

**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. 07-42**

**GRACE MARY ANENI,**

**Claimant – Petitioner**

**v.**

**D.C. DEPARTMENT OF HUMAN SERVICES,**

**Employer – Respondent.**

**Appeal from a Compensation Order of**  
**Administrative Law Judge Fred D. Carney, Jr.**  
**AHD No. PBL 00-029A; DCP No. 7610110-0002-199-0026**

Kirk D. Williams, Esquire for the Petitioner

Kevin Turner, Esquire for the Respondent

Before: E. COOPER BROWN, *Chief Administrative Appeals Judge*, 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).<sup>1</sup>

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<sup>1</sup> 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 31, 2007, the Administrative Law Judge (ALJ) denied the claim for relief by Claimant-Petitioner (Petitioner), concluding that Petitioner failed to show by substantial evidence that she continues to suffer any remaining disability as a result of her work injury. 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 and should be reversed. Petitioner asserts that the ALJ erred in relying on the medical reports of Employer-Respondent (Respondent). Petitioner contends that it was erroneous for the ALJ to choose the opinion of Respondent's physicians, as those physicians relied on outdated medical records and diagnostic studies and their opinions were based on a faulty factual basis.

On March 20, 1995, Petitioner injured her back at work, while attempting to lift a patient and she has not returned to her employment. Petitioner has received wage loss and medical benefits from the date of her injury until March 25, 2006, when the Disability Compensation Program (DCP) terminated her benefits. In its Final Order on Reconsideration, DCP stated that Petitioner's benefits were terminated based on the opinions of independent medical examiners that Petitioner's work-related back injury had resolved and that she had no current work-related impairment. DCP based its termination on the independent medical reports of Drs. Jerry Friedman, Dr. Kevin Hanley and Dr. Robert Gordon.

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. D.C. Dep't. of Corrections*, CRB No. 05-202, OHA No. PBL. No. 98-048A, DCP No. LT5-DOC001603 (May 2, 2005); *Jones v. D.C. Dep't. of Corrections*, Dir. Dkt. No. 07-99, OHA No. PBL No. 97-14, ODC No. 312082 (December 19, 2000); *Robinson v. D.C. General Hospital*, EC AB No. 95-8, ODCVC No. 303585 (July 8, 1997).

Respondent submitted the medical report of Dr. Hanley, an orthopedic surgeon, who after examining Petitioner on October 2, 2002, opined that Petitioner's work related lumbar injury had completely resolved. On August 22, 2003, after examining Petitioner, Dr. Gordon opined that Petitioner had no remaining work related impairment. Dr. John. Cohen, an orthopedic surgeon, examined Petitioner on August 2, 2004, and this physician stressed that Petitioner's pain complaints were non-anatomical, after reviewing Petitioner's x-rays, which revealed degeneration of her spine. In addition, on January 22, 2004, Petitioner was referred for a functional capacity evaluation (FCE), which indicated that her pain complaints and effort level were not consistent with anatomic and organic test results. As such, the ALJ found that Respondent had met its burden of presenting evidence of a change in Petitioner's condition.

The ALJ then noted that Respondent heavily relied on additional reports by Dr. Gordon, who on June 14, 2004, upon review of additional medical reports, issued an addendum in which the physician confirmed his previous opinion that Petitioner had no remaining impairment due to the March 20, 1995 work injury. Dr. Gordon agreed with Dr. Cohen's opinion that Petitioner had degenerative congenital changes in her spine that were unrelated to the work injury. On November 14, 2005, Dr. Gordon again examined Petitioner and the ALJ summarized Dr. Gordon's findings:

. . . Examination of her cervical MRI scan, report dated June 22, 2005, showed degenerative changes and narrowing at C5-6, C4-5, and C6-7. Dr. Gordon opined claimant's complaints have always been markedly out of proportion with the findings of objective test. Dr. Gordon's opinion is also consistent with the January 22, 2004 FCE and the results of claimant's September 1999 lumbar MRI examination. Dr. Gordon opined that claimant needed no further formal medical treatment and that the claimant reached maximum medical improvement long ago with no ratable impairment.

Compensation Order at 6.

To rebut Respondent's evidence, Petitioner relied on her testimony and the reports of her treating physician, Dr. Gary Dennis, that she continues to have a disabling impairment due to her work injury of 12 years ago. Dr. Dennis has treated Petitioner since April of 1995 for her complaints of back and lower extremity pain due to her work related injury of March 30, 1995 and he has opined that Petitioner is totally disabled as a result of that incident of attempting to lift a patient in 1995.

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. *Kralik v. Dist. of Columbia Dep't. of Employment Servs.*, 842 A.2d 705, 712 (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 testimony 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 testimony of the treating physician. *Canlas v. District of Columbia Department of Employment Services*, 723 A.2d 1210, 1211-12 (D.C. 1995).

In choosing to credit the Respondent's medical evidence over Petitioner's treating physician, the ALJ stated:

In this instance employer's evidence indicates that the reports of claimant's treating physician lack precision and substance, and therefore, the reports of the independent medical examiners are found to be the most cogent . . . Dr. Gordon relied on his two examinations of claimant, claimant's medical history and the result of objective tests to reach his conclusions. Whereas claimant's treating physician, Dr. Dennis relied on the results of an MRI examination conducted on March 24, 1995 as a basis for his opinion that claimant suffered a herniated disc. Dr. Dennis also relied on his treatment of claimant, claimant's subjective complaints of pain and recently neck pain as well. (CE 1 Page 28) Dr. Gordon's report is consistent with the opinions of other independent medical examiners, and the January 22, 2004, FCE showing claimant's feigned response to her test. Dr. Gordon's opinion is also consistent with the results of objective tests such as the September 11, 1999, MRI of claimant's lumbar spine which revealed no disc herniation but only mild degeneration. By contrast, the reports of claimant's treating physician lack a clinical basis for his opinion that claimant is totally disabled as a result of attempting to lift a patient in 1995. It is therefore determined that claimant's evidence failed to rebut that of employer's that claimant has no remaining disability as a result of her work injury of more that a decade ago.

Compensation Order at 7.

As such, the ALJ concluded that Petitioner's lumbar strain and disc herniation has resolved and that she was capable of working as of the date her benefits were terminated.

Petitioner argues that it was erroneous for the ALJ to rely on Dr. Gordon's reports, as Dr. Gordon and Respondent's other physicians relied on outdated medical reports and their opinions were based on a faulty medical basis, as there was no acknowledgement that Petitioner had suffered a herniated disc, as emphasized by Dr. Dennis. However, as the ALJ pointed out, Dr. Dennis relied on an MRI of March 24, 1995 as the basis for his opinion that Petitioner suffered a herniated disc and was still totally disabled, whereas the MRI of September 11, 1999, four years later, revealed no disc herniation, but only mild degeneration. As Dr. Gordon emphasized in his report of September 22, 2003, any disc herniation "is obviously no longer present based on my review of the MRI performed in 1999" and he noted that Petitioner had no positive objective findings, except for some degenerative changes.

Moreover, as to Respondent's earlier medical opinions and reports which Petitioner argues are not sufficiently fresh, these reports serve as corroboration and support for Dr. Gordon's November 14, 2005 opinion. In this matter, the primary medical opinion relied on by the ALJ was Dr.

Gordon's November 14, 2005 opinion, the initial notification of termination of benefits was on January 24, 2006 and the final decision upon reconsideration was on March 17, 2006

It must be emphasized that the diagnosis of a herniated disc for which benefits were awarded, was based on an MRI of March 24, 1995 taken immediately after the work injury. Dr. Gordon bases his opinion that this had resolved, not only on his physical examinations of Petitioner, but on a more current MRI of June 22, 2005, which he mentions in his November 2005 report, that revealed no herniated disc, but rather degenerative changes at C5-6, C4-5 and C6-7. This MRI is corroborated not only by the MRI of September 11, 1999, but there is an MRI that was taken on June 30, 1995 (which is found in the medical records of Dr. Dennis) that also clearly states, "No disk herniation." Petitioner's exhibit no. 1, p. 22.

After reviewing the record as a whole, this Panel concludes that there is more than ample evidence in the record to support Dr. Gordon's November 2005 opinion that Petitioner's work injury had resolved. Furthermore, it should be noted that Dr. Dennis does not address these later MRI's that revealed no herniated disc. The ALJ clearly explained the reasons for relying on Respondent's medical evidence over Dr. Dennis and the ALJ's conclusion that Petitioner no longer has any remaining disability as a result of her work injury is supported by substantial evidence, is in accordance with the law and should not be disturbed.

#### CONCLUSION

The Compensation Order of January 31, 2007 is supported by substantial evidence in the record and is in accordance with the law.

#### ORDER

The Compensation Order of January 31, 2007 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

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FLOYD LEWIS  
Administrative Appeals Judge

June 11, 2007  
DATE