

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 14-160

EARL S. WILSON,
Claimant-Petitioner,

v.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
and AS&G CLAIMS ADMINISTRATION, INC.
Employer/Third Party Administrator-Respondent.

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2015 APR 20 PM 2 11

Appeal from a December 3, 2014 Compensation Order on Remand by
Administrative Law Judge Nata K. Brown
AHD No. 03-369, OWC No. 555373

David M. Snyder for Claimant
Sarah O. Rollman for Employer

Before, LINDA F. JORY, MELISSA LIN JONES, 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 a bus operator. On June 5, 2000, Claimant injured his back when a vehicle struck the bus which he was preparing to operate. Claimant came under the care of Dr. Hampton Jackson, orthopedic surgeon. Dr. Jackson performed an Intradiscal Electrothermal Therapy (IDET) procedure. Immediately following the IDET, Claimant had increased pain and swelling in his left leg and continued to have pain swelling, weakness and loss of function in his left leg.

In October 2002, Claimant started to treat with Dr. Edward Aulisi, a neurosurgeon, who opined that Claimant had an unfortunate result following the IDET. As Dr. Aulisi did not have any treatment recommendations for Claimant, he referred Claimant to a pain management anesthesiologist, Dr. Babak Arvanaghi.

Dr. Arvanaghi prescribed epidural steroid injections. On November 1, 2013, Dr. Arvanaghi reported the epidural injections failed and opined that Claimant may be a candidate for surgery. Dr. Arvanaghi also reported that Claimant understood that he has a chronic component, arachnoiditis,¹ that will not get better. Claimant returned to Dr. Aulisi on May 24, 2013. Dr. Aulisi recommended a decompressive lumbar laminectomy from L3 down through S1.

Employer scheduled an independent medical evaluation (IME) of Claimant with Dr. Arthur Kobrine, neurosurgeon, who opined that he “doubted very much that an operation would help”. Employer forwarded Claimant’s medical records to H.H.C. Group and Dr. Philip Williams prepared a utilization review (UR) report on November 27, 2013.

Employer did not authorize the surgery. A full evidentiary hearing occurred on May 13, 2014. Claimant sought an award authorizing payment for lumbar surgery. Administrative Law Judge (ALJ) Nata K. Brown issued a Compensation Order (CO) on December 3, 2014. The CO concluded lumbar surgery recommended by Dr. Aulisi is not reasonable or necessary and denied Claimant’s request.

Claimant timely appealed, asserting that the ALJ erred in disregarding the opinion of the treating physician, Dr. Aulisi, and crediting the opinion of the UR report, which Claimant asserts relied on the IME opinion. Employer opposes Claimant’s appeal, asserting that the ALJ’s determination that Claimant failed to present evidence demonstrating that the surgery is reasonable and necessary is supported by substantial evidence.

ISSUE ON APPEAL

Is the December 3, 2014 Compensation Order supported by substantial evidence and in accordance with the law?

ANALYSIS

Claimant asserts the CO “improperly based its legal conclusions upon the opinions of Dr. Kobrine when it should have only reached a conclusion based upon a weighing of the UR and the opinions of the treating physicians with regard to the reasonableness and necessity of the proposed treatment”. Memorandum of Points and Authorities in Support of Application for Review (Claimant’s Brief) at, 8, 9.

After correctly citing D.C. Code § 32-1507(a) and the Compensation Review Board’s (CRB) decision in *Haregewoin v. Loews Washington Hotel*, CRB No. 08-068, AHD No. 07-041A, OWC No. 603483 (February 19, 2008)² and describing all of the evidence of record, the ALJ concluded:

¹The signs and symptoms of the inflammation of the Arachnoid vary with extent and location. It is sometimes secondary to therapeutic or diagnostic injection of substances into the subarachnoid space or delicate membrane covering the spinal cord or the brain. Dorland’s Illustrated Medical Dictionary 120 (29th Edition).

² *Haregewoin v. Loews Washington Hotel*, CRB No. 08-068, AHD No. 07-041A, OWC No. 603483 (February 19, 2008). The Compensation Review Board’s Decision and Order transposes the claimant’s name; the claimant’s name is Haregewoin Desta not Desta Haregewoin. See *Desta v. Loew’s Washington Hotel*, AHD No. 07-041A, OWC No. 603483 (December 7, 2007).

