**U.S. Department of Labor**

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

BRB No. 21-0076

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| ARTURO CHAMPI APAZA | ) | |
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| Claimant-Petitioner | ) | |
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| v. | ) | |
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| SOC-SMG, INCORPORATED | ) | |
| | ) | |
| and | ) | |
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| CONTINENTAL INSURANCE COMPANY | ) | DATE ISSUED: 01/30/2023 |
| | ) | |
| Employer/Carrier-<br>Respondents | ) | |
| | ) | |
| DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR | ) | |
| | ) | |
| Respondent | ) | DECISION and ORDER |

Appeal of the Decision and Order on the Record and Order on Claimant's Motion for Reconsideration of Angela F. Donaldson, Administrative Law Judge, United States Department of Labor.

Lara D. Merrigan (Merrigan Legal), Sausalito, California, and Brian C. Karsen (Barnett, Lerner Karsen, Frankel & Castro, P.A..), Fort Lauderdale, Florida, for Claimant.

Krystal L. Layher and Rebecca R. Sonne (Brown Sims), Houston, Texas, for Employer/Carrier.

Steven Winkelman (Seema Nanda, Solicitor of Labor; Barry H. Joyner, Associate Solicitor; Mark A. Reinhalter, Counsel for Longshore), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: ROLFE, GRESH and JONES, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Angela F. Donaldson's Decision and Order on the Record and Order on Claimant's Motion for Reconsideration (2019-LDA-00635) rendered on a claim filed pursuant to the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq*., as extended by the Defense Base Act, 42 U.S.C. §1651 *et seq.* (Act). We must affirm the administrative law judge'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 citizen of Peru, allegedly sustained a psychological injury and a monoaural hearing loss in his left ear as a result of his work as a security guard in Iraq from 2006 to 2012.[1] He stopped working for Employer in 2012 and returned home to Peru because he "started feeling stressed out" and "couldn't take it anymore." CX 12, Dep. at 58. Claimant stated that after leaving Iraq, he thought he needed to see a doctor, but he procrastinated due to other expenses and because he thought his "mind would clear" if he was back in Peru. *Id.*, Dep. at 60-61. Once in Peru, Claimant began offering transportation services, primarily as a taxi driver, but also took odd jobs in construction and apparel delivery on an as needed basis; he continued to do this work through the date of the ALJ's decision. *Id.*, Dep. at 29-45.

Claimant stated he had progressively worsening flashbacks in 2016 due to his experiences in Iraq that prompted his visit to a psychiatrist, Dr. Oscar Vizcarra Iturri, on December 4, 2017. CX 10. Dr. Vizcarra diagnosed Claimant with post-traumatic stress disorder (PTSD), prescribed medications to alleviate his symptoms, and recommended he

[1] Because the district director in Covington, Louisiana, filed the ALJ's decision, this case arises under the jurisdiction of the United States Court of Appeals for the Fifth Circuit. *McDonald v. Aecom Technology Corp.*, 45 BRBS 45 (2011); *see also Global Linguist Solutions, L.L.C. v. Abdelmeged*, 913 F.3d 921, 52 BRBS 53(CRT) (9th Cir. 2019). Claimant, therefore, incorrectly states "[t]his case arises in the Second Circuit." Cl. Br. at 41.

take medical leave. *Id.* Claimant subsequently was treated by Drs. Carmen Ciuffardi Montoya, Enrique Galli, Eduardo Avila Suarez, and J. Angel Manrique Galvez, all of whom diagnosed Claimant with PTSD related to his experiences in Iraq. CXs 6, 8, 9. Claimant was also evaluated, at Employer's request, by Dr. Gloria Morote. In her October 18, 2019 report, Dr. Morote opined Claimant has "no diagnosis of a current psychological condition," nor any psychological condition "caused or aggravated" or "sustained/exacerbated" by his work in Iraq with Employer. EX 1 at 10. On August 16, 2018, Claimant visited an otorhinolaryngologist, Dr. Pedro F. Bernejo Catano, who conducted an audiogram which, Claimant states, revealed he has a 1.9% monoaural hearing loss in his left ear. CX 11. Dr. Bernejo diagnosed Claimant with hyperacusis and chronic acoustic trauma either caused or worsened by prolonged exposure to loud noises ostensibly from his work with Employer. *Id.* at 1.

