

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 15-171

DAVID NOCKET,
Claimant-Petitioner,

v.

LOCKHEED MARTIN and ESIS,
Self-Insured Employer/Third-Party Administrator-Respondents.

Appeal of an September 30, 2015 Compensation Order by
Administrative Law Judge Gerald D. Roberson
AHD No. 15-237, OWC No. 722932

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2016 APR 4 PM 12 21

(Decided April 4, 2016)

Matthew J. Peffer for Claimant
Michael H. Daney for Employer

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

HEATHER C. LESLIE, for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

Claimant has been employed by the Employer as a system analyst. Claimant installed and maintained computers. On August 11, 2014, Claimant injured his head, neck and back when a sliding door shut on him, hitting his head.

Claimant subsequently sought medical treatment for his cervical and thoracic spine as well as headaches. Claimant saw Dr. Jonathan Levin who recommended an MRI of the cervical spine. A September 4, 2014 MRI test revealed a fracture at C6 and a bulging disc at C6-7. A follow up CT scan revealed no evidence of a fracture.

Dr. Amjad Anaizi treated Claimant on September 9, 2014 for worsening neck pain. Dr. Anaizi recommended another MRI, which showed degenerative changes at C6-7. Dr. Anaizi released Claimant to light duty work on October 6, 2015.

Claimant continued to treat for neck pain which included numbness radiating down both upper extremities. Claimant also expressed concerns with his thoracic spine. Physical therapy, pain management, and a thoracic MRI were recommended.

On December 29, 2014, Employer sent Claimant for an independent medical evaluation with Dr. Clifford Hinkes. Dr. Hinkes performed a physical examination and took a history of the injury. Dr. Hinkes opined Claimant suffered from a closed head injury with minor post-concussion syndrome and a cervical strain and sprain, but could go back to work full-time, without restrictions. Dr. Hinkes concluded that treatment was medically indicated, but delayed any further opinion until recent medical records were provided. On January 13, 2015, after reviewing further medical reports, Dr. Hinkes opined future treatment "is not medically indicated or casually related."

A full evidentiary hearing occurred on August 31, 2015. Claimant sought authorization for medical treatment; specifically pain management and treatment for his cervical spine, thoracic spine, post-concussion syndrome and headaches. The issues to be adjudicated were whether the thoracic spine condition arose out of and in the course of Claimant's employment and whether Claimant's neck condition, pain management for the cervical (neck) spine, thoracic spine and headaches were medically causally related to the August 11, 2014 accident. On September 30, 2015, a Compensation Order (CO) was issued which concluded Claimant's thoracic spine condition did not arise out of and in the course of his employment. The Administrative Law Judge (ALJ) also determined Claimant was entitled to pain management for his neck and headaches until January 13, 2015. Thereafter, the ALJ concluded any treatment was not medically causally related to the work accident.

Claimant timely appealed the decision. Claimant argues "the conclusions of law that the Employer provided evidence to rebut the presumption of compensability is [sic] not supported by the substantial evidence. All of the evidence indicates that Mr. Nocket suffered a work accident on August 11, 2014 to his head, neck, and back,¹ and that the treatment required for the results of this injury are causally related." Claimant's argument at 5.

Employer opposes Claimant's Application for Review, arguing the CO is supported by the substantial evidence and should be affirmed as a matter of law.

¹ We note that while Claimant makes reference to Claimant's upper back (thoracic) in his rendering of facts and briefly references the back in the quoted language above, in Claimant's argument only the head and neck injuries, and Claimant's headaches are mentioned when arguing the CO is not supported by the substantial evidence in the record or in accordance with the law. "Issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived." *Enders v. District of Columbia*, 4 A.3d 457, 471 n. 21 (D.C. 2010) quoting *McFarland v. George Washington University*, 935 A.2d 337, 351 (D.C. 2007); see also *Bardoff v. United States*, 628 A.2d 86, 90 n.8 (D.C. 1993) (arguments raised but not argued in briefing are treated as waived). Thus, only the head and neck injuries, and headaches will be considered to have been appealed.

ANALYSIS²

Claimant begins his argument, in addition to the above quoted language from page 5 of his brief, arguing the CO erred in concluding Claimant did not invoke the presumption of compensability that the work injury to his head and neck caused his headaches. We find this argument confusing as a review of the CO reveals that the ALJ concluded, when determining whether Claimant's headaches and neck condition are causally (legally) to the work injury, there was no dispute that Claimant did suffer a cervical strain, head injury and subsequent minor post-concussion syndrome. CO at 9. When addressing whether the headaches were medically casually related to the work injury, the ALJ stated:

With respect to whether Claimant's medical conditions, neck treatment, pain management and *headaches*, are medically causally relate to the work incident, Claimant relied on the medical evidence from American Spine. On November 25, 2014, Claimant complained of continued neck pain and occasional bilateral shoulder pain since the work incident. Claimant had not received physical therapy, but reported his pain had improved somewhat since his last visit. Claimant had a MRI of the cervical spine on November 25, 2014, which was relatively stable with some slight decrease in the degree of enhancement at C6-7, and there were findings most consistent with degenerative changes at C6-7. Dr. Anaizi indicated if the physical therapy did not relieve Claimant's symptoms, a C6-7 anterior cervical discectomy and fusion remained an option. CE 1, p. 7.

On January 13, 2015, Dr. Anaizi stated Claimant may return to work on January 19, 2015 with no restrictions. CE 1, p. 4. Claimant had received physical therapy, and reported his symptoms had remained relatively stable. Claimant advised Dr. Anaizi the soft tissue massages to his thoracic spine seemed to alleviate some of his symptoms, and he was concerned there may be a problem in his thoracic spine. Dr. Anaizi recommended a MRI of the thoracic spine, and pain management for Claimant's neck pain, indicating Claimant was not interested in surgical intervention. CE 1, p. 3. *With the medical evidence from Dr. Anaizi, Claimant has invoked the presumption that his current medical treatment is causally related to his employment.*

CO at 12 (Emphasis added).

We are aware of the ambiguity inherent in the statement in the CO that “even if Claimant has invoked the presumption with respect to current treatment for his headaches, the record contains sufficient evidence to rebut the presumption...” CO at 14. However, any error is harmless as the ALJ invoked the presumption, as stated above, and continued the analysis from that point. As we

² The scope of review by the CRB is generally 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. See D.C. Workers' Compensation Act of 1979, as amended, D.C. Code § 32-1501, *et seq.*, (the Act) at § 32-1521.01 (d)(2)(A), and *Marriott International v. DOES*, 834 A.2d 882 (D.C. 2003). Consistent with this standard of review, the CRB and this review panel must affirm 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 this panel might have reached a contrary conclusion. *Id.*, at 885.

conclude that the ALJ found Claimant's evidence sufficient to invoke the presumption that Claimant's head and neck injuries and headaches were legally and medically causally related to the work injury, we need not address Claimant's argument on this point.

Claimant next argues that the opinion of Dr. Hinkes is not specific or comprehensive enough to rebut the presumption of compensability that the treatment sought by Claimant was medically causally related to the work accident. Specifically, Claimant argues Dr. Hinkes' report and addendums do not offer an opinion as to why the treatment to the neck was neither necessary nor medically related to the work injury and his opinion is merely superficial in nature. Claimant's argument at 10.

On this point, the ALJ noted:

To challenge medical causal relationship and rebut the presumption, Employer relied primarily on the medical reports from Dr. Hinkes. On January 18, 2015, Dr. Hinkes reviewed additional medical records from Dr. Anaizi, who ordered a thoracic MRI and recommended pain management. Dr. Hinkes stated the MRI and pain management program was not necessary, and Claimant could continue full duty without restriction. Dr. Hinkes remarked "Further treatment is not medically indicated nor causally related." EE 11, p. 178.

CO at 12.

As the Claimant correctly points out, an independent medical examination (IME) report is sufficient to rebut the presumption if the IME physician physically examined the Claimant, reviewed Claimant's medical records, and rendered a firm and unambiguous medical opinion in support of the contention that the work accident did not cause the Claimant's current disability. *Washington Post v. DOES (Raymond Reynolds, intervenor)*, 852 A.2d 909 (D.C. 2004) (*Reynolds*). A review of the medical reports, as well as the deposition, supports the ALJ's conclusion that the opinion of Dr. Hinkes rebutted the presumption. Dr. Hinkes' reports and testimony reflects his firm and unambiguous opinion that any further treatment to Claimant's neck was medically unrelated to the work-injury. Dr. Hinkes, similar to the IME physician in *Reynolds*,

...based his opinion on his personal examination of Reynolds and his review of all the pertinent medical records. The doctor's opinion was firm and unambiguous. He supported it with detailed reasons. His reports and testimony were neither superficial nor implausible. Certainly they were "specific and comprehensive enough," *Ferreira*, 531 A.2d at 655, for the purpose at hand.

Reynolds, supra at 914.

Moreover, a review of Dr. Hinkes' deposition testimony reveals detailed answers when answering why the neck injury was unrelated in his opinion. We conclude the ALJ's reliance on Dr. Hinkes' IME reports and his deposition testimony, and the ALJ's determination that the presumption had been rebutted by Employer is supported by substantial evidence in the record and in accordance with the law.

The ALJ then weighed the evidence without benefit of the presumption, determined Claimant was entitled to pain management for his neck and headaches up until January 13, 2015, and denied Claimant's request thereafter. Claimant does not appeal the ALJ's weighing of the evidence at this stage. We affirm the ALJ's conclusion and determine the CO is supported by the substantial evidence in the record and is in accordance with the law

CONCLUSION AND ORDER

The September 30, 2015 Compensation Order is supported by the substantial evidence in the record and is in accordance with the law. It is **AFFIRMED**.

So ordered.