The medical opinions of Dr. Williams and Dr. Kobrine are more persuasive than those of Drs. Aulisi and Arvanaghi. The UR report detailed a cognizable rationale for the conclusion that an operation of the lumbar spine is not medically necessary. Dr. Williams listed the indications for a laminectomy and he opined that there is no indication for surgery in this case because Claimant does not meet ODG criteria for surgery. He explained that Claimant does not have objective evidence of radiculopathy as required per ODG, nor does Claimant have diagnostic imaging to support nerve root compression, lateral disc rupture, or lateral recess stenosis. Therefore, the requested surgery is not reasonable or medically indicated.

Supporting the opinion of Dr. Williams is the opinion of Dr. Kobrine. In his deposition, he gives a thorough explanation regarding why surgical treatment is not advisable for Claimant. Dr. Kobrine, relying on his IME dated July 10, 2013, opined that Claimant had no objective neurologic finding of any radicular pain. Claimant had symptoms of intermittent left leg pain, and his examination was normal. His MRIs showed mild changes. It is not possible to look at a lumbar MRI of a 59 year old male and not see mild to moderate degenerative changes in the lower lumbar spine. That is part of the human condition. As a surgeon, in Dr. Kobrine's opinion, the likelihood of an operation to decompress the neuroforamen and make the holes bigger, the likelihood of that helping this gentleman he put well under 10%. He put it at 5%. He doesn't operate on people who have recommended surgery for something that has a five of 10% likelihood of being made better. He does not think an operation is what is best for Claimant. (EE 3, pp. 31-33, 35).

CO at 6.

The ALJ clearly stated that the IME opinion of Dr. Kobrine **supports** the UR opinion of Dr. Williams. The Court of Appeals has agreed with the CRB's holding that it is permissible for an ALJ to consider an IME physician's opinion as evidence supporting the UR report. *Placido v. DOES*, 92 A.3d 323, (D.C. 2014) citing *Hisler v. DOES*, 950 A.2d 738, 746 (D.C. 2008). Thus, we reject Claimant's assertion that it was not within Dr. Kobrine's purview to express an opinion with regard to the reasonableness and necessity of the proposed surgery or that the ALJ committed any error in relying on Dr. Kobrine's opinion in support of the UR opinion.

This Panel also does not agree with Claimant's argument that 7 DCMR § 232.3 mandates the UR reviewer to accept the diagnosis of "Radiculopathy" "because the Employer did not challenge the causal relationship of these diagnoses or the nature of the diagnoses themselves, it was in error for the UR to rely upon a different diagnosis in reaching its conclusions".³ Claimant's Brief at 8.

³7 DCMR § 232.3 states "The employee, employer or the Office may initiate the review, accepting as a given the diagnosis of injury, where it appears that the necessity, character or sufficiency of medical services is improper or clarification is needed on medical service that is scheduled to be provided.

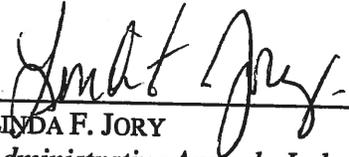
As Employer points out, none of the physicians of record have found Claimant has objective evidence of radiculopathy. Opposition to Claimant's Application for Review at 4. Contrary to Claimant's assertion, Dr. Aulisi's reports do not include a diagnosis of radiculopathy and Claimant's Brief does not reference an exhibit number to support this assertion.

According to the UR, a decompressive lumbar laminectomy is indicated only where objective evidence of radiculopathy exists and/or diagnostic imaging shows nerve root compression, lateral disc rupture, or lateral recess stenosis. There is no evidence that Claimant exhibits any of these findings. Accordingly, the ALJ's determination that Claimant failed to present evidence demonstrating that surgery is reasonable and necessary is supported by substantial evidence and is AFFIRMED.

CONCLUSION AND ORDER

The ALJ's conclusion that the requested lumbar surgery is not reasonable and necessary is supported by substantial evidence, in accordance with the law and is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:



LINDA F. JORY
Administrative Appeals Judge

April 20, 2015
DATE