

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 15-163

**HARVEY R. CHESTER,
Claimant-Respondent,**

v.

**FEDERAL EXPRESS CORPORATION and
SEDGWICK CLAIMS MANAGEMENT
Employer/Third Party Administrator-Petitioner.**

Appeal from an September 4, 2015 Compensation Order
by Administrative Law Judge Joan E. Knight
AHD No. 10-071C, OWC No. 653997

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2016 MAR 17 PM 12 47

(Decided March 17, 2016)

Eric M. May for Claimant
Lisa A. Zelenak for Employer

Before LINDA F. JORY, HEATHER C. LESLIE and JEFFREY P. RUSSELL, *Administrative Appeals Judges.*

LINDA F. JORY for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

Harvey R. Chester (Claimant) worked for Federal Express (Employer) as an express courier. Claimant has a history of lower lumbar injury dating back to 2000. In early 2008, Claimant began to experience pain, weakness and buckling in his right knee and came under the care of Dr. Steven Bleckner. On June 19, 2008, Dr. Bleckner performed a lateral meniscectomy on Claimant's right knee.

On September 15, 2008, while attempting to lift a 75 pound package off of his delivery truck, Claimant felt pain and numbness in his lower back. Claimant was initially diagnosed with a lumbar strain and subsequently underwent physical therapy. On April 14 2010, Claimant began treating with Dr. Matthew Ammerman, neurosurgeon, for complaints of back pain and right leg pain. Claimant was diagnosed with L3-4 nerve root irritation with degenerative disc disease , S1

nerve root irritation with degenerative disc disease. Dr. Ammerman performed a right-sided L3-L4 hemilaminectomy with a right-sided complete facetectomy and L3-L4 posterior lumbar interbody fusion on Claimant. Claimant subsequently came under treatment for his right knee by Dr. Philip Bobrow. Dr. Bobrow opined on August 20, 2013 that Claimant's right quadriceps weakness is related to an old work related issue with his lower back and his knee issue is causally related to the workers' compensation injury of his back. On March 13, 2013, Dr. Ammerman reported Claimant has been doing well in regard to his back but his right knee has become a problem causing Dr. Bobrow to drain it repeatedly.

Employer arranged for Claimant to be examined by Dr. Marc Danziger, orthopedic surgeon, for an independent medical examination (IME) on June 4, 2013. Dr. Danziger opined Claimant's treatment for his right knee is not causally related to the September 15, 2008 work injury to Claimant's back.

A full evidentiary hearing occurred on May 5, 2015. Claimant sought an award of causally related medical expenses for treatment of his right knee.

An administrative law judge (ALJ) issued a Compensation Order (CO) on September 4, 2015. The ALJ concluded Claimant met his burden of demonstrating that his right knee complaints are causally related to the September 15, 2008 work accident.

Employer timely appealed. Employer asserts the ALJ's conclusion that Claimant's condition is causally related to the 2008 work injury is not supported by substantial evidence and not in accordance with the Act.

Claimant contends that the CO should be affirmed as it is supported by substantial evidence.

ISSUE ON APPEAL

Is the September 4, 2015 Compensation Order supported by substantial evidence and in accordance with the law?

ANALYSIS¹

At the outset, we note that Employer's allegations of error involve the ALJ's characterization of the evidence after the ALJ found Claimant invoked and Employer successfully rebutted the

¹ The Compensation Review Board's (CRB) scope of review, established by the District of Columbia Workers' Compensation Act (the Act) and as contained in the governing regulations is limited to making a determination as to whether the factual findings of the Compensation Order are based upon substantial evidence in the record, and whether the legal conclusions drawn from those facts are in accordance with applicable law. D.C. Code § 32-1521.01(d)(2)(A). "Substantial evidence", as defined by the District of Columbia Court of Appeals (DCCA), is such evidence as a reasonable person might accept to support a particular conclusion. *Marriott Int'l. v. DOES* 834 A.2d 882 (D.C. 2003). Consistent with this scope of review, the CRB is bound to uphold a Compensation Order that is supported by substantial evidence, even if there is also contained within the record under review substantial evidence to support a contrary conclusion, and even where the reviewing authority might have reached a contrary conclusion. *Marriott*, 834 A.2d at 885.

presumption of compensability. Employer does not assert that the ALJ erred in concluding Claimant invoked the presumption and Claimant does not assert the ALJ erred in applying or did not set forth in her rebuttal analysis the test currently used in this jurisdiction when IME reports are relied upon to rebut the presumption, as outlined in *Washington Post v. DOES and Raymond Reynolds, Intervenor*, 852 A.2d 909 (D.C. 2004) (*Reynolds*).

Employer contends the ALJ's reliance on the treating physician preference in this matter is misplaced. Employer specifically takes issue with the ALJ's conclusion:

Drs. Ammerman and Bobrow have evaluated and treated Claimant's lumbar injury and right knee condition extensively since 2008 and therefore are in better positions to provide reliable medical opinions addressing the causal relationship of Claimant's right knee condition.

Employer's brief unnumbered at p. 6; CO at 8.

Employer contends:

However, neither physician began treatment of Claimant in 2008. Dr. Ammerman did not begin his treatment of the Claimant until April 2010, 19 months after the injury and Dr. Bobrow did not become involved in Claimant's care until June 2011, well over two years after the September 2008 injury.

