

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. 06-47

GLADYS E. JONES,

Claimant – Petitioner

v.

POTOMAC ELECTRIC POWER COMPANY,

Self-Insured Employer – Respondent.

Appeal from a Compensation Order on Remand of
Administrative Law Judge Terri Thompson Mallett
OHA No. 02-073, OWC No. 253357

Matthew Peffer, Esq. for the Petitioner

Kevin J. O’Connell, Esq., for the Respondent

Before LINDA F. JORY, SHARMAN J. MONROE and JEFFREY P. RUSSELL, *Administrative Appeals Judges.*

SHARMAN J. MONROE, *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 (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

BACKGROUND

This appeal follows the issuance of a Compensation Order on Remand 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 24, 2006, the Administrative Law Judge (ALJ) denied the request of the Claimant-Petitioner (Petitioner) for payment of medical expenses causally related to her Major Depressive Disorder (MDD). The Petitioner now seeks review of that Compensation Order on Remand.

As grounds for this appeal, the Petitioner alleges as error that the decision below is not supported by substantial evidence and not in accordance with the law.

ANALYSIS

As an initial matter, the standard 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 § 32-1521.01 (d)(2)(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. District of Columbia Department of Employment Services*, 834 A.2d 882 (D.C. App. 2003). Consistent with this standard 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, the Petitioner alleges that the ALJ’s finding that her mental impairment is not causally related her May 18, 1993 work injury pursuant to the *Dailey* standard is not supported by substantial evidence. Specifically, the Petitioner asserts that the ALJ erred as a matter of law in disregarding the treating physician preference. The Petitioner points to the opinion of Dr. Donald Seeling, the treating physician, that an ordinary person with no predisposition to emotional injury could have developed the same condition as the Petitioner when exposed to the same or similar stimuli. She further asserts that Dr. Seeling’s opinion is not contradicted and that uncontradicted evidence on an issue constitutes substantial evidence. Hence, the Petitioner argues that she presented sufficient evidence to satisfy the *Dailey* standard.

In the instant case, the Petitioner sustained physical injuries to her neck, back and both knees when she fell during the course of her employment on May 18, 1993. At the hearing, the Petitioner alleged that she suffered from Major Depressive Disorder (MDD) secondary to her physical injuries. After reviewing the Petitioner’s medical evidence, the ALJ found that the Petitioner had presented sufficient evidence to show that her work injury caused her constant

bilateral knee pain and her back pain, and to show that she was predisposed to emotional injury. The ALJ, however, rejected Dr. Seeling's opinion, reflected in a letter dated May 10, 2001, that an individual without a predisposition to emotional injury would have developed MDD when exposed to same stimuli as the Petitioner. In so doing, the ALJ stated that Dr. Seeling's opinion was presented via a fill-in-the-blank letter which was appeared to be prepared in anticipation of litigation, that his opinion did not contain an explanatory rationale or bases for the opinion, and that the letter itself was unsworn, did not reflect an original signature and did not qualify as a business or medical record. *See Compensation Order at p. 6.*

It is well-settled in this jurisdiction that great weight is to be accorded to the opinion of the treating physician due to that physician's familiarity with a claimant's injury and treatment. *See Harris v. D.C. Department of Employment Services, 746 A.2d 297 (D.C. 2000).* This preference, however, is not absolute and an ALJ may reject the opinion of the treating physician so as long as the ALJ provides reasons for not according the treating physician's opinion great weight. *See Clark v. D.C. Department of Employment Services, 772 A.2d 198, 202 (D.C., 2001).* Some of the reasons for rejecting the opinion of a treating physician are sketchiness, vagueness and imprecision in the reports of the treating physician. *See Marriott, 834 A.2d at 886.*

Herein the ALJ stated several reasons for rejecting Dr. Seeling's opinion, *i.e.*, it was a form, fill-in-the-blank letter which appeared to be prepared in anticipation of litigation, it contained statements or questions followed by a blank or an option to check "yes" or "no", it was unsworn, it did not contain Dr. Seeling's original signature and it did not qualify as a business or medical record. The ALJ's most persuasive reason for rejecting Dr. Seeling's opinion was that he failed "provide an explanatory rationale or factual description of the bases for the conclusions" for the opinion. *See Compensation Order at p. 6.* In other words, Dr. Seeling's opinion was imprecise. The Panel notes that the May 10, 2001 letter with Dr. Seeling's opinion was the only evidence submitted by the Petitioner on this issue. After reviewing the record evidence, the Panel discerns no reason to disturb the ALJ's rejection of the treating physician's opinion in this case. In taking this action the Panel rejects the Petitioner's argument that Dr. Seeling's opinion, being uncontradicted, constitutes substantial evidence. An ALJ is free to reject even uncontradicted evidence, where the evidence itself is inherently faulty. *Patterson v. Kaiser Permanente of the Mid-Atlantic States, CRB No. 06-041, AHD No. 05-388, OWC No. 609163 (May 23, 2006) at p. 5, n 3.*

CONCLUSION

The Compensation Order of April 24, 2006 is supported by substantial evidence in the record and is in accordance with the law.

ORDER

The Compensation Order of April 24, 2006 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

SHARMAN J. MONROE
Administrative Appeals Judge

August 2, 2006
DATE