U.S. Department of Labor

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

BRB No. 22-0415

DAVID BLACK	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	DATE ISSUED: 12/18/2023
ELECTRIC BOAT CORPORATION	)	
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Noran J. Camp, Administrative Law Judge, United States Department of Labor.

Mary Ann Violette and Robert P. Audette (Audette, Audette & Violette), East Providence, Rhode Island, for Claimant.

Conrad M. Cutcliffe and Daniel J. Archetto (Cutcliffe Archetto & Santilli), Providence, Rhode Island, for Self-Insured Employer.

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

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Noran J. Camp's Decision and Order Denying Benefits (2020-LHC-00542) rendered on a claim filed pursuant to the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (Act).[1] We must affirm the ALJ's findings of fact and conclusions of law if they are

[1] This case arises within the jurisdiction of the United States Court of Appeals for the First Circuit because the alleged injury occurred in Rhode Island. 33 U.S.C. §921(c);

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 67-year-old welder who alleges his employment with Employer caused or contributed to his increased hearing loss and binaural hearing impairment. Since 1979, Claimant worked intermittently for Employer – approximately 26 years in total[2]– and was exposed to loud noise during that employment. TR at 15, 18-19, 21-24, 26-32; CX 1 at 2; EX 3 at 79.

As part of Employer's Hearing Conservation Program, Claimant wore ear protection "every day" and underwent audiograms annually. TR at 35; CX 1 at 2; CX 6 at 19-21, 28; EX 1 at 19-21; EX 2 at 1. When Claimant stopped working for Employer in 2005, his annual audiogram demonstrated a 0% hearing impairment. CX 1 at 1; CX 3 at 24; CX 4 at 1; EX 5 at 1. When Claimant returned to work for Employer in 2017, his audiogram demonstrated a 30.9% binaural hearing impairment.[3] EXs 5-6. In 2018, his annual audiogram demonstrated a 40.3% binaural hearing impairment. *Id.*

On April 17, 2019, Claimant was evaluated by his chosen audiologist, Dr. Mary Kay Uchmanowicz. The audiogram demonstrated a 47.2% binaural hearing impairment. CX 1 at 3; CX 3 at 69-70. Dr. Uchmanowicz attributed Claimant's binaural hearing loss to noise exposure during his employment with Employer. In her June 12, 2019 report, she wrote:

> To a reasonable degree of audiological certainty[,] Mr. Black's binaural hearing loss is causally related to his two years of service combined with his previous twenty-one years of employment at Electric Boat, working in noise levels above the OSHA [Occupational Safety and Health Administration] Standard of 85 dBA without adequate hearing protection.

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see Roberts v. Custom Ship Interiors, 35 BRBS 65, 67 n.2 (2001), *aff'd*, 300 F.3d 510, 36 BRBS 51(CRT) (4th Cir. 2002), *cert. denied*, 537 U.S. 1188 (2003); 20 C.F.R. §702.201(a).

[2] Claimant worked for Employer from 1979 until 1989, 1989 until 1993, 1996 until 2005, and 2017 until March 2019. TR at 15, 29-31, 33; CX 1 at 2; CX 6 at 10-18.

[3] Sometime in 2016 or 2017, Claimant started wearing hearing aids after he had his hearing tested at the Veterans Affairs Medical Center in Providence, Rhode Island. TR at 36-37; CX 6 at 26-27; EX 1 at 26-27; EX 3 at 17.

CX 1 at 3.[4]

On June 29, 2019, Claimant was evaluated by Employer's audiologist, Dr. Janet P. Sells. Dr. Sells administered an audiogram which demonstrated a 34.7% binaural hearing impairment. EX 2 at 2-4. Because Claimant had no hearing loss when he left Employer's employ in 2005, but he demonstrated significant loss upon restarting in 2017, Dr. Sells concluded his hearing loss is not work-related. *Id.* at 2. She opined the change in Claimant's binaural hearing impairment from 2017 (30.9%), until her audiogram in 2019 (34.7%), was "not characteristic of noise exposure" and was instead "characteristic of non-occupational hearing losses such as due to aging of the auditory system." She noted Claimant's hearing loss from 2017 to 2019 "must be viewed as a continuation of his pre-existing hearing loss that was present when he was rehired in 2017 and not due to noise exposure." *Id.* at 2-3.

Claimant filed a claim for 47.2% binaural hearing impairment based on the results of Dr. Uchmanowicz's audiogram, and Employer controverted the claim. ALJX 1, Stip. 6.

