

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



GERREN PRICE
INTERIM DIRECTOR

CRB No. 14-095

**DONALD POOLE,
Claimant-Respondent,**

v.

**BENEDICT METAL WORKS and
CINCINNATI INSURANCE COMPANY,
Employer and Carrier-Petitioner.**

Appeal from a July 3, 2014 Compensation Order by
Administrative Law Judge Karen Calmeise
AHD No. 11-062A, OWC No. 673724

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2015 JAN 26 PM 10 53

Joel E. Ogden for the Employer
Allen Lowe for the Claimant

Before HEATHER C. LESLIE, MELISSA LIN JONES, and JEFFREY P. RUSSELL, *Administrative Appeals Judges.*

HEATHER C. LESLIE for the Compensation Review Board.

DECISION AND ORDER

OVERVIEW

This case is before the Compensation Review Board (CRB) on the request for review filed by Employer-Petitioner (Employer) of the July 3, 2014, Compensation Order (CO) issued by an Administrative Law Judge (ALJ) in the Office of Hearings and Adjudication of the District of Columbia Department of Employment Services (DOES). In that CO, the ALJ granted Claimant's request for an award of medically causally related expenses due to Claimant's left shoulder condition. We affirm.

FACTS OF RECORD AND PROCEDURAL HISTORY

Claimant was a Project Manager for Employer. Claimant had been employed by Employer since 2005, initially holding the position of sheet metal worker. As a Project Manager, Claimant's duties included administrative responsibilities as well as design work, installation of materials, driving, and delivering materials.

On May 10, 2010, Claimant injured his right shoulder while attempting to catch a ladder to stop it from falling. Claimant sought medical treatment for his right shoulder injury. After conservative treatment failed, Claimant underwent right shoulder surgery on September 3, 2010. Subsequently, Claimant's neck became symptomatic. Claimant was diagnosed with a disk herniation which Dr. Scott McGovern opined was causally related to the work injury. Eventually, Claimant underwent spinal surgery in June of 2012.

Subsequent to the work injury, Claimant began to experience left shoulder pain. An MRI of the left shoulder revealed a partial rotator cuff and labral tear of the left shoulder. Claimant sought treatment with not only with Dr. McGovern, but also Dr. Thomas Brandon.

Claimant has not returned to work for Employer. On December 30, 2010, Employer terminated Claimant's employment. Employer sent Claimant for an independent medical evaluation (IME) on March 31, 2014 with Dr. Robert Riederman. Dr. Riederman opined Claimant's left shoulder condition was not medically casually related to the work injury.

A Formal Hearing was held on May 19, 2014. Claimant requested an award of causally related medical expenses for treatment rendered to the left shoulder. The sole issue presented was whether Claimant's left shoulder condition was medically casually related to his work injury. A Compensation Order issued on July 3, 2014 granting Claimant's relief, finding the left shoulder condition was medically casually related to his work injury.

Employer appealed. Employer puts forth several arguments. First, that the ALJ's finding that Claimant's left shoulder symptoms were related to the May 10, 2010 work injury and need for treatment is not based upon the substantial evidence in the record. Second, that the ALJ "erroneously conflated Claimant's radicular symptoms with Claimant's rotator cuff injury." Employer's argument at 5. Finally, Employer argues the reference on page 3 of the CO to the causal relationship of Claimant's knees and back injury to a December 18, 2012 is in error and should be vacated. Claimant timely opposed, arguing that the CO's findings were supported by the substantial evidence in the record.

THE STANDARD OF REVIEW

The scope of review by the CRB is 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 District of Columbia Workers' Compensation Act of 1979, D.C. Code, as amended, § 32-1501 *et seq.* at § 32-1521.01(d)(2)(A) of the ("Act") and *Marriott International v. DOES*, 834 A.2d 882 (D.C. 2003).

Consistent with this standard of review, the CRB must uphold a Compensation Order that is supported by substantial evidence, even if there is substantial evidence in the record to support a contrary conclusion, and even where the CRB might have reached a contrary conclusion. *Id.* at 885.

ANALYSIS

We address Employer's third argument first. We agree with Employer that the ALJ's reference to a left knee, right knee and back condition and a December 18, 2012 work injury is a drafting error. We also agree with Claimant that the drafting error is harmless and does not require remand. Pursuant to our authority outlined in 7 DCMR § 267.5,¹ we amend the CO under review by striking any reference to a left knee injury/condition, right knee injury/condition and back injury/condition attributable to an alleged December 18, 2012 work injury.

