

U.S. Department of Labor

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



BRB No. 20-0279

TALISHA K. ROSE)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
VECTRUS SYSTEMS CORPORATION)	
)	DATE ISSUED: 05/25/2021
and)	
)	
INSURANCE COMPANY OF THE STATE)	
OF PENNSYLVANIA)	
)	
Employer/Carrier-)	
Respondents)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Monica Markley, Administrative Law Judge, United States Department of Labor.

Lara D. Merrigan (Merrigan Legal), Sausalito, California, and Jon B. Robinson (Strongpoint Law Firm, LLC), Mandeville, Louisiana, for Claimant.

Michael W. Thomas and Edwin B. Barnes (Thomas Quinn, LLP), San Diego, California, and Kelly J. Johnson (Thomas Quinn, LLP), Chicago, Illinois, for Employer/Carrier.

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

BOGGS, Chief Administrative Appeals Judge:

Claimant appeals Administrative Law Judge Monica Markey’s Decision and Order Denying Benefits (2017-LDA-00333) 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 started working for Employer in 2011 at Bagram Airfield in Afghanistan, where she worked in movement control and transportation of containers, conducting inventories of government assets as well as assisting customers with data entry and questions. Tr. at 32-33, 36-37. She testified the base came under attack often and that she remembered experiencing mortar attacks and a vehicle explosive device which killed several people at a bus stop next to her office. *Id.* at 38-40. When an explosion went off, sirens blared and she was required to run to a bunker while wearing personal protective equipment until the all-clear sounded. *Id.* at 40-42.

Claimant left her employment in May 2013, in part because her son needed surgery. Tr. at 46-47. Since then, Claimant has remained in the United States. *Id.* at 48-50.

Following her employment with Employer, she has worked for a number of companies, primarily in security. While working for Securitas, she testified she heard the sound of an explosion while a movie was filming and she "started running around looking for a bunker as if [she] was still overseas." Tr. at 59. In speaking with her supervisor and co-workers about the incident, she concluded it was because of her experiences in her overseas employment. *Id.* at 60.

Thereafter, Claimant worked for ADT as a picker/packer. She testified she experienced issues while working at ADT with the sounds of the conveyor belt sirens and pallets dropping on the floor, making her flinch. Tr. at 60-62. After being laid off from her job at ADT, she went to work full-time at Sanofi, putting medication orders together for hospitals. She left her job at Sanofi to work for an Amazon contractor, Express Pack, where she was employed at the time of the hearing. *Id.* at 63-64.

Claimant's psychiatrist, Dr. Naqvi, diagnosed her with post-traumatic stress disorder (PTSD) and Generalized Anxiety Disorder in November 2016, prescribing medication. CX 4. He noted the basis for his diagnosis of PTSD, listing direct experience of suicide bombings and mortar attacks, nightmares, anxiety, and isolation from people. CX 4 at 22-25. Since October 2016, Claimant has also been receiving treatment from a therapist, Ms. Monica Bell-Callahan, to whom she reported her problems with loud noises and crowds. Tr. at 67-70; CX 3 at 4-5, 11. She reported that when she hears loud noises like fireworks, thunderstorms, or gunshots, she starts hallucinating and looking for shelter and has to take slow, deep breaths to recover. CX 3 at 4-5, 15-18. Ms. Bell-Callahan

diagnosed Claimant with PTSD, stating it is related to Claimant's employment in Afghanistan. CX 3 at 1-2.

Claimant was examined by Dr. Shindell, a Board-certified neuropsychologist, at Employer's request. He administered a number of neuropsychological tests, and reviewed some of her medical and employment records. Dr. Shindell testified Claimant did very poorly on various cognitive effort tests, which he attributed to Claimant's not making a full effort. Tr. at 144. He repeatedly opined he could not actually determine her abilities "due to her failure on tests of cognitive effort." JX 4 at 4. He concluded Claimant does not have PTSD because she was not exposed to death or violence to herself or a loved one (stressors) and did not report negative alterations in her cognitions and mood.¹ See *id.* at 7-9; EX 40 at 8-9. He opined exaggeration is the explanation for Claimant's test results, and for the inconsistencies between Claimant's records and her self-reporting of her symptoms. See EX 40 at 16. Dr. Shindell stated, "In summary, there is not credible evidence that [Claimant] has believable symptoms, but even if they were valid they would not reach the level of PTSD diagnosis." *Id.* at 8. He also stated, "There is no evidence of any mental health diagnosis either at present or in the past." JX 4 at 9.