Employer's brief at 6, 7.

Employer further asserts:

The medical records from Claimant's treating physicians prior to Drs. Ammerman and Bobrow, Drs. Bleckner and Michaels, reveal that the Claimant was experiencing progressive weakness and atrophy in the knee and thigh both before and immediately after the September 15, 2008 injury. The Claimant was seen by Dr. Bleckner beginning in June 2008 for right knee problems, and ultimately underwent surgery for that condition. Following the surgery, Claimant's right knee condition continued to deteriorated, with weakness in the knee and atrophy in the quadriceps reported in August and September 2008. (ER P. 31). On September 3, 2008, Claimant followed up with Dr. Bleckner for his right knee and complained of progressive weakness with symptoms in the thigh. (ER P. 34). A mere twelve days later, the Claimant suffered an injury to his lower back. When the Claimant presented to Dr. Michaels in November 2008, right thigh atrophy and continued swelling in the knee were both reported and attributed to the previous knee arthroscopy. (ER P. 10) As previously noted, muscle atrophy is a slow and insidious process, it is not a spontaneous result for a traumatic injury.

Employer's Brief at 7.

At the outset we must note that although Employer refers to “Dr. Michaels” several times in support of its position, Dr. Michaels’ records have not been made part the instant record. In fact Employer’s citations to Dr. Michaels’ opinions include references to other physicians’ reports. Therefore, we reject Employer’s assertion that the ALJ’s failure to reference Dr. Michaels is grounds for remand. Further, the November 2008 report of Dr. Bleckner which Employer asserts shows Claimant presented with right thigh atrophy and continued swelling in the knee attributed to the previous knee arthroscopy, has not been made part of the record presented to the ALJ.

We do agree that the ALJ mischaracterized the treatment dates and medical records of Drs. Ammerman and Bobrow, by stating “Drs. Ammerman and Bobrow have evaluated and treated Claimant’s lumbar injury and right knee condition extensively since 2008 and therefore are in better positions to provide reliable medical opinions addressing the causal relationship of Claimant’s right knee condition.” CO at 8. Review of the record evidence reveals, as Employer asserts, Dr. Ammerman did not begin his treatment of the Claimant until April 2010, 19 months after the injury and Dr. Bobrow did not become involved in Claimant’s care until June 2011, well over two years after the September 2008 injury. However, we conclude that this incorrect statement does not warrant a reversal or remand.

The Employer urges that the ALJ erred in according the treating physician preference to Dr. Ammerman:

Regardless of the fact that Dr. Ammerman is primarily a neurosurgeon and was involved in this case in that capacity, he was called upon to render opinions regarding the knee and its relationship with the back. It should be noted that Dr. Ammerman was the only expert offered on the Claimant’s behalf; an orthopedic surgeon did not offer testimony. It was stated in the Compensation Order that Dr. Ammerman concluded that “Claimant’s right knee and quadriceps are intimately related”. Judge Knight relied on this conclusion in reaching her final decision. In his reports, Dr. Ammerman rendered conclusions related to orthopedic issues, and yet when asked to defend them in his deposition, Dr. Ammerman deferred to the orthopedic surgeon and admitted he had not seen the Claimant’s knee diagnostics. An issue of credibility arises as to the causal relationship opinions rendered by Dr. Ammerman in light of the fact that his qualifications do not extend into the orthopedic realm and he did not examine the knee diagnostics.

Employer’s brief at 7, 8.

The ALJ found the medical opinion of the treating physician, Dr. Ammerman, to be persuasive and accorded him the treating physician preference. Dr. Ammerman is not only the treating physician but he performed complex neurosurgery on Claimant’s back in 2010. We do not agree with Employer’s assertion that Dr. Ammerman lacks the qualifications to provide an opinion with regard to the causal relationship of claimant’s right knee problems. At his deposition, Dr. Ammerman was specifically asked by Counsel for Employer:

Q. So my question is, from a neurological standpoint, do you believe that the injury to the back in September of 2008 somehow contributed to or caused the need for the surgery in September 2011 or in 2012?

A. I don't think it caused it. I do think it contributed, as I said earlier – previously. He had so much nerve damage in that right quadriceps and so much atrophy of the muscles, that I think that has set him up for this failure and this need for recurring knee surgery.

CE 3 at 28, 29.

While Employer presents reasons why the ALJ might have chosen to reject the treating physician's opinion in favor of Employer's proffered expert opinions to the contrary, Employer cites no support for the proposition that Dr. Ammerman's opinion must, as a matter of law, be rejected. Given Dr. Ammerman's status as a treating physician, and given his unequivocally expressed opinion that Claimant's knee condition was aggravated by the work incident and/or the back surgery, the ALJ's determination to that effect is supported by substantial evidence and must therefore be affirmed.

What the Employer is asking us to do is to reweigh the evidence in their favor and reject the treating physician's opinion, a task we cannot do. The ALJ weighed the evidence and applied the well accepted treating physician long applied in the District of Columbia. We affirm this finding.

CONCLUSION AND ORDER

The ALJ's conclusion that Claimant's current complaints are causally related to her 2008 injury is supported by substantial evidence and in accordance with the law and is AFFIRMED.

So ordered.