

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 30th day of September, two thousand twenty-six.

PRESENT:

JOSÉ A. CABRANES,
GERARD E. LYNCH,
JOSEPH F. BIANCO,
Circuit Judges.

MARJAN APOSTOLOVSKI,

Petitioner,

v.

25-2168

UNITED STATES DEPARTMENT OF LABOR,
DYNCORP INTERNATIONAL INC.,
INSURANCE COMPANY OF THE STATE OF
PENNSYLVANIA,

Respondents.

FOR PETITIONER:

JON B. ROBINSON, Strongpoint Law Firm,
LLC, Mandeville, Louisiana, (Lara D.
Merrigan, Merrigan Brown, PC, Campbell,
California, *on the brief*).

FOR RESPONDENT:

LAWRENCE P. POSTOL (Joshua Obszanski, *on the brief*), Postol Law Firm, P.C., McLean, Virginia.

On petition for review from the United States Department of Labor Benefits Review Board.

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the petition for review of a decision of the United States Department of Labor Benefits Review Board is **DENIED**.

Petitioner Marjan Apostolovski seeks review of an order of the United States Department of Labor Benefits Review Board (the “Board”) affirming the decision of the administrative law judge (“ALJ”), who denied Apostolovski’s claim for benefits under the Longshore and Harbor Workers’ Compensation Act (“LHWCA”), 33 U.S.C. § 901 *et seq.*, as extended by the Defense Base Act (“DBA”), 42 U.S.C. § 1651 *et seq.*¹ Apostolovski’s claim is against Respondents DynCorp International, for whom he worked in Afghanistan, and its insurer, Insurance Company of the State of Pennsylvania. We assume the parties’ familiarity with the underlying facts, procedural history, and issues on appeal, to which we refer only as necessary to explain our decision.

¹ The LHWCA “is a comprehensive [federal] workers’ compensation system, under which employers are required to compensate covered employees injured in the course of their employment, regardless of fault.” *In re Verplanck Fire Dist.*, 175 F.4th 144, 155 (2d Cir. 2026) (alteration in original) (internal quotation marks and citation omitted). The DBA “extends workers’ compensation coverage under the [LHWCA] to employees of American contractors engaged in [activities] related to military bases in foreign countries . . . [and] establishes a uniform, federal compensation scheme for civilian contractors and their employees for injuries sustained while providing functions under contracts with the United States outside its borders.” *G4S Int’l Emp. Servs. (Jersey), Ltd. v. Newton-Sealey*, 975 F.3d 182, 186 (2d Cir. 2020) (alterations in original) (internal quotation marks and citation omitted).

BACKGROUND

In June 2010, Apostolovski, who is from North Macedonia, was hired as a fuel distribution operator by DynCorp. Apostolovski worked for DynCorp for two years, during which he fueled helicopters and armored vehicles at Forward Operating Base (“FOB”) Wolverine in Afghanistan. He has limited proficiency in English. Apostolovski allegedly experienced multiple mortar and grenade attacks while working at FOB Wolverine, resulting in difficulty sleeping, loss of appetite, and weight loss (from 120 to 90 kilograms) while in Afghanistan. Apostolovski’s contract with DynCorp ended in approximately June 2012, at which point he returned to North Macedonia. According to Apostolovski, beginning in Afghanistan and continuing through his return to North Macedonia, he experienced anxiety, trouble being in crowds and with his family, elevated heartrate, headaches, hand tremors, and muscle cramps. In 2014, Apostolovski began working for a food processing company and continued that employment for approximately two and a half years, until the company filed for bankruptcy. He then worked as a warehouse worker for another company beginning in March 2017, through at least August 2021. At some point between 2012 and November 2018, Apostolovski applied to work in Afghanistan for Fluor Corporation, but did not secure any position.

Apostolovski first visited a doctor about his symptoms in November 2018. He saw a psychologist, Dr. Lidija Manasievska, from November 2018 to October 2020. Dr. Manasievska diagnosed Apostolovski with Post-Traumatic Stress Disorder (“PTSD”) due to his work on the military base in Afghanistan based on his self-reported experiences and symptoms, and referred him to a psychiatrist, Dr. Gjorgje Hadzi-Angjelkovski, whom he saw from February to August 2020 and who prescribed “medications to calm [him].” Joint App’x at 559. As of August

2021, Apostolovski continued to see a psychiatrist, Dr. Tanja Risteska, and take his prescribed medications.

In April 2020, Apostolovski filed a claim under the LHWCA against DynCorp and its insurer. In July 2021, Apostolovski was evaluated by Dr. Melissa Ogden, a psychologist retained as an expert by DynCorp. Apostolovski retained his own expert, Dr. Brett Valette, a psychologist. The case was referred to the ALJ, who held a hearing in December 2021.

In August 2023, the ALJ issued his decision, denying the claim. *See generally* ALJ's Decision and Order, *Apostolovski v. DynCorp Int'l*, No. 2020-LDA-02617, 2023 WL 5928901 (Dep't of Lab. Aug. 29, 2023) (*Apostolovski I*). The ALJ determined that, although Apostolovski's post-employment paperwork denied exposure to traumatic events or psychological symptoms, his testimony, medical treatment records, and the testimony of his expert, Dr. Valette, sufficed to invoke the statutory presumption, *see* 33 U.S.C. § 920(a), that the claim for compensation comes within the provisions of the LHWCA. *Apostolovski I*, 2023 WL 5928901, at *9. After placing the burden on DynCorp to rebut the presumption, the ALJ found that "Dr. Ogden's opinion constitutes substantial evidence that . . . [Apostolovski] does not have any psychological injury, much less any caused by his employment [with DynCorp]," and thus the Section 920(a) presumption had been rebutted. *Id.* at *10. The ALJ then assessed the evidence as a whole to determine if Apostolovski had carried his burden of persuasion, and concluded that he had not. In particular, the ALJ found that Apostolovski was "not credible" on the key aspects of his testimony, *id.* at *10–11; that his medical records, which were "not well-documented or well-reasoned," should be afforded "only limited evidentiary weight," *id.* at *11 (footnote omitted); and that Dr. Valette's opinion was less credible than that of Dr. Ogden because, *inter alia*, Dr. Valette had never spoken to Apostolovski and his opinion relied on the

treatment records that the ALJ had found unreliable, *id.* at *12. The ALJ noted that, although “it is more likely than not that [Apostolovski] was exposed to war conditions while in Afghanistan[,] likely causing transient fear and visceral reactions . . . , the weight of the credible evidence establishes only that [he] suffers from . . . minimal symptomology, not rising to the level of a psychological injury,” and that his minimal symptomology was “likely due to his shift work [at his current employment] and not a consequence of his employment [for DynCorp in Afghanistan].” *Id.*

Apostolovski timely appealed to the Board, which affirmed the ALJ’s decision in July 2025. *See generally Apostolovski v. DynCorp Int’l*, No. 23-0487, 2025 WL 2548756 (Ben. Rev. Bd. 2025) (*Apostolovski II*). After analyzing and rejecting Apostolovski’s challenges to the ALJ’s decision, the Board concluded that, “[b]ecause the ALJ permissibly exercised his discretion in weighing the medical opinions of record, and his credibility determinations are rational and supported by substantial evidence, we affirm the ALJ’s conclusion that [Apostolovski] does not have a work-related psychological condition and his denial of benefits.” *Id.* at *9 (internal citations omitted). This appeal followed.

DISCUSSION

“Our review is limited to whether the [Board] made any errors of law and whether substantial evidence supports the ALJ’s findings of fact.” *Rainey v. Dir., Office of Workers’ Comp. Programs*, 517 F.3d 632, 634 (2d Cir. 2008). Accordingly, we review questions of law *de novo* and the ALJ’s findings of fact for substantial evidence. *See Peña Garcia v. Dir., Office of Workers’ Comp. Programs*, 169 F.4th 111, 116 (2d Cir. 2026). “[A] decision of the ALJ that is supported by substantial evidence, is not irrational, and is in accordance with the law . . . must be affirmed.” *G4S Int’l Emp. Servs. (Jersey), Ltd. v. Newton-Sealey*, 975 F.3d 182, 186 (2d Cir.

