U.S. Department of Labor

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

BRB No. 23-0177

DAMIR VUJADINOVIKJ Claimant-Petitioner v. KBR GOVERNMENT OPERATIONS/ SERVICE EMPLOYEES INTERNATIONAL, INCORPORATED and INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA Employer/Carrier-Respondents	)	**NOT-PUBLISHED** DATE ISSUED: 10/17/2024 DECISION and ORDER

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

Matthew J. Rolla (Garfinkel Schwartz, P.A.) Maitland, Florida, for Claimant.

Alexandra E. Grover and Briana V. Rogers (Brown Sims), Houston, Texas, for Employer/Carrier.

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

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Jonathan C. Calianos's Decision and Order Denying Benefits[1] (2021-LDA-00085) rendered on a claim filed pursuant to the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §§901-950 (Act), as extended by the Defense Base Act, 42 U.S.C. §§1651-1655 (DBA).[2] 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).

Claimant, a native of Macedonia, worked multiple jobs for Employer. He worked in Macedonia for Employer as a human resources (HR) assistant/interpreter from 1998 to 2000, a quality assurance/quality control inspector from August 2000 to October 2001, and a quality assurance/quality control senior field inspector from October 2001 to August 2002. Decision and Order (D&O) at 129;[3] Hearing Transcript (HT) at 27-28. From 2003 to 2005, he worked for Employer in Afghanistan as a client-owned equipment specialist at Charlie Two military base and then as a material expeditor at Camp Phoenix/Bagram military base. D&O at 129-130; HT at 29-30; Joint Exhibits (JX) 1, 2. Between 2005 and March 2007, he worked in Kuwait for Employer as a quality assurance/quality control inspector for four months. D&O at 130; HT at 30. He then worked for Employer as an air ops specialist and a logistics supervisor in United Arab Emirates. D&O at 130; HT at 31. From March 2007 to January 2009, he worked for Employer as an HR generalist and later as a senior HR generalist at Camp FT Victory and Camp F2 Liberty military bases in Iraq. D&O at 130; HT at 32-33; JX 1, 2. Finally, from January 2009 until his resignation on January 30, 2010, he worked as a travel coordinator for Employer in United Arab Emirates. D&O at 130; HT at 33-34.

Claimant alleges he has a work-related psychological injury which caused him to stop work on January 29, 2010. JX 1. He alleges witnessing traumatic events, such as an IED suicide explosion and a grenade attack in Afghanistan in 2003, along with an attack in Iraq in 2007. D&O at 130-135; HT at 37-47. In addition, he described experiencing

[1] The Administrative Law Judge's (ALJ's) January 18, 2023 Decision and Order Denying Benefits adopts and incorporates by reference the "findings of fact and conclusions of law" articulated in his November 30, 2022 bench decision.

[2] This case arises within the jurisdiction of the United States Court of Appeals for the Second Circuit because 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).

[3] The ALJ's bench decision will be referred to as "D&O," and the page numbers continue sequentially from the last page of the hearing transcript.

fear and insecurity in bunkers, and trauma from hearing loud explosions and observing injured bodies. *Id.* On December 17, 2010, he met with Dr. Lidija Manasievska, a psychologist-psychotherapist, describing various symptoms he asserts are the result of his time working for Employer in war zones, including trouble sleeping/unrest, nightmares, fatigue, anxiety, appetite loss, disturbing flashbacks of traumatic events, and difficulties with socializing, concentrating, working, and maintaining relationships. D&O at 137-138; JX 9 at 1. At that time, Dr. Manasievska did not diagnose Claimant with a specific condition but opined he is "not fit for any work activity." *Id.* Claimant continued to meet with Dr. Manasievska four to five times per year from 2010 to 2019. JX 9.