Dr. Datz, a clinical psychologist, also interviewed Claimant via Skype, and conducted a Personality Assessment Inventory test and medical records review. Dr. Datz sent both the PTSD symptom scale and the Personality Inventory test to Claimant to complete at home, which she acknowledged was unusual, but stated she did not think the integrity of the test was compromised by having to complete it outside of an office setting. CX 5 at 1-2; CX 8 at 27, 33. Dr. Datz noted Claimant's performance on the Personality Inventory Test indicated the test results "may under-represent the severity of this patient's presentation." CX 5 at 13. She found Claimant's interview revealed Claimant to have significant attention and concentration issues. CX 5 at 13. She disagreed with Dr. Shindell's assertion that Claimant failed three cognitive effort tests, stating Claimant only failed one, noting one of the other tests was experimental and should not be regarded as credible. *Id.* at 14. She also disagreed with Dr. Shindell's opinion that Claimant does not have PTSD and is malingering, stating the DSM-V requires all other psychiatric diagnoses to be effectively ruled out before malingering is diagnosed. *Id.* at 15.

Claimant filed a claim for benefits for a "psychological injury" due to her work with Employer; she did not file a claim specifically for PTSD. JX 1 at 1. The administrative

¹ Dr. Shindell stated Claimant's experiences of having to wear protective equipment and go into bunkers does not satisfy the diagnostic criterion for a stressor in order to diagnose PTSD and Claimant told Dr. Shindell she did not witness a specific traumatic event or incur bodily harm herself. See Tr. at 151-153.

law judge found Claimant was not credible, noting her inconsistent reports as to the frequency of attacks at the base and the onset of her symptoms, as well as to other stressors. *See* Decision and Order at 20-21. She noted Claimant exhibited a willingness “to be untruthful when it serves her purposes.” *Id.* at 22.

The administrative law judge went on to note Claimant’s performance on the various psychological and neuropsychological tests she took raised doubts as to her effort on the tests and the accuracy of the symptoms she reported. *See* Decision and Order at 23-24. The administrative law judge accepted Dr. Shindell’s statement that Claimant’s pattern of test results is “consistent with somebody that [i]s portraying something that they [a]re not, that they [a]re showing more symptoms than would be possible.” *Id.* at 23 (quoting Tr. at 147-148). The administrative law judge emphasized she found Claimant’s test results not supportive of psychological illness because Dr. Shindell found her test results indicate a very low IQ level, which is inconsistent with Claimant’s own presentation at the hearing and her work history. *See* Decision and Order at 25.

The administrative law judge concluded Claimant’s lack of credibility undermines the opinions of Dr. Naqvi, Ms. Bell-Callahan, and Dr. Datz, who all relied on Claimant’s reporting of her symptoms in forming their diagnoses. *See* Decision and Order at 25-26. The administrative law judge noted Dr. Naqvi and Ms. Bell-Callahan “did no or little objective testing to support the veracity of their diagnoses.” She also discredited Dr. Datz’s opinion because she found her less-qualified than Dr. Shindell, because Dr. Datz conducted her interview of Claimant via Skype and because the tests she administered were not conducted in a controlled environment. She also found it significant that Dr. Datz did not have an explanation for Claimant’s poor performance on the intellectual tests that Dr. Shindell administered. *See id.* at 26. She noted Claimant withheld reporting other stressors in her life to these doctors and practitioner, such as her bankruptcy filing. In contrast, she gave probative weight to Dr. Shindell’s opinion, finding he is well-qualified and his opinions supported by the results of the tests that he administered. *See id.* The administrative law judge concluded the diagnoses that are based on Claimant’s own reports cannot be credited and found Claimant did not establish she suffered a psychological harm. *See id.* at 27. Thus, she found Claimant did not establish a prima facie case and could not invoke the Section 20(a), 33 U.S.C. §920(a), presumption. She therefore denied benefits.

