GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services
Labor Standards Bureau

Office of Hearings and Adjudication
COMPENSATION REVIEW BOARD

(202) 671-1394-Voice
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CRB No. 04-048

TANEISHA DUNBAR,

Claimant – Petitioner,

v.

HOWARD UNIVERSITY AND SEDGEWICK CLAIMS MGMT. SERVICE,

Employer/Carrier – Respondent.

Appeal from a Compensation Order of
Administrative Law Judge E. Cooper Brown
OHA No. 01-456B, OWC No. 565431

Matthew Peffer, Esquire, for the Petitioner

John F. Ward, Esquire, for the Respondent

Before LINDA F. JORY, FLOYD LEWIS and JEFFREY P. RUSSELL, *Administrative Appeals Judges*.

FLOYD LEWIS, *Administrative Appeals Judge*, on behalf of the Review Panel:

DECISION AND ORDER

JURISDICTION

Jurisdiction is conferred upon the Compensation Review Board pursuant to D.C. Official Code §§ 32-1521.01 and 32-1522 (2004), 7 DCMR § 230, and the Department of Employment Services Director's Directive, Administrative Policy Issuance 05-01 (February 5, 2005).[1]

[1] Pursuant to Administrative Policy Issuance No. 05-01, dated February 5, 2005, the Director of the Department of Employment Services realigned the Office of Hearings and Adjudication to include, *inter alia*, establishment of the Compensation Review Board (CRB) in implementation of the District of Columbia Fiscal Year 2005 Budget Support Act of 2004, Title J, the D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, sec. 1102 (Oct. 1, 1994), *codified at* D.C. Code Ann. §§ 32-1521.01, 32-1522 (2005). In accordance with the Director's Policy Issuance, the CRB replaces the Office of the Director in providing administrative appellate review and disposition of workers' and disability compensation claims arising under the D.C. Workers' Compensation Act of 1979, as amended, D.C. Code Ann. §§ 32-1501 to 32-1545 (2005) and the D.C. Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Code Ann. §§ 1-623.1 to 1.643.7 (2005), including responsibility for administrative appeals filed prior to October 1, 2004, the effective date of the D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004.

BACKGROUND

This appeal follows the issuance of a Compensation Order from the Administrative Hearings Division (AHD) of the Office of Hearings and Adjudication (OHA) in the District of Columbia Department of Employment Services (DOES). In that Compensation Order, which was filed on April 20, 2004, the Administrative Law Judge (ALJ) denied the request by Claimant-Petitioner (Petitioner) for benefits, concluding that Petitioner failed to prove that her lower back injury and leg conditions arose out of and in the course of her employment. Petitioner now seeks review of that Compensation Order.

As grounds for this appeal, Petitioner alleges as error that the Compensation Order is arbitrary, capricious, unsupported by substantial evidence in the record and not in accordance with the law.

ANALYSIS

As an initial matter, the scope of review by the Compensation Review Board (CRB) and this Review Panel, as established by the Act and as contained in the governing regulations, 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. D.C. Official Code § 32-1522(d)(2). "Substantial evidence," as defined by the District of Columbia Court of Appeals, is such evidence as a reasonable person might accept to support a particular conclusion. *Marriott Int'l. v. District of Columbia Department of Employment Services*, 834 A.2d 882 (D.C. 2003). Consistent with this scope of review, the CRB and this Review Panel are constrained 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 reviewing authority might have reached a contrary conclusion. *Marriott*, 834 A.2d at 885.

Turning to the case under review herein, Petitioner alleges that the ALJ's decision should be reversed, as the ALJ disregarded the treating physician preference and her low back and leg condition is medically causally related to the November 28, 2001 work accident. Employer-Respondent (Respondent) counters by arguing that the ALJ's decision is supported by substantial evidence in the record and is in accord with the applicable law.

Petitioner injured her lower back in a work-related slip and fall in November of 2001 and Respondent made voluntary payments of temporary total disability benefits from November 29, 2001 to May 23, 2002. Thereafter, she returned to full-duty work. Petitioner then began to complain of persistent lower back and leg pain that she contended worsened over time, to the point that she was forced to leave work due to the pain, by June of 2003.

In concluding that Petitioner failed to prove, by a preponderance of the evidence, that her lower back and leg conditions arose out of and in the course of her employment, the ALJ

accorded more weight to the opinion of Respondent's physician, Dr. Steven Hughes over Petitioner's treating physician, Dr. Joel Fetcher.

