

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA MARÍA MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 12-192

**RUSSELL BRADLEY,
Claimant–Respondent,**

v.

**FORT MYER CONSTRUCTION CORPORATION and LIBERTY WAUSAU MUTUAL GROUP,
Employer / Insurer – Petitioners.**

Appeal from a November 21, 2012 Compensation Order by
Administrative Law Judge Amelia Govan
AHD No. 11-014B, OWC No. 652520 & 674447

Gerard J. Emig, Esquire, for the Petitioner
Ryan J. Foran, Esquire, for the Respondent

Before HEATHER C. LESLIE, MELISSA LIN JONES, and HENRY W. MCCOY, *Administrative Appeals Judges*

HEATHER C. LESLIE, *Administrative Appeals Judge*, 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 Employer - Petitioner (Employer) of the November 21, 2012, Compensation Order (CO) issued by an Administrative Law Judge (ALJ) in the Office of Hearings and Adjudication of the District of Columbia Department of Employment Services (DOES). In that CO, the ALJ granted the Claimant's request for authorization for medical treatment and/or testing with the Claimant's treating physicians. We AFFIRM.

FACTS OF RECORD AND PROCEDURAL HISTORY

Claimant was a tractor trailer driver for Employer. On August 26, 2008 and October 2, 2010 the Claimant injured his head, back and neck.

The Claimant came under the care and treatment of the physicians at Maryland Orthopedics for both injuries. By September 2010, the Claimant had reached maximum medical improvement from the August 2008 work injury.

After the October 2010 work accident, the Claimant underwent an MRI which revealed herniated discs at C5-C6, C3-C4 and C7-T1. Surgical intervention was recommended by his treating physicians.

After surgery, the Claimant continued to suffer from headaches, leg pain and back pain with radiating pain into the extremities. The Claimant's treating physicians have recommended further diagnostic testing, epidural steroid injections for his back, and medication for his headaches.

A Formal Hearing was held on October 2, 2012. At the Formal Hearing, the Claimant requested, as his claim for relief, authorization of medical treatment and/or testing as recommended by his treating physicians. The Employer argued the Claimant's condition was not medically causally related to the work injuries. A Compensation Order was issued on November 21, 2012 granting the Claimant's request.

The Employer timely appealed. On appeal the Employer argues that it was in error for the ALJ to grant the claim for relief as prior to going on the record, the ALJ indicated she would only address the issue of medical causal relationship and that she would not address a specific claim for relief.

THE STANDARD OF REVIEW

The scope of review by the CRB 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. See District of Columbia Workers' Compensation Act of 1979, D.C. Code, as amended, §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 uphold a Compensation Order that is supported by substantial evidence, even if there is substantial evidence in the record to support a contrary conclusion, and even where the CRB might have reached a contrary conclusion. *Id.* at 885.

DISCUSSION AND ANALYSIS

The Employer's sole argument is that prior to going on the record the ALJ indicated she would not be going forward on reasonableness and necessity and would proceed solely on the issue of whether or not the Claimant's current complaints were medically causally related to the work injury. The Employer asserts that "there was not dispute that the specific award, *vel non*, of medical treatment would be deferred to a later hearing." Employer's argument at 4.

A review of the hearing transcript reveals the following discussion.

Judge:	At this time, I will incorporate by reference, the stipulation form we discussed prior to going on the record, and which was described for the record. And the Joint Pre-Hearing Statement as well. Please state, for the record, Mr. Bradley's precise claim for relief, Mr. Foran.
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Claimant's attorney: We are here to have Your Honor determine that there is a medical casual relationship between Russell Bradley's current condition and his injuries of August 26, 2008 and October 2, 2010.

Judge: And your specific, the relief sought?

Claimant's attorney: The treatment as recommended by his treating physicians, Maryland Orthopedics.

Hearing transcript at 14.

At no time did the Employer's counsel object to this specific claim for relief being raised by the Claimant. The Claimant in his closing argument reiterated his request that the ALJ grant his claim for relief. Hearing transcript at 54. Again, the Employer did not object to the Claimant's request in any fashion.

As stated above, we are constrained to determine whether or not a CO is supported by the substantial evidence in the record. Any preliminary discussions off the record, if not memorialized in some fashion by the parties or presiding ALJ, cannot be the basis for the CRB to reverse, remand or vacate a CO.

Moreover, what the Employer is proposing the ALJ should have done is issue an advisory opinion on whether or not the Claimant's current medical condition is casually related to the work injury without addressing any claim for relief. This the ALJ cannot do. An ALJ is not granted the authority to issue advisory opinions. *Heyward v. DOES*, CRB 12-123, AHD No. 12-145 (September 25, 2012).¹

The ALJ identified the sole issue to be adjudicated whether or not the Claimant's current medical condition was causally related to the work injury and identified the Claimant's claim for relief. The Employer did not raise any objection to the issue identified or the Claimant's claim for relief. As such, we reject the Employer's argument.

CONCLUSION AND ORDER

The findings of fact and conclusions of law contained in the November 21, 2012 Compensation Order AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

HEATHER C. LESLIE
Administrative Appeals Judge

March 14, 2013
DATE

¹ "Under the Act, the ALJ's authority is limited to adjudicating claims for compensation, that is, claims for which a payment for disability, death, or for medical services and supplies. D.C. Code §§ 32-1508, 32-1509, and 32-1507." *Heyward, supra*.