Following a formal hearing, the ALJ issued a Decision and Order (D&O) Denying Benefits on June 7, 2022.[5] He found Claimant invoked the Section 20(a) presumption that his hearing loss is work-related, 33 U.S.C. §920(a), because he suffered a harm (binaural hearing loss) and was exposed to "noisy working conditions" from 2017 through 2019 which could have caused the harm.[6] D&O at 10. Next, the ALJ found Employer rebutted the Section 20(a) presumption through Dr. Sells' report and testimony, which he determined was "sufficient evidence… that, if credited, sever[ed] the connection between Claimant's hearing loss and his work environment." *Id.* at 11-12. Upon weighing the evidence as a whole, the ALJ maintained his focus on Claimant's employment with Employer from 2017 to 2019, and Claimant's increased hearing loss during that time. *Id.* at 12-14. He found Claimant's testimony regarding his working conditions was credible, and both audiologists were equally qualified to render opinions. However, the ALJ

[4] The "two years of service" refers to Claimant's work for Employer between 2017 and 2019. CX 1 at 2-3.

[5] At the hearing before the ALJ, Claimant clarified the issue was "whether or not [Claimant] suffered a hearing loss that related to, either combined with, aggravated, or [was] contributed to" by his employment with Employer from 2017 until 2019. TR at 11.

[6] When describing Claimant's employment history, the ALJ specifically focused on Claimant's working conditions during his employment with Employer from 2017 to 2019 because, as the ALJ stated, "[Claimant] does not seek compensation for any hearing loss preceding his return to EB [Electric Boat] in 2017." D&O at 4.

ultimately afforded more weight to Dr. Sells' opinion. While acknowledging Claimant has hearing loss, the ALJ concluded Claimant failed to meet his burden of persuasion of showing his hearing loss was caused by or related to his employment with Employer from 2017 to 2019. The ALJ therefore denied disability compensation and medical benefits. *Id.* at 14.[7]

Claimant appeals the ALJ's decision, contending the ALJ erred in finding Employer rebutted the Section 20(a) presumption and in weighing the evidence as a whole. Employer responds, urging affirmance.

Section 20(a) Rebuttal

Claimant first contends the ALJ "misconstrued or overlooked material evidence" and thereby erred in finding Employer rebutted the presumption of compensability with Dr. Sells' opinion. He asserts Dr. Sells' opinion is insufficient to rebut the presumption because she did not refute the fact that Claimant's hearing impairment increased between 2017 and 2019 or that Claimant's noise exposures at work could have potentially contributed to his hearing loss. We disagree.

If a claimant invokes the Section 20(a) presumption by producing some evidence 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., Bath Iron Works Corp. v. Fields*, 599 F.3d 47, 44 BRBS 13(CRT) (1st Cir. 2010). Once invoked, the burden shifts to the employer to rebut the presumption of causation by introducing "substantial evidence" showing workplace conditions did not cause, contribute to, or aggravate the claimant's condition. *Carswell v. E. Pihl & Sons*, 999 F.3d 18, 55 BRBS 27(CRT) (1st Cir. 2021), *cert. denied*, 142 S. Ct. 1110 (2022); *Fields*, 599 F.3d 47, 44 BRBS 13(CRT); *Bath Iron Works Corp. v. Preston*, 380 F.3d 597, 38 BRBS 60 (CRT) (1st Cir. 2004); *Sprague v. Director, OWCP*, 688 F.2d 862, 865, 15 BRBS 11, (CRT) (1st Cir. 1982); *Universal Maritime Corp*. v. *Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997); *Rose*, 56 BRBS 27; *O'Kelly v. Dep't of the Army/NAF*, 34 BRBS 39 (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, 28 BRBS 43(CRT) (1994); *Santoro v. Maher Terminals, Inc.*, 30 BRBS 171 (1996).