2020) (internal quotation marks and citation omitted). “Substantial evidence is such evidence as a reasonable mind might accept as adequate to support a conclusion.” *Serv. Emps. Int’l, Inc. v. Dir., Office of Workers’ Comp. Programs*, 595 F.3d 447, 455 (2d Cir. 2010) (internal quotation marks and citation omitted); *see also DynCorp Int’l v. Dir., Office of Workers’ Comp. Programs*, 658 F.3d 133, 137–38 (2d Cir. 2011) (per curiam) (noting “that it might be more appropriate to refer to a ‘*reasoning*’ mind’ rather than a ‘*reasonable*’ mind’ because the inquiry requires evaluation of the judgment used arriving at a finding or conclusion, not the ultimate correctness—or ‘reasonableness’ of that finding”).

“To recover under the LHWCA, [a claimant] must demonstrate causation,” *Rainey*, 517 F.3d at 634—here, that Apostolovski’s alleged PTSD or other psychological injury arose out of his employment at DynCorp, *see* 33 U.S.C. § 902(2). “Section 920(a) of the . . . [LHWCA] creates a presumption that a claim for compensation comes within the provisions of the Act, and inherent in this provision is the presumption that an injury is causally related to a worker’s employment.” *Rainey*, 517 F.3d at 634 (internal quotation marks and citation omitted). To invoke this presumption, the claimant “must make out a *prima facie* case of causation by establishing both that [the claimant] suffered harm, and that workplace conditions . . . could have caused, aggravated, or accelerated the harm.” *Id.* (omission in original) (internal quotation marks and citation omitted). If a claimant makes this *prima facie* showing, the “burden shifts to the employer to rebut the presumption with substantial evidence that the alleged harmful workplace condition did not cause, contribute to, or aggravate the claimant’s condition.” *Am. Stevedoring Ltd. v. Marinelli*, 248 F.3d 54, 65 (2d Cir. 2001). If the employer offers evidence sufficient to rebut the presumption, then “all relevant evidence must be weighed to determine if a causal relationship has been established, with [the] claimant bearing the ultimate burden of

persuasion.” *Id.*

The parties do not dispute the ALJ’s finding that Apostolovski’s claim triggered the Section 920(a) presumption. On appeal, Apostolovski argues that the ALJ erred by holding that DynCorp produced substantial evidence sufficient to rebut the statutory presumption. He alternatively asserts that, even if the presumption was rebutted, the ALJ erred in determining, after weighing all of the evidence, that he did not ultimately carry his burden of persuasion. We find his arguments unpersuasive and address each in turn.

I. Section 920(a) Rebuttal

Apostolovski first argues, in essence, that Dr. Ogden’s opinion alone cannot constitute substantial evidence because her analysis contained a number of alleged infirmities. It is important to note, however, that “the employer’s burden in rebutting the [Section] 920(a) presumption is a burden of *production*, not a burden of persuasion.” *Rainey*, 517 F.3d at 637 (emphasis added). Here, as the ALJ explained, Dr. Ogden “evaluated [Apostolovski], conducted diagnostic testing, and opined that [he] does not have psychological injuries” because, *inter alia*, “[he] did not meet any diagnostic criteria for a mental illness, the treatment records are not valid, and . . . his results on the two objective tests indicated overreporting and exaggerating symptoms.” *Apostolovski I*, 2023 WL 5928901, at *10. Based on this record, the ALJ did not err in concluding that Dr. Ogden’s thorough opinion is clearly the kind of evidence that “a reasonable mind might accept as adequate to support a conclusion.” *Serv. Emps. Int’l*, 595 F.3d at 455 (internal quotation marks and citation omitted). None of the alleged weaknesses in Dr. Ogden’s medical opinion raised by Apostolovski undermine the strength of her analysis or the ALJ’s reliance on that analysis as substantial evidence to rebut the Section 920(a)

presumption.²

For example, Apostolovski contends that the ALJ, by treating Dr. Ogden’s opinion as substantial rebuttal evidence, improperly “substitute[d] DSM-5 criteria for Congress’s definition of ‘injury.’”³ Petitioner’s Br. at 32. Dr. Ogden testified, *inter alia*, that “the definition of PTSD or any psychological condition, includes the necessary criteri[on] of functional impairment,” namely, “significant distress or impairment in social, occupational or other important areas of functioning,” and that Apostolovski “d[id] not meet that criteri[on].” Joint App’x at 134. Based upon that assessment, Apostolovski asserts that the ALJ “treated Dr. Ogden’s erroneous ‘no DSM-5 diagnosis’ gatekeeper as substantial evidence rebutting the § 20(a) presumption—even though [the LHWCA’s] injury definition neither demands a DSM-5 diagnosis nor makes ‘functional impairment’ an element of injury.” Petitioner’s Br. at 37; *see also* 33 U.S.C. § 902(2) (defining “injury”).⁴

That argument overlooks Dr. Ogden’s bottom-line opinion—namely, that “there is no indication he is (or was) experiencing a psychological condition.” Joint App’x at 502; *see also id.* at 410 (“[I]t is my opinion [Apostolovski] does not have PTSD or any psychological condition caused or aggravated by his work in Afghanistan.”); *accord id.* at 504. Indeed, the ALJ explicitly noted that he was *not* relying upon Dr. Ogden for any definition of “injury” under the

² As a threshold matter, DynCorp argues that we should assess these alleged weaknesses during the weighing of the evidence at step three of the legal standard, not at step two. Apostolovski counters that these issues must be considered at step two because the alleged errors rendered Dr. Ogden’s opinions legally insufficient to rebut the statutory presumption. However, we need not address this question because we find Apostolovski’s arguments unavailing for the reasons discussed herein, regardless of the step at which they are considered.

³ DSM-5, or the “Diagnostic and Statistical Manual of Mental Disorders,” is “one of the basic texts used by psychiatrists and other experts.” *Hall v. Florida*, 572 U.S. 701, 704 (2014).

⁴ The LHWCA has a separate definition for “disability.” *See* 33 U.S.C. § 902(10).

statute, but rather on her medical opinion that Apostolovski did not suffer from PTSD or any other psychological condition *and* that the minimal symptomology that he experienced was the result of his shift rotations in his employment at that time as a warehouseman (rather than his employment in Afghanistan):

I find it is more likely than not that [Apostolovski] was exposed to war conditions while in Afghanistan likely causing transient fear and visceral reactions. However, the weight of the credible evidence establishes only that [he] suffers from what Dr. Ogden identified as minimal symptomology, not rising to the level of a psychological injury. While her statement is inconsistent with the legal definition of an injury, since any symptom may qualify, that distinction is moot, since she credibly explained it was likely due to his shift work and not a consequence of his employment.

Apostolovski I, 2023 WL 5928901, at *12; *see also id.* at *8 (noting that Dr. Ogden found that “[s]ome symptoms [Apostolovski] reports—irritability, sleep disturbance, symptoms of depression, etc.—have been shown to be caused by shift work” and “[he] reports weekly-rotating shifts at work, working 10pm-6am for a week, the next week 6am-2pm, and then a week 2pm-10pm”).⁵ Thus, contrary to Apostolovski’s contention, the ALJ did not permit the DSM-5 criteria to override the statutory definition of “injury.” Although Apostolovski also seeks to attack Dr. Ogden’s determination regarding his shiftwork as an alternative cause for his alleged symptoms, we conclude that her opinion on this issue, in the context of her overall medical assessment, was sufficiently specific to permit the ALJ to rely upon it.

Apostolovski also suggests that Dr. Ogden’s opinion could not rebut the presumption because she erroneously relied upon the results of the Test of Memory Malinger (‘‘TOMM’’) and the Morel Emotional Numbing Test (‘‘MENT’’), which are designed to measure whether the

⁵ The Board also rejected this conflation argument, emphasizing that ‘‘Dr. Ogden unequivocally opined [Apostolovski] does not have PTSD or any work- or non-work-related psychological injury; she did not confuse or substitute ‘injury’ with ‘disability.’’’ *Apostolovski II*, 2025 WL 2548756, at *5.

examinee is engaged in malingering or exaggeration in reporting symptoms. Apostolovski contends that those tests should not have been considered because, *inter alia*, “the record included no North Macedonian validation data” and “no Macedonian-language norms,” and the tests were administered “through an interpreter” in a “remote evaluation setting.” Appellant’s Reply Br. at 17. However, Dr. Ogden addressed the cross-cultural validity issue in detail during her testimony at the hearing, which the ALJ found “full and rational.” *Apostolovski I*, 2023 WL 5928901, at *12. In any event, the ALJ explicitly stated that his determination would be the same even without considering that testing. *See id.* at *12 n.45 (“[E]ven if I were to discount the testing because of [Apostolovski’s] arguments, I would still find Dr. Ogden’s opinion otherwise supported by her evaluation and understanding of [his] history.”).⁶

In sum, the ALJ did not err in concluding that DynCorp, based on Dr. Ogden’s medical opinion, had “rebut[ted] the presumption with substantial evidence that the alleged harmful workplace condition did not cause, contribute to, or aggravate [Apostolovski’s] condition.” *Am. Stevedoring Ltd.*, 248 F.3d at 65.

II. Burden of Persuasion

Apostolovski also argues that, even if the presumption was rebutted, the ALJ erred in

⁶ We reach the same conclusion regarding the admission of non-party treatment records, involving similar reports from the same providers used by Apostolovski, which the ALJ explained had been submitted by DynCorp “to argue that the similarities in the entries show a pattern of listing general symptomology and the absence of accompanying details, descriptions, or testing records indicate the providers did volume work without explaining or even considering the specifics of each patient.” *Apostolovski I*, 2023 WL 5928901, at *11 n.42. The ALJ made clear that “[it] found that argument and the accompanying records only marginally persuasive, given the regular use of boilerplate language in many professions and the fact that the identification of the failure to enter detailed or even specific findings in [Apostolovski’s] records required no comparison to others.” *Id.* Thus, even assuming *arguendo* that the ALJ erred in admitting those records, any such error was harmless because the ALJ made clear that he would have reached the same determination regardless of any reliance on those records and that determination was supported by substantial evidence.

determining that he did not carry his burden of persuasion after weighing all of the evidence. We disagree.

Apostolovski contends that the ALJ's discounting of his treatment records was "irrational." Petitioner's Br. at 64. That contention is without merit. The ALJ assigned the treatment records "limited evidentiary weight" because they were "not well-documented or well-reasoned." *Apostolovski I*, 2023 WL 5928901, at *11. In doing so, the ALJ "[found] persuasive Dr. Ogden's observation that the records summarily jump from a list of symptoms to diagnoses and medications provided, without any symptom validation, descriptions of treatment offered, testing performed, testing results or explanation of what other factors they considered to reach their diagnostic conclusions." *Id.* Based upon our review of the record, that finding was supported by substantial evidence. *Cf. Morales v. U.S. Dep't of Lab.*, No. 25-1112, 2026 WL 2224751, at *3 (2d Cir. Aug. 3, 2026) (summary order) (holding that the ALJ's assigning minimal weight to the claimant's expert opinions was supported by substantial evidence where their opinions relied heavily on self-reported symptoms and contained inconsistencies and inaccuracies).

We are similarly unpersuaded by Apostolovski's argument that the ALJ erred in discounting Dr. Valette's opinion. The ALJ's decision to afford Dr. Valette's opinion little weight was again supported by substantial evidence. More specifically, the ALJ reasonably found that Dr. Valette's opinion was less credible where, *inter alia*, Dr. Valette "never talked to or met [Apostolovski]," "did not know how long [he] had been working or that [he] had applied for a job in Afghanistan," and "base[d] his opinions on the treatment records [that the ALJ] found to be unreliable." *Apostolovski I*, 2023 WL 5928901, at *12.

Finally, Apostolovski asserts that the ALJ erred in concluding that he was not credible.

We have emphasized that the ALJ “has the discretion to evaluate the credibility of a claimant and to arrive at an independent judgment, in light of medical findings and other evidence,” *Pietrunti v. Dir., Office of Workers’ Comp. Programs*, 119 F.3d 1035, 1042 (2d Cir. 1997) (internal quotation marks and citation omitted), and “[w]e are not free to re-weigh the evidence or to make determinations of credibility,” *Sealand Terminals, Inc. v. Gasparic*, 7 F.3d 321, 323 (2d Cir. 1993) (per curiam). Here, the ALJ’s negative assessment of Apostolovski’s credibility was supported by substantial evidence. For example, the ALJ explained that “the record discloses significant discrepancies in [Apostolovski’s] testimony and other statements that call into question his credibility,” including how much weight he lost while in Afghanistan, and noted that “his postemployment statements” contradicting his claim “fundamentally taint his credibility.” *Apostolovski I*, 2023 WL 5928901, at *10. Moreover, the ALJ explained:

[Apostolovski’s] testimony is only minimally consistent with the reports he made to his treating providers and, like his interview with Dr. Ogden, includes no references to flashbacks or intrusive thoughts, two rather remarkable and severe symptoms the treatment records consistently report. Dr. Ogden also noted [Apostolovski] gave conflicting reports of when his symptoms began She pointed out many inconsistencies between the history he provided her and in his doctors’ reports.

Id. at *11. The ALJ also noted that “[Apostolovski’s] testimony about why he left his job was at best ambiguous and in any event not credible.” *Id.* at *10. In particular, although he claimed that “he would not have renewed” the position if it had been offered, the ALJ found that this “explanation was not at all persuasive, since he gave as a reason the fact that he did not have any medications there, then said he was not taking any, and conceded he had later applied to return to work in Afghanistan.” *Id.*

Apostolovski maintains that it is unsurprising that there are “minor inconsistencies” in his testimony. Petitioner’s Br. at 72. However, “it is for the ALJ to evaluate whether

[inconsistencies in] a petitioner’s testimony resulted from a lack of credibility or a more innocent cause.” *Avendano v. U.S. Dep’t of Lab.*, No. 24-2254, 2025 WL 3652843, at *3 (2d Cir. Dec. 17, 2025) (citing *Lin v. U.S. Dep’t of Just.*, 453 F.3d 99, 109 (2d Cir. 2006)). Following the ALJ’s reasonable discounting of his medical records and Dr. Valette’s opinion, Apostolovski “was left principally with his own testimony about his symptoms, and that testimony did not compel the conclusion that he suffered a work-related psychological injury.” *Morales*, 2026 WL 2224751, at *3. Given the ALJ’s thorough reasoning and upon our review of the evidence in the record, we find that the ALJ’s credibility determination was supported by substantial evidence and was not “patently unreasonable.” *Pietrunti*, 119 F.3d at 1042 (citation omitted).

In short, there is no basis to disturb the ALJ’s ultimate conclusion that “the weight of the evidence shows that [Apostolovski] failed to carry his burden and, in fact, that it is more likely than not that [he] did not sustain a psychological injury during his employment.” *Apostolovski I*, 2023 WL 5928901, at *13.

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We have considered Apostolovski’s remaining arguments and conclude that they are without merit. Accordingly, we **DENY** the petition for review.

FOR THE COURT:

Catherine O’Hagan Wolfe, Clerk of Court