

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 15-040

**CONSTANCE DYSON,
Claimant–Petitioner,**

v.

**SPECIALTY HOSPITAL OF WASHINGTON,
Self-Insured Employer-Respondent.**

Appeal from a February 12, 2015 Compensation Order by
Administrative Law Judge Gerald D. Roberson
AHD No. 14-515, OWC No. 700021

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2015 JUL 7 PM 2 15

(Decided July 7, 2015)

Michael J. Kitzman for Claimant
Tony D. Villareal for Employer

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

JEFFREY P. RUSSELL for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

This claimant's appeal follows the issuance of a Compensation Order issued by an Administrative Law Judge (ALJ) in the Administrative Hearings Division (AHD) of the Department of Employment Services (DOES), denying Constance Dyson's (Claimant's) claim for benefits related to an alleged back injury suffered by her on August 14, 2013. The denial was premised upon the ALJ's acceptance of the opinions of two independent medical examiners (IMEs), Dr. Louis Levitt and Dr. Thomas Ryan, to the effect that any complaints or conditions Claimant may currently experience in her low back are unrelated to a stipulated work injury occurring when she lifted a patient on that date.

Claimant appealed the denial to the Compensation Review Board (CRB), arguing (1) Employer's evidence was insufficient to overcome the statutory presumption of compensability found in

D.C. Code § 32-1521, and alternatively (2) Claimant's evidence was superior to that of Employer, considering the existence of a preference for the opinions of treating physicians over those of IME physicians.

Because the facts as found by the ALJ are supported by substantial evidence, and the conclusions reached flow rationally therefrom, we affirm the Compensation Order.

ANALYSIS

The scope of review by the CRB is limited 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. *See* D.C. Code § 32-1521.01(d)(1)(A). Consistent with this standard of review, the CRB is constrained to 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 different conclusion. *Marriott International v. DOES*, 834 A.2d 882, 885 (D.C. 2003).

The first portion of Claimant's brief addresses the invocation of the presumption of compensability, and its rebuttal. Since no one disputes that Claimant's evidence was sufficient to invoke the presumption, we will not address that portion of the brief.

Claimant complains that Employer's evidence fails to satisfy its burden of producing substantial evidence in opposition to the presumption that Claimant's alleged low back disability is causally related to the stipulated work injury of August 14, 2013.

Employer disagrees, arguing in its brief that the IMEs of Drs. Ryan and Levitt are sufficient to overcome the presumption. Citing several cases, primarily *The Washington Post v. DOES and Raymond Reynolds, Intervenor*, 852 A.2d 909 (D.C. 2004) (*Reynolds*), Employer asserts that it has provided unambiguous opinions from two physicians, who examined Claimant, reviewed the pertinent medical records, including the records relating to the non-work related intervening accidents and the initial treatment records from the subject incident, to the effect that Claimant had sustained a mild injury to her low back which has completely resolved, and that any current complaints that she may experience are unrelated to the work injury of August 14, 2013.

Review of EE 2, the IME report of Dr. Levitt dated March 24, 2014 reveals the following conclusion:

With respect to her complaints of back pain, although she would allege she has ongoing chronic and worsening lower back discomfort related now to a[n] [prior] injury of 5/17/12, it represents preexisting disease. In my office today, she has no active spinal process of disc origin or radicular process that requires care. Out of all due respect to Dr. Suros I have no idea what he is treating at the current time. Clearly his intervention in this patient is driven by subjective complaints but she has no identifiable objective measure compatible with disc disease or lumbar radiculopathy that would qualify for interventional treatments such as epidural

steroids. I must state strongly that any epidural steroid injections provided by Dr. Suros are not causally related in any manner to the work incident of 8/14/13. In spite of her complaints of worsening back pain, no doubt secondary to her morbid obesity and deconditioned state, I see no basis for restricting work activities based on her lumbar complaints.

Further, review of EE 4, the IME report of Dr. Ryan dated December 8, 2014, contains the following assessment:

With respect to the back, I am not certain given that there are no x-rays of the spine and only subjective evaluations by Dr. Soros [sic] and the patient's subjective complaints referencing the lower lumbar region. It would be my opinion, however, that the events of August 2013 simply aggravated a pre-existing condition in the lower spine. That condition being more likely related to her body habitus and longstanding morbid obesity than it is to any injury which occurred on August of 2013. Any relationship to the lower lumbar spine without question pre-dated that 2013 injury. Because of the relationship of previous problems and the fact that I can confirm that the injury to the knee has resolved. I must say that at this time, I can find no permanent impairment whatsoever to the events of August 2013. My diagnosis at this time is that she had a knee strain which has resolved and she may well have had a back strain which has also resolved from the standpoint of that event that returns to its pre-existent discomfort related to July of 2012. The current symptoms are not causally related to the events of 2013.

In its most direct holding on the nature of the evidence that is required to be produced in order to overcome the presumption, the Court of Appeals has written as follows:

We hold that an employer has met its burden to rebut the presumption of causation when it has proffered a qualified independent medical expert who, having examined the employee and reviewed the employee's medical records, renders an unambiguous opinion that the work injury did not contribute to the disability.

Reynolds, supra, 852 A.2d at 910.

The Court has, in this passage, established the following criteria for determining whether an employer has produced sufficient medical evidence to overcome the causation presumption: (1) an opinion from (2) a qualified medical expert which (3) follows an examination of the claimant by that expert and (4) a review of the relevant medical records, which opinion is (5) unambiguous, and which asserts both (6) a lack of causation of and (7) a lack of "contribution", or, in a phrase used more frequently in workers' compensation law, "aggravation" of the disabling condition.

EE 2 and EE 3 meet the *Reynolds* standard. Accordingly, we reject Claimant's argument that Employer has failed to adduce evidence sufficient to overcome the presumed causal relationship

between Claimant's alleged low back injury and the work injury here at issue.

Claimant's final argument is that, assuming the presumption has been overcome, her evidence outweighs Employer's due, in large part, to the preference for the opinions of treating physicians over that of IME physicians.

Under the law of the District of Columbia, there is a preference for the testimony of treating physicians over doctors retained for litigation purposes. *See Short v. DOES*, 723 A.2d 845 (D.C. 1998); *see also Stewart v. DOES*, 606 A.2d 1350 (D.C. 1992). This rule is premised upon the assumption that a physician who has treated a patient numerous times over a number of weeks, months or years is likely to have a greater and more reliable insight into the condition of a patient than does a physician who has had only a very limited exposure to the patient, and upon a concern that a physician hired for purely litigation-related evaluations may have either an unwitting or overt bias. *See Lincoln Hockey, LLC v. DOES*, 831 A.2d 913 (D.C. 2003).

However, the rule is not absolute, and where there are persuasive reasons to do so, a treating physician's opinions may be rejected. *Stewart, supra*. In such a case, the ALJ may choose to credit the testimony of a non-treating physician over a treating physician. *Short, supra*. Among the reasons that have resulted in such a rejection are sketchiness, vagueness and imprecision in the reports of the treating physician. *Erickson v. WMATA*, H&AS No. 92-63, OWC No. 181489 (October 28, 1993), *aff'd*. Dir. Dkt. No. 93-82 (June 5, 1997); *see also Marriott International v. DOES, supra*. Additional reasons that have been found to be relevant to this determination are the fact that the IME physician had examined the claimant personally, had reviewed all the available medical reports and diagnostic studies, and had superior relevant professional experience and specialization. *Canlas v. DOES*, 723 A.2d 1210 (D.C. 1999).

We note initially that, nowhere in her brief does Claimant direct us to any direct expression of medical opinion on the subject of the medical relationship between Claimant's current low back pain and the instant injury, and our close review of those reports and notes fails to disclose any such opinion, and certainly no reasoned analysis of the issue by Dr. Suros can be found.

The ALJ did refer to an "undated narrative statement" by Dr. Suros in which the ALJ states the doctor "attempted to address this issue". Compensation Order, p. 8. The reference is to CE 1, which is an undated narrative report by Dr. Suros.

We find nothing in CE 1 which attempts to analyze medical causal relationship in any specific manner. The statement makes reference to numerous incidents and evaluations, including his first seeing Claimant on December 7, 2012 on referral by a neurosurgeon, Dr. Matthew Ammerman, to assess and treat low back pain, reference to "non-contributory studies" including an MRI in July 2012, inconclusive EMG/NCS studies, x-rays taken in May 2014 which he described as "unremarkable" except for some cervical (neck) straightening, reference to a lifting incident in 2013 (which we assume for this decision is the instant accident) which he states caused an "increase her baseline low back pain", with a subsequent "flare up lasting several weeks in early May of 2014 when she was stopped at a stoplight and hit from behind", after which "her pain returned to her chronic baseline level".

Giving Claimant the benefit of the doubt that this report constitutes an opinion by Dr. Suros on causation, the ALJ discredited whatever such conclusions might be read into it because, among other things, it “conflicts with the initial medical report from Concentra dated August 15, 2013, where Claimant indicated her back pain had improved as a result of a steroid injection the week prior” as well as the August 19, 2013 report from Dr. Aisha Rivera-Margarin, in which it is written that “currently she has no back pain, reports pain is mostly in her right knee...”. CE 6, p. 28.

The ALJ clearly made a thorough review of the evidence before him, considered that evidence without the benefit of the presumption, gave legitimate and record based reasons for rejecting any implication that Dr. Suros’s opinion supported a finding of causal relationship, and gave cogent reasons for accepting the opinions of the only two doctors who expressed direct and reasoned opinions on causation.

CONCLUSION AND ORDER

The ALJ’s findings are supported by substantial evidence and the conclusion that Claimant failed to meet her burden by a preponderance of the evidence is in accordance with the law.

So ordered.