

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

Department of Employment Services

MURIEL BOWSER  
MAYOR



DEBORAH A. CARROLL  
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 16-047

DAYANARA JACKSON,  
Claimant-Respondent,

v.

MEDSTAR WASHINGTON HOSPITAL CENTER and  
GALLAGHER BASSETT SERVICES,  
Employer/Third-Party Administrator-Petitioner.

Appeal from a February 29, 2016 Compensation Order  
by Administrative Law Judge Mark W. Bertram  
AHD No. 15-280 OWC No. 712495

DEPT. OF EMPLOYMENT  
SERVICES  
COMPENSATION REVIEW  
BOARD  
2016 SEP 8 AM 7 29

(Decided September 8, 2016)

William H. Schladt for Employer  
David M. Snyder for Claimant

Before GENNET PURCELL, LINDA F. JORY and HEATHER C. LESLIE, *Administrative Appeals Judges*.

GENNET PURCELL for the Compensation Review Board.

**DECISION AND ORDER**

**FACTS OF RECORD AND PROCEDURAL HISTORY**

Dayanara Jackson (“Claimant”) is employed by Medstar Washington Hospital Center (“Employer”) as a nursing assistant in the inpatient unit of the cardiac department. Claimant’s job duties are to assist patients in the activities of daily living, including the use of a commode, eating, drinking and moving around. As a nursing assistant, Claimant is also required to occasionally lift and reposition patients, as well as perform blood pressure readings, electrocardiograms (“EKG”), and blood sugar testing.

On January 16, 2014, Claimant was helping an elderly and infirmed patient into bed when the patient appeared to pass out in her arms. Claimant prevented the patient from falling on the floor and got the patient to the bed. In doing so, Claimant heard her low back ‘crack’ and felt pain on

her left side, lower back. Over the next few days, Claimant experienced excruciating pain down her left side and felt numbing and tingling sensations on the underside of her feet.

The following day, Claimant was seen by, Arlene Sheets, at Employer's occupational health department, with whom she continued to treat intermittently. Claimant was also treated and evaluated by multiple health care providers, including: Dr. Husna R. Baksh, her primary care physician, Mark Chow, a physician's assistant, Dr. Malady Kodgi, a pain management specialist at Employer, Dr. Amin Amini, a neurosurgeon, Dr. Mariam Hameed, a pain medicine specialist, and Dr. Kathleen Fink, a physical medicine and rehabilitation specialist.

On or about April 2014, Claimant was referred to a pain management specialist and came under the care of Dr. Kodgi. Dr. Kodgi performed two epidural steroid injections on Claimant at the L5-S1 level of her spine and prescribed her medications. On June 19, 2014, Dr. Kodgi noted Claimant was having ongoing pains despite the injection therapy; specifically a 'burning type pain' in her back and buttocks, pain with standing, sitting and walking.

On June 24, 2014, Claimant received a return to work slip, referencing work restrictions put in place by Dr. Kodgi and returning Claimant to modified duty noting no lifting over five (5) pounds; mandatory ten minute breaks every half hour; and, four hour work days, four days a week, for the period of July 7, 2014, to July 23, 2014, and reissued from July 21, 2014, to August 15, 2014. On the advice of her attorney, Claimant refused to sign the modified duty agreement offered by Employer upon her return to work.

On July 8, 2014, neurosurgeon Dr. Amini noted Claimant had "extreme point tenderness over the piriformis muscle." Dr. Amini referred Claimant to a pain management specialist for an injection into her piriformis muscle, and also cleared Claimant to return to work, with no restrictions, as of July 9, 2014.

Claimant treated with Dr. Hameed from August 2, 2014, to January 15, 2015. Dr. Hameed opined that Claimant had left piriformis syndrome<sup>1</sup> as a result of the January 16, 2014 work injury and recommended Claimant for a diagnostic and therapeutic piriformis block. Claimant was taken off of work by Dr. Mariam Hameed on October 10, 2015.

In preparation for a formal hearing at the Administrative Hearings Division ("AHD") of the Department of Employment Services ("DOES"), at Employer's request, on December 8, 2014, Claimant underwent an independent medical evaluation ("IME") with Dr. Kathleen Fink, physical medicine and rehabilitation specialist. Dr. Fink opined that Claimant's symptoms were not confined to a sciatic distribution; the only nerve that would be pinched in a piriformis syndrome, and that she had no mechanism of injury consistent with a case of pure piriformis syndrome. Dr. Fink recommended Claimant for an EKG/nerve conduction study to evaluate Claimant due to the questionable diagnosis of piriformis syndrome. Dr. Fink stated if a piriformis block was performed, Claimant may have some temporary relief however it would not confirm or deny the diagnosis.

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<sup>1</sup> Piriformis syndrome is an uncommon neuromuscular disorder that is caused when the piriformis muscle compresses the sciatic nerve. [www.webmd.com](http://www.webmd.com)

A full evidentiary hearing was held on September 17, 2015, before Administrative Law Judge (“ALJ”) Mark W. Bertram. Claimant sought benefits for temporary total disability for the period of October 10, 2014, through the present and continuing, authorization for medical treatment consisting of a piriformis block, and reimbursement of causally related medical expenses. The issues before the ALJ were whether Claimant’s current symptoms/conditions were medically causally related to the work place injury, whether Claimant was entitled to temporary total disability benefits for the period requested, whether Claimant’s request for medical treatment was reasonable and necessary, and whether Claimant voluntarily limited her income.

On February 29, 2016, the ALJ issued a Compensation Order (“CO”) granting Claimant’s claim that her current condition was medically causally related to the January 16, 2014 work injury, that her request for medical treatment was reasonable and necessary and, that she was temporarily and totally disabled for the period of October 10, 2014, to the present and continuing. *Jackson v. Medstar Washington Hospital Center*, AHD No. 15-280, OWC No. 712495 (February 29, 2016).

Employer timely appealed the CO to the Compensation Review Board (“CRB”) by filing Employer/Insurer’s Application for Review and Memorandum in Support of Application for Review (“Employer’s Brief”). In its appeal Employer asserted that the ALJ failed to properly address the issue of medical causal relationship, failed to address medical evidence rebutting Claimant’s diagnosis and, failed to address the opinion of Claimant’s treating physician, Dr. Kodgi, asserting that the Claimant can return to modified duty employment, and is therefore not temporarily totally disabled.<sup>2</sup> Claimant’s Brief, Argument I, page 14.

Claimant opposed the appeal by filing Claimant’s Opposition to Employer’s Application for Review (“Claimant’s Brief”). In her opposition, Claimant asserted the CO is supported by substantial evidence and should be affirmed.

### ANALYSIS<sup>3</sup>

Employer’s first argument asserts that the ALJ erred in his reasoning and analysis by failing to address the issue of medical causal relationship, specifically, whether the Claimant has piriformis syndrome. Employer also argues that the ALJ never addressed Employer’s evidence rebutting the diagnosis of piriformis syndrome. Finally, Employer argues that the ALJ failed to address whether Claimant can return to ‘modified duty’ employment and is as a result, not totally disabled.

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<sup>2</sup> Employer did not appeal the ALJ’s conclusion that Claimant’s request for treatment was reasonable and necessary.

<sup>3</sup> The scope of review by the CRB as established by the District of Columbia Workers’ Compensation Act (“Act”) and as contained in the governing regulations is limited to making a determination as to whether the factual findings of a Compensation Order on appeal are based upon substantial evidence in the record, and whether the legal conclusions drawn from those facts 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 also 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.

With regard to the issue of medical causal relationship, the ALJ stated:

Claimant's testimony and medical records indicate Claimant suffered injuries to her low back and buttocks area causing pain and weakness. Claimant testified to the mechanism of her injury and the resulting continual pain. HT 65:10-66:5; 87:18:13. Claimant's treating physician, Dr. Hameed, testified that it was possible the mechanism of claimant's injury could cause the piriformis syndrome. Dr. Hameed knew of no other causes that would have caused Claimant's injury. Claimant has invoked the presumption outlined under Whittaker. Employer's IME doctor, Dr. Fink, opines Claimant's symptoms related to her low back are more likely caused by the mechanism of the injury. CE 2 p.13. As Employer's IME physician also medically causally related Claimant's disabling condition, I find Claimant has proven by a preponderance of the evidence the medical causal relationship between her symptoms/conditions and her work place injury.

CO at 6.

When considering a causal relationship, the DCCA has held that a claimant is entitled to a rebuttable presumption that his claim arises out of and in the course of his employment if he produces credible evidence of an injury and of a work-related event which has the potential of causing the injury. *See Spartin v. DOES*, 584 A.2d 564 (D.C. 1990). Further, that the scope of application of the statutory presumption includes the medical causal relationship between the disabling condition in question and the injury. *Whittaker v. DOES*, 668 A.2d 844, 846 (D.C. 1995). In order to invoke the presumption, a claimant must meet the initial threshold requirement which is some evidence of a "work-related event, activity or requirement which has the potential of resulting in or contributing to the death or disability." *See Ferreira v. DOES*, 531 A.2d 651 (D.C. App 1987). Where employer has presented evidence "specific and comprehensive" on the question of causality, the presumption is rebutted and the conflicting evidence is weighed without reference thereto. *Id.*

In this case, both Claimant and Employer have asserted that Claimant sustained an injury to her back and has symptoms of the injury in the left leg as a result of the accident which occurred at work on January 16, 2014 and that the presumption of compensability was properly invoked. We agree that this invocation is based upon the facts of the case and substantial evidence in the record. The ALJ thereafter noted that Dr. Fink, Employer's IME physician, also medically causally related Claimant's disabling condition to the work injury. The ALJ ends his analysis here, stating "Claimant has proven by a preponderance of the evidence the medical causal relationship between her symptoms/conditions and her work place injury."

Employer argues that in determining that a medical causal relationship exists, the ALJ failed to discuss Employers' rebuttal evidence, and failed to discuss the diverse opinions of Claimant's treating doctors, and Dr. Fink, Employer's IME doctor, concerning the diagnosis of piriformis syndrome. It is at this point in the analysis that the dispute regarding the diagnosis of piriformis syndrome arises as the sole point of contention in this matter.

First, with regard to the discussion of Employer's rebuttal evidence, an employer meets its burden to rebut the presumption when it proffers a qualified IME who, after examining the

employee and reviewing her medical records, unambiguously opines that the work injury did not contribute to the disability. Accordingly, the ALJ must undertake an analysis of whether Employer's medical evidence rebuts the presumption. In the event the presumption is rebutted, the record evidence must be then weighed without the benefit of the presumption. The burden of proof then, returns to Claimant, who must then prove by a preponderance of the evidence that her current specific condition is medically causally related to the work injury. *Washington Hospital Center v. DOES*, 821 A.2d 898 (D.C. 2003).

We acknowledge that the ALJ concluded that Claimant proved her case by a preponderance of the evidence without a discussion of the rebuttal evidence in the record. We would have preferred, and routinely expect, analysis by the ALJ specifically stating that the IME evidence submitted by Employer has met the burden to rebut the presumption pursuant to *Washington*. Notably however, no medical evidence was presented stating that Claimant's work injury did not contribute to her low back symptoms of pain and weakness. Thus, the only dispute appears to be the source of Claimant's symptoms; the contested diagnosis of piriformis syndrome.

Given the substantial Employer evidence contesting Claimants specific diagnosis (but not her actual injury), we assume the ALJ arrived at his conclusion establishing a medical causal relationship by considering the rebuttal evidence and determined the presumption rebutted. This is evident because in reaching his conclusion, the ALJ appropriately weighed the evidence without the benefit of the presumption and concluded that Claimant proved by a preponderance of the evidence that her injury was medically causally related.

Secondly, with regard to the diagnosis of piriformis syndrome, Employer argues several times in its memorandum that the ALJ failed to address this question; that the Claimant does not have piriformis syndrome. Employer stated:

...the Employer was not arguing that the Claimant's condition was not related to her employment. Rather, the Employer was arguing that the Claimant does not have piriformis syndrome. The Administrative Law Judge in the Compensation Order fails to ever address that question.

Employer Brief at 5.

In light of the ALJ's finding of a medical causal relationship between Claimant's back condition and the January 16, 2014 work injury, Employer's argument that the ALJ failed to address the question of Claimant's diagnosis of piriformis syndrome is of no moment. Although the diagnosis of piriformis condition was contested among the doctors in this case, as we have determined, the CO concluded that there was no dispute from any of the doctors regarding the existence of *some* injury/condition to Claimant's back. The task of specifically identifying a Claimant's particular syndrome or condition *ancillary* to the finding of a medical causal relationship is not a mandate under the Act in this case.

We determine the CO's conclusion on medical causal relationship is based upon substantial evidence in the record, and that that conclusion flows rationally from the CO's findings of facts and is otherwise in accordance with applicable law.

Employer also argues that the ALJ erred by failing to address Dr. Kodgi's opinion regarding Claimant's ability to return to modified duty as of July 2014. Employer asserts that Claimant is not totally disabled and the ALJ erred in determining that Claimant did not voluntarily limit her income. Employer's argument is without merit and we disagree with this argument. Employer argues:

The [ALJ] correctly noted that the law in this jurisdiction prefers the opinion of a treating physician over that of a non-treating physician. However, the [ALJ] did not address all of the treating physicians' opinions in the case. Dr. Kodgi had noted that the Claimant was capable of working four hours a day for four days a week. In fact, the Claimant worked in a modified duty position with the Employer for a period of time.

Employer's Brief at 9.

While Employer's Brief correctly asserts that the law in this jurisdiction favors the opinion of a treating physician over that of a non-treating physician, Employer's position ignores the findings made by the ALJ with regard to Claimant's authorized change of treating physician from Dr. Kodgi to Dr. Hameed. The ALJ concluded:

By a Final Order from the Office of Worker's Compensation dated September 12, 2014, Claimant was granted a change of treating physicians from Dr. Malady Kodgi to another physician. Claimant was dissatisfied with Dr. Kodgi's treatment. AE 1. Claimant selected Dr. Mariam Hameed as her treating physician. Dr. Hameed is Claimant's treating physician.

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As I find Claimant credible and Dr. Hameed is the treating physician, I find Employer's evidence is insufficient to overcome Claimant's prima facie showing and evidence of total disability for the period at issue. Employers remaining arguments regarding voluntary limitation of income were reviewed and are rejected.

CO at 4, 9.

Consistent with the finding that Dr. Hameed was Claimant's treating physician, the ALJ determined that Dr. Hameed placed Claimant in an 'off work' status pending the reassessment of her request for the recommended treatment awarded in the CO. We find no reversible error in the ALJ's conclusions reached on this issue. The ALJ's conclusions regarding the analysis of Claimant's treating physician and findings regarding the issue of voluntary limitation of income are supported by substantial evidence in the record and in accordance with the law.

#### CONCLUSION AND ORDER

The conclusion that Claimant's back condition is medically causally related to the work injury that occurred on January 16, 2014, is supported by substantial evidence and is AFFIRMED. The

conclusion that the Claimant's request for medical treatment was reasonable and necessary was not appealed in this matter and is therefore the law of the case. The conclusion that Claimant did not voluntarily limit her income and the award of temporary total disability benefits are AFFIRMED.

*So ordered.*