

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 05-AA-770

INTERPARK HOLDINGS & FEDERAL INSURANCE COMPANY
PETITIONERS,

CRB No. 05-04

v.

D.C. DEPARTMENT OF EMPLOYMENT SERVICES,
RESPONDENT,

AND

WILLIAM ELEY

INTERVENOR-CLAIMANT.

On Petition for Review
of a Decision of the
Compensation Review Board

(Submitted April 20, 2007

Decided May 3, 2007

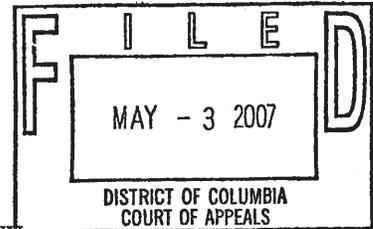
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Before BLACKBURNE-RIGSBY and THOMPSON, *Associate Judges* and TERRY, *Senior Judge*.

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: Petitioners, Interpark Holdings & Federal Insurance Company, contend that the Administrative Law Judge's (ALJ) findings were not supported by substantial evidence in the record and should not have been affirmed by the Department of Employment Services Compensation Review Board (CRB).¹ Discerning no error, we affirm.

¹ The District of Columbia Department of Employment Services filed a statement, in lieu of a brief, indicating that it stands on the decision below.



The ALJ determined the facts to be as follows. William Eley (claimant) was employed by petitioner as a parking lot attendant. His duties included using multiple jacks to move locked cars that were blocking other vehicles. This task is usually done with four parking lot attendants, however due to a staff shortage on July 12, 2003, the claimant attempted to move a vehicle with only one other co-worker. While lifting the vehicle by the bumper, the claimant felt a popping sensation in his lower back, accompanied by a sudden sharp pain in the same area, causing him to fall to the floor.

The next day, July 13, 2003, the claimant sought medical treatment at George Washington University Hospital and was prescribed Motrin and Percocet. On July 23, 2003, after experiencing continuous pain, the claimant visited Dr. Hampton Jackson, an orthopedic physician. An August 13, 2003 review of the claimant's MRI showed a deranged internal L5-S1 disc and bulging of the disc material, prompting Dr. Jackson to order further tests, including a discogram.

On October 28, 2003, the claimant underwent an independent medical examination (IME) by Dr. Stephen Hughes, an orthopedic surgeon. Upon reviewing the claimant's medical records, Dr. Hughes concluded that the injury of the L5-S1 disc was related to the workplace injury on July 12, 2003. However, he also noted that the claimant should discontinue the use of Percocet, physical therapy and all other medical treatments and return to work.

Dr. Jackson re-examined the claimant on November 17, 2003, and noted that the claimant "*may* be forming a habituation to his current prescribed medication." (Italics added) Dr. Jackson changed claimant's prescription to Vicodin ES, and recommended that he remain off work and rest for six months or until January 12, 2004. He also noted that if the claimant had not recovered by January 2004, he should consider a percutaneous disc procedure. In response to Dr. Hughes' IME report² and the notes from Dr. Jackson's re-examination, the petitioner recommended that the claimant enter into a detoxification program, which the claimant refused. Dr. Jackson recommended repeatedly on January 12, February 17, and March 25, 2004, that the claimant undergo a percutaneous disc procedure. On July 27, 2004, complainant returned to work, part time, with a new employer, which poses no risk to his back.

The ALJ concluded that Dr. Jackson's recommendation of surgery was reasonable and necessary. Similarly, the ALJ concluded that the claimant's refusal to participate in a detoxification program was also reasonable since there was no evidence of current or ongoing addiction. The ALJ

² Dr. Hughes did not conclude that the claimant was forming a habituation to the prescribed medication, but he did recommend that the claimant be weaned off of the medication over a two week time frame.

awarded temporary total disability from December 2, 2003-June 26, 2004, interest and reasonably related medical care including coverage for the recommended percutaneous disc procedure. The ALJ denied the requested temporary partial disability benefits continuing from June 27, 2004, concluding that claimant had voluntarily limited his income by working part time with his new employer. The CRB affirmed the decision of the ALJ.

II.

We give deference to the CRB's decision, "provided that the decision flows rationally from facts supported by substantial evidence in the record." *Marriott Int'l v. District of Columbia Dep't of Employment Servs.*, 834 A.2d 882, 885 (D.C. 2003). Such evidence is more than a mere scintilla and is "relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Stewart v. District of Columbia Dep't of Employment Servs.*, 606 A.2d 1350, 1351 (D.C. 1992). "The Board's conclusions must be sustained unless they are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." *George Washington Univ. v. District of Columbia*, 831 A.2d 921, 931 (D.C. 2003). We are constrained to uphold a compensation order that is supported by substantial evidence, even if substantial evidence exists to support a contrary conclusion. *Marriott Int'l, supra*, 834 A.2d at 885.

III.

Contrary to the petitioners' assertions, substantial evidence supports the ALJ's findings. The ALJ reasonably chose to credit the opinions and recommendations made by Dr. Jackson, the treating physician, over the opinion of Dr. Hughes, who conducted the IME. *See Short v. District of Columbia Dep't of Employment Servs.*, 723 A.2d 845, 851 (D.C. 1998) (examiners give weight to treating physician's testimony over the testimony of a physician retained for litigation); *Stewart v. District of Columbia Dep't of Employment Servs.*, 606 A.2d 1350, 1353 (D.C. 1992). Acting on the presumption that there was nothing wrong with claimant's back, Dr. Hughes stated that the claimant could "return to work in a full duty capacity after weaning from narcotics which will take no longer than 2 weeks." Dr. Hughes did not present any specific medical reasoning explaining his view that the claimant could return to work and discontinue the medical treatments prescribed to him by Dr. Jackson. In giving more weight to Dr. Jackson's recommendation, the Examiner noted that Dr. Hughes' IME does not constitute substantial evidence because the medical report was not accompanied by any reasoning explaining the opposition to the treating physician's findings.³

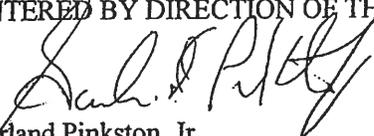
³ Although the ALJ does not specifically discuss Dr. Jackson's reprimand, he specifically noted in his opinion that he "considered and weighed" all of the evidence.

Finally, there was substantial evidence that the claimant did not unreasonably refuse to submit to a drug detoxification program offered by the petitioner. Petitioner argues that the claimant had a previous drug addiction and that he became addicted to the drugs prescribed by Dr. Jackson and therefore needed to attend a drug detoxification program. However, the ALJ noted that there was no evidence in the record indicating that the claimant had a current addiction to any drugs, including Percocet or Vicodin, prescribed by Dr. Jackson.⁴ Consequently, the claimant's refusal to submit to the detoxification program offered by his employer was reasonable, absent substantial evidence in the record that he needed detoxification.

For the reasons discussed, there was substantial evidence to support the compensation order and the decision of the CRB is

Affirmed.

ENTERED BY DIRECTION OF THE COURT


Garland Pinkston, Jr.
Clerk of the Court

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⁴ The ALJ found Dr. Jackson's note concerning the claimant's potential addiction to the prescribed medication, to be merely a concern and not a medical fact and the ALJ further found the claimant's use of the medication to be reasonable.