U.S. Department of Labor

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

BRB No. 23-0422

CLODOALDO PALOMINO IDONE Claimant-Petitioner v. CONSTELLIS GROUP/TRIPLE CANOPY and CONTINENTAL CASUALTY COMPANY c/o CNA Employer/Carrier- Respondents	)	**NOT-PUBLISHED** DATE ISSUED: 10/30/2024 DECISION and ORDER

Appeal of Decision and Order Denying Benefits of Timothy J. McGrath, Administrative Law Judge, United States Department of Labor.

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Krystal L. Layher and Syed S. Pasha (Brown Sims, P.C.), Houston, Texas, for Employer/Carrier.

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

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Timothy J. McGrath's Decision and Order Denying Benefits (2021-LDA-01826) 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). 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, a Peruvian citizen, allegedly sustained back and psychological injuries while working for Employer as a security guard in Iraq from May 2007 to July 2009.[1] JX 1 at 1. He stated he began experiencing symptoms associated with a psychological injury while he was stationed in Iraq in 2008, including difficulty sleeping, irritability, and recurring headaches. JX 27 at 17. In addition, Claimant asserted he first injured his back following an August 2008 attack when he lunged to the ground in his protective helmet and vest. *Id.* In his deposition testimony, Claimant stated he first sought medical treatment for his back at Employer's clinic, was given ibuprofen, and opted to not return to the clinic for further treatment. *Id.* at 17-18.

In July 2009, Claimant declined to renew his employment contract because he wanted to return to Peru. *Id.* at 15. Following his return to Peru, Claimant worked intermittently until he found his current position at a local warehouse. *Id.* at 20-22, 26. He testified he sought further medical treatment for his back in October 2009 at a local Peruvian hospital where doctors told him he had a lumbar hernia and gave him injections[2] and vitamins. *Id.* at 18. Claimant stated he did not inform Employer in 2009 about his back issues, treatment, or need for hernia surgery because previous attempts to communicate with Employer's Peruvian contact were unsuccessful. *Id.* at 19.

In 2014, Claimant went to a back specialist who confirmed his disc hernia diagnosis and recommended surgery to resolve the issue. *Id.* at 18-19, 25; JX 19 at 2. Claimant deemed the surgery too costly and continued receiving injections to cope with his pain. JX 27 at 19.

On September 12, 2018, Claimant reported to psychologist Dr. Eduardo Avila Suarez (Dr. Avila) and psychiatrist Dr. Angel Manrique Galvez (Dr. Manrique) at the

[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); *see also Global Linguist Solutions, L.L.C. v. Abdelmeged*, 913 F.3d 921 (9th Cir. 2019).

[2] Claimant's deposition testimony specifies the injection was called "Diclofenaco." JX 27 at 18. At the time of the deposition, he was still reporting to the hospital every three to four months for injections. *Id.* at 19.

recommendation of a friend and former coworker with Employer. JXs 17, 21, 27 at 16. Dr. Avila diagnosed Claimant with Post-traumatic Stress Disorder (PTSD) based on his described symptomology of irritability, impatience, intolerance, anxiety, isolation, depressive thoughts, excessive stress, suspicion, anguish, and panic. JX 17 at 3. Later that same day, Claimant saw Dr. Manrique, who conducted a mental status exam, diagnosed him with PTSD due to sequelae of war, and recommended cognitive-behavioral psychotherapy and medication. JX 21 at 3-4. Claimant returned to Dr. Avila again on November 20, 2021, February 5, 2022, and February 9, 2022. JX 17 at 7-8, 12-17. He also sought further treatment with Dr. Manrique culminating in a written report dated February 15, 2021. JX 21 at 9-12.

At Employer's request, psychiatrist Dr. Sofia Elisa Matta evaluated Claimant by video on September 15, 2021. EX 3. Dr. Matta reviewed Drs. Avila's and Manrique's medical records, conducted a clinical interview and mental status examination, and administered several psychological tests, including the Miller Forensic Assessment of Symptoms (M-FAST). *Id.* at 2, 9-11. She concluded Drs. Avila and Manrique did not apply DSM-V diagnostic criteria necessary to make a PTSD diagnosis and their opinions were conclusory. *Id.* at 12. Dr. Matta reported Claimant's alleged symptomology seemed exaggerated based on his responses to her objective testing and did not support a PTSD or any other psychological diagnosis. *Id.* at 13-15.

