

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 15-196

CORALYNN SMITH,
Claimant-Petitioner,

v.

D.C. WATER AND SEWER AUTHORITY and
PMA MANAGEMENT CORPORATION,
Employer/Third Party Administrator-Respondent.

Appeal from a November 18, 2015 Compensation Order by
Administrative Law Judge Joan E. Knight
AHD No. 15-152, OWC No. 681997

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2016 MAY 16 PM 12 59

(Decided May 16, 2016)

David M. Snyder for Claimant
Douglas A. Datt 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 worked for Employer as an industrial mechanic and reliability technician at Employer's Blue Plains water treatment facility. On June 16, 2011, Claimant injured her back when a heavy lid she and a co-worker were lifting slid out of the co-worker's grip. Claimant was initially seen at Providence Hospital's emergency room and by her primary care physician for back pain. She began treating for low back pain with Dr. Marc Danziger on June 22, 2011, who prescribed various treatments ranging from Flexeril to epidural injections. In August 2011, Dr. Danziger released Claimant to light duty work while she underwent physical therapy and work hardening. Additional work hardening and cortisone injections were prescribed in November 2011 after Dr. Danziger's examination revealed left paraspinal and left buttock tenderness.

By January 2012, Claimant passed the requirements of work hardening and Dr. Danziger released her to return to her full duties. On February 6, 2012, Claimant returned to full duty as a reliability technician for Employer. In August 2013, Claimant began to complain of low back pain again and sought treatment from Dr. James Abbott, a neurosurgeon. Dr. Abbott opined Claimant's condition was directly related to her June 2011 work injury. Dr. Abbott referred Claimant to his colleague Dr. Faheem Sandhu. Dr. Sandhu examined claimant on September 23, 2013.

Claimant continued to work full duty and did not seek medical treatment for her back again until May 20, 2014 when she saw Dr. Helen Norwood, an internist. She reported to Dr. Norwood that her back pain started "yesterday". On July 21, 2014, Claimant returned to Dr. Sandhu's office with complaints of radiating low back pain. An EMG and epidural injections were ordered. On August 28, 2014, Claimant was examined by Dr. Sandhu's physician assistant and not Dr. Sandhu. Claimant was prescribed a course of physical therapy and returned to light duty status. Dr. Sandhu wrote on May 29, 2015, the accident Claimant suffered on June 16, 2011 "could have aggravated" Claimant's spondylolisthesis and that she would likely benefit from surgical intervention.

At the request of Employer, Claimant was returned to Dr. Danziger who examined Claimant on January 13, 2015. Dr. Danziger issued an Addendum on June 5, 2015 which stated the condition for which Claimant seeks authorization for surgery is not causally related to her June 2011 work injury.

Employer did not authorize the surgery. A full evidentiary hearing occurred on June 10, 2015. Claimant sought authorization for treatment recommended by Dr. Sandhu. An Administrative Law Judge (ALJ) issued a Compensation Order (CO) on November 18, 2015. The CO concluded Claimant failed to bear her burden to produce the preponderance of evidence that her spondylolisthesis condition was causally related to the work-related accident on June 16, 2011.

Claimant timely appealed, asserting that the ALJ erred in disregarding the opinion of the treating physician, Dr. Sandhu and crediting the opinion of IME physician, Dr. Danziger. Employer opposes Claimant's appeal, asserting that the ALJ correctly discounted the opinion of Dr. Sandhu.

ISSUE ON APPEAL

Is the November 18, 2015 CO supported by substantial evidence and in accordance with the law?

ANALYSIS

The scope of review by the CRB as established by the District of Columbia Workers' Compensation Act (the Act) and as contained in the governing regulations is limited to making a determination whether the factual findings of a Compensation Order on appeal are based upon substantial evidence in the record, and whether the legal conclusions flow rationally from those facts and are otherwise 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) (*Marriott*). Consistent with this scope of review, the CRB is 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 members of the CRB review panel considering the appeal might have reached a contrary conclusion. *Marriott*, 834 A.2d at 885.