Claimant appeals the administrative law judge’s decision, arguing the administrative law judge applied the wrong standard in concluding she did not establish a prima facie case because the administrative law judge should not have weighed the evidence at this stage. Claimant also challenges the administrative law judge’s finding her not credible and discrediting the opinions of Drs. Datz and Naqvi and Ms. Bell-Callahan

because of her finding that Claimant lacked credibility.² Employer filed a response brief in support of the administrative law judge's decision.

In order to establish a claim for entitlement to benefits, a claimant must first make a prima facie case by showing that: (1) the claimant suffered a harm; and (2) a condition of the workplace could have caused, aggravated, or accelerated the harm. *See Ceres Gulf, Inc. v. Director, OWCP [Plaisance]*, 683 F.3d 225, 46 BRBS 25(CRT) (5th Cir. 2012); *Bolden v. G.A.T.X. Terminals Corp.*, 30 BRBS 71 (1996). Once a prima facie case is established, then Section 20(a) of the Act applies to presume the claimant's injury is work related. 33 U.S.C. §920(a); *Ortco Contractors, Inc. v. Charpentier*, 332 F.3d 283, 37 BRBS 35(CRT) (5th Cir.), *cert. denied*, 540 U.S. 1056 (2003).

Claimant argues the administrative law judge erred by applying the wrong standard for invoking the Section 20(a) presumption by requiring her to prove she has suffered a harm by a preponderance of the evidence. We disagree. It is a claimant's burden to "establish" or "prove" each element of her prima facie case. *Bis Salamis, Inc. v. Director, OWCP [Meeks]*, 819 F.3d 116, 127, 50 BRBS 29, 35-36(CRT) (5th Cir. 2016); *Gooden v. Director, OWCP*, 135 F.3d 1066, 1068, 32 BRBS 59, 61(CRT) (5th Cir. 1998). The administrative law judge is entitled to assess the sufficiency of Claimant's evidence supportive of her prima facie case, as well as the evidence that detracts from it. *See Brown v. Pacific Dry Dock*, 22 BRBS 284 (1989). Further, an administrative law judge may make credibility determinations in determining whether a claimant has established a prima facie case. *See Meeks*, 819 F.3d at 127, 50 BRBS at 36(CRT); *Bolden*, 30 BRBS at 73 (affirming an administrative law judge's finding that the claimant did not establish a prima facie case because he was not credible); *Mackey v. Marine Terminals Corp.*, 21 BRBS 129 (1988) (affirming an administrative law judge's finding that the claimant failed to make a prima facie case as to the existence of an injury where the administrative law judge found claimant was not credible). Thus, the administrative law judge did not err in assessing Claimant's credibility in determining whether her subjective reports of her symptoms to her physicians are sufficient to establish a prima facie case.

Next, we reject Claimant's assertion that the administrative law judge's credibility finding is irrational. It is the administrative law judge's prerogative to make credibility determinations and the Board will not disturb such determinations unless they are inherently incredible or patently unreasonable. *Del Monte Fresh Produce v. Director*,

² Claimant also submitted, as supplemental authority, a recent case, *G4S Int'l Emp. Servs. (Jersey), Ltd. v. Newton-Sealey*, 975 F.3d 182(CRT) (2d Cir. 2020), which we accept. 20 C.F.R. §802.215. Employer responds that the case does not support Claimant's appeal. We agree that the case does not address the issues presented here.