On October 5, 2018, Claimant filed his claim seeking benefits for a work-related psychological condition and for work-related hearing loss to his left ear. CX 1. Employer controverted the claim, CX 3, and the case was forwarded to the ALJ, where the parties opted for a decision on record. Decision and Order on the Record (D&O) at 2.

In her decision, the ALJ found Claimant did not establish the harm element of his prima facie case for his hearing loss claim and so did not invoke the Section 20(a) presumption, 33 U.S.C. §920(a). D&O at 18. While she found Claimant entitled to the Section 20(a) presumption relating his psychological condition due to his overseas work with Employer, she also found Employer rebutted the presumption, and determined on the record as a whole that Claimant did not prove he suffered from a psychological injury as a result of his work with Employer in Iraq by a preponderance of the evidence. Accordingly, the ALJ denied Claimant's claim for benefits relating to both his psychological condition and hearing loss, *id.* at 20-21, and denied his subsequent motion for reconsideration.

On appeal, Claimant challenges the ALJ's denial of benefits. Employer responds, urging affirmance of the ALJ's decision. The Director, Office of Workers' Compensation Programs (the Director), has filed a limited response, urging the Board to reject Claimant's contentions that the pertinent regulations governing audiogram evidence are invalid or unconstitutional. Claimant has filed a reply brief.

**Hearing Loss**

Claimant contends the ALJ erred in finding he was not entitled to the Section 20(a) presumption relating his hearing loss to his work. He asserts the undisputed record, notably through the parties' stipulation and his 2018 audiogram, establishes he has sustained a loss

of hearing in his left ear.[2] In conjunction with his working conditions overseas, he asserts there is sufficient evidence to invoke the Section 20(a) presumption. Moreover, he states that because Employer submitted no evidence to contradict a hearing loss, he has established his hearing loss is compensable. Consequently, he requests the Board reverse the ALJ's denial of hearing loss benefits and remand the case for further consideration of that claim. Employer maintains the ALJ adequately addressed the evidence and permissibly determined Claimant did not meet his prima facie burden with respect to his alleged hearing loss.

The Director responds and asserts the ALJ provided ample grounds for discrediting Claimant's 2018 audiogram without the need to address his argument regarding the validity and constitutionality of the calibration requirement. He maintains the ALJ correctly concluded Claimant's audiogram was not reliable and probative because it lacked any information from which she could assess its reliability. Moreover, he avers the Board should affirm the ALJ's finding that Claimant's audiogram lacked any indicia of reliability regardless of the calibration standards because it is unchallenged on appeal. Therefore, the Director states the Board must decline to address Claimant's arguments concerning the validity and constitutionality of the calibration requirement.

Addressing Section 20(a) invocation in regard to Claimant's alleged hearing loss, the ALJ found Claimant established the working conditions element but not the harm element of his prima facie case, as he failed to show the existence of any hearing loss. In assessing the harm element, she found Dr. Bernejo's 2018 audiogram "highly questionable" given that it provided no calibration information or other indicia of reliability. The ALJ stated the absence of evidence to support the reliability of the audiogram precluded her from finding it determinative or otherwise sufficient to establish the harm element. Moreover, she noted Claimant's testimony that he noticed a buzzing in his ears in 2015 is likewise insufficient to establish the existence of hearing loss.

On reconsideration, the ALJ rejected Claimant's assertions that she erroneously permitted Employer to abandon its stipulation regarding his hearing loss and incorrectly

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[2] Claimant asserts the ALJ erroneously interpreted the parties' stipulation and also incorrectly considered the implementing regulations in assessing the validity of his 2018 audiogram. He maintains the parties' stipulation constitutes an admission as to the veracity of his audiogram, thereby requiring the ALJ to credit it and invoke the Section 20(a) presumption. Moreover, he contends the technical requirements for audiograms, as set forth in the regulations, are invalid because they purportedly conflict with the Act, violate his equal protection rights, and amount to an unconstitutional taking without due process of the law.

rejected the sole audiogram in evidence as presumptive evidence of a hearing loss sufficient to establish the harm element for purposes of invoking the Section 20(a) presumption. She found the parties' stipulation began with the conditional term "if" as it relates to the compensability of Claimant's hearing loss, so that if she found the harm work-related, the parties stipulated to a 1.9% hearing impairment. Reiterating the myriad of deficiencies in Claimant's 2018 audiogram under the regulations and finding the audiogram and Dr. Bernejo's accompanying report otherwise lacking "any indicia of reliability,"[3] the ALJ again determined the audiogram was "neither reliable nor probative." She therefore rejected Claimant's contentions and denied his motion for reconsideration.

In determining whether an injury is work-related, a claimant is aided by the Section 20(a) presumption, which may be invoked only after the claimant establishes a prima facie case that: (1) he suffered a harm; and (2) an accident occurred, or conditions existed at work, which could have caused that harm. *See Port Cooper/T. Smith Stevedoring Co. v. Hunter*, 227 F.3d 285, 34 BRBS 96(CRT) (5th Cir. 2000). The evidence relevant to these issues can be weighed in addressing the claimant's prima facie case, *see generally Bis Salamis, Inc. v. Director, OWCP [Meeks]*, 819 F.3d 116, 50 BRBS 29(CRT) (5th Cir. 2016),[4] or after the employer rebuts the Section 20(a) presumption. In this regard, the ALJ has the authority to address witness credibility in determining whether the claimant has made a prima facie case and to draw her own inferences and conclusions from the evidence. *Meeks*, 819 F.3d at 127-131, 50 BRBS at 36-38(CRT); *see also Mendoza v. Marine Personnel Co., Inc.*, 46 F.3d 498, 29 BRBS 79(CRT) (5th Cir. 1995). Such credibility determinations may be disturbed only if they are inherently incredible or patently unreasonable. *Lennon v. Waterfront Transport*, 20 F.3d 658, 28 BRBS 22(CRT) (5th Cir. 1994).

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[3] The ALJ found Claimant's 2018 audiogram lacked information regarding: the conditions under which the testing was performed; the qualifications of the person administering the testing; and whether the appropriate medical criteria were used. Order on Recon. at 12.

[4] Because this case arises under the Fifth Circuit's jurisdiction, we are bound to follow the Fifth Circuit's interpretation on Section 20(a) invocation. *But see Rose v. Vectrus Systems Corporation*, __ BRBS __, BRB No. 20-0279 (Dec. 29, 2022) (Decision on Recon. en banc) (a claimant's burden at invocation is one of production, not persuasion, in which credibility plays no role; whether a claimant's evidence "fails or carries the day is a matter to be resolved at step three of the causation analysis, when weighing the evidence based on the record as a whole, not at step one invocation").

The ALJ's Section 20(a) invocation analysis in this case as to Claimant's hearing loss, including her interpreting the parties' stipulation and assessing the reliability of Claimant's 2018 audiogram and Dr. Bernejo's accompanying report, is in accordance with the Fifth Circuit's invocation standard. *Meeks*, 819 F.3d at 127-131, 50 BRBS at 36-38(CRT). We therefore initially reject Claimant's contention that the ALJ applied an improper standard by requiring he prove both elements of his prima facie case. *Id.*

Turning next to the parties' stipulation, the record establishes they agreed, as the ALJ found, that "[i]f Claimant's alleged hearing loss is compensable, he has a monoaural impairment of 1.9 percent." D&O at 3; ALJX 1. Because the ALJ found Claimant did not invoke the Section 20(a) presumption for his hearing loss claim, she did not address any ramifications of this stipulation. On reconsideration, Claimant raised, for the first time, the theory that the stipulation alone is sufficient to invoke the Section 20(a) presumption. As noted above, the ALJ found the stipulation that Claimant has a 1.9% monoaural hearing impairment is contingent upon a finding that Claimant's condition is compensable.[5] As she accurately noted, "the stipulation does not state on its face agreement regarding compensability but, rather clearly begins with the conditional term 'if' as it concerned the compensability of Claimant hearing loss." Order on Recon. at 6. Thus, her interpretation was reasonable. Consequently, we affirm the ALJ's interpretation of the parties' stipulation, as well as her finding that it is, as written, insufficient to establish the requisite harm element, as they are rational and supported by substantial evidence. *Meeks*, 819 F.3d at 127-131, 50 BRBS at 36-38(CRT); *Mijangos v. Avondale Shipyards, Inc.*, 948 F.2d 941, 25 BRBS 78(CRT) (5th Cir. 1991).

As for Claimant's 2018 audiogram, we agree with the Director's position that the ALJ provided an adequate rationale for finding it "highly questionable" and insufficient to establish a hearing loss, separate and apart from her analysis as to whether it sufficiently complied with the regulatory requirements to constitute presumptive evidence of a hearing loss. While she found the audiogram flawed because it provided no calibration information in accordance with 20 C.F.R. §702.441(d), she also rejected it as evidence of any hearing loss because the record lacked any "other indicia of reliability." As the Director correctly states, Claimant does not challenge the ALJ's finding that the audiogram lacked any "indicia of reliability." *Scalio v. Ceres Marine Terminals, Inc.*, 41 BRBS 57 (2007). We

[5] Claimant's interpretation fails to recognize causation was a disputed issue and is a condition precedent of a compensable claim. *See* 33 U.S.C. §902(2) (for purposes of the Act, the term "injury" means one "arising out of and in the course of employment"); *see generally Director, OWCP v. Vessel Repair, Inc.,* 168 F.3d 190, 33 BRBS 65(CRT) (5th Cir. 1999) (there must be at least a partial causal relationship between a claimant's alleged work injury and disability).

therefore affirm the ALJ's finding that Claimant's 2018 audiogram is insufficient to establish the requisite harm element and her resulting conclusion that Claimant has not invoked the Section 20(a) presumption for his hearing loss claim.[6] Furthermore, we reject Claimant's contention that Dr. Bernejo's diagnoses of "chronic acoustic trauma" and "mild bilateral hyperacusis" standing alone establish the harm element of his prima facie case. The ALJ, acting within her broad discretion, accorded Dr. Bernejo's "brief and conclusory" opinion "no weight" because she found the underlying audiogram on which he relied "highly questionable."[7] As her credibility determinations are neither inherently incredible or patently unreasonable, *Meeks*, 819 F.3d at 127-131, 50 BRBS at 36-38(CRT); *Lennon*, 20 F.3d 658, 28 BRBS 22(CRT), we affirm the ALJ's findings that Claimant did not establish any hearing impairment and did not put forth sufficient evidence to establish the requisite harm element. We therefore affirm the ALJ's finding that Claimant is not entitled to the Section 20(a) presumption linking his alleged hearing loss to his work with Employer, as well as her resulting denial of benefits relating to that alleged injury.

**Psychological Condition**

**Section 20(a) Rebuttal**

Claimant contends the ALJ irrationally relied on Dr. Morote's opinion as substantial evidence to rebut the Section 20(a) presumption. Once the Section 20(a) presumption is invoked, Claimant maintains Employer could only rebut it by presenting evidence that

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[6] In light of this, we need not address Claimant's arguments concerning the validity and constitutionality of the calibration requirement as expressed in 20 C.F.R. §702.441(d). *See generally Lyng v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 445 (1988) ("[a] fundamental and longstanding principle of judicial restraint requires that courts avoid reaching constitutional questions in advance of the necessity of deciding them.").

[7] Section 8(c)(13)(E) of the Act, 33 U.S.C. §908(c)(13)(E), states:

> Determinations of loss of hearing shall be made in accordance with the guides for the evaluation of permanent impairment as promulgated and modified from time to time by the American Medical Association.

Thus, under the Act, a claimant's hearing impairment is determined by using the AMA *Guides*. 33 U.S.C. §908(c)(13); *see also Pierce v. Elec. Boat Corp.*, 54 BRBS 27 (2020) (where the Act requires use of the AMA *Guides*, the doctor is to use the *Guides*' most recent version at the time he renders a rating).

Claimant's already-established psychological condition is not work-related; it cannot rebut by using Dr. Morote's opinion that no psychological condition existed. Claimant also argues the ALJ's rebuttal analysis and conclusion do not comply with the Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A).

Where, as here, the Section 20(a) presumption applies to link a claimant's harm with his employment,[8] the burden shifts to the employer to rebut it by producing substantial evidence that the injury was not caused or aggravated by the claimant's working conditions. *Ceres Gulf, Inc. v. Director, OWCP [Plaisance]*, 683 F.3d 225, 46 BRBS 25(CRT) (5th Cir. 2012); *Conoco, Inc. v. Director, OWCP*, 194 F.3d 684, 33 BRBS 187(CRT) (5th Cir. 1999). An employer's burden on rebuttal is one of production, not persuasion; thus, an employer satisfies its burden to rebut the Section 20(a) presumption by offering substantial evidence which "throws factual doubt" on the claimant's prima facie case. *Id.*, 683 F.3d at 231, 46 BRBS at 29(CRT). Therefore, the presumption may be rebutted with evidence disproving the existence of the alleged injury. *See, e.g., Bourgeois v. Director, OWCP*, 946 F.3d 263, 53 BRBS 91(CRT) (5th Cir. 2020) (affirming the presumption was rebutted by a medical opinion stating the claimant did not suffer a labral tear to his right shoulder immediately following an accident at work and therefore establishing the accident did not cause the claimant's later-discovered tear).

In this case, the ALJ permissibly found Dr. Morote's opinion constitutes substantial evidence that a reasonable mind could accept as adequate to support a finding that Claimant does not have any psychological condition. Dr. Morote unequivocally stated Claimant has no current psychological or mental condition and, more specifically, no psychological condition caused, aggravated, or exacerbated by his work with Employer. EX 1 at 10. This is sufficient, *Bourgeois*, 946 F.3d 263, 53 BRBS 91(CRT), and we therefore affirm the ALJ's finding that Employer rebutted the Section 20(a) presumption for Claimant's psychological condition.[9] *Plaisance*, 683 F.3d at 231, 46 BRBS at 29(CRT).

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[8] We affirm the ALJ's finding that Claimant is entitled to the Section 20(a) presumption relating his psychological condition to his work, as it is unchallenged on appeal. *Scalio v. Ceres Marine Terminals, Inc.*, 41 BRBS 57 (2007).

[9] Contrary to Claimant's contention, the ALJ's decision comports with the APA. 5 U.S.C. §557(c)(3)(A); *see Santoro v. Maher Terminals, Inc.*, 30 BRBS 171 (1996). The ALJ set out all relevant evidence of record, correctly noted Employer's burden at rebuttal, and adequately explained Dr. Morote's opinion and why it met Employer's burden of production in rebutting the Section 20(a) presumption. D&O at 3-10, 15-16, 19-20.

**Weighing the Evidence on Causation as a Whole**[10]

Claimant contends the ALJ's primary reason for discrediting his testimony – because his medical records discuss different incidents on different dates rather than referencing all of the same stressful events -- is irrational based on the overall circumstances of this case. He further contends the ALJ's reasons for not giving considerable weight to his treating medical providers is not supported by substantial evidence or made with proper deference to their treating physician status. In addition, he maintains the ALJ's decision to afford the greatest probative value to Dr. Morote's opinion because she was the only one to include diagnostic testing places an irrational and unexplained premium on such "objective" testing, particularly because the tests in this case were irrelevant and invalid in terms of supporting Dr. Morote's diagnosis. Moreover, he avers the ALJ's additional reasons for rejecting the treating physicians' opinions, that none demonstrated an understanding of Claimant's mental health treatment and because they improperly relied on Claimant's unreliable reports, are equally flawed.