Turning to Employer's first argument, Employer argues that the ALJ's conclusion that Claimant's left shoulder condition is medically causally related to the May 10, 2010 work injury is not supported by the substantial evidence in the record. Employer argues the ALJ erred when weighing the evidence without the presumption, arguing Dr. Brandon's opinion is not enough to carry Claimant's burden. Employer relies heavily on selected statements made by Dr. Brandon at his deposition in support of its argument. Employer further argues that the IME opinion of Dr. Riederman was clear and unambiguous when opining Claimant's left shoulder condition was not medically causally related to the work accident, in contrast to the treating physician. We disagree with Employer's argument.

A review of the CO reveals the following discussion:

The reports of Dr. Brandon, who has treated the Claimant since the 2010 work injury, support the existence of a medical causal connection between Claimant's right shoulder and neck condition and his left shoulder symptoms. Dr. Brandon noted that the left shoulder rotator cuff tear was not caused by the 2010 right shoulder injury. (CE 3, pg. 19) However, Dr. Brandon repeatedly expressed his opinion, in the contemporaneous medical reports and on deposition, that Claimant's left shoulder pain is a result of repetitive use from compensation of the right shoulder work-related injury. (CE 3, pg. 9, 19, and 26)

CO at 5.

Employer only points out selected passages of the deposition and ignores the rest of the evidence submitted, including medical reports. The ALJ is tasked with considering all the evidence, including the contemporaneous medical reports pointed out above, when analyzing contested issues. A review of the evidence supports the ALJ's conclusion above. What Employer is in essence asking this panel to do is to reweigh the evidence in Employer's favor, a task we cannot do. As we point out above, the CRB must uphold a Compensation Order that is supported by substantial evidence, even if there is substantial evidence in the record to support a contrary conclusion, and even where the CRB might have reached a contrary conclusion.

¹ 7 DCMR § 267.5 states, in pertinent part, that

The Review Panel shall only issue an amended compensation order where a remand to the Administrative Hearings Division or the Office of Workers' Compensation would be unnecessary (e.g. where there is but one action that the Review Panel decision would permit), and thus remand would be superfluous.

Turning to Employer's second argument, Employer argues the ALJ erroneously conflated Claimant's radicular symptoms with Claimant's rotator cuff injury by wrongly interpreting Dr. Riederman's report. Employer points to the following passage:

Dr. Riederman's findings of the left shoulder condition are not in conflict with the treating physician's opinion. Whether Claimant's left shoulder complaints are aggravated by over-use or referred from the cervical spine, the IME report of Dr. Riederman supports the medical connection between Claimant's May 2010 accidental injury to his neck and right shoulder and his left shoulder complaints of pain and discomfort.

CO at 5.

We agree with Claimant's Counsel that any supposed error is harmless as the ALJ rejected the IME of Dr. Riederman and based her determination that the left shoulder condition was casually related to the work injury on the treating physician's opinion. We have repeatedly held, consistent with prevailing case law, that in situations where there are conflicting medical opinions, the opinion of the treating physician is preferred over those of physicians retained simply to examine the claimant for the purposes of litigation. *Stewart v. DOES*, 606 A.2d 1350 (D.C. 1992).

The ALJ, in concluding the left shoulder symptoms were related to the work accident, relied on the opinion of Dr. Brandon. As the ALJ stated,

In this case, there is no reason to reject the medical conclusions of Claimant's treating physician regarding the left shoulder symptoms and the causal connection with the 2010 work accident.

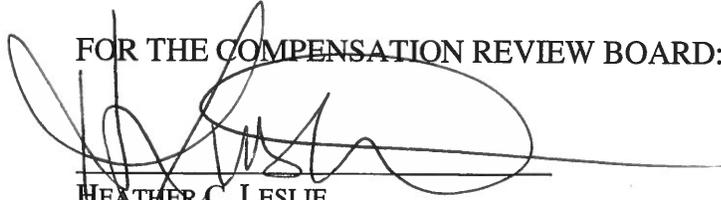
CO at 5.

We conclude the CO's determination that the left shoulder condition is medically causally related to the May 10, 2010 work injury is supported by the substantial evidence in the record and in accordance with the law.

CONCLUSION AND ORDER

The July 3, 2014 Compensation Order is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

A handwritten signature in black ink, appearing to read 'H. C. Leslie', is written over a horizontal line. The signature is stylized and somewhat cursive.

HEATHER C. LESLIE
Administrative Appeals Judge

January 26, 2015

DATE