OWCP [Gates], 563 F.3d 1216, 43 BRBS 21(CRT) (11th Cir. 2009); *Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963). It was within the administrative law judge's discretion to find Claimant not credible based on the inconsistencies in her statements regarding the onset of her symptoms, the frequency of the attacks on the base, and her withholding relevant information from her medical doctors and practitioner. Specifically, the administrative law judge noted Claimant testified in her deposition, and also reported to Dr. Datz, that the base was attacked every day, JX 8 at 28; CX 5 at 4, but at the hearing she stated the base was attacked every other day or week. Tr. at 43. Similarly, Claimant reported to Dr. Datz that she had daily panic attacks in 2017; however, she also testified that she completed a Cognitive Monitoring Form for Ms. Bell-Callahan after every panic attack and Ms. Bell-Callahan's records contain reports of only four such incidents (dated February 2017, March 1, 2017, April 1, 2017, and April 3, 2017). The administrative law judge observed Claimant's inconsistent reports about when she started experiencing symptoms, ranging from her return from overseas in 2013, to 2015 or in 2016. *See* Decision and Order at 21-22 (citing CX 3 at 4-5; JX 8 at 19-20; and Tr. at 59). She also was troubled by Claimant's lack of candor with her doctors about potentially stressful events, such as her other health considerations and her bankruptcy. *See id.* at 21-22. Further, Claimant admitted during cross-examination at the formal hearing that in her bankruptcy filing of March 6, 2017, she stated she was not a party to any lawsuit, court action, or administrative proceeding in the prior year, despite the existence of this case which started in the fall of 2016. *See id.* at 22 (citing Tr. at 126-127). She testified that she answered "no" because she did not want the bankruptcy court to know and that it was none of the court's business. *See id.* (citing Tr. at 127, 130). On pre-employment health forms, Claimant stated she was not pregnant even though she knew at the time that she was. *See id.* (citing JX 5 at 14, 16, 19; Tr. at 106). In addition, prior to the hearing, Claimant admitted she did not go overseas to a job for which she had applied and had accepted because the contract for the job was cancelled; however, at the hearing she testified that something told her not to go, indicating she chose not to go. *See id.* at 22-23 (citing JX 8 at 17-18; EX 31; Tr. at 65). The administrative law judge rationally found Claimant not credible based on these inconsistencies and deliberate misstatements, and the Board is not permitted to disregard an administrative law judge's findings merely because other inferences could have been drawn from the evidence. *See Newport News Shipbuilding & Dry Dock v. Tann*, 841 F.2d 540, 21 BRBS 10(CRT) (4th Cir. 1988) (an administrative law judge's credibility findings "may not be disregarded on the basis that other inferences might have been more reasonable"); *Calbeck*, 306 F.2d at 695.

The administrative law judge accurately noted the diagnoses of Drs. Naqvi and Datz are largely based on Claimant's self-reporting of her symptoms, as is the opinion of Ms. Bell-Callahan. The administrative law judge is entitled to determine the weight to be accorded the evidence and is not required to accept the opinion of any medical expert. *See Mendoza v. Marine Personnel Co., Inc.*, 46 F.3d 498, 29 BRBS 79(CRT) (5th Cir. 1995).

The administrative law judge acted within her discretion in finding Claimant's lack of credibility tainted the diagnoses of her doctors and practitioner, and therefore their diagnoses of a work-related psychological injury could not be given weight.³ She also was entitled to determine that Dr. Datz is not as well-qualified or as experienced as Dr. Shindell. *See Pisaturo v. Logistec, Inc.*, 49 BRBS 77 (2015). In addition, she found Claimant's results on the objective tests that Dr. Shindell administered are not creditable because they indicate a much lower IQ level than is consistent with Claimant's history. She permissibly credited Dr. Shindell's opinion that Claimant does not have PTSD because of his superior credentials and as his report is better reasoned. She therefore concluded the evidence is not sufficient to establish Claimant suffers from any psychological injury.⁴ Because the administrative law judge permissibly found Claimant failed to establish an essential element of her prima facie case, we affirm the denial of benefits as it is supported by substantial evidence.⁵ *Meeks*, 819 F.3d at 129-130, 50 BRBS at 37-38(CRT); *Mackey*, 21 BRBS 129.

³ The administrative law judge permissibly stated, "Particularly with regard to a diagnosis of PTSD, providers must rely on the accurate representations of their patient; the fact that they could not do so here diminishes the value of their opinions." Decision and Order at 24. Unlike *Pietrunti v. Director, OWCP*, 119 F.3d 1035, 31 BRBS 84(CRT) (2d Cir. 1997), which Claimant cites in support of her appeal, this case contains *conflicting* medical opinions on the reliability of Claimant's subjective complaints.

⁴ The administrative law judge's discussion of Claimant's credibility specifically addresses the deficiencies in her claim of anxiety, and the discrediting of Claimant's practitioners as a result. *See* Decision and Order at 23.

⁵ Because we affirm the administrative law judge's finding that Claimant did not establish a prima facie case in order to invoke the Section 20(a) presumption, we need not address Claimant's argument regarding whether Dr. Shindell's opinion is sufficient to rebut the presumption.

Accordingly, we affirm the administrative law judge's Decision and Order denying benefits.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

I concur:

DANIEL T. GRESH
Administrative Appeals Judge

BUZZARD, Administrative Appeals Judge, dissenting:

I respectfully dissent from my colleagues' affirmance of the denial of benefits. The administrative law judge's decision is not supported by substantial evidence or in accordance with the law and, therefore, cannot be affirmed. *See O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S.359 (1965). As Claimant established a prima facie case of work-related psychological injuries, I would vacate the administrative law judge's decision and remand this case to determine whether Employer rebutted it and, if necessary, weigh the evidence as a whole to determine if Claimant established work-related psychological injuries.

First, the administrative law judge applied the wrong legal standard for invoking the Section 20(a) presumption. To invoke the presumption, Claimant must establish that she suffered a harm and her working conditions could have caused, aggravated, or accelerated the harm. *See Ceres Gulf, Inc. v. Director, OWCP [Plaisance]*, 683 F.3d 225, 46 BRBS 25(CRT) (5th Cir. 2012). Establishing a prima facie case is not a heavy burden. *See Ramsay Scarlett & Co. v. Director, OWCP [Fabre]*, 806 F.3d 327, 49 BRBS 87 (CRT) (5th Cir. 2015) (stating the "low burden" required to establish a prima facie case may be satisfied with evidence that is "more than a scintilla" and "might cause a reasonable person to accept the administrative law judge's fact finding"); *see also Conoco Inc. v. Director, OWCP [Prewitt]*, 194 F.3d 684, 33 BRBS 187(CRT) (5th Cir. 1999). "All the claimant need adduce is *some* evidence tending to establish the prerequisites of the presumption."

Brown v. I.T.T./Cont'l Baking Co. & Ins. Co. of N. Am., 921 F.2d 289, 296 n.6, 24 BRBS 75, 80 n.6(CRT) (D.C. Cir. 1990) (emphasis in original).

The existence of the first element, a harm, is supported not only by Claimant's testimony and statements regarding her psychological symptoms but also by the diagnoses of two doctors and Claimant's therapist. See *Sewell v. Noncommissioned Officers' Open Mess, McChord Air Force Base*, 32 BRBS 134 (1998) (en banc) ("In order to establish her prima facie case, claimant was required to prove that she suffered harm, in this case a diagnosed psychological condition," noting the burden was met through a psychologist's diagnosis of depression.); Hearing Transcript (Claimant's testimony); JX 8 (Claimant's deposition); CX 3 (therapist Bell-Callahan diagnosing posttraumatic stress disorder (PTSD)); CX 4 (Dr. Navqi diagnosing PTSD and anxiety disorder); CX 5 (Dr. Datz diagnosing PTSD and panic attacks); CX 8 (Dr. Datz's deposition). Claimant also established the second element, working conditions which could have caused her injury, as the undisputed evidence establishes frequent terror attacks and explosions at the base where she worked in Afghanistan, while she worked there. See JX 2 (list of incidents at Bagram); CX 2 (Claimant's supervisor corroborated her testimony about attacks on the base). Claimant therefore presented evidence of both a harm and working conditions which could have caused the harm, sufficient to establish a prima facie case and invoke the Section 20(a) presumption that she has a work-related psychological condition. See *Port Cooper/T. Smith Stevedoring Co., Inc. v. Hunter*, 227 F.3d 285, 34 BRBS 96(CRT) (5th Cir. 2000).

Second, the administrative law judge's finding that Claimant is not credible is irrational and unsupported by the evidence because it is based on a number of mischaracterizations of Claimant's testimony and the record. For example, with regard to the frequency of the terror attacks at Bagram, the administrative law judge inaccurately found claimant's testimony inconsistent because at her deposition she stated the attacks occurred "every day," whereas at the hearing, she agreed with her supervisor's recollection that attacks occurred every other day or week. Decision and Order at 21. To the contrary, Claimant testified at her deposition that the attacks at Bagram were "more frequent [than her prior posting at Kandahar], like every day." JX 8 at 28 (emphasis added). Claimant was making an approximation of the frequency of attacks, not a definitive statement that attacks occurred daily.

