

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



F. THOMAS LUPARELLO
INTERIM DIRECTOR

CRB No. 13-071

**RANSOM BROOKS,
Claimant–Petitioner,**

v.

**D.C. PUBLIC SCHOOLS,
Employer-Respondent.**

Appeal from a May 13, 2013 Compensation Order by
Administrative Law Judge David L. Boddie
AHD No. PBL06-080D, DCP No. LTUNK000491

Ransom Brooks, self-represented Petitioner
Margaret P. Radbaugh for the Respondent

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

MELISSA LIN JONES for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD, PROCEDURAL HISTORY, AND ISSUES

Prior to February 1995, Ms. Ransom Brooks suffered from allergic reactions to multiple irritants and allergens.¹ On February 23, 1995, Ms. Brooks was employed as a school teacher by D.C. Public Schools (“Employer”). On that date, she was on a field trip visiting a volcano in Hawaii, and she experienced an allergic reaction to exposure to toxic chemicals emitted during an eruption.

In August and October 2003, Ms. Brooks was examined by independent medical examination physicians. Both physicians opined that Ms. Brooks’ work-related symptoms had resolved and that she was capable of returning to her pre-injury employment.

¹ *Cole v. D.C. Public Schools*, H&AS No. PBL97-008, ODC No. 360336 (August 10, 1998). At the time of the injury Ms. Brooks’ name was Gigi Roane aka Gigi Roane-Cole.

A Notice of Intent to Terminate Disability Compensation Payments issued on November 20, 2003. Ms. Brooks requested reconsideration of the Notice of Intent to Terminate Disability Compensation Payments, and on June 2, 2006, Employer issued a Final Decision on Reconsideration. Ms. Brooks' request for additional workers' compensation disability benefits was denied.

In May 2013, another independent medical evaluation physician examined Ms. Brooks. The doctor concluded Ms. Brooks' reactive airways dysfunction syndrome and multiple chemical sensitivities syndrome were not supported by objective medical evidence.

At a formal hearing, Ms. Brooks requested temporary total disability compensation benefits be reinstated, and an administrative law judge ("ALJ") issued a Compensation Order on May 13, 2013. The ALJ accepted the medical opinions that Ms. Brooks has reached maximum medical improvement from her work-related injury; although she may experience ongoing symptoms, they are not related to her February 23, 1995 accident. Consequently, the ALJ denied Ms. Brooks' request to reinstate workers' compensation disability benefits.²

On appeal, Ms. Brooks attempts to convince the Compensation Review Board ("CRB") that multiple chemical sensitivity continues to plague her and requests the CRB award her benefits. She has attached what appear to be printouts of several internet articles to her Memorandum of Law. Ms. Brooks also questions why the ALJ weighed the opinion of Dr. Samuel A. Gordon more favorably than that of Dr. Alan S. Chanales.³

² *Brooks v. D.C. Public Schools*, AHD No. PBL06-080D, DCP No. LTUNK000491 (May 13, 2013).

³ At the formal hearing, Ms. Brooks was represented by Harold L. Levi, Esquire. At unnumbered page 3 in her "Memorandum of Law," Ms. Brooks states:

I had no [resources] for legal aid. For years I searched for a firm to take my case. "No way" was the reply. It was the popular belief that the [employer] would be slow to pay or not pay at all. I almost gave up. Than [sic] I found a lawyer. He was retained for one thousand dollars. He did not prevail on my behalf. Now I am all on my own since he requests funds I simply do not have and no access to.

Pursuant to §1-623.27. Representation; attorneys; fees:

(a) A claimant may authorize an individual to represent him or her in any proceeding before an administrative law judge under §1-623.24(b). The claimant shall pay the fee for the representation.

(b) (1) For the purposes of this subsection, the term "successful prosecution" means obtaining an award of compensation that exceeds the amount that was previously awarded, offered, or determined. The term "successful prosecution" shall include a reinstatement or partial reinstatement of benefits which are reduced or terminated.