[7] Given the ALJ's finding that Claimant's hearing loss was not related to his employment with Employer, he did not address Employer's entitlement to relief under Section 8(f), 33 U.S.C. §908(f). *Id.*

In this case, the ALJ rationally found Employer rebutted the Section 20(a) presumption with Dr. Sells' opinion. In her report and at her deposition, Dr. Sells acknowledged Claimant had pre-existing binaural hearing loss that increased during the time he last worked as a welder for Employer, from 2017 to 2019. She also acknowledged welding without proper hearing protection "could possibly" contribute to hearing loss, but that Claimant reported to her he used single hearing protection regularly and double hearing protection when he was "doing something louder." EX 2; EX 3 at 48-52. Based on her examination, Claimant's employment history, and his audiological history, Dr. Sells concluded Claimant's binaural sensorineural hearing loss is "characteristic of non-occupational hearing losses such as due to aging of the auditory system." EX 2 at 2-3. Dr. Sells testified Claimant's hearing loss is not noise-induced because his hearing "changed so drastically between 2005 and 2017… without significant noise exposure," and his hearing loss would be expected to continue as he gets older. EX 3 at 35. She acknowledged there was a "slight progression" in Claimant's hearing loss and impairment from 2017 to 2019 but stated the progression "must be viewed as a continuation of his pre-existing hearing loss" and "not due to noise exposure." EX 2 at 2-3. She explained the "slight" increase in Claimant's binaural hearing impairment from 2017 to 2019 "was due to five to 10 dB changes in the low frequencies that are not affected by noise exposure," and his audiogram was "relatively flat in contour" at higher frequencies affected by noise exposure. EX 3 at 26-28. She stated that in her experience, this pattern was not consistent with noise-induced hearing loss. *Id.* at 26-27, 54-58.

Contrary to Claimant's contentions, Employer was not required to submit evidence to refute the *existence* of Claimant's increased hearing loss or potential exposure to injurious noise. *See, e.g.*, *Bourgeois v. Director, OWCP*, 946 F.3d 263, 53 BRBS 91(CRT) (5th Cir. 2020); *Duhagon v. Metro. Stevedore Co.*, 31 BRBS 98 (1997), *aff'd*, 169 F.3d 615, 33 BRBS 1(CRT) (9th Cir. 1999). Rather, on rebuttal, an employer satisfies its burden if it submits "such relevant evidence as a reasonable mind might accept as adequate to support a finding that workplace conditions did not cause the accident or injury." *Fields*, 599 F. 3d at 55, 44 BRBS at 17(CRT) (quoting *Rainey v. Director, OWCP*, 517 F.3d 632, 637, 42 BRBS 11, 12(CRT) (internal quotations omitted)); *see Bath Iron Works Corp. v. Dir., OWCP [Hartford]*, 137 F.3d 673, 675, 32 BRBS 45, 46(CRT) (1st Cir. 1998). Employer submitted Dr. Sells' opinion who, in her report and deposition, stated to a reasonable degree of audiological certainty that Claimant's hearing loss and hearing impairment are not related to his work for Employer. The ALJ's finding that Dr. Sells' opinion, "if credited, severs the *connection* between Claimant's hearing loss and his work environment," D&O at 12 (emphasis added), is supported by substantial evidence and is in accordance with law. *Hartford*, 137 F.3d at 674-675, 32 BRBS at 46(CRT) (physician opinion stated with reasonable degree of medical certainty sufficiently rebuts the presumption); *Moore*, 126 F.3d at 262, 31 BRBS at 123(CRT) (evidence "casting doubt on

the causative link between [work incident] and [injury]" sufficient "as a matter of law" to "drop presumption from case").

Claimant next contends Dr. Sells' opinion is insufficient to rebut the presumption because she did not rule out noise exposure generally, or specifically with Employer, as potential causes or contributory factors of his binaural hearing impairment and increased hearing loss. Cl. Brief at 11-19. In support, Claimant points to Dr. Sells' answers to two hypothetical questions posed by Employer's counsel during her deposition:

> Q: Hypothetically speaking, could it be that there was a continuing loss that was contributed to by his employment, hypothetically, even though he was using hearing protection?
>
> A: It is definite that he had a very small progression of his hearing loss during the time he was at Electric Boat until he left, and, since I tested him after he left Electric Boat, it could have occurred even more.
>
> ***
>
> Q: Hypothetically, there was a potential, because of his increased hearing loss, that there may have been some noise inducement, whether or not it was at Electric Boat or somewhere else; correct?
>
> A: It is not possible to rule that out.

EX 3 at 30-33.

Contrary to Claimant's contention, Employer was not required to "rule out any possible causal relationship between the claimant's employment and his condition." *Bath Iron Works Corp. v. Director, OWCP [Shorette]*, 109 F.3d 53, 56, 31 BRBS 19, 21(CRT) (1st Cir. 1998). A medical opinion of non-causation rendered to a reasonable degree of medical certainty is sufficient to rebut the presumption, *O'Kelley*, 34 BRBS at 41-42. Dr. Sells' general, non-specific, testimony concerning the hypothetical possibility of noise-induced hearing loss does not render her opinion insufficient. *Id.* at 42 ("'[A]bsolute certainty' is a difficult concept in the medical profession."). Rather, throughout her deposition and report, she confirmed her opinion that Claimant's hearing impairment and increased hearing loss were neither noise-induced nor attributable to his employment with

Employer from 2017 to 2019.[8] EXs 2-3. Moreover, it is clear from the ALJ's decision that he considered Dr. Sells' acknowledgments of Claimant's increased hearing loss from 2017 to 2019, and the possibility that Claimant's noise exposure at work could contribute to hearing loss. D&O at 10-11 ("Both experts agreed that Claimant's noise exposures at work can possibly contribute to hearing loss.").

As Dr. Sells' opinion constitutes substantial evidence to rebut the presumption by casting doubt on the causal connection between Claimant's hearing loss and his noise exposures at work, we affirm the ALJ's finding that Employer rebutted the Section 20(a) presumption.[9] Consequently, as the ALJ found, the presumption drops from the case and

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[8] Immediately after responding to Employer's hypothetical questions, Dr. Sells reiterated her opinion, sans hypotheticals, that based on a reasonable degree of audiological certainty, Claimant's hearing loss is not noise-induced or caused by his employment:

> Q: Is it your opinion that there was no noise-induced hearing loss, while he was employed at Electric Boat, for the last two years of his employment?
>
> A: Correct.
>
> ***
>
> Q: And your opinion in your report of 2019 indicates that the hearing loss that he had, the slight progression of hearing loss between 2017 and 2019, must be viewed as a continuation of his pre-existing hearing loss. What do you base that on?
>
> A: The fact that his hearing changed so drastically between 2005 and 2017 without – that's his testimony – without significant noise exposure, then it would be expected that his hearing loss will continue as he gets older.
>
> Q: And, again, that is based on a reasonable degree of audiological certainty?
>
> A: Yes, it is.

EX 3 at 33-35.

[9] Claimant further argues that in finding Dr. Sells' opinion sufficient to rebut the Section 20(a) presumption, the ALJ "misconstrued" Dr. Uchmanowicz's experience and understanding of Claimant's noise exposures and Dr. Robert A. Dobie's medical journal. Cl. Brief at 15-18. However, this argument is premature at the rebuttal stage. As the Board and the First Circuit have held, the employer's burden on rebuttal is one of production, not

the decision must be based on consideration of the record as a whole, with the burden of persuasion on Claimant. *Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT).

Weighing the Evidence as a Whole

Claimant contends the ALJ erred as a matter of law when weighing the evidence because he failed to consider whether Claimant's employment contributed to his pre-existing hearing loss. When aggravation of a preexisting condition is alleged, as it is here, an employer is liable for the entire resultant disability if the claimant's employment-related injury contributed to, combined with, or aggravated a pre-existing or underlying condition. *Fields*, 599 F.3d at 55, 44 BRBS at 17-18(CRT); *Strachan Shipping Co. v. Nash*, 782 F.2d 513, 18 BRBS 45(CRT) (5th Cir. 1986) (en banc); *Primc v. Todd Shipyards Corp.*, 12 BRBS 190, 193 (1980) (aggravation rule applies to hearing loss injuries). This rule applies not only when the underlying condition worsens, but also when the work incident causes the claimant's underlying condition to become symptomatic. *Gardner v. Director, OWCP*, 640 F.2d 1385, 13 BRBS 101(CRT) (1st Cir. 1981); *Pittman v. Jeffboat, Inc.*, 18 BRBS 212 (1986). However, if the claimant's disability is due solely to the natural progression of a prior non-work-related injury or condition, the employer is not liable for the disabling condition. *See generally Lamon v. A-Z Corp.*, 46 BRBS 27 (2012), *vacating on recon.* 45 BRBS 73 (2011).

After finding Employer rebutted the Section 20(a) presumption, the ALJ correctly characterized the next step in the causation analysis: "I must now weigh the evidence as a whole to determine if Claimant's employment at Electric Boat *caused* or *aggravated* his hearing loss." D&O at 12 (emphasis added). The ALJ then concluded Claimant failed to meet his burden of persuasion by showing "his hearing loss was *caused* by his employment at Electric Boat from 2017 to 2019." *Id.* at 12, 14 (emphasis added). Albeit imprecise, the ALJ's use of the word "caused" in setting forth his ultimate conclusion – rather than the broader terms of "caused, contributed to, or aggravated" – is harmless because the evidence he credited (Dr. Sells' reports and testimony), and the reasons why he credited it, thoroughly resolved the question of whether Claimant's work with Employer caused or contributed to Claimant's hearing loss.

Claimant next challenges the merits of the ALJ's factual findings and credibility determinations for the same reasons he asserts the ALJ erred in finding Employer rebutted

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persuasion, and is "not dependent on credibility." *Fields*, 599 F.3d at 55, 44 BRBS at 17(CRT) (citing *Hartford*, 137 F.3d at 675, 32 BRBS at 46(CRT)); *Rose*, 56 BRBS at 35; *Suarez v. Serv. Employees Int'l, Inc.*, 50 BRBS 33 (2016); *Cline v. Huntington Ingalls, Inc.*, 48 BRBS 5 (2013).

the Section 20(a) presumption. Cl. Brief at 19-21. The ALJ has the authority and discretion to weigh the evidence, accepting any medical opinion in whole or in part, and draw reasonable inferences therefrom. *Carswell*, 999 F.3d at 27-28, 55 BRBS at 31-32(CRT); *Moore*, 126 F.3d 256, 31 BRBS 119(CRT); *Santoro*, 30 BRBS at 173. The Board may not reweigh the evidence or disregard the ALJ's choice between reasonable inferences. *Burns v. Director, OWCP*, 41 F.3d 1555, 29 BRBS 28(CRT) (D.C. Cir. 1994); *Mijanjos v. Avondale Shipyards, Inc.*, 948 F.2d 941, 945, 25 BRBS 78, 81(CRT) (5th Cir. 1991) ("The choice between reasonable inferences is left to the ALJ and may not be disturbed if it is supported by the evidence."). Nor will the Board 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, 8 BRBS 744, 747(CRT) (9th Cir. 1978), *cert. denied*, 440 U.S. 911 (1979). If the ALJ's conclusion upon weighing the evidence is rational and supported by substantial evidence, it must be affirmed. *Carswell*, 999 F.3d at 27-28, 55 BRBS at 31-32(CRT).

The ALJ's conclusion that Claimant failed to establish his hearing loss is related to his employment, is rational, supported by substantial evidence, and in accordance with law. Although he found both audiologists equally qualified, the ALJ specifically credited, and was persuaded by, Dr. Sells' explanations for why Claimant's hearing loss is not noise-induced and why his "decline in hearing from 2017 to 2019 was a continuation of [his] pre-existing hearing loss." D&O at 13 (citing EX 3 at 34). Dr. Sells testified Claimant did not have noise-induced hearing loss because from 1988 to 2005 (periods he worked for Employer, was exposed to potentially injurious noise, and wore hearing protection) his audiograms showed no ratable hearing impairment. EX 3 at 34.[10] She explained why she thought Claimant's increased hearing loss from 2017 to 2019 was a continuation of his pre-existing hearing loss and not related to his employment with Employer, *id.* at 35 ("The fact that his hearing changed so drastically between 2005 and 2017… without significant noise

[10] She stated:

> if we look at 3000 hertz, which is definitely sensitive to noise exposure, in 1988 he had a 15-decibel threshold for the left ear. In 2005 he had a … 20-decibel threshold at 3,000 hertz for the left year. Five dB, it's test reliability: It's basically no change….
>
> Going from pretty good hearing in 2005 to 2017, there was an incredible decrease in hearing loss all the way across all the frequencies.

EX 3 at 34.

exposure, then it would be expected that his hearing loss will continue as he gets older."), and why his hearing loss pattern was not consistent with noise-induced hearing loss, *id.* at 26-28, 54-58 (the change in Claimant's binaural hearing impairment from 2017 to 2019 "was due to five to 10 dB changes in the low frequencies that are not affected by noise exposure," and his audiogram was "relatively flat in contour" at higher frequencies affected by noise exposure).