Claimant further testified that Bagram experienced "numerous terrorist attacks and suicide bombers" which caused her to fear for her life. JX 8 at 109. This is wholly consistent with her supervisor's statement that the base "came under attack often." CX 2 at 1. Her supervisor elaborated that he and Claimant "worked right off the flight line and there [were] always mortars directed that way." *Id.* He also described other incidents in which an explosive device detonated at the bus stop next to their office, killing several people; local Afghans working on the base were caught trying to poison food in the dining

hall; and the base had to be locked down for a week until several suicide bombers that had gotten onto the base were captured.⁶ CX 2 at 1-2. Finally, he stated that he and Claimant had to wear body armor to prepare for incoming attacks and witnessed aircraft crashes and other employees being injured.⁷ *Id.*

Thus, contrary to the administrative law judge's mischaracterization of the evidence, Claimant's description of the frequency of attacks at Bagram is consistent with the other evidence in the record.⁸ *See* JX 2 (showing a list of incidents at Bagram where attacks often occurred multiple times per week); CX 2 (supervisor stating the base "came under attack often"). In addition, the administrative law judge's statement that Claimant was not truthful during her bankruptcy proceeding – and thus not trustworthy in this Defense Base Act claim – is also inaccurate. At the hearing, Claimant explained that she misinterpreted the question on the bankruptcy paperwork as to whether she had any other cases pending, and that she did in fact tell the bankruptcy court about her workers' compensation claim. *See* Tr. at 129-130 ("[t]hey asked me do I have any open cases. And I told them about this one . . . So I had to make them aware of the case that I had open with you all.").

While it is the administrative law judge's prerogative to assess the credibility of the witnesses, that authority is not absolute. The administrative law judge's finding that

⁶ According to Claimant's supervisor, the suicide bombers' goal was to "go after . . . anyone that they could target." CX 2 at 1.

⁷ In light of this uncontradicted evidence regarding Claimant's frequent exposure to terror attacks and witnessing others' injuries, the administrative law judge failed to explain her crediting of Dr. Shindell's opinion that Claimant does not meet the criteria for PTSD (or suffer any other psychological condition, for that matter) because she allegedly was not "directly exposed" to trauma "other than being in a zone of conflict," witness or learn about another's trauma, or experience "extreme indirect exposure to adverse events." EX 40 at 8-9; Tr. at 151-153 (Dr. Shindell describing his belief that although Claimant's worksite was in a "war zone" and "had been shelled at times," Claimant was not "specifically in a severe amount of harm's way, other than what you would expect, given being in [a war zone]").

⁸ Moreover, even if the administrative law judge had not mischaracterized the evidence, she failed to explain how being subjected to bombings and related terror attacks every other day, instead of every day, defeats Claimant's prima facie case. Under either frequency, Claimant established working conditions that *could have* caused her psychological condition. *See Sewell*, 32 BRBS at 136-37.

Claimant is not credible is based on numerous mischaracterizations of her testimony and the other evidence in the record and, therefore, cannot be affirmed. *See Howell v. Einbinder*, 350 F.2d 442 (D.C. Cir. 1965). This error in turn affected the administrative law judge's consideration of the medical opinions supportive of Claimant's prima facie case, and therefore her rejection of these medical opinions as relying on Claimant's allegedly untrustworthy reporting of her symptoms also cannot be affirmed.

I would reverse the administrative law judge's finding that Claimant did not establish a prima facie case and hold Claimant is entitled to the Section 20(a) presumption. I would remand the case for the administrative law judge to address whether Dr. Shindell's opinion is sufficient to rebut the Section 20(a) presumption with regard to all of Claimant's diagnosed psychiatric conditions and if so, to weigh the evidence as a whole. *See Hargrove v. Strachan Shipping Co.*, 32 BRBS 11, *aff'd on recon*, 32 BRBS 224 (1998).

Therefore, I dissent.

GREG J. BUZZARD
Administrative Appeals Judge