

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 16-083

EUGENE PETTIS,
Claimant-Respondent,

v.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY,
Self-Insured Employer-Petitioner.

Appeal from an May 26, 2016 Compensation Order on Remand
by Administrative Law Judge Joan E. Knight¹
AHD No. 14-086, OWC No. 585487

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2016 NOV 2 PM 1 07

(Decided November 2, 2016)

Justin M. Beall for Claimant
Sarah O. Rollman for Employer²

Before JEFFREY P. RUSSELL, HEATHER C. LESLIE, and GENNET PURCELL, *Administrative Appeals Judges*.

JEFFREY P. RUSSELL for the Compensation Review Board.

DECISION AND ORDER

BACKGROUND

The following Background information is taken from the Decision and Remand Order ("DRO") issued by the Compensation Review Board ("CRB") on April 1, 2016:

¹ The formal hearing occurred May 6, 2014 before Administrative Law Judge ("ALJ") Leslie A. Meek. ALJ Meek left the Administrative Hearings Division ("AHD") of the District of Columbia Department of Employment Services without issuing a compensation order. The matter was re-assigned by AHD to ALJ Joan E. Knight. On June 30, 2014, an Order to Show Cause ("OSC") was issued advising the parties of the re-assignment and soliciting any objections to the matter being decided upon the record created at the formal hearing before ALJ Meek. Neither party opposed the OSC. ALJ Knight therefore issued the Compensation Order as well as the instant Compensation Order on Remand.

² The Washington Metropolitan Area Transit Authority was represented by Donna J. Henderson at the formal hearing in this case. Ms. Rollman represents Employer in this appeal.

Eugene Pettis (Claimant) was employed by the Washington Metropolitan Area Transit Authority (Employer) as a mechanic. Following a formal hearing conducted before an administrative law judge (ALJ), Claimant's claim for benefits under D.C. Code § 32-1501, *et seq.*, the District of Columbia Workers' Compensation Act (the Act) for a back injury allegedly sustained on April 14, 2013 was denied in a Compensation Order issued October 1, 2015 (the CO).

In the CO, the ALJ found that Claimant had adduced sufficient evidence to invoke the presumption that Claimant had sustained a work-related injury to his low back on April 14, 2013, and that Employer's evidence was insufficient to rebut that presumption.

The ALJ nonetheless denied Claimant's claim, finding that Claimant's current low back condition is not causally related to the April 14, 2013 work-related injury.

The CO was appealed by Claimant filing an Application for Review and memorandum of points and authorities in support thereof (Claimant's Brief) with the Compensation Review Board (CRB). Employer's filed an Opposition to Claimant's Application for Review and memorandum of points and authorities in support thereof (Employer's Brief). In response, Claimant filed Claimant's Reply Brief (Claimant's Reply).

Because the ALJ failed to afford Claimant the statutory presumption that Claimant's present alleged disability is causally related to the work-related injury that the ALJ found was sustained by Claimant on April 14, 2013, the denial of Claimant's claim is vacated, and the matter is remanded to the Administrative Hearings Division (AHD) of DOES for further consideration of in light of that presumption, and of such further issues as may be required.

Pettis v. Washington Metropolitan Area Transit Authority, CRB No. 15-172 (April 1, 2016) at 1, 2.

In the Discussion and Analysis and the Conclusion and Order the DRO, the CRB wrote in pertinent part:

We have no choice therefore but to vacate the denial of the claim for relief and remand the matter for further consideration of the claim, in light of the presumption that Claimant's current low back condition is medically causally related to the work injury of April 14, 2013.

On remand, the ALJ is to determine first whether Employer has adduced sufficient evidence to overcome the *Whittaker* [*v. DOES*, 668 A.2d 844 (D.C. 1995)] presumption, and if so, the ALJ is then to re-weigh the evidence without reference to the presumption and with Claimant bearing the burden of establishing

a medical causal relationship by a preponderance of the evidence but in light of the treating physician preference also long recognized in this jurisdiction.

If the ALJ determines Employer's evidence is insufficient to overcome the presumption, or if after weighing the evidence it is determined that Claimant has met his burden of proof by a preponderance, the ALJ is to proceed to consider the remaining issue of the nature and extent of Claimant's disability, if any.

CONCLUSION AND ORDER

The failure to accord Claimant the benefit of the presumption that his current alleged low back injury and related disability if any is medically causally related to the work injury of April 14, 2013 is not in accordance with the law. The denial of the claim is vacated and the matter is remanded to AHD for further consideration of the claim in a manner consistent with the foregoing Decision and Remand Order.

