

V

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. 07-109

EDWARD MONCRIEF,

Claimant – Petitioner

v.

D.C. DEPARTMENT OF PUBLIC WORKS,

Employer – Respondent.

Appeal from a Compensation Order of
Administrative Law Judge Fred D. Carney, Jr..
AHD No. PBL 03-008A; DCP No. 761020-0002-1999-0005

Eugene Muskus, Esquire for the Petitioner

Kevin Turner, Esquire for the Respondent

Before: LINDA F. JORY, FLOYD LEWIS and SHARMAN J. MONROE *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,

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 May 1, 2007, the Administrative Law Judge (ALJ) denied the claim for relief by Claimant-Petitioner (Petitioner), concluding that Petitioner has reached maximum medical improvement for his work-related injury and is capable of returning to his work without restrictions or further medical treatment. 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.

Turning to the case under review herein, Petitioner alleges that the Compensation Order is erroneous because the ALJ ignored the treating physician preference and rejected the opinion of Petitioner's treating physician, Dr. Hampton Jackson, who opined that Petitioner was totally disabled due to a herniated disc. Petitioner also argues that the ALJ erroneously rejected Dr. Jackson's opinion because of a reprimand Dr. Jackson received from the state of Maryland. Employer-Respondent (Respondent) counters that the ALJ explained why greater weight was given to the opinions of the independent medical examination (IME) reports of Drs. James Callan, Mohammad Zamani and Robert A. Smith and that the Compensation Order is supported by substantial evidence and is in accordance with the law.

On January 14, 1997, Petitioner left work with complaints of back pain and he received wage loss and medical benefits until June 5, 2006. On April 19, 2006, the

the effective date of the D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004.

Office of Risk Management (ORM) issued a Notice of Intent to Terminate Disability Compensation Benefits informing Petitioner that his benefits would be terminated based on the opinion of Dr. Callan. Petitioner sought reconsideration and on June 5, 2006, ORM issued a Final Decision on Reconsideration which stated that Petitioner had no remaining disability due to his work injury and that he was able to return to work.

In analyzing this case, the ALJ properly noted that in this jurisdiction, it has been consistently held that once a claim has been accepted and disability benefits paid, the burden of proof rests with the employer to present substantial and recent medical evidence to justify a modification or termination of those benefits. *See Toomer v. Dist. of Columbia Dep't. of Corrections*, CRB No. 05-202, OHA No. PBL. No. 98-048A, DCP No. LT5-DOC001603 (May 2, 2005); *Jones v. Dist. of Columbia Dep't. of Corrections*, Dir. Dkt. No. 07-99, OHA No. PBL No. 97-14, ODC No. 312082 (December 19, 2000); *Robinson v. Dist. of Columbia General Hospital*, ECAB No. 95-8, ODCVC No. 303585 (July 8, 1997).

In his appeal, Petitioner argues that the ALJ committed error in relying on the reprimand received by his treating physician, Dr. Jackson, in rejecting that physician's opinion. However, the record clearly reveals that this argument by Petitioner must be dismissed, as the ALJ did not reject Dr. Jackson based on the reprimand. Concerning the sanction received by Dr. Jackson from the state of Maryland, the ALJ stated:

... the consent order executed by Dr. Jackson on February 5, 2004 acknowledging the Maryland Board of Physicians' probation of 18 months (to last until August 5, 2005) while impugning his fitness dispensing the standard of care in an alleged case, does not conclusively establish that Dr. Jackson would falter in his subsequent endeavors. Since that time, there have been no further reports of disciplinary actions taken against Dr. Jackson. Thus any apprehension that Dr. Jackson, had after the February 5, 2004 probation, would necessarily provide a substandard care as he did in an earlier case would be unreasonable. In fact, the sanction imposed on Dr. Jackson under the said order may cause Dr. Jackson may cause Dr. Jackson to exercise greater caution in his subsequent treatment.

Compensation Order at 7.

In rejecting Petitioner's claim for relief, the ALJ correctly noted that the opinions of treating physicians are ordinarily preferred over those doctors who have been retained to examine an employee solely for purposes of litigation. *Kralick v. Dist. of Columbia Dep't. of Employment Servs.*, 842 A.2d 705, 712 (D.C. 2004). Notwithstanding this preference for the opinion of a treating physician over that of a physician hired to evaluate a workers' compensation claim, an administrative law judge may reject the opinion 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

opinion of the treating physician. *Canlas v. District of Columbia Department of Employment Services*, 723 A.2d 1210, 1211-12 (D.C. 1995).

In rejecting Petitioner's request for relief, the ALJ relied on the reports of Dr. Callan, who after examining Petitioner twice and emphasizing that Petitioner's responses to the exaggeration were exaggerated, opined that Petitioner could return to his usual employment without restrictions, as Petitioner had reached his maximum medical improvement years ago. The ALJ then clearly explained the reasons for rejecting the opinion of Petitioner's treating physician, Dr. Jackson, whose reports the ALJ found were unsupported by clinical data and vague. The ALJ stated:

Further, Dr. Jackson provides no clinical basis to supported his conclusion that claimant is permanently totally disabled . . . Dr. Jackson states that claimant is "not fit to work" and is "not fit for gainful employment" (CE 2). Dr. Jackson's statements do not constitute a medical opinion . . . I find the reports of Dr. Jackson to be incomplete, vague and unsupported by clinical data. Consequently, Dr. Jackson provides little assistance in assessing the nature and extent of claimant's disability . . .

Id.

After reviewing the record as a whole, this Panel concludes that there is more than ample evidence in the record to support Dr. Callan's opinion and the other IME opinions that Petitioner could return to his usual employment without restrictions, that Petitioner has no remaining disability as a result of his employment with Respondent and that any remaining symptoms to Petitioner's back results from natural degeneration.. The ALJ clearly explained the reasons for relying on Dr. Callan, and rejecting Petitioner's medical evidence.

Accordingly, the ALJ's conclusion that Petitioner reached maximum medical improvement and was capable of returning to his pre-injury employment is supported by substantial evidence and is in accordance with the law.

CONCLUSION

The Compensation Order of May 1, 2007 is supported by substantial evidence in the record and is in accordance with the law.

ORDER

The Compensation Order of May 1, 2007 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:



FLOYD LEWIS
Administrative Appeals Judge

August 17, 2007

DATE