Claimant argues in her Memorandum of Points and Authorities in Support of Claimant's Application for Review (Claimant's Brief) that the ALJ erred in finding Employer rebutted the presumption of compensability found in D. C. Code § 32-1521 and in rejecting the opinion of Dr. Sandhu when finding Claimant did not prove that her condition is causally related to the work injury. Claimant asserts:

In his IME report, Dr. Danziger noted that there was an initial causal relationship between Ms. Smith's injury and the symptoms she was experiencing when he treated her, but that she had since reached maximum medical improvement as of February 2012. The CO also determined that the Employer had rebutted the presumption with this evidence. However, Dr. Danziger only opined that Ms. Smith's condition had resolved and that her present complaints are now due only to her pre-existing degenerative changes. Dr. Danziger repeats this opinion throughout his report, but his support for it is lacking. In his last visit note with Ms. Smith, Dr. Danziger opined that she continued to have some complaints despite making much improvement, and that she could and should return to treatment if she had pain and problems. He did not, at that time, indicate that her condition had completely resolved nor that her complaints were now due to only degenerative changes. Ms. Smith contends that these opinions are not specific and comprehensive enough to rebut the presumption that she has invoked through Dr. Sandhu's opinions and her own testimony in which she testified that she has continued to have the same type of physical complaints since the date of her work injury. Although Dr. Danziger offers an alternative explanation of Ms. Smith's complaints, his explanation does not make sense when read in light of his prior reports and Ms. Smith's credible testimony.

Assuming *arguendo*, that the CO did properly find that the Employer's evidence rebuts the presumption, then Ms. Smith has proved her case by a preponderance of the evidence, contrary to the determination of the CO. Ms. Smith is not requesting that the CRB re-weigh the evidence, but rather that it evaluate the evidence in light of the firmly entrenched legal principles that govern a determination as to medical causation. When the opinions of the doctors are weighed against each other and coupled with the credible testimony of Ms. Smith, the opinions of Dr. Sandhu are more consistent with Ms. Smith's complaints and his opinions are entitled to greater weight because he is the authorized treating physician.

Claimant's Brief at 6, 7.

We disagree with Claimant's assertion that Dr. Danziger's report does not meet the standard set forth for rebutting the presumption with an IME report in *Washington Post v. DOES, Raymond Reynolds, Intervenor*, 852 A.2d 909, 914 (D.C. 2004) (*Reynolds*). We further disagree with Claimant that Dr. Danziger's opinions are not specific and comprehensive enough to rebut the presumption. Dr. Danziger reported:

In looking at the temporal relationship, she had an injury in 2011 and she resolved her symptoms and she went back to full duty work with negligible symptoms. She went almost a full year without additional treatment and it is not until sporadic treatment provided in 2013 and onward that her back became symptomatic again. This is a result of the underlying degenerative disc disease and not a result of the work related injury. Any and all treatment would be solely based on spondylolisthesis which clearly pre-existed the work related injury. I would disagree with his notes where he states he feels it is related. I clearly state it is unrelated and any and all treatment should be provided under her private health insurance and it has nothing to do with the work related injury of 6/16/11.

EE 1, addendum at 3b.

We conclude the ALJ's determination that Dr. Danziger 's opinion is sufficient to rebut the presumption is in accordance with the law as Dr. Danziger's opinion is an unambiguous opinion that the work injury no longer contributes to the disability and was rendered by a qualified independent medical expert who examined Claimant and reviewed the medical records. *Reynolds, supra*. Further, he does not state in explaining his opinion that it is premised upon her condition when he last saw her. Rather, he gives a rational medical explanation involving the passage of time and lack of treatment for a lengthy interval as additional reasons for his opinion.

With regard to the ALJ's conclusion that Claimant failed to bear her burden to produce the preponderance of the evidence that her spondylolisthesis condition was causally related to the work related accident on June 16, 2011, Employer asserts:

While Dr. Sandhu suggests in his letter that the treatment is causally related to her accident and states that his opinions are within a reasonable degree of medical certainty, his explanations all are expressed in a less than clear and unambiguous manner. On the contrary, he consistently uses "could have" to describe the Claimant's medical status.

Employer provided the following language of Dr. Sandhu's May 29, 2015 letter to Claimant's counsel:

Although she may have had some pre-existing degenerative changes in her spine, an accident such as she suffered on June 16, 2011, **could have aggravated** her condition of spondylolisthesis. Trauma is well known to lead to instability of spondylolistheis and **could result** in further stenosis or narrowing if the spondylolithesis were made worse by the trauma . . . This mechanism **could clearly** aggravate mild degenerative changes and make an asymmetric problem

symptomatic. Ms. Smith continues to suffer from her condition and **would likely benefit** from surgical intervention to decompress the nerves, correct the spondylolisthesis and stabilize the L4-5 level. **Hopefully, surgery would allow her to return to work in at least a light duty capacity.** (CE 1 a 1-2)

Employer's Brief at 9 (emphasis in original).

The ALJ properly cited the treating physician preference afforded treating physicians in this jurisdiction and provided the following reasons for rejecting Dr. Sandhu's opinion:

- 1) Dr. Sandhu does not provide an unequivocal opinion attributing Claimant's spondylolisthesis to her lumbar injury sustained at work on June 16, 2011. Dr. Sandhu's opinion is that Claimant's work accident "could have" aggravated her spondylolisthesis;
- 2) Dr. Sandhu's May 29, 2015, opinion on casual [sic] relationship was not contemporaneous with a physical examination of Claimant and appeared based upon the record of his last treatment exposure to Claimant on August 28, 2014 and
- 3) Dr. Sandhu did not clearly explain his rationale for attributing Claimant's lumbar pain to the accidental injury on June 16, 2011, other than the trauma "could have" aggravated the spondylolisthesis.

CO at 9.

The ALJ concluded:

For these reasons, I reject Dr. Sandhu's opinion that Claimant's lumber [sic] injury which arose out of and in the course of her employment on June 16, 2011. Dr. Sandhu's opinion is found to be imprecise, vague and sketchy and lacks the necessary detail and specificity to prove Claimant's current condition is causally related to her June 2011 work injury.

On the other hand, Dr. Danziger's medical opinions are more comprehensive, persuasive and he states his reasons for his medial conclusion on causal relationship which outweighs the medical opinion of the treating physician, Dr. Sandhu in this case.

CO at 9.

The Panel finds the ALJ properly analyzed the medical evidence of record in accordance with the law, affording the latest treating physician, Dr. Sandhu a preference, but finding more than one reason to reject it in favor of the original treating physician and subsequent IME physician, Dr. Danziger. Notably, we agree with the ALJ determination that Dr. Sandhu's opinion should be rejected in favor of Dr. Danziger's because "Dr. Sandhu's May 29, 2015, opinion on casual [sic] relationship was not contemporaneous with a physical examination of Claimant and appeared based upon the record of his last treatment exposure to Claimant on August 28, 2014". The ALJ's rejection is strengthened by the fact that Dr. Sandhu's physician's assistant saw Claimant on August 28, 2014 not Dr. Sandhu. Further it is not clear if Dr Sandhu actually

examined Claimant on July 21, 2014 as the disability certificate in evidence is marked "VOID" and is illegible.

We conclude the ALJ provided "specific and legitimate reasons" to reject the opinion of Dr. Sandhu's opinion and the ALJ's determination that Claimant did not meet her burden of production is supported by substantial evidence and in accordance with the law. *Mellese v. Global Fund for Children*, CRB No. 11-029(R) (July 26, 2012).

CONCLUSION AND ORDER

The ALJ's determination that Claimant failed to meet her burden of establishing by a preponderance of the evidence that her spondylolisthesis condition is causally related to the work-related accident of June 16, 2011 is supported by substantial evidence and is in accordance with the law.

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

So ordered.