

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services
Labor Standards Bureau

Office of Hearings and Adjudication
COMPENSATION REVIEW BOARD



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CRB No. 08-222

CATHY CHAUPIS,

Claimant – Petitioner,

v

GEORGE WASHINGTON UNIVERSITY AND FRANK GATES SERVICE, Co.,

Employer/Carrier –Respondent/ Cross Petitioner.

Appeal from a Compensation Order on Remand of
Administrative Law Judge Henry W. McCoy
AHD No. 07-112A, OWC No. 622922

Matthew Peffer, Esquire, for the Petitioner

David M. Schoenfeld, Esquire, for the Respondent/Cross Petitioner

Before: E. COOPER BROWN, *Chief Administrative Appeals Judge*, FLOYD LEWIS AND SHARMAN J. MONROE, *Administrative Appeals Judges*.

FLOYD LEWIS, *Administrative Appeals Judge*, on behalf of the Review Panel:

DECISION AND ORDER

JURISDICTION

Jurisdiction is conferred upon the Compensation Review Board pursuant to D.C. Official Code §§ 32-1521.01 and 32-1522 (2004), 7 DCMR § 250 *et seq.*, and the Department of Employment Services Director's Directive, Administrative Policy Issuance 05-01 (February 5, 2005).

OVERVIEW

This appeal follows the issuance of a Compensation Order on Remand from the Administrative Hearings Division (AHD) of the Office of Hearings and Adjudication (OHA) in the District of Columbia Department of Employment Services (DOES). In that Order, which was filed on August 27, 2008, the Administrative Law Judge (ALJ) granted, in part, the claim for relief by Claimant-Petitioner (Petitioner) concluding that Petitioner's current condition regarding her knee complaints are medically causally related to the cumulative trauma associated with her work duties. In addition

the ALJ ordered that Petitioner submit her request for reasonable and necessary medical treatment to Utilization Review. On September 25, 2008, Petitioner appealed that Order and Employer-Respondent/Cross Petitioner (Respondent) also filed an appeal.

As grounds for his appeal, Petitioner alleges that the ALJ's order that Petitioner request Utilization Review for medical care to her knees is inconsistent with the Act and must be reversed. In its appeal, Respondent contends that the ALJ erred by denying its request to admit into evidence its independent medical examination (IME) report of Dr. Richard Conant.

Since the ALJ's decision is supported by substantial evidence and is in accordance with the law, there is no reason to disturb the ALJ's determination to order Petitioner to submit her request for medical care to Utilization Review and to deny Respondent's request to admit its IME report into evidence.

ANALYSIS

As an initial matter, the scope of review by the Compensation Review Board (CRB) and this Review 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. Official Code §32-1522(d)(2). "Substantial evidence," as defined by the District of Columbia Court of Appeals, is such evidence as a reasonable person might accept to support a particular conclusion. *Marriott Int'l. v. District of Columbia Department of Employment Services*, 834 A.2d 882 (D.C. 2003). Consistent with this scope of review, the CRB and this Review Panel are constrained 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.

In a December 21, 2007 Compensation Order, the ALJ denied Petitioner's request for authorization for neck surgery, concluding that it was not medically reasonable and necessary. In addition, the ALJ concluded that Petitioner's knee injuries did not arise out of and in the course of her employment and were not medically causally related to her current condition. Petitioner appealed that Compensation Order to the CRB.

On March 8, 2008, the CRB affirmed the ALJ's denial of Petitioner's request for authorization for neck surgery. However, the CRB concluded that the evidence of record did not support the ALJ's finding that Petitioner's knee condition is not causally related to her employment with Respondent and as a result, the CRB vacated the ALJ's denial of Petitioner's request for medical care to her knees and remanded the matter for further proceedings. *Chaupis v. George Washington University*, CRB No. 08-075, AHD No. 07-112A (March 8, 2008)

As to whether Petitioner's work-related walking and stair climbing caused or aggravated her knee condition, the CRB found that there was insufficient evidence to overcome the presumption of compensability and remanded the matter to the ALJ "for entry of an order so finding." In addition,

the ALJ directed the ALJ to address the remaining issues in this matter, including the reasonableness and necessity of medical care.

Both parties filed Petitions for Review with the District of Columbia Court of Appeals. On March 28, 2008, the Court determined that the matter was not ripe for its review and dismissed the appeals for lack jurisdiction, as having been taken from a non-final order and remanded the matter to AHD. *Chaupis v. District of Columbia Department of Employment Services*, No. 08-AA-241 (April 22, 2008).

On remand, the ALJ found that Petitioner's work-related walking and stair climbing caused or aggravated her current knee condition. In addition, the ALJ denied Respondent's request to admit the IME report of Dr. Conant into evidence, determining that Respondent had not shown reasonable grounds why the IME report was not adduced at the initial hearing in this matter. Also, the ALJ directed Petitioner to submit the requested medical care for her knees to the Utilization Review process and file an application for formal hearing once that process has been completed.

Turning to the case under review herein, Petitioner asserts that the ALJ erred in requiring that she submit a Utilization Review report testifying to the reasonableness and necessity of medical care to her knees. On this point, Respondent counters that requiring Petitioner to undergo Utilization Review before beginning medical treatment is consistent with the Act. In its appeal, Respondent asserts that the ALJ erred in refusing to admit Dr. Conant's IME report into the record, while Petitioner contends that the ALJ correctly refused to admit the report considering the circumstances surrounding the instant matter.

Initially, as to Petitioner's contention that the ALJ erred in requiring Petitioner to undergo Utilization Review prior to beginning medical treatment, it must be stressed that under D.C. Official Code § 32-1507(b)(6), "any medical care furnished . . . shall be subject to utilization review." In addition, when issues concerning the "necessity, character or sufficiency of medical care or service to an employee is improper or that medical care or service scheduled to be furnished must be clarified, the Mayor, employee or employer may initiate review by a utilization review . . . " *Id.*, at § 32-1507(b)(6)(B).

In this matter, in addition to contesting Petitioner's contention that her knee complaints were related to her employment, Respondent challenged the reasonableness and necessity of Petitioner's treatment. The CRB in remanding the matter to the ALJ specifically noted that the reasonableness and necessity of Petitioner's requested knee care is an issue in this matter, and as such, Utilization Review procedures need to be exhausted before the filing of a new application for formal hearing on that issue. As directed, the ALJ ordered Petitioner to undergo Utilization Review. The Act clearly provides that the "Mayor" may initiate the Utilization Review process and in this matter, the CRB and the ALJ properly exercised the authority to do so. Petitioner's arguments on this point must be rejected.

In addition, Petitioner's contention that Respondent must file for a *Snipes*- like hearing to prove that the requested medical treatment is incorrect must be rejected. As Respondent points out, *Snipes* involved a dispute over the issue of a change of condition, but this case involves the Utilization Review process. Under the Utilization Review provisions of the Act, there is no requirement that

there be a hearing to prove that there is a dispute over the reasonableness or necessity of medical care. When this issue is raised, it first must be submitted to Utilization Review.

In *Gonzalez v. UNNICO*, CRB No. 07-005, AHD No. 06-155 (February 21, 2007), the CRB, after reviewing the legislative history of these provisions, clearly held that Utilization Review is the “exclusive and mandatory” procedure to resolve the reasonableness and necessity of medical care. In addition, the Utilization Review process must be completed in its entirety before any formal hearing on the reasonableness and necessity of medical care. Moreover, the reconsideration process must be undertaken if a party contests the conclusions established in the Utilization Review report.

Petitioner’s other arguments on appeal, such as that she and her treating physician should not have any responsibility in the process, that Utilization Review violates her due process and that it creates an agency relationship between Petitioner and her treating physician must be rejected by this Panel. As Respondent points out, the appropriate body for Petitioner to seek redress on language of these provisions in the Act is with the legislature, not with the CRB. As such, there is no reason to disturb the ALJ’s determination to order Utilization Review in the instant matter.

In its appeal, Respondent argues that the ALJ erred by not admitting the IME report of Dr. Conant into evidence. After this matter was remanded back to the ALJ, Respondent moved to reopen the record to admit this additional medical evidence to rebut the presumption that Petitioner’s knee complaints were related to her employment, but this request was denied by the ALJ. D.C. Official Code § 32-1520(c) provides that no additional evidence may be admitted after the date of the hearing except in unusual circumstances. Where a party files a request to supplement the record, the Director, now the CRB, is obligated by statute to consider whether the proffered evidence is material and whether there are reasonable grounds for failing to adduce such evidence in the initial hearing. See *Bennett v. District of Columbia Department of Employment Services*, 629 A.2d 28, 30 (D.C. 1993).

While acknowledging that this additional medical evidence is material to the issue of whether Petitioner’s knee complaints are related to her employment, the ALJ emphasized that Respondent had not espoused any reasonable grounds for its failure to adduce the evidence at the initial hearing. The ALJ specifically noted that Respondent had relied on its argument that the report of Petitioner’s treating physician, Dr. David Novak, was sufficient to provide rebuttal of the presumption, indicating a lack of causation and that Respondent wanted the IME report to support its position on this issue.

The ALJ determined that Respondent had not met the standards required by *Bennett* and *King v. District of Columbia Department of Employment Services*, 560 A.2d 1067 (D.C. 1989), of presenting any reasonable reasons why Dr. Conant’s June 19, 2008 report was not admitted into evidence at the initial hearing. This Panel can find no reason to disturb the ALJ’s ruling on this matter, as Respondent did not present any circumstances that prevented it from obtaining the report before the initial hearing. As Petitioner points out, citing *Young v. District of Columbia Department of Employment Services*, 681 A.2d 451, 456-457 (D.C. 1996), Respondent’s failure to more completely investigate the circumstances and obtain other material information surrounding this matter, while believing that the opinion of Petitioner’s treating physician supported its position, does not constitute unusual circumstances.

Finally, Respondent again raises its argument that Petitioner's knee condition was not causally related to her employment duties with Respondent. However, Respondent's arguments on this point must be rejected, as the CRB's previous ruling that Petitioner's knee condition is causally related to her employment with Respondent stands as the law of the case and there is no valid reason for reconsidering that ruling. *See Munson v. Hardy & Son Trucking, Inc.* CRB No. 07-017, OHA No. 96-176B (February 5, 2007).

Accordingly, after reviewing the evidence of record, this Panel concludes the ALJ's determination that Petitioner's current knee condition is causally related to her employment and Petitioner shall submit her request for reasonable and necessary medical treatment to Utilization Review is supported by substantial evidence and is in accordance with the law.

CONCLUSION

The Compensation Order on Remand of August 27, 2008 is supported by substantial evidence and is in accordance with the law.

ORDER

The Compensation Order on Remand of August 27, 2008 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW
BOARD:

/s/ Floyd Lewis

FLOYD LEWIS
Administrative Appeals Judge

November 26, 2008
DATE