Claimant also reported to psychologist Dr. Gustavo R. Benejam on December 22, 2021, for another psychological examination. JX 22 at 1. Dr. Benejam likewise reviewed all the medical reports, conducted a clinical interview and mental status examination, and administered psychological tests, including the M-FAST, Beck Depression Inventory, PTSD and Suicide Screener (PSS), PTSD Checklist-5 (PCL), and Clinician-Administered PTSD Scale for DSM-V. *Id.* at 7. He disagreed with Dr. Matta's assessment and diagnosed Claimant with PTSD and Major Depressive Disorder caused by traumatic experiences as part of his work overseas for Employer. *Id.* at 15.

On August 14, 2020, Claimant filed his claims, seeking benefits for work-related psychological and back injuries. JX 1 at 1. Employer controverted the claims, contending they were untimely and the medical evidence showed no nexus between his employment and his current conditions. EX 2 at 1. The case was forwarded to the Office of Administrative Judges (OALJ), where the parties opted for a decision on the record in lieu of a formal hearing. On July 7, 2023, the ALJ issued his Decision and Order Denying

Benefits (D&O), finding Claimant's alleged back and psychological injuries are not compensable.[3]

Considering the psychological claim, the ALJ found Claimant invoked the Section 20(a) presumption of compensability, 33 U.S.C. §920(a), by presenting medical records supporting a PTSD diagnosis from Drs. Avila, Manrique, and Benejam, along with testimonial evidence that his guard duties in Iraq could have caused his psychological condition. D&O at 18. But the ALJ found Employer rebutted the presumption with Dr. Matta's medical report which stated Claimant does not have PTSD or a psychological condition causally related to his work. *Id.*

Weighing the evidence as a whole, the ALJ concluded Claimant's testimony regarding his experiences in Iraq are credible but his descriptions regarding his symptomology are contradictory and exaggerated. *Id.* at 19-20. He attributed minimal weight to Drs. Avila's and Manrique's medical records because he found their treatment reports primarily relied on Claimant's self-reported symptoms. *Id.* at 20. Further, he gave Dr. Benejam's opinion less weight because he found Dr. Benejam documented symptoms not mentioned elsewhere in the record, and Dr. Benejam incorrectly stated Claimant had not been able to maintain employment. *Id.* at 21. Finally, the ALJ concluded Dr. Matta's opinion, that Claimant's motivation for secondary gain made it impossible to determine whether he actually suffered a traumatic event, is contrary to the record which established he worked in an active war zone. *Id.* at 20-21. Holding the medical evidence to be in equipoise, the ALJ concluded Claimant failed to establish a work-related psychological injury by the preponderance of the evidence, and he denied benefits.[4] *Id.* at 21.

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[3] The ALJ found Claimant's notice of injury for his psychological claim was untimely as his date of awareness was September 12, 2018, when he was evaluated and diagnosed with PTSD by Drs. Avila and Manrique. The ALJ nevertheless proceeded to adjudicate the claim because Employer was not prejudiced by the delay, 33 U.S.C. §912(a), (d), and the claim for compensation for a psychological injury was timely filed within the statute of limitation for an occupational disease. However, he found Claimant's notice of injury and claim for compensation for his back injury were untimely as his date of awareness was August 29, 2014. He thus disallowed that claim. 33 U.S.C. §§912(a), 913(a); 20 C.F.R. §702.212; D&O at 15-17.

[4] The ALJ also assessed whether Claimant is entitled to medical benefits for his back injury, as a claim for medical benefits is never time-barred. D&O at 21; *see Siler v. Dillingham Ship Repair*, 28 BRBS 38 (1994) (en banc); *Ryan v. Alaska Constructors, Inc.*, 24 BRBS 65 (1990). He found Claimant invoked the Section 20(a) presumption for his back injury, but Employer rebutted it. Based on the record as a whole, he found Claimant's

Claimant appeals the ALJ's decision. He contends the ALJ erred in finding Dr. Matta's report was sufficient to rebut the Section 20(a) presumption linking his psychological condition with his employment. In addition, he argues the ALJ incorrectly determined the medical evidence is in equipoise, inaccurately weighed the evidence, and failed to give the opinions of Drs. Avila and Manrique their proper weight as his treating physicians. Finally, he contends the ALJ erred in taking judicial notice of evidence not in the record to discredit Dr. Benejam, in violation of the Administrative Procedure Act (APA), 5 U.S.C. § 556(e). Employer responds, urging affirmance.

Section 20(a) Rebuttal

Claimant contends the ALJ erred in finding Dr. Matta's opinion sufficient to rebut the Section 20(a) presumption because the ALJ disregarded Dr. Matta's contradictory findings in violation of the APA. We disagree.

Where, as here, the Section 20(a) presumption is invoked, *Rose v. Vectrus Systems Corp.*, 56 BRBS 27 (2022) (en banc), *appeal dismissed* (M.D. Fla. Aug. 24, 2023); *see also Rainey v. Director, OWCP*, 517 F.3d 632, 634 (2d Cir. 2008), the burden shifts to the employer to produce substantial evidence that is "specific and comprehensive enough" to sever the connection between the claimant's condition and his employment.[5] *American Stevedoring Ltd. v. Marinelli*, 248 F.3d 54, 65 (2d Cir. 2001); *Port Cooper/T. Smith Stevedoring Co. Inc. v. Hunter*, 227 F.3d 285, 288 (5th Cir. 2000); *see Noble Drilling Co. v. Drake*, 795 F.2d 478, 481 (5th Cir. 1986) (substantial evidence is that which a reasonable mind could accept to support a conclusion). If the employer successfully rebuts the presumption, the issue of causation must be resolved on the evidence as a whole with the claimant bearing the burden of persuasion by a preponderance of the evidence. *Rainey*, 517 F.3d at 634; *Marinelli*, 248 F.3d at 65; *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 262 (4th Cir. 1997); *Santoro v. Maher Terminals, Inc.*, 30 BRBS 171, 175 (1996).

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medical evidence is limited, is contradicted by other medical experts in the record, and failed to persuade him that Claimant's back problems are work-related. Consequently, he denied medical benefits. *Id.* at 22-23. We affirm this finding as unchallenged on appeal. *Scalio v. Ceres Marine Terminals, Inc.*, 41 BRBS 57, 58 (2007).

[5] Rebuttal is an "objective test" which requires the ALJ to decide, as a legal matter, whether the employer produced the degree of evidence which could satisfy a reasonable factfinder that the claimant's injury is not work-related. *Hawaii Stevedores, Inc. v. Ogawa*, 608 F.3d 642, 651 (9th Cir. 2010); *Bath Iron Works Corp. v. Fields*, 599 F.3d 47, 55 (1st Cir. 2010).

The ALJ found Employer rebutted the presumption with Dr. Matta's medical opinion that Claimant did not have a psychological injury based on the M-FAST objective testing results, Claimant's failure to seek further psychiatric treatment, and Claimant's ability to sustain fulltime employment. In asserting the ALJ should have considered Dr. Matta's credibility before accepting her opinion, Claimant misstates the standard at the rebuttal stage.

Employer's burden at this stage is one of production, not one of persuasion. *Rainey*, 517 F.3d at 634; *see American Grain Trimmers v. Director, OWCP* [*Janich*], 181 F.3d 810, 816-817 (7th Cir. 1999) (en banc) ("the burden of persuasion rests at all times on the claimant…"). An employer need only introduce substantial evidence showing a claimant's condition was not caused by his work. *Conoco Inc. v. Director, OWCP*, 194 F.3d 684, 690 (5th Cir. 1999). Therefore, at rebuttal, the ALJ need not be persuaded by an employer's evidence; it is only necessary for the employer to proffer "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Truczinskas v. Director, OWCP*, 699 F.3d 672, 677-678 (1st Cir. 2012); *Bath Iron Works Corp. v. Fields*, 599 F.3d 47, 53 (1st Cir. 2010); *see Janich*, 181 F.3d at 818 ("vague and speculative" evidence does not meet an employer's rebuttal burden to produce "substantial evidence").

Dr. Matta's opinion meets Employer's burden of production. She reviewed the available medical reports from Drs. Avila and Manrique and opined neither doctor's report indicates they conducted a thorough psychological evaluation or specified which DSM-V diagnostic criteria were met to support their PTSD diagnoses. EX 3 at 11-12. Based on her own psychological evaluation and objective testing, she stated Claimant feigned his symptomology. *Id.* at 12. She recounted Claimant's M-FAST score showed "indisputable evidence" of malingering and concluded Claimant did not have PTSD or any other psychological condition. *Id.* at 13. Dr. Matta's report constitutes substantial evidence casting doubt on the presumed connection between Claimant's alleged injury and his employment by definitively stating her opinion that the alleged injury does not exist. *See Bourgeois v. Director, OWCP*, 946 F.3d 263, 265 (5th Cir. 2020) (finding the Section 20(a) presumption was rebutted by a medical opinion stating the evidence showed no proof of the alleged injury). We therefore affirm the ALJ's finding that Dr. Matta's opinion rebuts the Section 20(a) presumption. *Marinelli*, 248 F.3d at 65. With the presumption rebutted, the ALJ properly proceeded to weigh the evidence as a whole.