Id. at 4.

On May 26, 2016, the ALJ issued a Compensation Order on Remand ("COR") in which Claimant was found, through his own testimony and the medical records and reports of his treating physicians, to have adduced sufficient evidence to invoke the presumption that on April 14, 2013 he sustained an accidental injury arising out of and occurring in the course of his employment with Employer.

The ALJ went on to find that Claimant's evidence was also sufficient to invoke the presumption that his current complaints and disability, if any, are medically causally related to the work injury. The ALJ also determined that Employer, through the independent medical evaluation (IME) report and the *de bene esse* deposition of its IME physician, had adduced sufficient evidence to rebut the presumption of medical causal relationship.

The ALJ then proceeded to weigh the evidence again, without the benefit of the presumptions, and taking into account the preference accorded in this jurisdiction to treating physician opinion as opposed to IME opinion, determined that Claimant's current complaints and alleged disability are causally related to the work injury of April 14, 2013.

Finally, the ALJ considered the nature and extent of Claimant's disability, and determined that he has, since September 28, 2013, been, and continues to be temporarily totally disabled, and granted Claimant's claim for benefits.

On June 17, 2016, Employer filed an Application for Review and Memorandum in Support of Application for Review ("Employer's Brief") with the CRB, arguing that the COR was inconsistent with findings and conclusions of law in the original Compensation Order, rendering them "arbitrary", and that they must therefore be reversed.

On June 24, 2016, Claimant filed Claimant's Brief in Opposition to Employer's Application for Review ("Claimant's Brief"), arguing that the CRB's legal analysis in the DRO was correct, and that the ALJ properly applied the law as directed in the DRO, resulting in a COR that is supported by substantial evidence and in accordance with the law, and that it should be affirmed.

Because the COR conforms with the mandate of the CRB in the DRO, made findings of fact premised upon substantial evidence in the record, and its legal conclusions flow rationally from those facts, we affirm.

DISCUSSION AND ANALYSIS

We begin by again noting, as we did in the DRO, that Employer has not appealed the finding that Claimant adduced sufficient evidence to invoke the statutory presumption that he sustained a work-related accidental injury to his low back on April 14, 2013, and that Employer failed to adduce evidence sufficient to overcome that presumption. Thus we need not address the issue of accidental injury.

We note further that Employer has not challenged the ALJ's determination relating to the nature and extent of Claimant's disability, and thus that issue is also not before us.

All that is at issue is Employer's argument that:

In the Compensation Order on Remand, the ALJ completely reversed her position finding Claimant did, in fact, prove by a preponderance of the evidence that his condition was related to the work accident. This is an inconsistent position and cannot stand. If Claimant's evidence was insufficient to demonstrate by a preponderance of the evidence that his condition was related to the work accident, it cannot later be said that on the same record a preponderance of the evidence supports the opposite conclusion. For this reason, the Compensation Order on Remand should be reversed.

Employer's Brief at 9.

We disagree.

The initial Compensation Order failed to adhere to the necessary analytic framework that has been determined over the years to foster full consideration of a claim in different stages, applying statutory presumptions at some stages, evidentiary preferences at others, and allocating the proper burdens of proof in an manner and in an order that assures that presumptions, preferences and burdens of proof are allocated properly at each stage.

We need not address whether the ALJ's findings, conclusions and award are supported by substantial evidence because Employer does not challenge the factual findings as being unsupported by substantial evidence, does not argue that the conclusions drawn therefrom do not flow rationally from those facts, or that the legal conclusions reached are legally inconsistent with those conclusions.

A remand for “further consideration” is exactly that, an instruction that the ALJ in a given case reassess the case in a manner which ensures that errors in the analytic framework initially employed do not yield an outcome inconsistent with the District of Columbia Workers’ Compensation Act, D.C. Code § 32-1501 *et seq.* Anytime “further consideration” is required to be undertaken, it is possible that a different outcome may result. Otherwise, there would be no purpose in having established the appropriate necessary analytic framework (a process that includes following specific mandates from the District of Columbia Court of Appeals concerning how presumptions, preferences and burdens of proof must be applied) and there would be no point in a remand for such “further consideration”.

The COR is, a model of clarity and the proper consideration of the issues presented. We affirm.

CONCLUSION AND ORDER

Because the Compensation Order on Remand of May 26, 2016 conforms to the mandate of the Compensation Review Board in the Decision and Remand Order of April 1, 2016, made findings of fact premised upon substantial evidence in the record, and reached legal conclusions that flow rationally from those facts, it is AFFIRMED.

So ordered.