In evaluating the medical evidence of record, the testimony of a treating physician is ordinarily preferred over that of a physician retained solely for litigation purposes. *Harris v. Dep't. of Employment Servs.*, 746 A.2d 297, 302 (D.C. 2000); *Stewart v. Dep't. of Employment Servs.*, 606 A.2d 1350, 1353 (D.C. 1992). Notwithstanding this preference for the testimony of a treating physician over that of a physician hired to evaluate a workers' compensation claim, an administrative law judge may reject the testimony of the treating physician and credit the opinion of another physician when there is conflicting evidence. In doing so, the fact-finder must give reasons for rejecting the testimony of the treating physician. *Canlas v. Dep't. of Employment Servs.*, 723 A.2d 1210, 1211-12 (D.C. 1995).

The ALJ, after clearly recognizing the treating physician preference, detailed the reasons for rejecting the opinion of Dr. Fetcher in favor of the views of Dr. Hughes, stating:

> . . . I find persuasive reasons for disallowing the treating physician's preference, and for rejecting the medical findings of Claimant's treating physician in favor of the independent medical evaluation of Dr. Hughes. To begin with, Claimant's inability to provide credible information renders unreliable and unpersuasive the medical records proffered in support of her claim. Specifically, Claimant's physicians' respective findings are uniformly based upon Claimant's subjective complaints and are, in critical regard, incomplete due to Claimant's failure to at time credibly relate a full and complete history to those to whom she presented. For example, the "history of present condition" taken by Dr. McClaren on June 24, 2002 contains no mention of the April 2002 train accident . . . Dr. Fetcher's entry at the time of Claimant's presentation to him on December 6, 2002, that there had been no new injuries since her last visit, is suspect as well – inasmuch as Claimant's medical records reveal that she had experienced at least two potentially traumatic events in the previous six months: less than a month earlier, Claimant had presented for an emergency x-ray of her hip for fracture or dislocation . . . and in June, she reported to her physical therapist that she had to go to the emergency room due to some form of trauma to her ribs. . . .

Compensation Order at 10-11.

In relying on Dr. Hughes, the ALJ noted that Respondent's physician emphasized the lack of any objective findings from the various MRI's and EMG's and stressed that Petitioner's subjective complaints did not correlate with any objective findings. Dr. Hughes opined that Petitioner's condition from the November 2001 work injury had reached maximum medical improvement and required no further medical treatment by April of 2002. In his follow-up evaluation in June of 2003, Dr. Hughes concluded that Petitioner's current complaints are related to the April 2002 train accident and not the work injury of November 2001.

While Petitioner argues that Dr. Fetcher's report of May 2002 can be read to opine that Petitioner's current disability is causally related to the work accident, Respondent counters that in his medical reports, Dr Fetcher never actually gives an opinion causally relating Petitioner's disability, after the intervening train accident in April of 2002, to the work injury. Respondent asserts that there is no opinion from Dr. Fetcher, when Petitioner returned to him in December of 2002, or after then, reflecting that Petitioner's work injury of November 2001 was the cause of her current problems. Moreover, Respondent points out that the ALJ clearly referenced substantial evidence in the record to reject the treating physician preference.

The CRB, in great detail, has reiterated how it is quite proper to reject the opinion of the treating physician if persuasive reasons are given to accept a conflicting medical opinion submitted by an employer. *Taylor v. Verizon Communications, Inc.*, CRB No. 05-232, OHA No. 03-216B, OWC No. 571165 (June 16, 2005). After reviewing the record, it is clear that the ALJ detailed the reasons for rejecting the views of Petitioner's treating physician, Dr. Fetcher, in favor of the opinion of Dr. Hughes. As a result, there is no reason to disturb the ALJ's determination on this issue.

Accordingly, the ALJ's conclusion that Petitioner failed to prove, by a preponderance of the evidence, that her lower back and leg condition arose out of and in the course of her employment is supported by substantial evidence and is in accordance with the law.

CONCLUSION

The Compensation Order of April 20, 2004 is supported by substantial evidence in the record and is in accordance with the law.

ORDER

The Compensation Order of April 20, 2004 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

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FLOYD LEWIS
Administrative Appeals Judge

February 3, 2006
DATE