The ALJ also specifically rejected Dr. Uchmanowicz's opinion that Claimant's employment caused or contributed to his hearing loss and explained why. He described Dr. Uchmanowicz's opinion as "weak" in two respects, rationally finding her opinion was not supported by facts in the record and was "internally inconsistent." D&O at 13. He took issue with Dr. Uchmanowicz's assertion that Claimant worked in noise levels above 85 decibels because she did not explain "why she believes that the noise levels were above 85 dBA." *Id.*[11] He also rationally found Dr. Uchmanowicz's statement that Claimant wore inadequate hearing protection was not supported by any evidence and actually was contradicted by the evidence in the record. *Id.*[12] The ALJ further found Dr. Uchmanowicz's opinion conflicted with the very authority upon which she relied; namely, Dr. Dobie's opinion that noise-induced hearing loss is reflected the earliest at 3000, 4000,

[11] In a footnote, the ALJ added that in at least one respect Dr. Uchmanowicz "oddly" may have underestimated Claimant's noise exposure, as she thought Claimant's job was an "X-ray welder," a position requiring only occasional welding, when in fact his work was primarily welding. D&O at 13 n.23.

[12] In his brief, Claimant asserts the ALJ "overlooked" his testimony that his hearing protection was "inadequate" because he still heard noise when he was wearing his earplugs and removed his hearing protection to hear his colleagues. Cl. Brief at 21-22. However, the ALJ specifically addressed this testimony and Claimant's other statements regarding his noise exposure at work. D&O at 5-6. Based on Claimant's deposition and hearing testimony that he always wore earplugs when required and Drs. Uchmanowicz's and Sells' deposition testimony that Claimant reported he always wore hearing protection and did not report to them it was inadequate, the ALJ rationally inferred Claimant's hearing protection was adequate. Moreover, the ALJ based his decision to deny benefits on "whether to credit Dr. Uchmanowicz's opinion, or Dr. Sells' [opinion]," ultimately resolving the disagreement between the experts primarily upon the persuasiveness of their explanations as to whether the hearing loss reflected on Claimant's audiogram could, from an audiological standpoint, have been caused by noise exposure. *Id.* at 12. Accordingly, we reject Claimant's assertion.

and 6000 Hz, with the greatest loss usually occurring at 4,000 Hz. *Id.*; CX 5 at 4.[13] The ALJ mentioned that in discussing Claimant's 2005 audiogram, Dr. Uchmanowicz found it reflected hearing loss at 6,000 Hz and 8,000 Hz, but none at the lower frequencies, and did not provide any "explanation for why noise-induced hearing loss in this case could have skipped the normal 4,000 Hz and jumped straight to the 6,000 Hz and 8,000 Hz level." D&O at 13; *see also* CX 3 at 24. On this point, the ALJ found Dr. Sells' opinion, that it was impossible to have noise-induced hearing loss at 6,000 and 8,000 hertz without having hearing loss at 4,000 hertz, was more persuasive than Dr. Uchmanowicz's opinion.[14] *Id.*

Based on the evidence in the record when weighed as a whole, the ALJ concluded Dr. Sells' opinion was "more thorough, well-reasoned, and convincing" than Dr. Uchmanowicz's opinion because it "reflect[ed] an accurate understanding of Claimant's work, his noise exposures, and his reported use of hearing protection… [and] a clear understanding of hearing loss and how to recognize noise-induced hearing loss." D&O at 13. Thus, he found Claimant failed to meet his burden of persuasion. *Id.* Because the ALJ's credibility determinations are not "inherently incredible or patently unreasonable," *Cordero*, 580 F.2d at 1335, 8 BRBS at 747(CRT), and his factual findings are rational and supported by substantial evidence in the record, *Carswell*, 999 F.3d at 32, 55 BRBS at 35(CRT), we affirm the ALJ's findings on weighing the record as a whole and his denial of disability and medical benefits.

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[13] Dr. Dobie's medical journal article states, in pertinent part:

> The earliest damage to the inner ears reflects a loss at 3000, 4000, and 6000 Hz. There is always far more loss at 3000, 4000, and 6000 Hz than at 500, 1000, and 2000 Hz. The greatest loss usually occurs at 4000 Hz.

CX 5 at 4. The journal goes on to say noise-induced hearing loss "*can* begin in frequencies other than the 3 to 6 kHz region, but this is rare." *Id.* (emphasis in original).

[14] Dr. Sells testified, "It is virtually – it is impossible to have a hearing loss at 6,000/8,000 hertz [due] to noise exposure without also having hearing loss at 3,000 and 4,000." Dr. Sells disagreed with Dr. Uchmanowicz's opinion because it "just doesn't compute" and "doesn't align with what Dr. Dobie said, either." EX 3 at 26.

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

SO ORDERED.

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge