U.S. Department of Labor

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

BRB No. 20-0172

WANDA J. THOMAS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
VECTRUS SYSTEMS CORPORATION	)	
	)	
and	)	DATE ISSUED: 06/25/2020
	)	
INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA c/o AIG CLAIMS, INCORPORATED	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Larry W. Price, Administrative Law Judge, United States Department of Labor.

Wanda J. Thomas, Acworth, Georgia.

Joanna N. Pino and Ruth A. Eschman (Sioli Alexander Pino), Miami, Florida, for employer/carrier

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

PER CURIAM:

Claimant, appearing without representation, appeals the Decision and Order Denying Benefits (2018-LDA-00848) of Administrative Law Judge Larry W. Price 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*. (the Act). In an appeal by a claimant without representation by counsel, the Board will review the administrative law judge's decision to determine if the findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with law. If they are, they must be affirmed. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant served in the Air Force from 1976 until she was honorably discharged in 1996. Tr. at 33-34; EX 16 at 16. Claimant testified she was sexually assaulted twice in 1976 while in the military. Tr. at 33-34; EX 16 at 20. She did not seek mental health treatment for these assaults until 2002, when she was diagnosed with post-traumatic stress disorder (PTSD). Tr. at 34-35; EX 16 at 23; EX 21 at 189. Claimant worked for KBR in Iraq from 2004 to 2009. Tr. at 17, 36. She worked for employer in Afghanistan as a quality control manager from December 2011 to August 2013. EX 16 at 47. She alleged her PTSD is related to or was aggravated by her witnessing a 747 cargo plane crash and catch fire near her base on April 29, 2013.[1] Tr. at 19-25, 37-39; CX 2; EX 16 at 68-69. Employer terminated claimant after conducting an unrelated investigation and determining she had retaliated against another employee. Tr. at 24-28. Claimant filed a claim under the Act on May 15, 2016. CX 2.

In his decision, the administrative law judge rejected employer's assertion the claim was untimely filed, *see* 33 U.S.C. §913, and found claimant entitled to the Section 20(a) presumption, 33 U.S.C. §920(a), linking her PTSD, at least in part, to her employment in Afghanistan. Decision and Order at 22-25. He found Dr. Michael Hilton's opinion that claimant's psychological condition was not caused or aggravated by any experience she had during the course of her employment for employer in Afghanistan rebutted the presumption. *Id*. at 26-27; EX 14 at 25.

In weighing the evidence as a whole, the administrative law judge determined claimant's "subjective complaints are entitled to less probative weight" because she did not report the plane crash traumatized her until after she filed her claim. Decision and Order at 29. He found the opinions of her therapists who linked her PTSD to the plane crash based solely on claimant's "unpersuasive subjective complaints and self-reports." *Id*. at 31. The administrative law judge gave "significant weight" to Dr. Hilton's opinion because he relied on his examination, objective testing, and a review of claimant's medical records. *Id*. The administrative law judge concluded claimant did not establish her psychological injury was aggravated or accelerated by her employment with employer. *Id*. Thus, he denied the claim.

[1] All crew members were killed in the crash.

Claimant appeals the administrative law judge's decision. Employer responds that the administrative law judge's decision is supported by substantial evidence and should be affirmed. As claimant is without legal representation, we will review the findings adverse to her.

Under the aggravation rule, if a work-related injury contributes to, combines with or aggravates a pre-existing condition, the entire resultant condition is compensable. *Independent Stevedore Co. v. O'Leary*, 357 F.2d 812 (9th Cir. 1966). Where, as here, the Section 20(a) presumption applies to link claimant's harm with her employment, the burden shifts to employer to rebut it by producing substantial evidence that the injury was not caused or aggravated by claimant's working conditions. 33 U.S.C. §920(a)[2]; *see, e.g., Ceres Gulf, Inc. v. Director, OWCP [Plaisance]*, 683 F.3d 225, 46 BRBS 25(CRT) (5th Cir. 2012); *Hawaii Stevedores, Inc. v. Ogawa*, 608 F.3d 642, 44 BRBS 47(CRT) (9th Cir. 2010); *Bath Iron Works Corp. v. Fields*, 599 F.3d 47, 44 BRBS 13(CRT) (1st Cir. 2010); *C & C Marine Maint. Co. v. Bellows*, 538 F.3d 293, 42 BRBS 37(CRT) (3d Cir. 2008); *Rainey v. Director, OWCP*, 517 F.3d 632, 42 BRBS 11(CRT) (2d Cir. 2008); *American Grain Trimmers v. Director, OWCP [Janich]*, 181 F.3d 810, 33 BRBS 71(CRT) (7th Cir. 1999), *cert. denied*, 528 U.S. 1187 (2000); *Universal Maritime Corp. v. Moore*, 126 F.3d 256, 31 BRBS 119(CRT) (4th Cir. 1997). The opinion of a physician that, to a reasonable degree of medical certainty, no relationship exists between an injury and the employment accident or exposures alleged to be the cause of the injury is sufficient to rebut the Section 20(a) presumption. *Jones v. Aluminum Co. of America*, 35 BRBS 37, 40 (2001); *O'Kelley v. Dep't of the Army/NAF*, 34 BRBS 39, 41-42 (2000). Where aggravation is raised, the evidence employer offers on rebuttal must address aggravation. *See Newport News Shipbuilding & Dry Dock Co. v. Holiday*, 591 F.3d 219, 43 BRBS 67(CRT) (4th Cir. 2009).

In this case, Dr. Hilton agreed with claimant's diagnosis of PTSD. EX 14 at 22; EX 15 at 21-22. However, he opined claimant's "emotional complaints have not been caused or aggravated by any experience as an overseas contractor, and specifically, during her

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[2] The Act states:

> In any proceeding for the enforcement of a claim for compensation under this chapter it shall be presumed, in the absence of substantial evidence to the contrary –
>
> (a) That the claim comes within the provision of this chapter.

33 U.S.C. §920(a).

employment with [employer] from December 2011 to August 9, 2013." EX 14 at 25. Dr. Hilton's opinion constitutes substantial evidence of the lack of a causal connection between claimant's employment in Afghanistan and her psychological condition. Therefore, we affirm the administrative law judge's finding that employer rebutted the Section 20(a) presumption. *See O'Kelley*, 34 BRBS 39; *see also Plaisance*, 683 F.3d 225, 46 BRBS 25(CRT); *Holiday*, 591 F.3d 219, 43 BRBS 67(CRT); *Suarez v. Service Int'l, Inc.*, 50 BRBS 33 (2016).

If employer rebuts the Section 20(a) presumption, the issue of causation must be resolved on the evidence of record as a whole, with the claimant bearing the burden of persuasion. *Moore*, 126 F.3d 256, 31 BRBS 119(CRT); *see also Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43(CRT) (1994). The aggravation rule provides that employer is liable for the totality of the claimant's disability if the work injury aggravates a pre-existing condition. *See Strachan Shipping Co. v. Nash*, 782 F.2d 513, 18 BRBS 45(CRT) (5th Cir. 1986) (en banc). Thus, to prevail on her claim, claimant must establish, based on the evidence as a whole, that her psychological condition was caused or aggravated by her employment for employer in Afghanistan. *See generally Moore*, 126 F.3d 256, 31 BRBS 119(CRT).

In evaluating claimant's credibility, the administrative law judge found she did not report the plane crash as a source of her psychological symptoms during her 36 sessions at the Veterans Affairs Medical Center (VA) prior to filing her claim. Decision and Order at 28; *see* CX 1 at 2-4; EX 21 at 25, 249-490. He found claimant first reported the plane crash to her VA therapist, Ms. Baynes, on May 27, 2016, 12 days after filing her claim. Decision and Order at 29; EX 21 at 264. The administrative law judge quoted from the treatment note that claimant "shared two traumas that she previously hadn't shared." *Id*. He thus determined claimant's account of her symptoms has been inconsistent. Decision and Order at 29. He also found she did not report any delusions or hallucinations until after she filed her claim, but she told Dr. Hilton in 2017 that shortly after the plane crash she sensed she could hear voices from the people in the plane crying out. EX 14 at 10.

The administrative law judge noted claimant first stated on June 6, 2016, that "planes/helicopters triggered her anxiety," and that on January 14, 2019, claimant reported "the voices of the passengers on a plane in close proximity to her years ago." Decision and Order at 29; CX 1 at 30; EX 21 at 258. The administrative law judge also relied on claimant's reporting financial concerns beginning in August 2015 and her applying for different types of financial assistance and disability compensation. Decision and Order at 29; EX 21 at 348, 386-387. He noted that on August 16, 2018, claimant stated her goal was to obtain worker's compensation. Decision and Order at 29; CX 1 at 19. The administrative law judge found Dr. Hilton's note pertinent that claimant's first mention of trauma related to the plane crash was three years after employer terminated her and almost two years into her treatment at the VA. Decision and Order at 29; EX 14 at 25. The

administrative law judge concluded claimant "is not persuasive" and that her opinions and complaints "are entitled to less probative weight." Decision and Order at 29.

Claimant relied on the opinions of Drs. Bernard Francis and Osagic Okundaye. The administrative law judge gave no weight to their opinions because they did not opine on any relationship between claimant's PTSD and her working conditions in Afghanistan. Decision and Order at 30; CX 1 at 27-28. Claimant also relied on the opinions of Dr. Angela Montfort and Ms. Amanda Blackburn, a licensed professional counselor, who related claimant's PTSD, in part, to her witnessing the plane crash. CX 1 at 14-15, 30; CX 11 at 1. The administrative law judge gave "little weight" to their opinions because they are based on claimant's subjective complaints and opinions, and did not address the fact that claimant first reported the plane crash after she filed her claim. Decision and Order at 30-31.

The administrative law judge gave "significant weight" to Dr. Hilton's opinion that claimant's condition is not work-related. *Id*. He found Dr. Hilton noted claimant's delayed reporting of symptoms relating to the plane crash and the results of a MMPI-2 test indicated she was either "overstating or misstating or manipulating some of the information" or indicated a severe mental disorder; Dr. Hilton opined "the most likely explanation is that this is exaggeration in support of litigation." *Id*.; EX 15 at 6. The administrative law judge noted Dr. Francis concurred in Dr. Hilton's assessment that the MMPI-2 results show inconsistency and possible overreporting or exaggeration of symptoms. Decision and Order at 31; CX 1 at 25. The administrative law judge found that, unlike Dr. Montfort and Ms. Blackburn, Dr. Hilton did not rely on claimant's self-reported and subjective complaints, but based his opinion on his examination, objective testing, and a review of claimant's medical records. Decision and Order at 31. The administrative law judge credited Dr. Hilton's opinion and concluded claimant did not establish her psychological injury was aggravated or accelerated by her employment for employer based on claimant's inconsistent reporting of her symptoms and experiences to her treating and examining physicians and the lack of any supporting objective testing. *Id*.

It is well-established that, in arriving at his decision, the administrative law judge is entitled to evaluate the credibility of all witnesses and to draw his own inferences and conclusions from the evidence. *See Calbeck v. Strachan Shipping Co*., 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 373 U.S. 954 (1963). The Board may not reweigh the evidence or draw its own inferences, but may assess only whether there is substantial evidence to support the administrative law judge's decision. *Del Monte Fresh Produce v. Director, OWCP [Gates]*, 563 F.3d 1216, 43 BRBS 21(CRT) (11th Cir. 2009); *Ortco Contractors, Inc. v. Charpentier*, 332 F.3d 283, 37 BRBS 35(CRT) (5th Cir.), *cert. denied*, 540 U.S. 1056 (2003). The administrative law judge must assess the sufficiency of the evidence offered for establishing claimant has a work-related psychological condition. He rationally found claimant did not submit creditable evidence that her psychological condition is

related to her employment with employer. Moreover, the credited opinion of Dr. Hilton constitutes substantial evidence that claimant's PTSD is not related to her employment with employer. *Sistrunk v. Ingalls Shipbuilding, Inc.*, 35 BRBS 171 (2001); *Coffey v. Marine Terminals Corp.*, 34 BRBS 112 (2000); *Duhagon v. Metropolitan Stevedore Co.*, 31 BRBS 98 (1997), *aff'd*, 169 F.3d 615, 33 BRBS 1(CRT) (9th Cir. 1999). Therefore, this finding is affirmed as supported by substantial evidence. As claimant did not sustain her burden of establishing she has a work-related injury, we affirm the denial of benefits.

Accordingly, we affirm the administrative law judge's Decision and Order Denying Benefits.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge