

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

Office of Hearings and Adjudication
COMPENSATION REVIEW BOARD



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CRB No. 07-34

EDNA MCMANUS,

Claimant – Respondent

v.

D.C. DEPARTMENT OF CORRECTIONS,

Employer – Petitioner.

Appeal from a Compensation Order of
Administrative Law Judge Fred D. Carney, Jr.
AHD No. PBL 02-017D; DCP Nos. 761032-0002-2002-0002

Pamela Smith, Esquire, for the Petitioner

Edna McManus, *pro se* Respondent

Before: E. COOPER BROWN, *Chief Administrative Appeals Judge*, LINDA F. JORY and FLOYD LEWIS,
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 § 1-623.28, § 32-1521.01, 7 DCMR § 118, and DOES Director's Directive Administrative Policy Issuance No. 05-01 (Feb. 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 D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, D.C. Official Code § 32-1521.01. In accordance with the Director's Directive, 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. Official Code § 32-1501 *et seq.*, and the D.C. Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Official Code § 1-623.1 *et seq.*, 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 January 2, 2007, the Administrative Law Judge (ALJ) concluded that Claimant-Respondent (Respondent) continues to suffer from bilateral carpal tunnel syndrome as a result of her employment with Employer-Petitioner (Petitioner). The ALJ granted Respondent temporary total disability benefits retroactive to the date of her termination and continuing, all cost of living adjustments and payment of related medical expenses. Petitioner now seeks review of that Compensation Order.

As grounds for this appeal, Petitioner alleges as that the ALJ's decision is not based upon substantial evidence and is 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 § 1-623.28(a). "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. Dist of Columbia Dep't. of Employment Servs.* 834 A.2d 882 (D.C. App. 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.

After a May 19, 2005 remand from the CRB, on February 10, 2006, ALJ Terri Thompson Mallett issued a Compensation Order concluding that Respondent sustained an accidental injury arising out of and in the course of her employment, she remained temporarily totally disabled, and her temporary total disability benefits were related to her bilateral carpal tunnel condition.

While Respondent was receiving her benefits, the Office of Risk Management (ORM) scheduled Respondent for an independent medical evaluation by Dr. David Johnson on November 17, 2005. Based on Dr. Johnson's opinion that Respondent had no remaining disability related to her employment, ORM issued a Final Decision on Reconsideration that terminated Respondent's benefits on January 30, 2006. Respondent appealed that termination of benefits and a formal hearing was held before ALJ Fred Carney, Jr. on July 6, 2006, which resulted in this appeal.

Turning to the case under review herein, Petitioner alleges that the Compensation Order is not supported by substantial competent evidence and that OHA lacked jurisdiction to hear Respondent's claim concerning cost of living adjustments (COLA). Respondent counters that the decision is supported by substantial evidence, is in accordance with the law, and should be affirmed.

Petitioner argues that the ALJ erred in according the opinions of Respondent's treating physicians more weight. On this point, the ALJ stated:

In evaluating medical evidence it is well settled that the opinion of the attending treating physician has greater probative value than any equally competent doctor. *Ruby San Rose v. D.C. Public Schools*, ECAB No. 82-56 (August 31, 1983). It is well-established that the medical opinions of the employee's treating physicians are to be accorded "significant weight." See *Butler v. Boatman & Magnani*, OWC No. 0044699, H&AS No. 84-348 (Remand Order December 31, 1986)(citing *Murray v. Heckler*, 624 F. Supp. No. 11156 (D.C. 1986). (sic). In this case no specific articulable reason was found for rejecting the opinions of Drs. Ignacio and Muawwad. Therefore, their opinions were accorded great weight in reaching a conclusion herein that claimant continues with remaining impairment to her upper extremities as a result of her employment and also that claimant would benefit from further formal treatment including left wrist surgery.

Compensation Order at 9.

This Panel would like to stress that the District of Columbia Court of Appeals has on numerous occasions sanctioned the treating physician preference in workers' compensation cases. See *Short v. Dist. of Columbia Dep't. of Employment Servs.*, 723 A.2d 845 (D.C. 1998); *Steward v. Dist. of Columbia Dep't. of Employment Servs.*, 606 A.2d 1350 (D.C. 1992). Moreover, the Court has specifically stated that, "We see no reason why a claimant employed by the District should be treated any differently than a claimant employed by the private sector when it comes to assessing the credibility of that claimant's treating physician." *Kralick v. Dist. of Columbia Dep't. of Employment Servs.*, 842 A.2d 705, 712 (D.C. 2004).

As such, this Panel must reject Petitioner's argument that the ALJ erred by accepting the opinions of Respondent's treating physicians. In addition, Petitioner's argument that the ALJ erred by failing to specifically mention Dr. Johnson's reports of May 14 and 23, 2006, in which Dr. Johnson provided his opinion on a video surveillance and his opinion on an electrodiagnostic report must be rejected. It must be noted that the ALJ specifically commented that after viewing the video, he found that the activities that Respondent was performing on the tape were not restricted by her treating physicians and that Respondent was not performing any task required by her job. Compensation Order at 6.

It should be noted that the treating physician preference is so strong, that when the ALJ relies on the opinion of a treating physician to the detriment of conflicting evidence, the ALJ does not need to provide an explanation for not accepting the opinions of the other medical evidence of record. See *Metropolitan Poultry v. Dist. of Columbia Dep't. of Employment Servs.*, 706 A.2d 33, 35 (D.C. 1998). Moreover, it must be noted that an ALJ "is not required to inventory the evidence and explain in detail why a particular part of it is accepted or rejected." *Landesberg v. Dist. of Columbia Dep't. of Employment Servs.*, 794 A.2d 607, 616. n.7 (D.C. 2002) quoting *Sturgis v. Dist. of Columbia Dep't. of Employment Servs.*, 629 A.2d 547, 555 (D.C.1993).

Thus, this Panel must reject Petitioner's argument that the ALJ erred in accepting the opinions of Respondent's treating physicians in concluding that Respondent continues to be totally disabled from performing her regular duties as a result of her carpal tunnel syndrome.

As to Petitioner's argument that OHA had no jurisdiction to hear the COLA issue, a review of the record reveals that one of the issues to be considered was whether Petitioner was entitled to cost of living adjustments since the date of her injury. This was identified as an issue at the hearing and there was testimony on COLAs at the hearing, without any objection by Petitioner. After Respondent introduced evidence on this issue, the D.C. Payment History Record, and a letter addressed to ORM on this issue (Respondent's exh. nos. 14, 15), the ALJ stated:

In rebuttal to claimant's evidence on the issues of COLA's, employer offered to produce post-hearing documentation to rebut claimant's assertion that she is not in the collective bargaining unit. Employer has not filed a motion to reopen the record to introduce any evidence to contradict claimant's testimony as of the date of this order. Therefore, her testimony is uncontradicted on that point. Claimant's record of payment history indicates no change in her rate of compensation since July 28, 2003. . . Therefore, having found claimant a credible witness, her testimony with the supporting documentation, creates reason for this writer to believe her assertion that she is entitled to all COLA' granted to employees since 2003, which she would have received had she not been out with a work-related injury. Employer has presented no evidence, documentary or testimonial, to rebut claimant's claim that she is entitled to COLAs since 2003.

Compensation Order at 11.

Thus, Petitioner's argument on the COLA issue must be rejected, as the ALJ considered and articulated his findings of fact and conclusions of law on all issues presented in determining whether Respondent had any remaining disability as a result of her work injury and if so, the nature and extent of that disability. In this matter, the Final Decision on Reconsideration terminated Respondent's benefits on January 30, 2006, concluding that she was no longer disabled. Respondent, in appealing that decision to terminate her benefits, filed a request for a formal hearing. In seeking to have her disability benefits restored, Respondent sought an adjustment to the directly related matter of her rate of compensation. Since Respondent's benefits were at issue, then all aspects of those benefits were quite appropriate for adjudication and there was no need for a separate order on Respondent's cost of living adjustment to get AHD to address it in this Compensation Order.

This issue was clearly listed as one to be considered by the ALJ and at the hearing, it was never objected to by Petitioner and Petitioner even offered to present post-hearing documentation to rebut Respondent's evidence on this issue. However, as the ALJ duly noted, Petitioner never produced any evidence to contradict Respondent's evidence on COLAs and as such, Petitioner argument that the ALJ should not have ruled on this issue must be rejected.

Accordingly, after a complete review of the record in this matter, this Panel concludes that the ALJ's decision is supported by substantial evidence, is in accordance with the law and should not be disturbed.

CONCLUSION

The Compensation Order of January 2, 2007 is supported by substantial evidence in the record and is in accordance with the law.

ORDER

The Compensation Order of January 2, 2007 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

FLOYD LEWIS
Administrative Appeals Judge

March 29, 2007
DATE