

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

Department of Employment Services

MURIEL BOWSER  
MAYOR



DEBORAH A. CARROLL  
ACTING DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 14-137

**BRUCE TULLOCH,**  
**Claimant-Respondent,**

v.

**SODEXHO and**  
**GALLAGHER BASSETT SERVICES**  
**Employer/Third-Party Administrator-Petitioner.**

Appeal from a October 29, 2014 Compensation Order by  
Administrative Law Judge Joan E. Knight  
AHD No. 12-541, OWC No. 669344

DEPT. OF EMPLOYMENT  
SERVICES  
COMPENSATION REVIEW  
BOARD  
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Matthew Peffer for Claimant  
Julie D. Murray for Employer

Before, LINDA F. JORY, HEATHER C. LESLIE, and JEFFREY P. RUSSELL, *Administrative Appeals Judges.*

LINDA F. JORY for the Compensation Review Board.

**DECISION AND ORDER**

FACTS OF RECORD AND PROCEDURAL HISTORY

Claimant had a prior lumbar injury unrelated to his employment and has a complicated medical history associated with a lumbar fusion, pulmonary embolism and Paget Schroeder Syndrome. Claimant worked for Employer as an executive general manager of Employer's sports division. On April 3, 2010, Claimant was working and supervising an event at RFK Stadium. While lifting and moving cases on that date, Claimant injured his back for which he sought treatment from Michael Hasz, MD, an orthopedic spine surgeon who was Claimant's treating surgeon for previous back problems. Dr. Hasz performed an L2/L3, L4/L4 fusion in January 2006. On April 12, 2010, Dr. Hasz examined claimant and diagnosed an exacerbated disc herniation at L4/L5 and L5/S1 and recommended additional studies and epidural injections.

Claimant was able to return to his work duties with modifications. To prepare for epidural injections, Claimant was taken off of Coumadin, a blood thinner, which Claimant had been

taking since 2006. Claimant developed a number of complications including kidney stones, blood clots and kidney infection. An MRI of the brain in March 2011 revealed Claimant had a stroke secondary to atherosclerosis. An emergency carotid endarterectomy was performed. Dr. Hasz performed a follow-up MRI on November 1, 2012, which showed the L4/L5 disc herniation, nerve root compression and degenerative disc disease.

The epidural injections treatment was never performed due to the numerous complicating medical issues. Claimant continues to have back and radicular leg pain from the work injury. Claimant currently suffers from right-sided numbness and is wheelchair bound.

A full evidentiary hearing occurred on January 29, 2013. Claimant sought an award of temporary total disability benefits from December 17, 2010 through the present and continuing, as well as authorization for medical treatment and payment of all causally related medical expenses.

An administrative law judge (ALJ) issued a Compensation Order (CO) on October 29, 2014. The ALJ concluded the stroke Claimant suffered following the work injury are not causally related to the April 3, 2010 work injury. The ALJ further found Claimant has been temporarily and totally disabled due to the untreated lumbar injury, since December 17, 2010 and granted Claimant's claim in part.

Employer timely appealed. Employer asserted the ALJ's conclusion that Claimant is unable to return to work because of his back pain is not supported by medical evidence. Specifically, Employer asserts the medical records support a conclusion that Claimant is permanently unable to return to work because of the stroke and complications and not because of the back re-injury.

Claimant responded asserting that the physician who treated Claimant for the back injury, Dr. Hasz opined that Claimant is unable to return to work as a result of his back condition and Employer presented no evidence to establish Claimant was not disabled as a result of his back condition.

#### STANDARD OF REVIEW

The scope of review by the Compensation Review Board (CRB) and this Review Panel (Panel) as established by 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 § 32-1521.01(d)(2)(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). 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.

## ISSUE ON APPEAL

Is the November 14, 2014 Compensation Order supported by substantial evidence and in accordance with the law?

### ANALYSIS

Neither party has appealed the ALJ's conclusion that Claimant's stroke which resulted in his right sided numbness is not medically causally related to the back injury Claimant sustained on April 3, 2010. The ALJ correctly determined Claimant was entitled to the benefit of the presumption that the upper extremity blood clot is causally related to his employment. The ALJ found that Employer had rebutted the presumption and reviewed the record evidence as a whole, without reference to the presumption, and taking into account the preference that is accorded to the opinions of treating physicians in this jurisdiction under *Short v. DOES*, 723 A.2d 845 (D.C. 1998) (*Short*), as well as *Stewart v. DOE*, 606 A.2d 1350 (D.C. 1992) (*Stewart*), and determined Claimant did not establish by a preponderance of the evidence, that his blood clots and subsequent stroke were causally related to the stipulated work injury. We find no error committed by the ALJ in her analysis.

Employer contends the ALJ erred in finding that Claimant was entitled to temporary total disability benefits as there was no evidence supporting the fact that Claimant's temporarily and totally disability was due to his back condition. As stated above, Claimant asserts that Dr. Hasz did, in fact, state that Claimant's back condition prevented him from returning to his pre-injury duties.

Although the nature and extent of Claimant's disability is listed as a contested issue in the parties' Joint Pre-Hearing Statement and was included in the ALJ's list of issues in the CO, the ALJ failed to provide any analysis in accordance with either the case law set forth in *Logan v. DOES*, 805 A.2d 237 (D.C. 2002) or recently stated by the CRB in outlined in *Diaz v. Clark Concrete Construction*, CRB No. 14-030, AHD No. 14-039, OWC NO. 705928 (December 3, 2014)(*Diaz*)<sup>1</sup>.

In his letter to counsel for Claimant, Dr. Hasz wrote:

He currently is disabled from work. He is permanently disabled from work based on the stroke, hemiparesis, and overall fragility of this part of his medical condition. He does have significant flare-ups of his back and leg pain, which would preclude any type of activities if he was to do this. He is wheelchair bound, has an AFO, knee brace and physical therapy continued medical care are definitely necessary and permanent.

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<sup>1</sup> The CRB in *Diaz* determined that there is a distinction between the legal standards applied when deciding whether Claimant cannot do any work and whether Claimant can work but cannot do his pre-injury job. If Claimant is capable of performing some work but not his pre-injury job, then the case should be analyzed in accordance with *Logan*.

While the Panel agrees Dr. Hasz reported that Claimant's back pain precludes him from returning to his pre-injury duties as a manager for Employer, the ALJ did not provide any analysis to explain what medical evidence she relied upon in concluding that Claimant is unable to resume his pre-injury duties as a result of his untreated lumbar injury. The fact that the ALJ rejected the opinion of Dr. Hasz in her analysis of the causal relationship of Claimant's strokes, does not preclude her from relying on his opinion regarding any disability Claimant has from the stipulated back injury.

We agree with Claimant that absent an opposing opinion that states Claimant was not disabled due to his back problems, the record before the ALJ contained an opinion from the treating physician that Claimant could not return to work due to his back pain, the effects of the stroke notwithstanding. Neither Dr. Johnson nor Dr. Nemetz, the two IME physicians opined that Claimant's back problems did *not* contribute to his inability to work. However, we must reject Claimant's reliance on the DCCA opinion in *Clark v. DOES*, 772 A.2d 198 (D.C. 2001) (*Clark*), to support the ALJ's award of wage loss benefits. The nature and extent of Claimant's disability was not at issue in *Clark*. Thus, while the court remanded the matter in *Clark*, to consider an alternative, work-related activity which had the potential to cause the injuries sustained by *Clark*, the issue at hand was whether claimant sustained an aggravation of a pre-existing condition and not which condition was causing Clark's disability.

While this Review Panel would have preferred the ALJ to provide some analysis as to what evidence Claimant presented which established his entitlement to ongoing temporary total disability benefits, a remand for this analysis would not change the outcome, in light of the preference in this jurisdiction for the treating physician's opinion. *See Short, supra*, and *Stewart, supra*.

#### CONCLUSION AND ORDER

The CO is supported by substantial evidence, is in accordance with the law and is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

*/s/ Linda F. Jory*

LINDA F. JORY

*Administrative Appeals Judge*

April 8, 2015

DATE