UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

JIMMIE D. WILSON,

Petitioner,

v. CASE NO. 3:23-cv-470-BJD-MCR

FLUOR CORPORATION, INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA, and DIRECTOR OFFICE OF WORKERS' COMPENSATION PROGRAM,

Respondents.
_____/

REPORT AND RECOMMENDATION[1]

THIS CAUSE is before the Court on the Petition (Doc. 1), filed April 26 2023, in which Jimmie D. Wilson ("Petitioner") seeks review of the Benefits Review Board's ("Board") final decision denying his claim for worker's compensation benefits under the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. §§ 901–950 ("Longshore Act"), as extended by

[1] "Within 14 days after being served with a copy of [this Report and Recommendation], a party may serve and file specific written objections to the proposed findings and recommendations." Fed. R. Civ. P. 72(b)(2). "A party may respond to another party's objections within 14 days after being served with a copy." *Id.* A party's failure to serve and file specific objections to the proposed findings and recommendations alters the scope of review by the District Judge and the United States Court of Appeals for the Eleventh Circuit, including waiver of the right to challenge anything to which no specific objection was made. *See* Fed. R. Civ. P. 72(b)(3); 28 U.S.C. § 636(b)(1)(B); 11th Cir. R. 3-1; Local Rule 6.02.

the Defense Base Act, 42 U.S.C. §§ 1651–1654 ("DBA").[2]

I. Background

Petitioner filed a claim for medical and disability benefits alleging a work-related injury in the form of multiple myeloma and post-traumatic stress disorder ("PTSD") while working for Fluor Corporation ("Employer") in Afghanistan. (Doc. 1.)

On January 9, 2017, an Administrative Law Judge ("ALJ") held a hearing, during which he heard from Petitioner, who was represented by counsel. On February 7, 2018, the ALJ issued a Decision denying Petitioner's claim for failure to raise the section 20(a) presumption of the Act. (Doc. 1-2.) Thereafter, Petitioner requested review of the Decision by the Board. On June 18, 2019, the Board reversed the ALJ's holding and remanded the case for further consideration. (Doc. 1-3.) On October 20, 2021, the ALJ issued a Decision denying benefits, holding that the section 20(a) presumption was rebutted, which was affirmed upon appeal to the Board. (Docs. 1-4, 1-5.)

On April 26, 2023, Petitioner commenced this action under 42 U.S.C. § 1653(b), by timely filing the Petition seeking judicial review of the Board's Decision. (*See* Doc. 2.) On June 14, 2024, Petitioner filed his Opening Brief.

[2] The DBA "extend[s] the workers' compensation coverage of the [Longshore Act] to employees working on air, military, and naval bases outside the continental United States." *ITT Base Servs. v. Hickson*, 155 F.3d 1272, 1274 (11th Cir. 1998) (citing 42 U.S.C. § 1651(a)).

(Doc. 15.) Respondents filed their Answering Brief (Doc. 25) on September 11, 2024.

After a thorough review of the entire record and consideration of the parties' respective arguments, the undersigned respectfully **RECOMMENDS** that the Board's decision upholding the ALJ's Decision be **AFFIRMED**.

II. Legal Principles

Section 20(a) of the Longshore Act provides that "in the absence of substantial evidence to the contrary" it is presumed that a "claim comes within the provisions of [the] Act." 33 U.S.C. § 920(a); *see also U.S. Indus./Fed. Sheet Metal, Inc. v. Dir., Off. of Workers' Comp. Programs, U.S. Dep't of Labor*, 455 U.S. 608, 612 (1982). This so-called "§ 20(a) presumption" applies to DBA claims as well. *See* 42 U.S.C. § 1651(a); *e.g.*, *Carswell v. E. Pihl & Sons*, 999 F.3d 18, 30–31 (1st Cir. 2021) (applying presumption in DBA case); *Ins. Co. of State of Pa. v. Dir., Off. of Workers' Comp. Programs*, 713 F.3d 779, 783–84 (5th Cir. 2013) (same). To invoke this presumption, the claimant must establish a prima facie case of compensability, which requires that the claimant "allege an injury that arose in the course of employment as well as out of employment." *U.S. Indus./Fed. Sheet Metal*, 455 U.S. at 615.

Once the claimant invokes the section 20(a) presumption, the burden shifts to the employer to rebut the presumption with evidence that the claimant's employment did not cause or aggravate the claimant's injury.

Brown v. Jacksonville Shipyards Inc., 893 F.2d 294, 297 (11th Cir. 1990) (citing *Noble Drilling Co. v. Drake*, 795 F.2d 478, 481 (5th Cir. 1986) (recognizing that to rebut the claimant's "presumption of causation, the employer was required to present substantial evidence that the injury was not caused by the employment")). If the employer rebuts the presumption, the claimant is no longer entitled to the presumption, and the burden shifts back to the claimant to prove by a preponderance of the evidence that the claimant's injury is related to the employment. *Del Vecchio v. Bowers*, 296 U.S. 280, 286 (1935); *Metro. Stevedore Co. v. Rambo*, 521 U.S. 121, 138 (1997); *Dir., Off. of Workers' Comp. Programs, Dep't of Labor v. Greenwich Collieries*, 512 U.S. 267, 277–78 (1994). In deciding whether the claimant has shown a work-related injury, the ALJ must weigh and consider the evidence as a whole. *See Del Vecchio*, 296 U.S. at 286–87.

III. The ALJ's Decision

Here, consistent with the above framework, the ALJ made the following findings. In his first decision, the ALJ concluded that Petitioner failed to invoke the section 20(a) presumption and found that there was insufficient evidence in the record to establish Petitioner was exposed to a chemical capable of causing his injury during the course of his work with Employer. (Doc. 1-2 at 47.) Petitioner appealed the ALJ's decision to the Board, which reversed the ALJ's finding that Petitioner failed to invoke the

section 20(a) presumption and remanded the case with instructions to complete the causation analysis and address whether Petitioner's injuries were aggravated by his work exposures with Employer. (Doc. 1-3 at 10–11.) On remand, the ALJ found that "Employer has produced substantial evidence to rebut the Section 20(a) presumption." (Doc. 1-4 at 2.) Additionally, upon weighing all of the relevant evidence as a whole, the ALJ concluded that a preponderance of the evidence did not establish a causal relationship between Petitioner's work exposures to jet fuel or benzene and his diagnosis of multiple myeloma. (*See id.* at 2–20.) Furthermore, the ALJ found that the evidence did not establish that Petitioner's "elevated protein levels or multiple myeloma were aggravated by working conditions with Employer." (*See id.* at 20–21.) Finally, the ALJ stated that Petitioner's psychological conditions were not compensable because his psychological conditions were secondary to his cancer diagnosis, which was not work-related. (*See id.* at 21.) Therefore, the ALJ concluded that Petitioner was not entitled to benefits under the Act. (*Id.* at 22.) Petitioner appealed the ALJ's second decision to the Board, which affirmed the ALJ's denial of benefits. (*See* Doc. 1-5.)

IV. Standard of Review

This Court reviews the Board's decision pursuant to 42 U.S.C. § 1653(b). Although a claimant appeals the Board's decision, the Court must "begin [its] analysis by reviewing the decision of the ALJ." *U.S. Steel Mining*

Co. v. Director, OWCP, 386 F.3d 977, 984 (11th Cir. 2004) (citing *Bradberry v. Dir., Off. of Workers' Comp. Programs*, 117 F.3d 1361, 1365 (11th Cir. 1997)). The ALJ's decision is "reviewable only as to whether [it is] in accordance with law and supported by substantial evidence in light of the entire record." *Id.* (quoting *Lollar v. Alabama By-Prod. Corp.*, 893 F.2d 1258, 1261 (11th Cir. 1990)). The substantial evidence standard is met when there is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Del Monte Fresh Produce v. Dir., OWCP*, 563 F.3d 1216, 1219 (11th Cir. 2009) (quoting *Lollar*, 893 F.2d at 1262).

If the Board has affirmed the ALJ's decision, the Court's review "effectively cloaks the [Board]'s decision with the same deference to which the ALJ is entitled." *Id.* (alteration in original) (quoting *Lollar*, 893 F.2d at 1262 n.4). In reviewing the Board's decision, the Court must "mak[e] certain that the Board adhered to its statutory standard of review of factual determinations, which is whether the findings of fact are supported by substantial evidence and consistent with the law." *Roger's Terminal & Shipping Corp. v. Dir., Off. Of Worker's Comp. Programs, Dep't of Labor*, 784 F.2d 687, 690 (5th Cir. 1986) (citation omitted); *see also Del Monte Fresh Produce*, 563 F.3d at 1219; *Argonaut Ins. Co. v. Patterson*, 846 F.2d 715, 718 (11th Cir. 1988).

V. Issues on Appeal

On appeal, Petitioner raises the follow two arguments: 1) "[t]he ALJ improperly found that [Employer] produced substantial evidence to rebut the Section 20(a) presumption because [Employer] did not submit specific and substantial evidence *disproving* a causal link between [Petitioner's] cancer and his employment;" and 2) "[e]ven if the Section 20(a) Presumption was Rebutted on Causation, [Employer] Presented No Evidence Rebutting the Section 20(a) Presumption with Regard to Aggravation." (Doc. 15 at 8, 17.)[3]

VI. Summary of Relevant Background

Petitioner started working overseas after he was discharged from the military, where he served for 21 years. (Doc. 1-5 at 2.) From 2009 to 2012, Petitioner worked for Employer as a fuel distribution manager in Afghanistan. (*Id.*) Petitioner states that he was "regularly exposed to JP8 jet fuel as well as its chemical additives [including benzene]" and was "responsible for cleaning up spills and transferring fuel when [fuel] bladders became defective or unstable." (*Id.*)

In 2011, Petitioner's physician, Dr. Paul Skinner, noted in a routine primary care appointment that Petitioner had elevated protein levels. (*Id.*)

[3] The undersigned notes that while Petitioner cites and refers to hearing exhibits and formal hearing transcripts in his Petition, these documents were not made part of the record on appeal. (*See* Doc. 15 at 8 n.1.)

In June 2012, Dr. Skinner referred Petitioner to Dr. Saeeda Chowdhury who diagnosed him with multiple myeloma. (*Id.*) Petitioner filed a claim on December 10, 2012, "alleging that his multiple myeloma was caused by his work exposure to jet fuel." (*Id.*) Additionally, Petitioner claimed that "he developed Post-Traumatic Stress Disorder as a result of contracting multiple myeloma." (*Id.*) In support of his claim, Petitioner presented evidence from Dr. Saeeda Chowdhury, Dr. Gary Spitzer, and Dr. Harvey Checkoway and "asserted that benzene, a carcinogen and component of jet fuel, either caused or contributed to his multiple myeloma." (*See id.*; Doc. 25 at 1–2.) Employer challenged Petitioner's claim and presented evidence from Dr. Suzanne Sergile who opined that Petitioner "did not establish benzene could cause multiple myeloma." (Doc. 1-5 at 3.)

Ultimately, the ALJ gave "greater weight to Dr. Sergile's medical testimony than to [Petitioner's] doctors, finding her opinion well-documented and well-reasoned." (*Id.*; *see also* Doc. 1-4 at 20.) On appeal, the Board affirmed the ALJ's ruling because "the ALJ reasonably weighed the evidence in reaching his conclusions," and the ALJ "determined Dr. Sergile's medical research and analysis of the nine Bradford Hill factors[4] warranted giving her

[4] The Board stated that "[t]he Bradford Hill criteria for causality is a methodology that epidemiologists and other doctors use to determine an association or causation between workplace exposure and an injury or illness. The Bradford Hill factors include: (1) temporal relationship; (2) strength of association; (3) dose-

greater weight." (Doc. 1-5 at 8–9.) According to the Board:

> Nothing in the record indicates the ALJ erred in weighing the evidence. The ALJ's review was well cited and well supported by the doctor's reports, deposition testimony, and medical literature in the record. As the Board is not permitted to impute its own judgment in the place of the ALJ's well-reasoned inferences and conclusions, we are in no position to negate the ALJ's conclusions. Accordingly, we affirm the ALJ's conclusion that [Petitioner] did not prove by a preponderance of the evidence that his work exposures caused his myeloma.

(*Id.* at 9.) The Board also affirmed the ALJ's conclusion that "work exposure did not aggravate a preexisting condition." (*Id.*) The Board stated:

> Although Dr. Sergile noted [Petitioner's] elevated protein levels existed since 2007, which were ultimately the driving factor for testing [Petitioner] for myeloma, as the ALJ found the record is decidedly silent of any evidence [Petitioner's] conditions were aggravated by exposures to benzene from his work with Employer. This is particularly so in light of Dr. Sergile's credited opinion that there is no established and accepted relationship between exposure to jet fuel and multiple myeloma. Thus, we affirm the ALJ's determination that [Petitioner's] condition was not aggravated by his work-related exposure to benzene.

(*Id.* at 10.)

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response relationship; (4) replication of findings; (5) biological plausibility; (6) consideration of alternative factors; (7) cessation of exposure; (8) specificity of association; and (9) consistency with other information and knowledge." (Doc. 1-5 at 6.)

VII. Analysis

Petitioner contends the ALJ and the Board erred in finding that Employer presented substantial evidence to rebut the section 20(a) presumption because Employer did not submit specific and substantial evidence *disproving* a causal link between Petitioner's multiple myeloma and his employment. (Doc. 15 at 9–13.) Petitioner argues that, to rebut the presumption of compensability, Employer must present substantial evidence that Petitioner's condition could not have been caused nor aggravated by his employment. (*Id.*) Petitioner relies on *Swinton v. J. Frank Kelly, Inc.*, 554 F.2d 1075 (D.C. Cir. 1976), for this proposition. (*Id.* at 10–11.)

Petitioner's argument is misplaced. The rebutting party need not disprove possible links between an injury and employment, but must only provide evidence that a reasonable mind might accept as adequate to support a conclusion that the injury was not work-related. *Higgins v. ACADEMI,* No. 3:19-CV-552-BJD-JRK, 2021 WL 7627741, at *14 (M.D. Fla. July 27, 2021), report and recommendation adopted as modified sub nom., 2021 WL 7627733 (M.D. Fla. Oct. 25, 2021). In other words, the employer must provide enough evidence to cast factual doubt on the prima facie case created by the section 20(a) presumption. *Id.*

Petitioner further argues that Employer failed to rebut the section 20(a) presumption because a specific alternative cause for the injury was

never identified. (Doc. 15 at 10.) There is no requirement for the Employer to identify a specific alternative cause for the claimant's injury, as the rebuttal standard is simply to provide evidence that the injury did not arise out of employment. An employer need not affirmatively prove that the injury arose through other means. *See, e.g.*, *Brown v. Jacksonville Shipyards, Inc.*, 893 F.2d 294, 297 (11th Cir. 1990).

On remand, the ALJ found that Employer had presented substantial evidence to rebut the section 20(a) presumption. Specifically, the ALJ found that Dr. Sergile's reports and testimony, which showed that Petitioner's multiple myeloma was not caused by his exposure to jet fuel and burn pits, constituted substantial evidence to rebut the section 20(a) presumption. (*See* Doc. 1-4.) Petitioner contends that this finding was in error, asserting that Dr. Sergile's opinion does not explicitly rule out causation and that it is "hedged and speculative." (Doc. 1-5 at 15.)

Dr. Sergile testified to the possibility of an association between petroleum products and multiple myeloma, but went on to clarify that "association does not equal causation." (Doc. 1-4 at 9.) Petitioner contends that the ALJ erred because this admission of an association fails to "rule out" the possibility of a connection between benzene and multiple myeloma. (Doc. 1-5 at 5.) In support, Petitioner relied on *Brown*, where the court stated that the employer's physicians failed to "rul[e] out" a potential connection between

his injury and employment, thus failing to rebut the section 20(a) presumption. *Brown,* 893 F.2d at 297. Petitioner's argument is misplaced. Despite the aforementioned language, the court in *Brown* held that an employer needs only to provide substantial evidence showing that the injury is unrelated to the employment. *Id.*; *see also O'Kelley v. Dep't of the Army/NAF*, 2000 WL 1228805, at *3.

Dr. Sergile's opinion cites the International Agency for Research on Cancer repeatedly, specifically for its findings that "[a] causal relationship between multiple myeloma and jet fuel has not been found," and that there is "limited evidence in humans for a causal association of benzene with multiple myeloma." (Doc. 1-4 at 11.) Further, Dr. Sergile references the Bradford Hill criteria to establish the lack of epidemiologic evidence of a causal relationship between benzene and multiple myeloma. (*Id.* at 13–14.) This by itself is sufficient to cast doubt on the causal link between benzene and multiple myeloma and to rebut the section 20(a) presumption.

Petitioner also contends that his work exposure to benzene may have aggravated preexisting multiple myeloma. However, the record on appeal contains no medical documentation substantiating this assertion. The ALJ considered and rejected the aggravation theory, finding that the evidentiary record does not establish that Petitioner had multiple myeloma prior to his employment with Respondent. (Doc. 1-4 at 20.) Although the record reflects

that Petitioner exhibited elevated protein levels as early as 2007, prompting subsequent testing for multiple myeloma, there is no evidence indicating that any preexisting condition was aggravated by his work with Employer. (*See id.* at 20–21.) Furthermore, Dr. Sergile's testimony that there is no established or accepted relationship between benzene exposure and the development or progression of multiple myeloma significantly weakens Petitioner's aggravation theory. (*See id.* at 9–20.)

In sum, Dr. Sergile's testimony is not "hedged" nor "speculative" and constitutes substantial evidence to rebut the section 20(a) presumption. (*See* Doc. 1-5 at 5.); *see also Higgins,* No. 3:19-CV-552-BJD-JRK, 2021 WL 7627741, at *14.

VIII. Conclusion

For the above reasons, the undersigned recommends that the ALJ's Decision, upheld by the Board, is in accordance with law and supported by substantial evidence. Accordingly, it is respectfully **RECOMMENDED** that:

1. The Petition (**Doc. 1**) be **DENIED**.

2. The decision of the Benefits Review Board, upholding the decision of the Administrative Law Judge, be **AFFIRMED**.

3. The Clerk of Court be directed to enter judgement accordingly and close the file.

DONE AND ENTERED in Jacksonville, Florida, on June 11, 2025.

MONTE C. RICHARDSON
UNITED STATES MAGISTRATE JUDGE

Copies to:

The Honorable Brian J. Davis
Senior United States District Judge

Counsel of Record