If the employer rebuts the Section 20(a) presumption, it no longer controls, and the issue of causation must be resolved on the evidence of record as a whole, with the claimant bearing the burden of persuasion. *Meeks*, 819 F.3d at 127, 50 BRBS at35-36(CRT); *Plaisance,* 683 F.3d 225 46 BRBS 25(CRT); *see generally Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994). Prior to addressing causation, the ALJ considered the relative credibility of Claimant and each of "the various opining medical professionals." D&O at 20. She found Claimant "not very credible" largely because "[t]he events he claimed to have experienced in Iraq often conflict, are demonstrably exaggerated, and vary to degrees beyond what could reasonably be expected even with allowances for potential memory deficits." *Id.* at 11. In reaching this conclusion, she found "the discrepancies among [Claimant's] testimony and several reports to providers not insignificant or within an expected range of variance." *Id.* at 12, 19. The ALJ next stated that, by extension, Claimant's exaggerations of his symptoms and past events undermines the opinions of his medical providers insofar as they relied solely on Claimant's subjective complaints.

Addressing the credibility of those medical providers assessing Claimant's mental health, the ALJ afforded no weight to Dr. Vizcarra's opinion because his report contained a conclusory diagnosis without any indication as to the nature of his evaluation of Claimant, including any consideration of his symptoms and evidence of any testing. D&O at 12. She

[10] Once the ALJ determined Dr. Morote's opinion rebutted the Section 20(a) presumption, she correctly examined the entirety of the evidence to assess whether Claimant established a work-related psychological injury based on the record as a whole, without the benefit of the presumption. *Meeks*, 819 F.3d at 127; 50 BRBS at 35-36(CRT).

next accorded minimal weight to the opinions that Drs. Ciuffardi, Galli, and Avila proffered, as they: relied solely on Claimant's self-reported symptoms; failed to conduct any testing or examine Claimant's background beyond his work in Iraq; or document any personal observations of Claimant's behavior in the course of their medical appointments. *Id.* at 13, 20. In addition, she accorded minimal weight to Dr. Manrique's opinion, finding he was the only medical provider to document observed behaviors during his evaluation of Claimant, but he did not perform any diagnostic testing or consider any history beyond Claimant's employment in Iraq, such that his opinion is likewise "based primarily on Claimant's subjective self-reports." *Id.* at 13-14.

In contrast, the ALJ afforded "the greatest probative value" to Dr. Morote's "highly credible and probative opinion" because only she conducted diagnostic testing, a comprehensive clinical interview, and assessed Claimant for potential exaggeration. *Id.* at 14, 20. Consequently, the ALJ found the credible record as a whole does not support a finding of a diagnosable psychological injury; a conclusion "buttressed by Dr. Morote's competent, thorough, and foundationally solid opinion." *Id.* at 21. The ALJ, therefore, concluded Claimant did not establish the existence of any compensable psychological injury arising out of his overseas employment. *Id.*

On reconsideration, the ALJ addressed Claimant's specific challenges to her finding that his testimony is not credible. She stated: "[t]he issue here is not whether Claimant could present perfect recall of dates and events but the vast discrepancies among the reported dates and events" which combined "to render Claimant almost entirely unreliable." Order on Recon. at 14. In this regard, she noted between August 13, 2018, and October 25, 2019, Claimant reported his experiences in Iraq 19 times, but his statements are "peppered with inconsistencies beyond what could reasonably be expected" within this time frame. *Id.* She provided examples of these inconsistencies, showing varying statements Claimant provided to different medical providers during approximately the same short period of time, involving the same or similar experiences during his time working in Iraq.[11] *Id.* at 14-15. Next, she rejected Claimant's contention that the inconsistencies should be excused based on his alleged diminished capacity because no physician found or otherwise opined Claimant demonstrated any memory difficulties or difficulties in reasoning or recalling events; nor did Claimant testify to having any memory

[11] For instance, the ALJ found Claimant mentioned experiencing all-night rocket attacks in either October 2011, as he told Dr. Avila, or in his first year of employment, as he reported to Dr. Morote and in his deposition taken approximately nine months later. Claimant, however, never indicated the all-night rocket attacks occurred more than once, and he informed Dr. Morote that no incidents occurred between September 2011 and June 5, 2012, his last period of work with Employer. Order on Recon. at 14.

problems – rather, she found Claimant demonstrated "substantial recall of many details of his personal history dating to the 1990s and complained of no difficulties with memory or concentration." *Id.* at 16; *see also* CX 12. Moreover, the ALJ found Claimant's remaining contentions, that even an incredible Claimant's testimony can support a compensable claim where that testimony is uncontradicted in the record and that his incredible statements to physicians cannot serve to undermine those physicians' opinions "are not sound in law." Reiterating her decision to accord "minimal evidentiary weight" to each of Claimant's mental health providers and weigh them against Dr. Morote's "more credible, better documented, and better reasoned opinion," the ALJ again concluded Claimant did not establish, by a preponderance of the evidence, that he sustained a work-related psychological injury.

Recognizing the ALJ's broad discretion in weighing the evidence and making credibility determinations, we affirm her finding that Claimant did not establish he suffered a psychological injury as a result of his work in Iraq with Employer.[12] *James J. Flanagan Stevedores, Inc. v. Gallagher*, 219 F.3d 426, 430, 34 BRBS 35, 37(CRT) (5th Cir. 2000); *Mendoza*, 46 F.3d at 500-501, 29 BRBS at 80-81(CRT). Contrary to Claimant's contentions, the ALJ acted within her discretion in finding him "not very credible" and her underlying rationale is adequately explained and supported by substantial evidence. We therefore affirm her decision to accord diminished weight to Claimant's testimony as that decision is neither unreasonable nor irrational. *Id.* Additionally, contrary to Claimant's contentions, the ALJ's discussion reflects her awareness that treating physicians' opinions may, under certain circumstances, be accorded special weight but are not accorded automatic deference.[13] Substantial evidence supports her decision to give "minimal weight" to Claimant's treating medical providers, Drs. Ciuffardi, Galli, Avila, and Manrique, and accord greatest weight to Dr. Morote's opinion because she found it more credible, better documented, and well-reasoned.[14] *Gallagher*, 219 F.3d at 430, 34 BRBS at 37(CRT); *Mendoza*, 46 F.3d at 500-501, 29 BRBS at 80-81(CRT).

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[12] The Board is not permitted to reweigh the evidence but may ascertain only whether substantial evidence supports the ALJ's decision. *See, e.g., Pool Co. v. Cooper,* 274 F.3d 173, 178, 35 BRBS 109, 112(CRT) (5th Cir. 2001); *Compton v. Avondale Industries, Inc.*, 33 BRBS 174 (1999).

[13] We reject Claimant's contention that his testimony and the reports of his medical providers diagnosing PTSD must be credited as uncontradicted evidence. That evidence is contradicted by Dr. Morote's opinion.

[14] Dr. Morote's evaluation on October 18, 2019, was contemporaneous with those of Dr. Manrique (July 15 and October 17, 2019) and Dr. Avila (January 2019 through July

Dr. Morote's statements that Claimant "does not have a psychological condition that was caused or aggravated by his employment" and "[t]here is no psychological injury sustained/exacerbated during [Claimant's] work" for Employer are sufficient to establish the lack of a causal nexus between any alleged psychological condition and Claimant's work in Iraq. Consequently, we affirm the ALJ's conclusion that Claimant has not established he sustained a work-related psychological condition by a preponderance of the evidence, as it is supported by substantial evidence. *Meeks*, 819 F.3d 116, 127, 50 BRBS 29, 35-36(CRT) (5th Cir. 2016); *Plaisance,* 683 F.3d 225 46 BRBS 25(CRT); *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962) (that other inferences could have been drawn from the record does not establish error in the ALJ's conclusion).

Accordingly, we affirm the ALJ's Decision and Order on the Record and Order on Claimant's Motion for Reconsideration denying benefits.

SO ORDERED.

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

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2019), and it was more recent than those of Dr. Iturri (December 4, 2017), Dr. Galli (September 19, 2018), and Dr. Ciuffardi (August 13 and October 24, 2018).