Weighing the Evidence as a Whole and Credibility Assessments

Claimant next contends the ALJ did not correctly weigh the evidence of record. Specifically, he asserts the ALJ erred by not giving deferential weight to his treating physicians, Drs. Avila and Manrique. He also contends the ALJ erred in finding the

medical evidence in equipoise, in failing to resolve factual doubt in his favor, and in not considering his testimony, alone, as sufficient to establish his entitlement to benefits.

Weight Due a Treating Physician's Opinion

Claimant contends his treating physicians' opinions should have been "accorded considerable and special weight." Cl. Brief at 9. He asserts it was improper for the ALJ to focus on the fact that Drs. Avila and Manrique did not conduct validity or objective testing because they did not treat Claimant for purposes of litigation. *Id.* at 10. Claimant also argues the ALJ erred in assigning limited weight to their medical opinions because of their subjective nature. *Id.* at 11.

As a preliminary matter, questions of witness credibility are for the ALJ as the trier-of-fact. *Pietrunti v. Director, OWCP*, 119 F.3d 1035, 1042 (2d Cir. 1997); *Sealand Terminals v. Gasparic*, 7 F.3d 321, 323 (2d Cir. 1993); *Volpe v. Northeast Marine Terminals*, 671 F.2d 697, 700 (2d Cir. 1982); *Calbeck v. Strachan Shipping Co*., 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963); *John W. McGrath Corp. v. Hughes*, 289 F.2d 403, 405 (2d Cir. 1961). He may accept parts of a witness's testimony and reject 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 he may draw his own inferences and conclusions from the evidence, *Compton v. Avondale Indus., Inc.*, 33 BRBS 174, 176-177 (1999).

This standard applies with equal force to medical evidence – the ALJ is entitled to weigh medical evidence, is entitled to draw his own inferences from it, and is not bound to accept the opinion or theory of any particular medical examiner. *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741, 742 (5th Cir. 1962). The Board must respect his evaluation of all testimony, including that of medical witnesses, and will not interfere with credibility determinations unless they are "inherently incredible or patently unreasonable." *Cordero v. Triple A Mach. Shop*, 580 F.2d 1331, 1335 (9th Cir. 1978); *see generally Bis Salamis, Inc. v. Director, OWCP* [*Meeks*], 819 F.3d 116, 130 (5th Cir. 2016) (Board may not second-guess an ALJ's factual findings or disregard them merely because other inferences could have been drawn from the evidence).

Notwithstanding the ALJ's express authority to weigh medical evidence, there are instances in which courts have held a treating physician's medical opinion may be given special and deferential weight: when there exists no substantial evidence in the record to controvert the treating physician's opinion or when there are multiple reasonable treatment options and the claimant elects to proceed according to his treating physician's advice. *Amos v. Director, OWCP*, 153 F.3d 1051, 1054 (9th Cir. 1998); *Pietrunti*, 119 F.3d at 1042-1044; *see Bastien v. Califano*, 572 F.2d 908, 912 (2d Cir. 1978) ("The expert opinions

of a treating physician as to the existence of a disability are binding on the fact-finder unless contradicted by substantial evidence to the contrary.").

Relying on *Pietrunti*[6] and *Amos*,[7] Claimant urges the Board to hold treating physicians are entitled to automatic deference by virtue of their status as "treating" physicians. We decline to do so.

When there are conflicting medical opinions regarding disability or causation, as here, the ALJ is not required to give special weight to the treating physicians' opinions. *Carswell v. E. Pihl & Sons*, 999 F.3d 18, 31-32 (1st Cir. 2021), *cert. denied*, 14 S. Ct. 1110 (2022) (reasonable for ALJ to give greater weight to employer's medical expert where the claimant's treating doctor's opinion, and that of the claimant's other experts, were vague and conclusory); *Sea-Land Services, Inc. v. Director, OWCP* [*Ceasar*], 949 F.3d 921, 925 (5th Cir. 2020) (reasonable for ALJ to give less weight to treating physician where contrary evidence is more consistent with treatment records); *Hice v. Director, OWCP*, 48 F. Supp. 2d 501 (D. Md. 1999) (reasonable for ALJ to give less weight to treating physician's

[6] In *Pietrunti*, the Second Circuit held the ALJ's "reason for dismissing the findings of [the treating psychiatrist] had no substantial evidentiary foundation," because the record contained "uncontroverted and unanimous evidence" that the claimant suffered a work-related psychological injury. *Pietrunti*, 119 F.3d at 1042-1043. Consequently, the court concluded that the treating psychiatrist's opinion "was entitled to great weight, as [the claimant's] treating physician," and the ALJ improperly substituted his own medical judgment for the uncontradicted medical evidence. *Id.* at 1043-1044.

[7] In *Amos*, a claimant was presented with conflicting opinions regarding the proper treatment for his work-related shoulder injury. The United States Court of Appeals for the Ninth Circuit held that "neither the employer nor the Secretary [who is authorized to supervise medical care] stands in *loco parentis* to injured employees." Thus, "when the patient is faced with two or more valid medical alternatives, it is [he], in consultation with his own doctor, who has the right to chart his own destiny." *Amos*, 153 F.3d at 1054. Although the court stated that a treating physician's opinion is entitled to "special weight," *id.* at 1054, it did not state that such opinions are dispositive of all medical issues. Rather, it allowed that a treating physician's opinion could be "shown by the testimony of the other doctors to be unreasonable" – but under the facts of that case no other physician established the proposed course of treatment was unreasonable, particularly given that the "choice of one reasonable [treatment] option over the other was not [the ALJ's] to make." *Id.* Therefore, where there are conflicting but equally reasonable methods of treatment, the choice of how to proceed belongs to the claimant and his treating physician – not to the ALJ. *Id.*

opinion which was not supported by facts).[8] Rather, the ALJ must consider all relevant evidence including opinions from non-treating physicians, assess the weight and credibility of each opinion, and explain his rationale before reaching a decision on the evidence as a whole.[9] *See Burns v. Director, OWCP*, 7 BLR 1-597, 1-600 (1984) ("an ALJ need not

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[8] *See also Grizzle v. Pickands Mather and Co./Chisolm Mines*, 994 F.2d 1093 (4th Cir. 1993), *abrogated on other grounds by Director, OWCP v. Greenwich Collieries*, 512 U.S. 267 (1994). In *Grizzle*, a case arising under the Black Lung Benefits Act, the court discussed and rejected the claimant's assertion that her medical expert's opinion was entitled to greater weight than the contrary opinions of the employer's experts because he was the decedent's treating physician. The court stated: "Neither this circuit nor the Benefits Review Board has ever fashioned either a requirement or a presumption that treating or examining physicians' opinions be given greater weight than opinions of other expert physicians." *Grizzle*, 994 F.2d at 1097. It explained:

> It is, of course, one thing to say that we give great weight to the treating or examining physician's opinion; it is quite another to say that as a matter of law we give greater weight to such an opinion than to opinions by other physicians. The ALJ therefore was not required to defer to [the doctor's] diagnoses or to accord them greater weight than the opinions of other physicians. He was fully entitled to credit the contrary opinions….

Grizzle, 994 F.2d at 1097-1098 (internal footnote omitted). Although *Greenwich Collieries* abrogated this decision because it was issued at a time when the "true doubt" rule applied, the "true doubt" rule did not affect the aforementioned analysis in *Grizzle*. Thus, the court's differentiation between giving great weight to a treating physician's opinion and stating such opinions are dispositive of medical issues as a matter of law, remains valid.

[9] Social Security disability cases provide examples of when an ALJ may give a treating physician less weight than other medical opinions on the record. For instance, in *Greenspan v. Shalala*, 38 F.3d 232 (5th Cir. 1994), the United States Court of Appeals for the Fifth Circuit identified several "good cause" exceptions when an ALJ may accord diminished weight to a treating physician's testimony: (1) when the medical opinion is brief and conclusory; (2) when the opinion is not supported by medically acceptable clinical laboratory diagnostic techniques; or (3) when the opinion is otherwise not supported by the evidence in the record. *Greenspan*, 38 F.3d at 237; *Scott v. Heckler*, 770 F.2d 482, 485 (5th Cir. 1985) (same). Also, cases arising under the Black Lung Benefits Act indicate an ALJ is not required to defer to one physician's conclusion over another solely because that physician has treated the claimant. *See, e.g., Consolidation Coal Co. v. Director, OWCP* [*Sisson*], 54 F.3d 434, 438 (7th Cir. 1995); *Peabody Coal Co. v.*

mechanically afford a treating physician's opinion the greatest weight."). Therefore, we reject Claimant's argument that medical experts are automatically entitled to greatest weight by virtue of their status as treating physicians.

In his decision, the ALJ acknowledged Drs. Avila and Manrique as Claimant's treating physicians but properly declined to afford them automatic deference on that basis. D&O at 20. He explained he gave both doctors minimal weight because he found their treatment records and opinions primarily relied on Claimant's self-reported symptoms which the ALJ found not credible. *Id.* While acknowledging Dr. Avila included the DSM-V criteria for PTSD, the ALJ also noted Dr. Avila did not consider Claimant's clinical history until his third appointment and he documented events not reported by any other medical professional or supported elsewhere in the record, including an infirmary bombing, an attempted kidnapping, and a period from 2009 through 2011 when Claimant lived in the Peruvian jungle.[10] *Id.* Further, the ALJ concluded Dr. Manrique made only a passing reference to the DSM-V criteria for PTSD and did not indicate he performed any objective testing to corroborate his diagnosis.[11] *Id.*

Director, OWCP [*Railey*], 972 F.2d 178, 181-182 (7th Cir. 1992); 20 C.F.R. §718.104(d)(5) (an ALJ's decision to give "controlling weight" to a treating doctor's opinion "shall also be based on the credibility of the physician's opinion in light of its reasoning and documentation, other relevant evidence and the record as a whole").

[10] The record contains three reports from Dr. Avila, reflecting notes from appointments on September 12, 2018, November 20, 2021, February 5, 2022, and February 9, 2022. JX 17. Dr. Avila's first report detailed Claimant's self-reported symptoms and experiences in Iraq before briefly setting forth his PTSD diagnosis. *Id.* at 3. His November 20, 2021 report is substantively similar but supplements his prior report by adding recommendations to attend psychotherapy and psychiatric sessions, take daily walks around the neighborhood, and to "not return to work in war zones." *Id.* at 7-8. Finally, his third report on February 14, 2022, summarizes the February 2022 appointments and describes how Claimant's symptomology supports a PTSD diagnosis under the DSM-V criteria, but does not indicate he conducted any objective testing. *Id.* at 14, 16-17.

[11] The record contains two reports from Dr. Manrique. JX 21. The first report, dated September 12, 2018, indicates he conducted a mental examination and provides a diagnostic impression of PTSD due to sequelae of war. *Id.* at 3-4. His second report, dated February 15, 2021, listed the DSM-V criteria for PTSD and described follow up appointments from December 16, 2020, January 13, 2021, and February 10, 2021. *Id.* at 9-12. While this report listed Claimant's continued self-reported symptoms from each

This case, unlike *Pietrunti*, does not contain "uncontroverted and unanimous" evidence on causation, and the ALJ did not substitute his own judgment for that of Claimant's treating physicians. The record contains conflicting reports from four physicians addressing whether Claimant has a work-related psychological injury, and therefore the ALJ was obligated to review and weigh that evidence. *Pietrunti*, 119 F.3d at 1042. Thus, the ALJ did not err by not deferring to the opinions of Claimant's treating physicians. *Carswell*, 999 F.3d at 31-33.

Weighing the Evidence as a Whole

Claimant next contends the ALJ erred in finding he did not prove his psychological injury claim by a preponderance of the evidence. Cl. Brief at 11. Specifically, he argues the ALJ failed to resolve evidentiary doubts in his favor despite initially finding him a credible witness. He also alleges the ALJ erred by conclusively finding the medical evidence in equipoise under *Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 279-280 (1994), without considering that credible evidence may not be ignored. Cl. Brief at 12-13. Further, he contends the ALJ relied on minor inconsistencies in his descriptions of his symptoms while ignoring his deposition testimony, photographs, employment certificates, employment contract, discovery responses, and other filings with the Department of Labor. *Id.* at 12. Ultimately, Claimant contends the ALJ erred in basing his decision solely on the medical evidence despite finding Claimant credible. *Id.* at 13-14. We are not persuaded by Claimant's arguments.

