan testified that neither the August 2016 workplace incident nor Claimant's "various employment-related back strains" aggravated or exacerbated his underlying chronic degenerative disc disease. EX 5 at 84, 92, 115-116. As Employer's burden on rebuttal is one of production, not persuasion, this medical opinion is sufficient to rebut the Section 20(a) presumption.[4] *Rose*, 56 BRBS at 35; *Cline v. Huntington Ingalls, Inc.*, 48 BRBS 5, 6-7 (2013); *L.W. [Washington] v. Northrop Grumman Ship Systems*, 43 BRBS 27, 32 (2009).

We also note that the Section 20(a) presumption, and therefore Claimant's argument regarding rebuttal of the presumption, relates to the overall compensability of the claims under the Act, i.e., whether Claimant suffered a work-related injury. But the presumption does not relieve the claimant of his burden of still proving the elements of his claims for medical benefits under Section 7. *See Schoen v. U.S. Chamber of Commerce*, 30 BRBS

[4] We further note Claimant's argument that the newly submitted evidence precludes Employer from rebutting the Section 20(a) presumption is undermined by his reliance on medical evidence that was available to him the first time these claims were before the ALJ. He relies primarily on the opinion of Dr. Palumbo, who provided no new evidence on remand, and the opinion of Dr. Morgan, who opined in his first deposition, prior to the issuance of the ALJ's first Decision and Order, that the August 2016 injury only temporarily exacerbated Claimant's underlying condition. Cl. PR at 23-25 (citing EX 5 at 24). Because this evidence was in the record and thus available to Claimant when the ALJ first considered this claim, and Claimant did not make that argument to the ALJ at that time, he is precluded from raising it at this juncture. *Turk v. Eastern Shore Railroad, Inc.*, 34 BRBS 27, 32 (2000). Finally, Claimant argues Employer is precluded from rebutting the Section 20(a) presumption based on a comparison of Drs. Morgan's and Palumbo's opinions, submitted both before and after remand, to the opinion of his own expert, Dr. Maletz, submitted after remand. Cl. PR at 23-25. However, the comparison of medical evidence necessarily involves weighing of evidence, which is not appropriate at the rebuttal stage of the Section 20(a) analysis. *Rose*, 56 BRBS at 35; *Cline*, 48 BRBS at 6-7.

112, 113-114 (1996). Consequently, finding Claimant to have suffered a work-related injury does not automatically answer the relevant question in this case: whether Claimant's surgery is necessitated by that work-related injury. 33 U.S.C. §907(a); *see also* 20 C.F.R. §702.402; *Weikert v. Universal Maritime Serv. Corp*., 36 BRBS 38, 39-40 (2002); *Davison v. Bender Shipbuilding & Repair Co., Inc.*, 30 BRBS 45, 47 (1996); *Romeike v. Kaiser Shipyards*, 22 BRBS 57, 60 (1989). As the ALJ in this case ultimately determined Claimant likely did suffer temporary, short-term work-related aggravations of his underlying degenerative disc disease, Claimant has not explained how the alleged error at rebuttal made a difference in his separate finding that Claimant's work-related aggravations were temporary and did not necessitate surgery. *Shinseki v. Sanders*, 556 U.S. 396, 409 (2009); *see* Remand D&O at 16.

Weighing

Once the Section 20(a) presumption is rebutted, 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. *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 262 (4th Cir. 1997); *Santoro v. Maher Terminals, Inc.*, 30 BRBS 171, 174 (1996). On remand, the ALJ was tasked with weighing the evidence to determine whether Claimant established, by a preponderance of the evidence, that his need for back surgery is due to repetitive work-related trauma or aggravation as a result of the cumulative effects of his prior work-related injuries. *Osten*, slip op. at 5.

The ALJ reviewed the evidence submitted on remand, specifically Dr. Maletz's report and deposition, as well as Dr. Morgan's updated deposition testimony. Remand D&O at 3-14. He noted Dr. Maletz, citing medical studies, opined that the multiple sprains and strains Claimant suffered throughout his employment "were not merely short-term injuries that cause temporary pain," but rather were repetitive trauma that led to ineffective healing "at the molecular level," thereby increasing the force placed on deteriorating discs and contributing to the development of degenerative disc disease. *Id*. at 12-13 (citing CX 50 at 22-23).

But the ALJ noted Dr. Morgan countered Dr. Maletz, opining that the soft tissue strains and sprains Claimant suffered affect a completely different part of the spine than degenerative disc disease, and one does not lead to the other. *Id*. at 13. Dr. Morgan testified that musculoskeletal soft tissue injuries are generally treated and heal, and the best evidence showing Claimant's soft tissue injuries had healed was his quick return to full duty work after each incident. *Id*.

Ultimately, the ALJ gave Dr. Maletz's opinion "minimal weight," finding it was unsupported because it was largely a "conglomeration of bullet points" containing

"summary statements without support or analysis." Remand D&O at 13. He also noted Dr. Maletz's indication that Claimant had no genetic proclivity to degenerative disc disease contradicted Claimant's testimony that his father suffered back problems. *Id*. at 13-14. The ALJ found Dr. Maletz did not specifically opine as to whether Claimant's degenerative disc disease was exacerbated by repetitive work-related injuries but instead provided a conclusory statement that Claimant's "entire back injury is work related." *Id*. at 14 (citing CX 44 at 4).

The ALJ found Dr. Maletz's deposition testimony more comprehensive but "still not persuasive." Remand D&O at 14. Specifically, the ALJ took issue with the lack of evidence supporting Dr. Maletz's description of the "micro-injury" process, which the ALJ summarized as follows:

> Muscle strains or sprains led to incomplete healing, followed by scar tissue, that might affect the muscles supporting the spinal column, which then might increase the force on deteriorating discs, and lead to accelerated degenerative disc disease.

Id. The ALJ found the evidence in this case supported only a finding that Claimant suffered from muscle strains and sprains, and also suffered from accelerated degenerative disc disease. He determined there was no evidence showing that Claimant's multiple soft tissue injuries did not heal completely, that scar tissue subsequently formed around Claimant's spinal column, or that any scar tissue affected the muscles supporting Claimant's spinal column. *Id*. Therefore, the ALJ found Dr. Maletz's explanation as to the connection between Claimant's repetitive work-related injuries and his pre-existing degenerative disc disease was hypothetical and unsupported. *Id*. Instead, the ALJ credited the opinions of Drs. Morgan and Palumbo to find that Claimant's current condition requiring surgery was not caused by his temporary work-related soft tissue injuries but was solely a result of his underlying and pre-existing degenerative disc disease. *Id*. at 15-16.

Claimant argues the ALJ made several errors in weighing the evidence. First, he alleges the ALJ erroneously accepted the connection that Drs. Morgan and Palumbo suggested between Claimant's degenerative disc disease and a genetic predisposition based on his father's reported back problems. Claimant alleges their opinion was undermined by Dr. Maletz's testimony that there was no way to scientifically determine a genetic predisposition to degenerative disc disease. Cl. PR at 28-29. Claimant further alleges the ALJ erroneously credited Dr. Morgan's opinion over Dr. Maletz's despite Dr. Morgan's misunderstandings as to the medical studies upon which Dr. Maletz relied. *Id*. at 28-31.

Finally, Claimant maintains the ALJ erred in not assigning more weight to Claimant's treating providers, particularly Dr. Halperin.[5] *Id*. at 33-34.

Claimant's arguments amount to a request that the Board reweigh the evidence, which we are not permitted to do. *Volpe v. Northeast Marine Terminals*, 671 F.2d 697, 700 (2d Cir. 1982); *Miffleton v. Briggs Ice Cream Co.*, 12 BRBS 445, 447 (1980), *aff'd*, 659 F.2d 252 (D.C. Cir. 1981) (table). The record establishes a conflict between the medical opinions of Drs. Morgan and Palumbo on the one hand, and Drs. Halperin and Maletz on the other, as to genetic predisposition to degenerative disc disease, the interpretation of the various cited medical studies, and the ultimate cause of Claimant's need for surgery. CX 43 at 1-2; CX 44 at 2, 4-5; CX 50 at 16-17, 20, 23, 41-43, 57, 67, 77, 86; EX 5 at 81-82, 84, 88, 95, 97, 104-114; EX 8 at 14, 23, 25-27.

As he is entitled to do, the ALJ evaluated the credibility of the physicians, weighed the medical evidence, drew his own inferences and conclusions from the record, and permissibly gave more weight to the opinions of Drs. Morgan and Palumbo. *Sealand Terminals v. Gasparic*, 7 F.3d 321, 323 (2d Cir. 1993); *Compton v. Avondale Indus., Inc.*, 33 BRBS 174, 176-177 (1999); *see also Todd Shipyards Corp. v. Donovan*, 300 F.2d 741, 742 (5th Cir. 1962).

As the trier-of-fact, the ALJ's findings may not be disregarded on the basis that we might have drawn different inferences from the record; rather, the Board must respect his evaluation of all testimony, including that of medical witnesses. *Calbeck v. Strachan Shipping Co.*, 306 F.2d 693, 695 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403, 405 (2d Cir. 1961). The Board will not interfere with credibility determinations unless they are inherently incredible or patently

[5] As the ALJ noted in his original Decision and Order, "the opinions of treating physicians are not accorded automatic deference." ALJ D&O at 12. While deferential weight is permissible when there exists no substantial evidence in the record to controvert the treating physician's opinion or when there are multiple reasonable treatment plans and the claimant opts to proceed according to his treating physician's advice (*see Amos v. Director, OWCP*, 153 F.3d 1051, 1054 (9th Cir. 1998); *Pietrunti v. Director, OWCP*, 119 F.3d 1035, 1042-1044 (2d Cir. 1997); *Bastien v. Califano*, 572 F.2d 908, 912 (2d Cir. 1978)), the Act does not require the ALJ to give special weight to the treating physician's opinion. *Carswell v. E. Pihl & Sons*, 999 F.3d 18, 31-32 (1st Cir. 2021), *cert. denied*, 142 S.Ct. 1110 (2022); *Sea-Land Services, Inc. v. Director, OWCP* [*Ceasar*], 949 F.3d 921, 925 (5th Cir. 2020); *Hice v. Director, OWCP*, 48 F. Supp. 2d 501 (D. Md. 1999).

unreasonable. *Cordero v. Triple A Mach. Shop*, 580 F.2d 1331, 1335 (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979).

Claimant also maintains the ALJ erred by attempting to differentiate between pain attributable to Claimant's work-related injuries and pain attributable to his underlying degenerative disc disease, arguing that the presence of increased pain after the injury, on its own, should be sufficient to trigger compensability.[6] Cl. PR at 28. Likewise, Claimant argues the mere fact that the August 2016 injury caused his degenerative disc disease to become symptomatic is sufficient to trigger compensability under the Act, even without evidence of permanent harm. *Id*. at 29-31 (citing *Bath Iron Works v. Fields*, 599 F.3d 47 (1st Cir. 2010);[7] *Delaware River Stevedores, Inc. v. Director, OWCP*, 279 F.3d 233, 241

[6] In its discussion of the law pertaining to aggravation injuries, the Board's initial decision stated that "[i]f the work injuries caused pain, and pain is a reason for surgery, then the surgery is related to the work injuries." *See Osten*, slip op. at 6, citing *Director, OWCP v. Vessel Repair, Inc.*, 168 F.3d 190 (5th Cir. 1999). The ALJ found this statement "somewhat vexing" because it "assumes all pain is equal and unending." Remand D&O at 15-16. To be clear, the Board was not stating that any symptoms of work-related pain automatically establish the necessity for surgery. As the preceding sentence in the Board's analysis makes clear, a surgery is compensable under those circumstances only if the work-related pain is a cause of the need for surgery. *Id.* Consistent with the Board's remand instructions, the ALJ considered the issue and permissibly found Claimant's work-related pain was temporary and not a cause of his need for surgery.

[7] In *Fields*, the claimant alleged he suffered a work-related aggravation of his underlying lumbar spine osteoarthritis. *Fields*, 599 F.3d at 51. The ALJ initially found the employer rebutted the Section 20(a) presumption as to this theory of causation based on a physician's opinion that the claimant's work "did not play any significant contributing role" in the development of his osteoarthritis. *Id*. at 53. The Board vacated this finding, holding that the physician only addressed the "disease process," not whether the claimant's employment could have rendered his osteoarthritis symptomatic, and therefore the employer had failed to produce sufficient evidence to rebut the Section 20(a) presumption. *Id*. at 54. The United States Court of Appeals for the First Circuit affirmed, holding the Board properly differentiated between the claimant's underlying degenerative condition and his symptomatic pain, as "a claim for LHWCA benefits can be based on a work-related activation or aggravation of the employee's symptoms, even if the disease itself is not work-related." *Id*. at 55. Although the employer argued its physician found the claimant's symptoms to be wholly attributable to his pre-existing osteoarthritis, the Court disagreed, finding the physician actually "said only that [the claimant]'s *osteoarthritis* was wholly attributable to weight and age." *Id*. at 56 (emphasis in original). As he offered no opinion

(3d Cir. 2002)). However, as the ALJ emphasized, the question before him was not whether any of the employment-related injuries, either on their own or cumulatively, caused an increase in symptoms, but whether they caused his need for surgery under Section 7 of the Act, 33 U.S.C. §907. Remand D&O at 15. Ultimately, the ALJ found that although Claimant's individual employment-related back injuries "may have" increased Claimant's pain for a short time, even to the point of temporary disability, there was no evidence that any of those incidents caused permanent pain to the point where it could only be resolved by surgery. *Id*. at 16. He concluded Claimant produced no evidence showing more than short-term increases of pain as a result of his previous back injuries, followed by recovery and his return to full-duty unrestricted work. *Id*. Consequently, relying on the opinions of Drs. Morgan and Palumbo, the ALJ found Claimant's need for surgery unrelated to any injuries suffered in the course of his employment. *Id*.

Moreover, unlike the expert in *Fields* who failed to address whether the claimant's pain symptoms were work-related or due solely to his underlying osteoarthritis, both of Employer's experts in this case testified unequivocally that Claimant's pre-existing chronic degenerative disc disease is the sole reason for his current symptomatology requiring surgery. *Fields*, 599 F.3d at 56; Remand D&O at 7-8 (citing EX 5 at 68-76, 81-82, 95-97, 116); ALJ D&O at 11 (citing EX 6; EX 8 at 5). As the ALJ adequately explained his findings, and they are supported by substantial evidence, Claimant has not shown the ALJ erred in weighing of the evidence. *See Gasparic*, 7 F.3d at 323. Therefore, we affirm his conclusion that Claimant did not prove the work-relatedness of his need for back surgery

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as to the work-relatedness of the claimant's disabling *pain*, and as the work-related aggravation of non-work-related symptoms is sufficient to trigger compensability under the Act, the Court held the Board properly found the employer failed to rebut the Section 20(a) presumption. *Id*.

by a preponderance of the evidence and consequent denial of Claimant's claims for medical benefits. *Raiford v. Huntington Ingalls Indus., Inc.*, 49 BRBS 61, 64 (2015).

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge