GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR

LISA MARÍA MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 13-103

TEWODROS BERHANE,
Claimant–Petitioner,

v.

CVS AND GALLAGHER BASSETT SERVICES, INC.,
Employer/Carrier–Respondents.

Appeal from a July 30, 2013 Compensation Order By
Administrative Law Judge Linda F. Jory
AHD No.11-090B, OWC No. 688491

Michael Kitzman, Esquire, for the Petitioner
Tony Villeral, Esquire, for the Respondent

Before HEATHER C. LESLIE, JEFFREY P. RUSSELL, and MELISSA LIN JONES *Administrative Appeals Judges*.

HEATHER C. LESLIE, for the Compensation Review Board.

DECISION AND ORDER

OVERVIEW

This case is before the Compensation Review Board (CRB) on the request for review filed by the Claimant - Petitioner (Claimant) of the July 30, 2013, Compensation Order (CO) issued by an Administrative Law Judge (ALJ) in the Hearings and Adjudication Section of the District of Columbia Department of Employment Services (DOES). In that CO, the ALJ denied the Claimant's request for medical bills related to an emergency room visit (ER) on June 28, 2012 to be paid by the Employer, finding the visit was not medically causally related to the work injury. We AFFIRM.

BACKGROUND AND FACTS OF RECORD

On September 5, 2012 the Claimant injured his back and left leg. Germane to this appeal, the Claimant entered into a lump sum settlement (LSS) with the Employer which was approved by the Office of Worker's Compensation on September 6, 2012. In that LSS, the Employer agreed to pay and the Claimant agreed to accept $60,000 in a lump sum as well as $10,000 for future medical expenses. The LSS also stipulated the Employer would be held liable for all causally related medical care and treatment incurred prior to the date on which the LSS was approved.

Prior to the LSS approval at OWC, the Claimant had been engaged in vocational rehabilitation. On June 28, 2012, while attempting to search for jobs in the Silver Spring/Wheaton, Maryland area, the Claimant alleges the weather was too hot which caused dehydration. Because of his symptoms, the Claimant went to the ER at Holy Cross Hospital. Relying on *Nixon v. DOES*,[1] the Claimant claimed this visit was due to the requirement of the vocational counselor requiring in house visits, and thus the ER visit was the liability of the Employer.

A full evidentiary hearing proceeded on July 10, 2013. The sole issue to be decided was whether the treatment the Claimant received at Holy Cross Hospital on June 28, 2013 was medically causally related to the work injury and thus the liability of the Employer. A CO issued on July 30, 2013 denying Claimant's claim for relief. The CO found that the Claimant had failed to invoke the presumption of compensability that the work related event, activity, or requirement which had the potential to cause or to contribute to the ER visit.

The Claimant timely appealed. The Claimant argues that he submitted sufficient evidence to invoke the presumption. The Claimant further argues that as sufficient evidence was submitted, and as the Employer did not provide any evidence to the contrary, the Employer failed to rebut the presumption. Thus, the Claimant argues the ALJ erred in denying the Claimant's claim for relief.

The Employer opposes the Claimant's Application for Review, arguing there is substantial evidence to support the findings in the CO.

STANDARD OF REVIEW

The scope of review by the CRB, as established by the Act and as contained in the governing regulations, is generally 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. *See*, D.C. Workers' Compensation Act of 1979, as amended, D.C. Code § 32-1501, *et seq.*, (the Act) at § 32-1521.01 (d)(2)(A), and *Marriott International v. DOES*, 834 A.2d 882 (D.C. 2003). Consistent with this standard of review, the CRB must affirm 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 this panel might have reached a contrary conclusion. *Id.*, at 885.

[1] 954 A.2d 1016 (D.C. 2008).

DISCUSSION AND ANALYSIS

The Claimant argues that the ALJ erred in finding the Claimant failed to present evidence sufficient enough to invoke the presumption. We disagree.

As the ALJ correctly notes, in order to invoke the presumption of compensability, the Claimant must initially show some evidence of a disability and the existence of a work-related event, activity, or requirement which has the potential to cause or to contribute to the disability.[2] Upon such a showing, the burden then reverts to the Employer to rebut the presumption. The ALJ then went on to analyze the Claimant's evidence and testimony.

> Claimant testified that on June 28, 2012, the vocational rehabilitation case manager advised claimant that she was going to contact his attorney about his failure to complete the forms which report the names of the businesses that claimant applied for work. HT at 21. Claimant testified that he was afraid his benefits would be cut off and he left his home around two o'clock in the afternoon to look for work. HT at 19, 22. He testified that he looked for work for two hours and felt tired and began asking people on the street for help. HT at 22. According to claimant he was directed to the fire station and was taken from the fire station to Holy Cross Hospital by ambulance. Claimant also submits the records from the Holy Cross Hospital for his emergency room visit as well as the contemporaneous case manager's reports.
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> Claimant's assertion that his emergency room visit is causally related to the vocational rehabilitation employer was providing him is not supported by any of his exhibits. Moreover claimant's assertion that his emergency room visit was pre-empted by heat or dehydration is not supported by the emergency room records. Thus although claimant submits as CE 4, the weather history for Washington, DC, showing a high temperature of 96 degrees on June 28, 2012, claimant's exhibits contradict claimant's assertion that the emergency room physicians told claimant he was suffering from dehydration or that his problems were related to exposure to heat or that the CM told him his attorney would be contacted on June 28, 2012 and so he went out job searching in the middle of the afternoon. To the contrary, the June 28, record of the CM specifically indicates that the CM advised claimant on June 28, 2012, that "if [claimant] is unable to do in-person employer contacts, he should adjust his job search method to include, networking, internet and cold calling employers."
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> It is also noted that emergency room record lists the Chief Complaint as "Chest Pain" and the symptoms are located in the left chest and resolved within 30 minutes. Further, while the records indicate claimant was given "IV hydration", dehydration is not listed in the six diagnosis codes listed in the emergency department chart. The diagnoses listed are Headache, Chest Pain, numbness, Chest pain, abnormal bowel sounds and Normal EKG. See CE 1 at 4.

[2] *Ferreira v. D.C. Department of Employment Services,* 531 A.2d 651, 655 (D.C. 1987).

> While the undersigned is mindful that the CM records do indicate that on July 3, 2012 the CM did contact claimant's attorney to inform him of her concerns regarding claimant's negative attitude and his lack of compliance and that on July 9, 2012, claimant advised the CM that he had gone to the hospital when his headache symptoms worsened. These events occurred after the time frame in question and do not support claimant's assertion that he was afraid his benefits would be suspended so he went on a job search the afternoon of June 28, 2012 which led to his emergency room visit.
>
> There is no evidence to support claimant's assertion that he was conducting job search activities on June 28, 2012 when he experienced the symptoms that led to his hospital visit, whether it be for chest pains, headaches or dehydration. There is further no evidence in the record to establish that the vocational rehabilitation counsel was requiring that claimant leave his home on June 28, 2012 even though he complained of debilitating headaches Accordingly, the evidence of record does not establish a work-related event, activity, or requirement which has the potential to cause or to contribute to the claimant's hospitalization, and the presumption of compensability is not invoked. The burden of production accordingly does not shift to employer.

CO at 4-5.

The ALJ found the Claimant had failed to invoke the presumption of compensability. We agree with this conclusion.

We reject the Claimant's argument that the ALJ erred in failing to find that the vocational rehabilitation counselor required him to perform job searches in person and that because of this he had to seek medical treatment for dehydration. The evidence supports the ALJ's finding that the vocational counselor specifically indicated that when the Claimant was unable to perform in person job search, the Claimant could look for jobs online or cold call employers. Moreover, the ALJ noted the medical records do not support the Claimant's claim that dehydration was the cause of his hospital visit. The diagnosis listed on the ER visit was chest pain and headache, not dehydration. As the ALJ found the Claimant to have failed to invoke the presumption of compensability, a conclusion we affirm, we need not address the Claimant's other argument, that the Employer had failed to rebut the presumption of compensability.

The ALJ's conclusion that the Claimant failed to invoke the presumption of compensability is supported by the substantial evidence in the record and in accordance with the law. What the Claimant is essentially asking this panel to do is to reweigh the evidence in his favor, a task we cannot do. As we stated above, the CRB must affirm 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 this panel might have reached a contrary conclusion. *Marriot, supra*.

CONCLUSION AND ORDER

The Compensation Order of July 30, 2013 is supported by the substantial evidence in the record and is in accordance with the law. It is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

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HEATHER C. LESLIE
Administrative Appeals Judge

October 21, 2013
DATE