Because Employer successfully rebutted the Section 20(a) presumption, Claimant is no longer entitled to it, and the issue of causation must be resolved on the record as a whole, with Claimant bearing the burden of persuasion by a preponderance of the evidence. *Rainey*, 517 F.3d at 635; *Marinelli*, 248 F.3d at 65; *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 262 (4th Cir. 1997). And, as previously stated, the ALJ is entitled to weigh the evidence and draw his own inferences from it. *Compton*, 33 BRBS at 176-177; *see also Donovan*, 300 F.2d at 742.

As a preliminary matter, Claimant's assertion that the ALJ found him to be an overall credible witness is not accurate. The ALJ found the record establishes that Claimant experienced traumatic events while working for Employer in Iraq that are capable of causing psychological injuries. Thus, "on this point" the ALJ found him to be a "credible witness." D&O at 18-19. However, the ALJ also found "[t]he descriptions of Claimant's

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appointment and detailed Claimant's prescribed psychotherapeutic medications, it did not indicate Dr. Manrique conducted any objective testing to support his PTSD diagnosis. *Id.*

symptoms are somewhat less uniform," and he concluded these discrepancies "undermine Claimant's credibility as a witness." *Id.* at 19 (emphasis added).

Specifically, the ALJ noted that while Claimant testified at his deposition that he had experienced extreme irritability, insomnia, nightmares, headaches, stress, paranoia, and sensitivity to noises, he also stated he had not been bothered by his psychological condition for months because he was able to better manage his behavior with the help of his psychologist and treatment regimen. D&O at 19; JX 17 at 3; JX 27 at 5-6, 26. However, at the time of this testimony in August 2021, Claimant had not visited with Dr. Avila in nearly three years nor with Dr. Manrique for six months. JX 17 at 3; JX 21 at 9. Claimant told Dr. Manrique he experienced extreme anxiety, had depressive tendences, experienced flashbacks, and had difficulty finding employment, and Dr. Manrique's September 2018 report noted Claimant's PTSD resulted in difficulty finding employment. JX 21 at 2-3, 9-10; JX 27 at 20-22. However, the ALJ noted Claimant testified he has maintained his current employment since 2013. *Compare* JX 27 at 20-22, *with* JX 21 at 2-3; D&O at 19. Similarly, Claimant told Dr. Avila he experienced flashbacks, hypervigilance, and physical discomfort in response to loud noises, though the ALJ noted there is no other support from any other medical professional for those symptoms in the record. Dr. Avila's February 14, 2022 report also stated Claimant has recurrent distressing dreams, which contradicts Claimant's testimony that he used to have them "quite often" but "[n]ow, I don't have them."[12] *Compare* JX 17 at 16, *with* JX 27 at 26; D&O at 20.

Further, the ALJ found Claimant inconsistent in describing his marital relationship status to each doctor. D&O at 19-20. At his August 2021 deposition, he testified he and his wife were back together; however, one month later, he told Dr. Matta that he and his wife had been separated for two years, and in December 2021, he told Dr. Benejam they had been separated permanently since 2018. JX 22 at 3; JX 27 at 5, 24; EX 3 at 3.

Consequently, contrary to Claimant's assertion, the ALJ found he is *not credible* with respect to key details of his alleged psychological condition. D&O at 20. Substantial evidence in the record supports the ALJ's finding of inconsistencies in Claimant's testimony including, but not limited to, descriptions of his psychological symptoms. As the ALJ permissibly determined that Claimant is not a credible witness as to his alleged

[12] Dr. Benejam reported that Claimant described other symptoms, including a history of suicidal ideation, ringing in the ears, and concentration problems. JX 22 at 3-5, 11. The ALJ found those symptoms are not documented elsewhere in the record. D&O at 19.

psychological condition, we affirm the ALJ's credibility determination. *Ceres Gulf. Inc. v. Director, OWCP*, 683 F.3d 225, 228 (5th Cir. 2012); *Cordero*, 580 F.2d at 1335.

Moreover, contrary to Claimant's assertion, the ALJ did not limit his findings to a review of only the medical evidence. As discussed, he evaluated Claimant's deposition testimony and considered it in making his findings. D&O at 18-21. He also specifically found that Claimant's photographs, certifications, and employment letters support his testimony that he worked in a war zone which could have led to his psychological condition. D&O at 19. While the ALJ found this evidence supports Claimant's contention that he worked in war zone conditions, Claimant does not specify how the evidence undermines the ALJ's ultimate conclusion that he is not credible with respect to whether he suffered a work-related psychological injury. Thus, the ALJ rationally looked at the totality of the record in weighing the evidence, and he did not merely consider the medical evidence alone.[13] *Crawford v. Director, OWCP*, 932 F.2d 152, 154 (2d Cir. 1991).