(2) If a person utilizes the services of an attorney-at-law in the successful prosecution of his or her claim under §1-623.24(b) or before any court for review of any action, award, order, or decision, there shall be awarded, in addition to the award of compensation, in a compensation order, a reasonable attorney's fee, not to exceed 20% of the actual benefit secured, which fee award shall be paid directly by the Mayor or his or her designee to the attorney for the claimant in a lump sum within 30 days after the date of the compensation order.

In response, Employer objects to the CRB's consideration of any of the attachments to Ms. Brooks' Memorandum of Law because those attachments are not evidence that was offered into the record before the ALJ. Regarding the merits of Ms. Brooks' appeal, Employer asserts the Compensation Order is supported by substantial evidence and must be affirmed.

ANALYSIS⁴

To begin, the CRB is unable to consider any of the attachments to Ms. Brooks' Memorandum of Law. Although the articles may be informative and educational, they were not admitted into evidence at the formal hearing.

An appeal to the CRB is not a new hearing, and the decisions made by the CRB in public sector appeals are governed by the D.C. Comprehensive Merit Personnel Act of 1978, as amended, D.C. Code §1-623.01 *et seq.*, ("Act") and by the regulations that define the public sector workers' compensation procedures. The CRB

is not empowered to engage in a *de novo* proceeding or unrestricted review of a case brought before it, and is limited in its review to the record on appeal.^[5]

(c) A person who receives any fees, other consideration, or any gratuity on account of services rendered as a representative of the claimant in an administrative or judicial proceeding under this title, or who makes it a business to solicit employment for a lawyer, or for himself in respect of any claim or award for compensation, unless such consideration or any gratuity is approved as part of an order, shall be guilty of a misdemeanor and, upon conviction for each offense shall be punished by a fine of not more than \$ 1,000, or imprisonment for not more than one year, or both. This provision applies to all benefits secured through the efforts of the attorney, including settlements provided for under this subchapter.

(d) Repealed.

(e) (1) In all cases, fees for attorneys representing the claimant shall be approved in the manner herein provided. If any proceedings are had before the administrative law judge or any court for review of any action, award, order, or decision, the administrative law judge or court shall approve an attorney's fee for the work done before the administrative law judge or court, as the case may be, by the attorney for the claimant.

(2) An approved attorney's fee, in cases in which the obligation to pay the fee is upon the claimant, may be made a lien upon the compensation order due under an award, and the administrative law judge or court shall fix in the award approving the fee such lien and manner of payment.

There is no indication that a request for fee has been approved in this case.

⁴ Section 1-623.28(a) of the Act. *Marriott International v. DOES*, 834 A.2d 882, 885 (D.C. 2003).

⁵ 7 DCMR §266.1 Although this regulation is found among the regulations governing the private sector workers' compensation program, it also applies to public sector workers' compensation appeals; 7 DCMR §135.1 states

Thus, because the attachments were not included in the record on appeal (in other words, the evidence offered at the formal hearing), the CRB is unable to consider the attachments to Ms. Brooks' Memorandum of Law when ruling on her appeal.

Ms. Brooks raises many arguments, but the role of the CRB is a limited one. The scope of review by the CRB is restricted to making a determination as to whether the factual findings of the appealed 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. Consistent with this standard of review, the CRB must uphold a Compensation Order that is supported by substantial evidence, even if there also is contained within the record under review substantial evidence to support a contrary conclusion and even if the CRB might have reached a contrary conclusion.⁶

In reaching the conclusion that Ms. Brooks is not entitled to additional workers' compensation disability benefits, the ALJ initially placed the burden of production on Employer.⁷ When determining Employer had satisfied its initial burden, the ALJ relied upon the medical opinion of Dr. John Parkerson:

In a consultation note dated September 9, 2003, Dr. John Parkerson, an occupational medicine specialist, who was requested to examine and evaluate the Claimant's condition at the request of the Employer, did so on August 20, 2003 following which [his] report was issued. Dr. Parkerson obtained a history of injury and treatment from the Claimant and a limited review of medical reports. On a subjective basis he reported the Claimant was complain[ing] of experiencing symptoms following being exposed to volcanic ash resulting in her work injury of burning pain and itching over her face, legs, and arms, as well as of burning eyes, running nose and fluid in her ears.

It was noted that the Claimant did not report any difficulty with breathing or smoking and continues to smoke. Dr. Parkerson also noted the Claimant reported drinking up to four to five bottles of wine per week to stop her skin pain. At the time of his examination the Claimant was self-employed working operating a bookstore out of her home and traveled to conventions and book signings. Dr. Parkerson noted the Claimant reported having several other conditions for which

The provisions of 7 DCMR §§250 to 271 concerning administrative appeals to the Compensation Review Board (sometimes referred to in these regulations as the Board) established pursuant to the Directive of the Director of the Department of Employment Services (Director), Administrative Policy Issuance No. 05-01 (February 5, 2005), are incorporated herein by reference as fully as if stated and set forth in their entirety in this section.

⁶ *Marriott*.

⁷ Employer had paid Ms. Brooks workers' compensation disability benefits; therefore, the burden was on Employer to present evidence to support a modification or termination of benefits payable as a result of disability caused by the injury. *Jones v. D.C. Department of Corrections*, Dir. Dkt. No. 07-99, OHA No. PBL97-14, ODC No. 312082 (December 19, 2000).

she was receiving or had received treatment including irritable bowel syndrome, chronic fatigue syndrome, and fibromyalgia. A history of depression was reported and that the Claimant was under the care of a psychiatrist, although she had not seen them in six months. It was also noted that the Claimant had been seen by numerous providers related to symptoms she asserts are related to her work injury and medical reports of some of them were reviewed dating from May 1995 to February 2000. It was also noted that it was Dr. Chanales who diagnosed her with multiple chemical sensitivity (MCS), although she reported that she had not seen him in two years. EE 4.

Following what was reported as an essentially normal physical examination and breathing testing, with an absence of objective abnormalities noted, Dr. Parkerson diagnosed the Claimant's condition as history of volcanic fume and gas exposure 02/23/95; history of pre-existing allergic rhinitis and [anaphylactic] reaction; history of depression; history of fibromyalgia, history of chronic fatigue syndrome, and alcohol abuse. Dr. Parkerson then concluded stating that based upon his review of the medical records and clinical examination it was his medical opinion that the Claimant had long since reached maximum medical improvement from her exposure to volcanic ash. He further opined that her prognosis was poor for any significant improvement, stating that any residual symptoms that might be related to her occupational exposure were severely obscured by her depression and alcohol use, and noted that at the time of the injury there was no immediate response upon exposure to volcanic fumes, and that there was no indication of post-exposure pneumoconiosis or any specific lung damage from fume or toxic gas exposure, and that despite her alleged sensitivity, the Claimant continued to smoke.

Finally, regarding the Claimant's ability to return to work, Dr. Parkerson stated:

She is certainly capable of working full duty. She would not be incapacitated from returning to her regular job as an elementary schoolteacher. The work place exposure may have temporarily exacerbated a pre-existing allergic condition but there is no indication of any objective worsening. She is in uncontrolled environments for example when she travels, yet continues to work.

The cluster of problems is not uncommon: fibromyalgia, MCS and depression (along with alcohol abuse), but these are not from an occupational or environmental exposure. No additional treatment or evaluation is necessary based on the workplace exposure. I think that she really needs to have more regular psychiatric follow-up. She is drinking far too much alcohol. She is losing weight. Her history notes that she is feeling more depressed recently. I think those are the more significant medical factors here

and if addressed then perhaps her other symptoms would improve if not resolve.

EE 4.^[8]

In addition, the ALJ also gave extensive consideration to Dr. Ross S. Myerson's opinion:

Dr. Myerson, like Dr. Parkerson, reviewed medical reports of various physicians who have treated or examined the Claimant, and obtained a history of injury and treatment, and current subjective complaints of symptoms and problems she was experiencing related to her February 23, 1995 work injury before performing a physical examination of the Claimant. Most of the medical reports reviewed were the same of those reviewed by Dr. Parkerson for his September 9, 2003 consultation report covering a period from May 1995 up to and including the report of Dr. Parkerson. Subjective complaints of symptoms were noted by the Claimant who reported experiencing a burning sensation of the skin, worse affecting her arms, legs, and face, and of suffering from other conditions consisting of fibromyalgia, arthritis, insomnia, irritable bowel syndrome, multiple chemical sensitivities, and depression. He recorded the Claimant denied other medical conditions as part of her past medical history including asthma, myocardial infarction or heart disease, diabetes, thyroid disease, multiple sclerosis, seizure disorder, or any other serious systemic diseases. Regarding the Claimant's social history Dr. Myerson noted the Claimant reported she lived alone with two large rare breed dogs, that she smoked [cigarettes], and drank a bottle of wine a day, as well as a mixed drink, and to the use of marijuana once per week for pain control. EE 5.

On physical examination Dr. Myerson indicated that his examination was hampered by the Claimant's actions who stated that she was too sensitive to allow touch on her arms, legs and face. Inconsistent responses were noted by Dr. Myerson to this in examining the same or other parts of her body, and overall within the limitations allowed a normal examination was recorded absent of objective findings of abnormalities. In conclusion, Dr. Myerson opined that the Claimant's primary diagnosis was psychiatric in nature, of a somatization disorder, [footnote omitted] and that she likely had diagnoses of other psychiatric conditions as well, which he stated, was best evaluated by a psychiatrist. Dr. Myerson opined that it was obvious to him that these emotional conditions were significant and the primary cause of her disabling conditions, and that in light of her alcohol dependence and marijuana abuse, coupled with her emotional state and substance abuse, she was not fit for duty in any capacity. With respect to her exposure to volcanic ash and gases in February 1995, he opined that the Claimant had reached maximum medical improvement and that there was little in the way of objective physical signs of an organic illness. EE 5.

⁸ *Brooks* at pp. 5-6.

On May 30, 2012 Dr. Myerson performed an Additional Medical Evaluation (AME) of the Claimant at the request of the Employer. In that report he recounted his previous IME of October 8, 2003, and again listed medical reports of the Claimant by other physicians that were reviewed by him, most of which he had [] previously reviewed, but now including reports beyond the September 9, 2003 report of Dr. Parkerson, up to and including a medical report of May 8, 2012 by Dr. Lizy Thomas. EE 10.

Dr. Myerson recorded a normal physical examination without limiting behavior by the Claimant that was absent of respiratory problems, clear lungs, head, eyes, ears, nose and throat all normal to inspection, without evidence of rashes, or skin lesions. All motor, sensory, and cerebellar functions were intact with deep tendon reflexes positive and bilaterally symmetrical. Dr. Myerson restated his previous diagnosis rendered in his October 8, 2003 IME that the Claimant's condition was psychiatric in nature, and that her emotional and substance abuse issues were the causes most substantially contributing to her current state of health which he spoke to at length. EE 10.

At the Formal Hearing Dr. Myerson restated his medical opinions and the basis for them in his testimony, regarding the Claimant's condition, in addition to addressing the diagnoses assigned by other physicians who have treated, examined or evaluated her.

Regarding the diagnosis of fibromyalgia which the Claimant has been diagnosed with and she alleges is related to and was caused by her work injury, Dr. Myerson testified that the condition is one "basically diagnosed by patient reports of pain." He stated the diagnosis is arrived at or determined by patients reports of pain upon palpation of areas of the body that are fibromyalgia trigger points, and therefore constitutes a subjective diagnosis not based upon verifiable objective tests such as by blood, x-rays, or a cardiogram other than by history obtained from the patient. HT pp. 88-89.

Regarding the diagnosis of reactive airway dysfunction disorder or syndrome [footnote omitted] commonly referred to as RADS, and a condition that one of the Claimant's physicians diagnosed her with, Dr. Myerson described it as "basically an asthma-like condition characterized by broncho-constriction causing wheezing in response to various environmental stimuli," *e.g.*, fumes in the air or cigarette smoke. Dr. Myerson stated the underlying theory of the condition was that after an individual having been exposed to some significant toxic substance they then develop the reactive airway disorder that generally applies to a variety of different types of environmental contaminants. He stated that the diagnosis can be established by objective tests such as a pulmonary function test measuring pulmonary volumes, and a broncho-provocation test, and or a methacholine challenge test which also measures pulmonary volume. Finally, Dr. Myerson

stated that a patient with RADS could not be a cigarette smoker because of their condition. HT pp. 90-92.

Regarding the condition of multiple chemical sensitivity syndrome (MCSS), which one of Claimant's physicians also diagnosed her with, Dr. Myerson stated that this is a syndrome where a person becomes sensitive to a variety of environmental stimuli or contaminants at levels far below concentrations that would bother an ordinary person, reacting in a global way with all kinds of symptoms referable to all different organ systems, including sight, vision, taste, smell, bladder, balance, and memory. It is a condition in which people complain of symptoms related to many different organ systems without a specific objective test to determine the existence of it or not, physical, blood, radiologic, or otherwise. Further, he stated that because it was a diagnosis that could not be confirmed upon any objective basis, it was not one that was generally supported in the medical community. HT pp. 92-93.

Dr. Myerson testified that it was his medical opinion that the Claimant did not suffer from fibromyalgia, RADS, multiple chemical sensitivities, or from exposure from volcanic ash or gases from 1995, or anything from that exposure which prevents [her] from working, rather it is her unrelated issues regarding emotional problems due to alcohol abuse and marijuana use which prevent [her] from returning to work as schoolteacher. HT pp. 106-110.

Finally, on redirect examination, Dr. Myerson testified regarding a lead test performed on the Claimant in 2008 that was positive for lead, that it was not possible it could be related to the Feb 23, 1995 exposure because it was not possible to have absorbed an amount of lead substantial enough that the presence of it would still be in the body for that length of time. HT pp. 138-139.^[9]

Finally, the ALJ considered Ms. Brooks' psychological symptoms as explained by Dr. Gordon:

In that report Dr. Gordon set forth a description of the onset of illness and summary overview of the Claimant's social and family history, and a description identifying specific work factors contributing to her emotional and psychiatric conditions. He then conducted a mental status examination of the Claimant the findings and results of which he described as normal. No objective or formal psychological or personality testing was performed. In assessing the Claimant's current psychiatric or psychological condition Dr. Gordon opined "she appears to be suffering from a psychological disorder that is interactive with the physical illness (fibromyalgia) that developed after her exposure to apparently toxic substances while at an active volcano in Hawaii." EE 7.

⁹ *Id.* at 7-9.

Dr. Gordon went on to opine that the Claimant's experiences with anxiety and tension likely exacerbated the symptoms she suffers from associated with her physical condition, the unpredictability of which further fueled her anxiety, in addition to having become dependent on alcohol that appears to be used for the promotion of relaxation and sleep. Based upon this assessment of the Claimant's current conditions Dr. Gordon ultimately opined that it was not recommended that she return to work as a school teacher due to the physical demands of long periods of standing and sobriety being critical to job success. EE 7.^[10]

Based upon this evidence, the burden shifted to Ms. Brooks' to prove by a preponderance of the evidence that she remains entitled to ongoing benefits.¹¹

Ms. Brooks suffered from a pre-existing allergic condition.¹² Importantly, Employer is not a guarantor of health; Employer only is responsible for compensating Ms. Brooks for her work-related injuries,¹³ and to satisfy her burden, Ms. Brooks relied upon her own testimony, various articles, and the medical reports of Dr. Thomas, Dr. Chanales, Dr. Taylor, Dr. Robert L. Henderson, Dr. Elena R. Reece, Dr. Howard Wilson, and Dr. Mandana Hashsefi, Dr. Gordon, and the Washington Hospital Center, but the ALJ rejected the medical opinions of Ms. Brooks' treating physicians in favor of the opinions of Drs. Parkerson and Myerson because

medical reports submitted into evidence by the Claimant by physicians or health care providers who have treated or evaluated and diagnosed her condition after the August 10, 1998 Recommended Decision which reinstated her disability benefits up to the time of the June 2, 2006 Final Decision on Reconsideration, and to the present, reflect substantial gaps in treatment, sketchiness, lacking reports of objective findings of abnormalities, objective diagnostic testing to support diagnoses, and are too conclusory to be reliable.

I find that despite the Claimant's testimony of symptoms of complaints of respiratory problems due to sensitivity that continue to disable her and prevent her from returning to work the evidence reflects that the Claimant is capable and did work for a time independently owning and operating a bookstore and traveling to conventions and book signings. I find that the evidence reflects that the Claimant also owns two dogs as pets, and smokes cigarettes, both activities inconsistent with the conditions she has asserted [she] has as they would aggravate symptoms of those conditions.

* * *

¹⁰ *Id.* at 9.

¹¹ *D.C. Department of Mental Health Services v. DOES*, 15 A.3d 692, 698 (D.C. 2011).

¹² *Cole*.

¹³ *Anameleche-Oladokun v. D.C. Public Schools*, CRB No. 09-04, OHA/AHD No. PBL04-002A, DCP Nos. LT7-BOEdu004741 (March 14, 2006).

The evidence in the record reflects that the Claimant received sporadic medical treatment from the health care providers treating her condition, most of the medical reports indicating significant gaps in treatment of periods up to years, until a recent burst of medical visits, notably after the DCP's June 2, 2006 Final Decision on Reconsideration.

In addition, most of the medical reports of these physicians, while they may reflect a diagnosis of a condition asserted to be related to and caused by the Claimant's work injury, all or most fail to reflect treatment notes indicating objective findings of abnormalities on examination, and they are generally conclusory, failing to state the basis upon which the diagnosis relies upon and lacking support by application of objective testing or other clinical correlation confirming the diagnosis.

The evidence in the record further reflects inconsistencies and contradictions with the Claimant's testimony, for example, her claim of experiencing respiratory problems and difficulty breathing due to MCSS and RADS, while at the same time acknowledging that she continues to own pets and smoke, conditions that would not possible due to the inherent aggravating properties that would accompany these activities.^[14]

Although there is a preference for the opinion of a treating physician, that preference is not absolute, and when there are specific reasons for rejecting the opinion of a treating physician, the opinion of another physician may be given greater weight.¹⁵ The ALJ gave specific reasons for rejecting the opinions of Ms. Brooks' treating physicians, and those reasons are supported by substantial evidence in the record; therefore, the CRB is without authority to reweigh the evidence in Ms. Brooks' favor.¹⁶

¹⁴ *Brooks* at pp. 3, 13.

¹⁵ See *Butler v. Boatman & Magnani*, H&AS No. 84-348, OWC No. 044699 (Remand Order December 31, 1986) citing *Murray v. Heckler*, 624 F. Supp. 1156 (D.C. 1986).

¹⁶ *Marriott*.

CONCLUSION AND ORDER

Ms. Brooks' current symptoms may continue to plague her; however, based upon substantial evidence in the record (including an appropriate weighing of the medical opinions) and in accordance with the law, the ALJ appropriately determined those current symptoms are not related to Ms. Brooks' February 23, 1995 work-related accident. Thus, the May 13, 2013 Compensation Order is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

/s/ *Melissa Lin Jones*

MELISSA LIN JONES

Administrative Appeals Judge

January 24, 2014

DATE