

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 15-062

ARNTRICE D. WESTBROOK,
Claimant–Respondent,

v.

DISTRICT OF COLUMBIA PUBLIC SCHOOLS
Self-Insured Employer–Petitioner.

Appeal from a March 23, 2015 Compensation Order by
Administrative Law Judge Gwenlynn D’Souza
AHD No. PBL 14-046, DCP No. 0468-WC-94-0500032

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2015 AUG 25 AM 10 15

(August 25, 2015)

Harold L. Levi for Claimant
Rahsaan J. Dickerson for Employer

Before, LINDA F. JORY, MELISSA LIN JONES, and JEFFREY P. RUSSELL, *Administrative Appeals Judges.*

LINDA F. JORY for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

Artrice D. Westbrook (Claimant) worked as a teacher at the Oak Hill Public School (Employer) in a classroom without heat during the winter months. On April 10, 2001, Claimant filed a claim for “Respiratory System Conditions, Asthma, Influenza, Pneumonia, Multiple Body Parts.” The Office of Risk Management/Public Sector Workers’ Compensation Program (PSWCP) issued a Notice of Acceptance on August 29, 2001, which stated “An Independent Medical Evaluation is relating your condition to your work environment” and “lost time compensation” was continued. On June 15, 2007, the Administrative Hearings Division (AHD) issued a Compensation Order which decided the issues of whether employer had overpaid wage loss benefits to Claimant and whether Claimant remained entitled to receive wage loss benefits. *Westbrook v. D.C. Public Schools*, AHD No. PBL 06- 003B, DCP No. 761021-3-2006-3 (June 15, 2007).

PSWCP stopped paying wage loss benefits to Claimant on July 8, 2014. PSWCP issued a Notice of Determination (NOD) on January 16, 2014 which notified Claimant that her claim for continuing benefits was denied based on the report of Dr. Harvey Schwartz, an internist and allergist who found the January 8, 2001 work injury was not causing current symptomatology. A Final Decision on Reconsideration that denied Claimant's request for reconsideration issued on July 8, 2014.

A formal hearing took place on February 24, 2015. The March 23, 2015 Compensation Order (CO) granted Claimant's request to have her temporary total disability benefits reinstated. *Westbrook v. District of Columbia Public Schools*, AHD No. PBL14-046, DCP No. 0468-WC-94-0499932 (March 23, 2015)

Employer timely appealed. Claimant has filed an opposition.

ISSUES ON APPEAL

1. Is the administrative law judge's (ALJ's) finding that PSWCP accepted Claimant's claim without any specific limitation supported by substantial evidence?
2. Is the ALJ's conclusion that Employer failed to prove by a preponderance of evidence that Claimant's benefits should be terminated supported by substantial evidence?

ANALYSIS¹

Is the administrative law judge's (ALJ's) finding that PSWCP accepted Claimant's claim without any specific limitation supported by substantial evidence?

In support of its request for reversal of the COR, Employer asserts:

The notice of acceptance provided the following basis for the Program's acceptance of the claim: '[a]n independent medical evaluation is relating your condition (i.e. tracheobronchitis secondary to ambient work conditions) to your work environment.' Based on the foregoing information, the ALJ determined that the Program accepted Claimant's claim for her 'condition' without any specific limitation.

¹ The scope of review by the Compensation Review Board (CRB) and this Review Panel as established by the District of Columbia Comprehensive Merit Personnel Act of 1978, as amended D. C. Code § 1-623.01, *et seq.*, (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 §623.28(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) (*Marriott*). Consistent with this scope of review, the CRB and this panel are 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.

Employer's Brief at 11 (citations omitted). Subsequently, Employer states:

Per Dr. Mayo's report, Claimant's 'condition' was an adverse reaction secondary to ambient air conditions at her work environment. Based on the explicit description of the injury provided in Claimant's claim form, the diagnosis contained in Dr. Mayo's medical evaluation, and the claim acceptance form which refers to Dr. Mayo's diagnosis (i.e. that the allergens in Claimant's building where Claimant was working at the time she was seen by Dr. Mayo caused a recurrence of the symptoms) relating Claimant's condition to her work environment, the ALJ's finding that the Program accepted Claimant's claim with no restrictions is not supported by substantial evidence contained in the record.

Employer's Brief at 12.

Claimant responds asserting that the NOD makes no reference whatsoever to any diagnosis of Dr. Mayo.

Notwithstanding the two parenthetical diagnoses referred to by Employer, the NOD does not include either diagnosis.

The NOD in question states the following:

NOTICE OF ACCEPTANCE

Date of Injury: Monday, January 08, 2001

YOUR DISABILITY COMPENSATION CLAIM IS HEREBY ACCEPTED FOR THE REASON(S) INDICATED BELOW:

An Independent Medical Evaluation is relating your condition to your work environment.

Continuation of Pay (COP) is authorized for up to 21 days if prescribed by a PPO treating physician and directly related to the injuries sustained in the above referenced accident.

Medical expenses for the above injuries from this accident and performed by and/or prescribed by treating PPO physician are covered. Lost time beyond the 21 day COP period which is authorized by a PPO treating physician and directly related to the injuries sustained in the above referenced accident are compensable. Lost time compensation is continuing until such time as the prevailing medical opinion indicates your ability to return to work.

CE 2.

This panel is of the opinion that the reference to an IME without any specifics does not provide a specific limitation on Claimant's claimed work injuries as Employer alleges. We further find the ALJ did not commit error in her analysis or conclusion that the accepted claim consists of respiratory system conditions related to the work environment.

Is the ALJ's conclusion that Employer failed to prove by a preponderance of evidence that Claimant's benefits should be terminated supported by substantial evidence?

Employer contends the ALJ erred in finding the opinion of Claimant's treating physician, Dr. Steinberg persuasive. Specifically, Employer asserts;

Although treating physician's opinions are now equipoise with the opinions of independent medical evaluators, ALJ's may still reject a treating physician's opinions if that opinion includes sketchiness, vagueness, and imprecision. *Lawrence Bastian v. D.C. Water and Sewer Authority*, CRB No. 07-008, AHD No. PBL 03-406 (Dec. 10, 2008). Additionally, 'personal examination by the [A]ME physician, as well as review of pertinent medical records and diagnostic studies . . . [are] reasons to support acceptance of [AME] opinion instead of treating physician opinion'. *Id.*

Employer's Brief at 13.

Claimant responds:

The ALJ gave logical reasons for according greater weight to the reports of Dr. Steinberg than those of Drs. Schwartz and Myerson. Her reasons included that Dr. Steinberg's opinion was consistent with the opinions of previous pulmonary IMEs (Tauber and Mayo) which contained objective evidence of airways obstruction, that Dr. Steinberg treated Claimant continuously for several years and because he personally observed her hyperactive airways and her continuing unabated cough. The ALJ also gave reasoned and logical explanations for finding the reports of Drs. Myerson and Schwartz unpersuasive in that their opinions that Claimant should have been able to return to work within a month after she was removed from her workplace conditions were not only inconsistent with the law of the case, but they provided no alternative to explain the fourteen year history of Westbrook's abnormal and unabated chronic cough and they did not personally observe her obstructed airways.

Claimant's Brief at 8.

We do not agree that the ALJ improperly afforded Dr. Steinberg's opinion a preference. The fact that the ALJ referred to treatment that lasted for several years and personally observed Claimant's airways does not in this panel's view equate to a treating physician preference. The ALJ explained:

I find Drs. Myerson and Schwartz's opinion on causation unpersuasive because they did not personally observe Claimant's airways, they did not determine an alternative cause for Claimant's abnormal condition, and their determination is contrary to the law of the case. Assuming the law of the case, particularly that Claimant's condition should have been able to return to work approximately one month after the workplace exposure was eliminated – must be discounted. Based on the law of the case, the weight of the evidence is that Claimant's current disability was medically causally related for 7 years, and Employer has not shown any change in medical condition since July 15, 2007.

CO at 7.

The ALJ's reference to the law of the case pertains to the 2007 Compensation Order wherein the parties stipulated to a causal relationship between claimant's respiratory condition and the January 8, 2001 work injury. CE 11. The stipulation was incorporated into the 2007 Compensation Order's Findings of Fact which was not appealed. While we note the ALJ misstated the date of the 2007 Compensation Order as July 15, 2007, we find the ALJ provided sufficient reasoning for rejecting the opinions of Drs. Myerson and Schwartz. We further conclude that the ALJ's determination that Employer did not prove by a preponderance of evidence that Claimant's current condition is no longer causally related to the work place injury is supported by substantial evidence.

Although we may have reached a conclusion contrary to that of the ALJ on this issue, we cannot substitute our judgment for that of the ALJ. *Marriott, supra* 834 A.2d at 885. We conclude that the ALJ's Conclusions of Law is supported by substantial evidence in the record and the Compensation Order is AFFIRMED.

So Ordered.