Following his return to Macedonia upon ceasing to work for Employer, Claimant worked full-time as an administrative specialist at Construction Investment Group (CIG) from 2011 to 2019 and again in 2021. He also worked as the director of a basketball club from 2017 to 2019. D&O at 144-148; JX 22 at 6; HT a 62-64, 92. He stated his work included "running restaurants…building buildings, buying and selling apartments, going to basketball games, and running a basketball club." D&O at 148. He stated he quit his CIG job at the end of 2019 due to a worsening of his psychological symptoms; he returned to his CIG job in the beginning of 2021 but resigned again for the same reason in December 2021. HT at 64-65, 71, 94-95. Claimant has been unemployed since then. *Id.*

In 2018-2019, Dr. Manasievska opined Claimant sustained a psychological injury, which she diagnosed first as Severe Stress Reaction and Adaptation Disorder and then as Post-Traumatic Stress Disorder (PTSD), as a consequence of traumatic events and stresses he experienced while working at military bases in Iraq and Afghanistan. JX 9 at 21, 23, 25-26. On January 8, 2020, Dr. Gjorgie Hadji-Angjelkovski, a psychiatrist, also diagnosed Claimant with PTSD from his work experiences in Iraq and Afghanistan. JX 10 at 3. Claimant continued prescription and psychiatric treatment with Dr. Angjelkovski until August 2020. JX 10. On September 9, 2020, Dr. Tanja Risteska, a psychiatrist, also diagnosed Claimant with PTSD based on symptoms arising from his engagement in war zones in Iraq and Afghanistan. JX 11 at 1. Claimant treated with Dr. Risteska until July 2021. JX 11.

Claimant filed a claim under the Act on January 25, 2020, seeking benefits for his psychological condition. JX 1. Employer, who first received notice through an Office of Workers' Compensation Programs (OWCP) letter dated March 13, 2020, controverted the claim. JX 3. The case was transferred to the Office of Administrative Law Judges (OALJ) for a hearing, which was held on February 18, 2022. At a subsequent proceeding on November 30, 2022, the ALJ issued a verbal "bench decision" denying Claimant's claim in its entirety. D&O at 161-175.

Initially, the ALJ: found the notice of injury and the claim for compensation were untimely filed, 33 U.S.C. §§912, 913; determined Claimant has "significant credibility issues;" and further found insufficient evidence to support the claim. *Id*. at 124-125, 127. Specifically, the ALJ discredited Claimant's testimony, finding his statements lacked "consistency" and "specificity," including with respect to his date of injury awareness, symptoms, medical treatment, education level, and post-Employer work history. *Id*. at 161. Likewise, the ALJ discounted Claimant's medical evidence from Drs. Manasievska, Hadji-Angjelkovski, and Risteska, as he found their reports were non-specific, inconsistent, and based on Claimant's incredible subjective reporting. *Id*. at 141-143, 164-167, 172-175. Having rejected Claimant's testimonial and medical evidence, the ALJ concluded Claimant did not meet his prima facie burden and failed to invoke the Section 20(a) presumption, 33 U.S.C. §920(a), for his alleged psychological injury/PTSD. D&O at 175.

Claimant appeals the denial of benefits. He contends the ALJ erred in finding he is not credible. In addition, he contends the ALJ erred in finding he did not invoke the Section 20(a) presumption as the evidence he submitted reflects that he sustained a psychological injury (harm) and that conditions at work could have caused the harm (i.e., attacks, bombs exploding). Further, he maintains Employer failed to rebut the Section 20(a) presumption.[4] Employer responds, urging affirmance, to which Claimant filed a reply.

To invoke the Section 20(a) presumption linking his injuries to his employment, a claimant must sufficiently allege: 1) he sustained a harm; and 2) an accident occurred or

[4] The ALJ found Claimant did not provide Employer timely notice of his psychological condition under Section 12(a) of the Act, 33 U.S.C §912(a), or timely file his claim pursuant to Section 13(b), 33 U.S.C. §913(b). D&O at 169-170. We affirm the ALJ's findings as unchallenged on appeal. *Scalio v. Ceres Marine Terminals, Inc*., 41 BRBS 57, 58 (2007). To the extent Claimant's one-sentence mention of "timeliness" in his brief's conclusion could constitute "raising the issue," and constitute a challenge on appeal, it is inadequately briefed. *Montoya v. Navy Exch. Serv. Command*, 49 BRBS 51, 52 n.1 (2015); *Plappert v. Marine Corps Exch.*, 31 BRBS 109, 116 (1997), *aff'g on recon. en banc* 31 BRBS 13 (1997). A party challenging the ALJ's finding must demonstrate why, in terms of law and evidence, the finding is not supported by substantial evidence or in accordance with law. 20 C.F.R. §802.211(b). As Claimant does not sufficiently challenge the ALJ's timeliness findings, we affirm them. *Scalio*, 41 BRBs at 58. Accordingly, the sole issue before us is whether Claimant has a work-related psychological condition for which he could be entitled to medical benefits, as a claim for medical benefits is never time-barred. 33 U.S.C. §907; *Siler v. Dillingham Ship Repair*, 28 BRBS 38, 41 (1994) (decision on recon. en banc); *Ryan v. Alaska Constructors, Inc.*, 24 BRBS 65, 70-71 (1990).

working conditions existed which could have caused or aggravated the harm. *Rose v. Vectrus Systems Corp.*, 56 BRBS 27 (2022) (Decision on Recon. en banc), *appeal dismissed* (MDFL Aug. 24, 2023); *see also American Stevedoring, Ltd. v. Marinelli*, 248 F.3d 54, 64-65 (2d Cir. 2001); *O'Kelley v. Dep't of the Army/NAF,* 34 BRBS 39, 40 (2000). The claimant bears an initial burden of production to invoke the Section 20(a) presumption.[5] *Rose*, 56 BRBS at 36. Credibility plays no role in addressing whether the claimant has established a prima facie case. *Id.* at 37. In this regard, the Section 20(a) invocation analysis "does not require examination of the entire record, an independent assessment of witness' credibility, or weighing of the evidence." *Id.* Instead, a claimant need only "present some evidence or allegation that if true would state a claim under the Act."[6] *Id.* Consequently, if Claimant establishes his prima facie case, he is entitled to the presumption that his injury is work-related and compensable, subject to rebuttal by Employer. *Id.*

Here, the ALJ's bench decision focuses predominantly on his determination that Claimant is not a reliable witness.[7] In addressing credibility at the first step of the Section

[5] "The burden of production or 'some evidence' standard which we have set forth here is a light burden – being no greater than an employer's burden on rebuttal – meant to give the claimant the benefit of the statutory framework." *Rose*, 56 BRBS at 38.

[6] "Whether the claimant's evidence fails or carries the day is a matter to be resolved at step three when weighing the evidence, not at step one invocation." *Rose*, 56 BRBS at 38.

[7] Specifically, the ALJ found Claimant was not credible because he was fluent in English but pretended to need an interpreter, D&O at 124, 127; HT at 105-106, and he blamed the interpreter when the ALJ pointed out an inconsistency in his testimony. D&O at 160; HT at 111. The ALJ also found Claimant's testimony regarding traumatic events was unclear, D&O at 131, 134, 158-162 (he gave non-specific descriptions like "people being injured" and was evasive even after the ALJ gave him opportunities to clarify his testimony); JX 15 at 19-20; HT at 110-111, and inconsistent, D&O at 159-162; HT at 111-112 (he stated he saw people get injured but also stated he was not sure about seeing people get injured because he was in a bunker), and his testimony about his condition was unbelievable, D&O at 142; HT at 110 (he rated his symptoms at a "5" in 2010 and a "9" in 2020 – after years of treatment). Further, the ALJ disbelieved Claimant's reported post-employment socializing and concentration difficulties because he was able to work and volunteer in jobs needing those skills after his return to Macedonia. D&O at 146, 154-156, 158; JX 15 at 19-20; HT at 41, 49-50, 55, 65-68, 91-103. Additionally, the ALJ found Claimant was not forthcoming about having attended an American university – being inconsistent about his attendance dates and enrollment status, D&O at 129, 156-157 (he

20(a) analysis, and denying the claim on that basis, the ALJ improperly found Claimant did not invoke the Section 20(a) presumption for his psychological injury/PTSD.[8] D&O at 172, 175; *see Rose*, 56 BRBS at 37. In doing so, he imposed upon Claimant a heightened burden of persuasion, rather than the proper burden of production at invocation. *Rose*, 56 BRBS at 37-38. As Claimant correctly contends, it is undisputed he produced medical reports from Drs. Manasievska, Hadji-Angjelkovski, and Risteska, each of whom diagnosed him with PTSD attributable to his work in Iraq and Afghanistan, JX 9, 10, 11, as well as his own testimony as to experiencing events that could cause trauma in the course of his work for Employer. HT at 37-47; Claimant's Brief at 29. Under *Rose*, this constitutes sufficient evidence that Claimant's working conditions could have caused his alleged harms and invokes the Section 20(a) presumption as a matter of law. *Rose*, 56 BRBS at 39; *see, e.g., Obadiaru v. ITT Corp.*, 45 BRBS 17, 18-19 (2011) (determining that a claimant's testimony regarding his back pain levels and job duties was sufficient to invoke the Section 20(a) presumption); *Hampton v. Bethlehem Steel Corp.*, 24 BRBS 141, 144 (1990) (a claimant is not required to introduce evidence that working conditions in fact caused the harm but only that conditions existed which could have caused the harm). Consequently, we reverse the ALJ's finding that Claimant did not meet his burden and failed to invoke the Section 20(a) presumption linking his alleged psychological injury to his work for Employer. *Id.*

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stated he "is going" to college but then stated he had not "been there for four or five years;" he also did not know the name of the school); JX 22 at 2; HT at 103-105, 107. Moreover, the ALJ found the medical professionals were provided little history or reliable information from Claimant to consider. D&O at 159, 166, 173-175 (ALJ stated he read medical reports and "had no idea which end was up" because the reports did not match Claimant's non-credible expressed reality). In particular, the ALJ found that while Dr. Manasievska stated Claimant was withdrawn and cannot return to work, JX 9, Claimant stated he was working in restaurants and construction and volunteering with a basketball club. D&O at 166; HT at 103. The ALJ also found Dr. Hadji-Angjelkovski gave "a very, very brief history of symptoms" and, "[t]rying to understand what the traumatic events were, really not much there[,]" and Dr. Risteska "gives no history." *Id.*; JXs 10-11.

[8] We acknowledge the ALJ issued his bench decision before the Board issued its decision on reconsideration in *Rose*. Nevertheless, we apply *Rose* to address the Section 20(a) issues the parties raise in their briefs, as it represents the controlling law and must be applied in all cases still open on direct review. *Harper v. Virginia Dept. of Taxation*, 509 U.S. 86, 97 (1993); *James B. Beam Distilling Co. v Georgia*, 501 U.S. 529, 540 (1992); *Kaye v. California Stevedore & Ballast*, 28 BRBS 240, 249 (1994).

Next, if the presumption is invoked, as here, to rebut it an employer must present substantial evidence that the claimant's injury did not arise out of his employment. *Rainey v. Director, OWCP*, 517 F.3d 632, 634 (2d Cir. 2008); *Marinelli*, 248 F.3d at 64-65; *O'Kelley*, 34 BRBS at 40. An employer's burden is one of production. Once the employer produces substantial evidence of the absence of a causal relationship, the Section 20(a) presumption falls from the case, and the ALJ must weigh the relevant causation evidence on the record as a whole, with the claimant bearing the burden of persuasion by a preponderance of the evidence. *Id.*

Employer submitted the August 3, 2021 report of its psychiatric expert, Dr. Brian Jacks, who opined that Claimant's complaints and experiences in his work for Employer did not result in any psychiatric disorder.[9] JX 15 at 24. In this regard, Dr. Jacks concluded Claimant suffered from no psychiatric injury, including PTSD. *Id.* at 24-25. Dr. Jacks stated he conducted "a complete, comprehensive, and extensive evaluation," completed psychological testing, JX 15 at 1, and provided a 29-page report detailing his findings and conclusion that Claimant has no psychological condition. JX 15 at 18-21.

While the ALJ performed a cursory review of Dr. Jacks's medical report, he did not adequately consider whether Dr. Jacks's opinion is sufficient to rebut the Section 20(a) presumption.[10] JX 15. Therefore, we must vacate the denial of benefits and remand the case to the ALJ for further consideration. The ALJ must determine whether Dr. Jacks's medical report or any other evidence of record is sufficient to rebut the Section 20(a) presumption linking Claimant's psychological injury/PTSD to his employment. *See, e.g., Rainey*, 517 F.3d at 634; *Marinelli*, 248 F.3d at 64-65; *Parsons Corp. of Cal. v. Director, OWCP*, 619 F.2d 38, 41-42 (9th Cir. 1980) (rebuttal requires substantial evidence specific and comprehensive enough to sever potential connection between the disability and the work environment; the standard is not met where an expert could not say exposure did not trigger or accelerate the disease); *O'Kelley*, 34 BRBS at 41 (a medical opinion of non-causation rendered to a reasonable degree of medical certainty is sufficient to rebut the

[9] Claimant's evaluation with Dr. Jacks included "approximately 1.50 hours of face-to-face interview time for detailed history-taking and formal mental status examination, [and] approximately 2.00 hours to review the available records and psychological testing…with the Beck Anxiety Inventory, Beck Depression Inventory-2, Beck Suicide Scale, Daily Stress Inventory, Wahler Physical Symptoms Inventory, Epworth Sleepiness Scale, and MMPI-2." JX 15 at 19.

[10] The ALJ concluded that Dr. Jacks's report contained the best description of Claimant's injuries and experiences but found the description is "completely contradictory to anything [Claimant] tried to depict during his testimony." D&O at 173-175; JX 15.

presumption); *Rochester v. George Washington Univ.*, 30 BRBS 233, 236 (1997); *Phillips v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 94, 96 (1988). If the ALJ finds the presumption rebutted,[11] he must then weigh the evidence on the record as a whole to determine whether Claimant's psychological injury/PTSD is work-related, with Claimant bearing the burden of persuasion. At that juncture, he must assess the credibility and weight to give the evidence. *Santoro v. Maher Terminal, Inc.*, 30 BRBS 171, 174 (1996); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 276 (1994). If, however, he finds Employer has not rebutted the presumption, then Claimant has established a work-related psychological injury/PTSD as a matter of law, and the ALJ must therefore award medical benefits in accordance with Section 7 of the Act. 33 U.S.C. §907(a).

Accordingly, we reverse the ALJ's finding that Claimant did not invoke the Section 20(a) presumption regarding his psychological injury/PTSD claim, vacate the denial of benefits, and remand the case for further consideration consistent with this opinion.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

[11] Contrary to Claimant's assertion, Employer's burden on rebuttal is also one of production. Therefore, the persuasiveness of the evidence is appropriately considered not at rebuttal (step two) but when and if the ALJ weighs the evidence as a whole (step three). *Rainey*, 517 F.3d at 637; *Rose*, 56 BRBS at 30; *Victorian v. Int'l-Matex Tank Terminals*, 52 BRBS 35, 41 (2018), *aff'd sub nom. Int'l-Matex Tank Terminals v. Director, OWCP*, 943 F.3d 278 (5th Cir. 2019); *Suarez*, 50 BRBS at 36 n.4; *Cline v. Huntington Ingalls, Inc.*, 48 BRBS 5, 7 (2013).