GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR

F. THOMAS LUPARELLO
ACTING DIRECTOR

DEPT. OF EMPLOYMENT SERVICES
COMPENSATION REVIEW BOARD
2014 MAY 21 AM 9 02

CRB No. 14-007

ANGELA ASHTON,
Claimant–Respondent,

v.

DISTRICT OF COLUMBIA DEPARTMENT OF MOTOR VEHICLES,
Employer–Petitioner.

Appeal from a December 18, 2013 Compensation Order issued by
Administrative Law Judge Fred D. Carney, Jr.
AHD No. PBL 13-045, DCP No. 30081122563-0001

Andrea G. Comantale, for the Petitioner
Harold L. Levi, for the Respondent

Before JEFFREY P. RUSSELL, MELISSA LIN JONES, and HENRY W. MCCOY, *Administrative Appeals Judges*.

JEFFREY P. RUSSELL for the Compensation Review Board.

DECISION AND REMAND ORDER

On January 17, 2013, Petitioner filed with the Compensation Review Board (CRB) an Application for Review of a Compensation Order issued December 18, 2013 (the CO), in which Respondent was awarded benefits from and after March 18, 2010. Contemporaneously therewith, Petitioner filed a timely Memorandum of Points and Authorities Supporting Petitioner's Application for Review.

On January 31, 2014, Respondent filed an opposition to the Application for Review, along with a Memorandum in Opposition to Application for Review.[1]

[1] Petitioner also filed a Motion to Stay the Compensation Order, to which motion Ms. Ashton filed an opposition. The motion was denied in a prior order.

BACKGROUND AND DISCUSSION

Respondent Angela Ashton (Respondent, or, Ms. Ashton) was employed by Petitioner, District of Columbia Department of Motor Vehicles (Petitioner).The claim under review in this proceeding appears on its face to relate to a date of injury alleged to be October 20, 2008. In the Pre-Hearing Order for the Disability Compensation Program (PHO) executed by the parties at the time of the formal hearing, the parties described the injury as follows:

> Date of Alleged Injury: 10/20/2008
>
> ...
>
> Claimant: I was exposed to fumes, aggravation of preexisting hypertension.
> Employer: Temporary aggravation of preexisting hypertension.
>
> ...
>
> Claimant—Has not returned to work has until *since* March 18, 2010 *unrelated to present claim from 10/20/08*

PHO, page 1 -2. The words "has until" were crossed out by hand, and the italicized words were handwritten. The changes were initialed by the Administrative Law Judge (ALJ) and both counsel.

Ms. Ashton and Petitioner had engaged in an earlier round of litigation concerning a claim for benefits resulting from work related environmental conditions occurring on March 18, 2010, the same date from which benefits are sought to be commenced in this case. It was her theory that oppressive heat caused her to suffer a stroke on that date, rendering her disabled. After a formal hearing, two Compensation Orders and two appeals to the CRB, it was ultimately "hereby determined that Claimant has failed to show by a preponderance of evidence that she suffered a stroke as a result of working on March 18, 2010", and her claim for benefits was denied. *Ashton v. Department of Motor Vehicles* AHD No. PBL 10-065 (July 23, 2013).

In this case, there has been no claim that the environmental conditions that have prevented Ms. Ashton from returning to work have caused a worsening of her admittedly pre-existing hypertension, and we have seen nothing in the record that any physician has expressed the opinion that her reactions to these environmental factors are anything more than temporary exacerbations which are transient in nature. As such, this claim should be viewed as falling into the same category as *WMATA v. DOES and Hughey Payne, Intervenor,* 992 A.2d 1276 (D.C. 2010) at 1285 – 1286 and footnote 12 and *Washington Post v. DOES and Monique Berthault, Intervenor*, 853 A.2d 704 (D.C. 2004), at 708. See also, *Hensley v. Cheechi & Co.*, CRB No. 10-075, AHD No. 92-359J, OWC No. 115568 (June 29, 2011). Ms. Ashton is entitled to such temporary total disability benefits as are the result of these work related exposures which disable her, and for medical care to treat the acute event.

Prior to this claim for disability commencing March 18, 2010, Ms. Ashton had claimed, and Petitioner accepted the claim for "Temporary aggravation of pre-existing hypertension" caused by inhalation of noxious fumes in October 2008, not work-related hypertension *per se*. Ms.

Ashton is only entitled to benefits if the aggravation continues, and is no longer entitled to compensation once the aggravation has subsided. Employer's doctor says it does not; Claimant's doctors do not say that the aggravation continues, only that the pre-existing hypertension continues. The employer met its burden, but the claimant offers a red herring – her hypertension is not better. She did not prove her claim of an ongoing aggravation by a preponderance of the evidence. *See*, *WMATA v. DOES and Hughey Payne, Intervenor, supra, Washington Post v. DOES and Monique Berthault, Intervenor*, *supra*, and *Hensley, supra.*

Notably, the ALJ does not draw any distinctions or at least make specific findings concerning Ms. Ashton's baseline pre-existing impairments and limitations, and those caused by the accepted work injury. For example:

> "Claimant continued to suffer with episodes of high blood pressure and worsening mental health. Dr. Jensvold opined as did Dr. Wetstone that failure to provide Claimant adequate accommodations lead to the disability and the duration thereof."[CO at 5]
>
> "I find Claimant has uncontrolled hypertension, anxiety, and migraines that keep her from working. Dr. Dukta opined Claimant's condition was triggered by and continues because the way her disability has progressed has aggravated her psychiatric disorder."[CO at 5]
>
> "I find Claimant's emotional condition including her prior stroke were caused by conditions at her work place, failure to adhere to the restrictions on Claimant's working in elevated heat and highly stressful environment as well as her anxiety and depression. I find Claimant's elevated blood pressure is uncontrollable as a result of her anxiety and depression." [CO at 6]
>
> "[T]he November 26, 2012 report of Dr. Dukta a neurologist that opined Claimant was suffering from anxiety and depression that were not well controlled and that her blood pressure was elevated on recent visits."[CO at 6]
>
> "Since her 2008 work injury she has been hospitalized three times for episodes of elevated or low blood pressure. Claimant testified that the incidents were the result of stress from working and that her treating physicians have never opined that she should return to work."[CO at 7]
>
> "Although it is settled case law in this matter that stress and stroke are not compensable under the Act the results of those injuries, *i.e.,* hypertension is compensable and has been accepted by WC as compensable."[CO at 8]

We must point out that Ms. Ashton declaimed any reliance upon a stroke as being causative of her claimed disability. See, HT 20 – 21. Further, the ALJ includes contradictory findings regarding the stroke and Ms. Ashton's employment. Because of this internally incongruent set of

findings, because there is no claim raised here regarding a connection between the alleged stroke and the claimed disability, and because there was no claim raised and no notice of denial issued concerning any emotional or psychological injury, (see, See, *Jaiyeola v. D.C. Public Service Commission,* CRB No. 13-022, OHA No. PBL 00-058B, DCP No. LT-DPE000340 (July 26, 2013), and cases cited therein) we vacate the ALJ's finding that "Claimant's emotional condition including her prior stroke were caused by conditions at her work place, failure to adhere to the restrictions on Claimant's working in elevated heat and highly stressful environment as well as her anxiety and depression.

Beyond this, the fact that Ms. Ashton has not returned to work for uncontrolled hypertension does not make the ongoing award supportable. Claimant suffered from hypertension before the work event, and she still has it after the work event. The Employer is only responsible for the exacerbation; once Claimant returned to her pre-injury baseline, ongoing uncontrolled hypertension is irrelevant. Furthermore, the limitations and restrictions are not based upon the aggravation but for Ms. Ashton's pre-existing hypertension. The limitations and restrictions are irrelevant to the workers' compensation claim because they are not a result of the work exposures. This relationship is bolstered by her doctor's reiteration that restricted Ms. Ashton regarding stress and heat before she the date of her alleged aggravation.

CONCLUSION AND ORDER

The claim for benefits commencing March 18, 2010 was denied in a final Compensation Order issued July 23, 2012, and the award of those benefits in the Compensation Order of December 18, 2013 is not in accordance with the law. The award is vacated and the matter remanded with instructions to make further findings of fact concerning the duration of Ms. Ashton's disabling exacerbation of her pre-existing hypertension and enter a Compensation Order on Remand awarding only such benefits as are related to the temporary aggravation of Ms. Ashton's hypertension.

FOR THE COMPENSATION REVIEW BOARD:

JEFFREY P. RUSSELL
Administrative Appeals Judge

May 21, 2014
DATE