

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA M. MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 12-029

CLARICE L. PARRAN,
Claimant-Petitioner,

v.

CASH MANAGEMENT SOLUTIONS and CNA,
Employer/Carrier-Respondent.

Appeal from a Compensation Order by
The Honorable Anand K. Verma
AHD No. 11-053, OWC No. 669891

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2012 MAY 9 PM 12 17

David J. Kapson, Esquire, for the Petitioner
Allan H. Kittleman, Esquire, for the Respondent

Before MELISSA LIN JONES, HENRY W. MCCOY, and JEFFREY P. RUSSELL,¹ *Administrative Appeals Judges.*

MELISSA LIN JONES, *Administrative Appeals Judge*, for the Compensation Review Board.

DECISION AND REMAND ORDER

JURISDICTION

Jurisdiction is conferred upon the Compensation Review Board ("CRB") pursuant to D.C. 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).

FACTS OF RECORD AND PROCEDURAL HISTORY

On January 8, 2010, Ms. Clarice L. Parran broke her ankle when she fell on ice. A dispute arose over Ms. Parran's entitlement to permanent partial disability benefits and to authorization for medical treatment.

¹ The Director of the DOES has appointed Judge Russell as a temporary CRB member pursuant to DOES Administrative Policy Issuance No. 11-01 (June 23, 2011).

Following a formal hearing, an administrative law judge (“ALJ”) awarded Ms. Parran 5% permanent partial disability to her leg but denied additional treatment for her subjective complaints. Ms. Parran appealed the ALJ’s July 19, 2011 Compensation Order.

In a Decision and Remand Order dated December 22, 2011, the CRB affirmed the award of 5% permanent partial disability to Ms. Parran’s right leg. The portion of the July 19, 2011 Compensation Order denying additional medical treatment was vacated.

In response, the ALJ issued a Compensation Order on Remand dated January 30, 2012. He, again, denied additional medical treatment (except for hardware removal and possible surgical exploration of Ms. Parran’s tendons.)

On appeal, Ms. Parran takes issue with the ALJ’s ruling.² As in the previous appeal, Ms. Parran argues the ALJ ignored her subjective complaints of ongoing, ankle symptoms as well as the medical reports that indicate she would benefit from additional treatment.

Cash Management Solutions requests the January 30, 2012 Compensation Order on Remand be affirmed.³ Cash Management Solutions argues it is liable for medical benefits “for such period as the nature of the injury or the process of recovery may require”⁴ and if additional treatment is recommended in the future it may raise the issue of reasonableness and necessity.

ISSUE ON APPEAL

1. Did the ALJ properly analyze the issue of authorization for additional medical treatment?

ANALYSIS⁵

This same issue was addressed in our December 22, 2011 Decision and Remand Order as follows:

Finally, turning to the issue of authorization for surgery, the Compensation Order lists the sole issue for resolution as “What is the nature and extent of claimant’s

² Ms. Parran reiterates her arguments from her appeal of the July 19, 2011 Compensation Order; however, the December 22, 2011 Decision and Remand Order affirmed the award of 5% permanent partial disability to Ms. Parran’s left leg.

³ Cash Management Solutions also requests we affirm the December 22, 2011 Decision and Remand Order, but the CRB lacks authority to affirm its own rulings.

⁴ Section 32-1507(a) of the Act.

⁵ The scope of review by the CRB is limited to making a determination as to whether the factual findings of the appealed Compensation Order on Remand are based upon substantial evidence in the record and whether the legal conclusions drawn from those facts are in accordance with applicable law. §32-1521.01(d)(2)(A) of the Act. Consistent with this standard of review, the CRB is constrained to uphold a Compensation Order on Remand 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. *Marriott International v. DOES*, 834 A.2d 882, 885 (D.C. 2003).

disability?" [Footnote omitted.] This recitation is consistent with the preliminary exchange that took place at the formal hearing:

Judge Verma: All right. Counsel, according to openings and the record, I understand that the main issue to be resolved at this hearing is the nature and extent of Clarice's disability, if any.

The issues that have been stipulated by the parties are, jurisdiction within the District of Columbia, employer employee relationship, Claimant's average weekly wage in the amount of \$782, Claimant's accident [*sic*] injury occurring on January 8th, 2010, timely notice of injury, timely claim, medical causal relationship and other issues being non-issues.

And I would ask both counsel as to the matters for the record, state the issues that I have recited here that have been stipulated by the parties that are true and correct. Ms. Griffith.

* * *

Ms. Griffith: Yes, Your Honor, the stipulations are true and correct as recited.

Judge Verma: All right. Is that so?

Mr. Kittleman: Yes, Your Honor, everything's fine. Thank you.

When addressing the claim for relief, however, the issues may have changed.

Judge Verma: All right. I have also received - - before I go any further I would ask that Claimant's Counsel if they'd state for the record the claim for relief that you're seeking today.

Ms. Griffith: Yes, Your honor. The claim for relief today would be authorization for medical treatment and also permanent partial disability benefits in the amount of 28% to the right lower extremity.

The law requires we remand this matter for clarification as to the issue regarding authorization for additional medical treatment including surgery. Is the issue causal relationship which would require an analysis of the application of the presumption of compensability or is the issue reasonableness and necessity which would require an analysis of a utilization review report? On remand, the ALJ is directed to clarify the issue and provide the proper analysis of it.^[6]

⁶ *Parran v. Cash Management Solutions*, CRB No. 11-080, AHD No. 11-053, OWC No. 669891 (December 22, 2011), pp. 5-6. (Internal footnotes omitted.)

In response, the ALJ refers to the prior Compensation Order and summarizes medical evidence purportedly supporting his conclusion that Ms. Parran “is authorized for a follow up examination by Dr. [Richard M.] Cirillo to undergo removal of the right ankle hardware and for a subsequent surgical exploration of her tendons, should it be deemed necessary;”⁷ however, the Compensation Order on Remand’s purported “clarification of the issue of authorization for additional medical treatment, including surgery of the right ankle,”⁸ provides no clarification of the legal issue to be addressed. The question remains unanswered, “Is the issue causal relationship which would require an analysis of the application of the presumption of compensability or is the issue reasonableness and necessity which would require an analysis of a utilization review report?”⁹

CONCLUSION AND ORDER

Before any meaningful review can take place by either the ALJ or the CRB, there must be clarification of the legal issue to be addressed. Failure to provide such clarification requires we remand this matter for further proceedings consistent with this Decision and Remand Order as well as the December 22, 2011 Decision and Remand Order.

FOR THE COMPENSATION REVIEW BOARD:


MELISSA LIN JONES
Administrative Appeals Judge

May 9, 2012
DATE

⁷ *Parran v. Cash Management Solutions*, AHD No. 11-053, OWC No. 669891 (January 30, 2012), p. 3.

⁸ *Id.*

⁹ *Parran v. Cash Management Solutions*, CRB No. 11-080, AHD No. 11-053, OWC No. 669891 (December 22, 2011), p. 6.