Finally, we reject as unpersuasive Claimant's argument that the ALJ erred in concluding the medical evidence is in equipoise. The ALJ detailed why he found each doctor's report entitled to limited weight. Again, he found Drs. Avila's and Manrique's opinions are not well-documented or well-reasoned based on the physicians' over-reliance on Claimant's self-reported symptoms and their lack of objective testing. D&O at 20. While the ALJ determined the reports of Drs. Matta and Benejam are well-reasoned and included objective testing, he afforded limited weight to Dr. Matta's report because she overemphasized her belief that Claimant exaggerated his symptoms, and her opinion that Claimant did not experience traumatic events is contradicted by Claimant's war zone experiences documented in the record. *Id.* Likewise, he gave limited weight to Dr. Benejam's report because, like Drs. Avila and Manrique, Dr. Benejam relied on Claimant's self-reporting, considered additional symptoms that Claimant did not testify to having, and contradicted Claimant's deposition testimony by stating Claimant never sought help for his psychological condition while he was in Iraq. *Id.* at 21.

Based on the questionable grounds for all the doctors' opinions, the ALJ permissibly found the medical evidence is in equipoise. The ALJ's finding that Claimant credibly testified about his work experiences does not undermine the ALJ's finding that his testimony is unreliable with respect to his psychological condition; nor does it undermine

[13] Claimant's reliance on *Director, OWCP v. Greenwich Collieries*, 512 U.S. 267 (1994), is misplaced. *Greenwich Collieries* rejected the argument Claimant raises – that any doubts must be construed in the claimant's favor. The Court held claimants bear the burden of persuasion. *Greenwich Collieries*, 512 U.S. at 277-278; *Santoro v. Maher Terminals, Inc.*, 30 BRBS 171, 174 (1996).

the ALJ's finding that the record lacks credible medical evidence connecting his alleged psychological condition to his work. As the ALJ's credibility determinations and weighing of the evidence are rational and supported by substantial evidence, *see Gasparic*, 7 F.3d at 323, we affirm the ALJ's findings. *Cordero*, 580 F.2d at 1335; *see also Carswell*, 999 F.3d at 31-33; *Calbeck*, 306 F.2d at 695-696. Consequently, we affirm the ALJ's determination that Claimant did not establish a work-related psychological injury by a preponderance of the evidence.[14] *Maher Terminals Inc. v. Director, OWCP*, 992 F.2d 1277, 1284 (3rd Cir. 1993) (When the ALJ finds the evidence is in equipoise it, "by definition, means that the claimant did not carry [the] burden of proof by a preponderance of the evidence.").

[14] Claimant also contends the ALJ erred by improperly taking "judicial" notice of prior ALJ decisions, *Loarte Rojas v. SOC, LLC*, 2021-LDA-01893 (ALJ Mar. 23, 2023), and *Padilla Morales v. Triple Canopy, Inc.*, 2021-LDA-01896 (ALJ May 5, 2023), *aff'd*, BRB No. 23-0327 (July 3, 2024) (unpub.), along with medical records from those cases, without giving him an opportunity to respond. A factfinder may take official notice of verifiable government websites and documents. *See Duvall v. Mi-Tech Inc.*, 56 BRBS 1, 2 n.6 (2022). Court documents, including previous decisions, typically fall under this category because they are verifiable and a matter of public record. *Id.*; *Hill v. Avondale Industries, Inc.*, 32 BRBS 186, 188 (1998). However, if an ALJ takes judicial notice of something not submitted into the record, then the parties must be presented with an opportunity to respond. *See Jordan v. James G. Davis Constr. Corp.*, 9 BRBS 529, 530 (1978) (an ALJ must provide the parties with "the opportunity to contradict the noticed facts with evidence to the contrary" if he decides to take judicial notice of medical evidence not provided in the evidentiary record). Nevertheless, any improper official notice the ALJ took is harmless in this case, as the ALJ provided sufficient rationale based on the record in this claim for giving Dr. Benejam's opinion limited weight. *See Fleishman v. Director, OWCP*, 137 F.3d 131, 135 (2d Cir. 1998), *cert. denied*, 525 U.S. 981(1998).

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge