

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 15-057

**IRIS D. WILLIAMS,
Claimant-Respondent,**

v.

**DISTRICT OF COLUMBIA PUBLIC SCHOOLS,
Employer-Petitioner.**

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2015 AUG 4 PM 10 43

Appeal from March 16, 2015 Compensation Order
by Administrative Law Judge Nata K. Brown
DCP No. 760002-0001-2001-0004, OHA No. PBL12-031

(Decided August 4, 2015)

Eric Adam Huang for the Employer
Charles E. Walton for the Claimant

Before MELISSA LIN JONES and LINDA F. JORY, *Administrative Appeals Judges* and LAWRENCE
D. TARR, *Chief Administrative Appeals Judge*.

MELISSA LIN JONES for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

On October 30, 2000, Ms. Iris D. Williams was working for the District of Columbia Public Schools (“Employer”) as an educational aide when she injured her right hand. A student crawled under a table and was banging his head on the floor; when Ms. Williams attempted to subdue the student, the student kicked and hit Ms. Williams’ right hand.

The Office of Risk Management accepted Ms. Williams’ claim for injury to her right hand, but Ms. Williams’ benefits were terminated as of April 14, 2012 because Dr. Mohammad H. Zamani, an additional medical examination physician, opined Ms. Williams is capable of returning to her pre-injury work without restrictions. Following a formal hearing, an

administrative law judge (“ALJ”) rejected Dr. Zamani’s opinion and awarded Ms. Williams temporary total disability compensation benefits from April 14, 2012 to the date of the formal hearing and continuing. *Williams v. D.C. Public Schools*, AHD No. PBL 12-209, DCP No. 760002-0001-2001-0004 (July 17, 2013).

Employer appealed the Compensation Order, and on November 5, 2013, the CRB vacated the Compensation Order:

DCPS argues in this appeal that the ALJ erred by failing to apply the proper framework in assessing the medical evidence. It asserts that rather than ascertaining whether DCPS had adduced sufficient evidence to meet its initial burden that the ALJ essentially jumped over that step, and weighed the evidence presented by both sides, and wrongfully concluded that DCPS had failed to demonstrate that Ms. Williams is no longer disabled from her work injury. We agree.

* * *

Putting aside that, as discussed above, the Compensation Order does not proceed in the proper analytic fashion, we conclude that the ALJ’s failure to identify with any degree of specificity what aspects of Ms. Williams’s job she is incapable of performing, upon what evidence she relies to reach that determination, and how any such limitations are related to the right hand injury, are fatal to the validity of the award.

Rather than merely reverse the Compensation Order, given the relatively large portions of the record that are not mentioned in the Compensation Order, it appears to be most appropriate to return the matter to the ALJ for further review of the evidence and consideration of the claim, and to do so in a manner consistent with the burden shifting process described above, but more importantly, in a manner that makes findings of fact on the necessary questions that must be answered, and identifies the record evidence upon which those findings are based.

Williams v. D.C. Public Schools, CRB No. 13-100, AHD No. PBL12-209, DCP No. 760002-0001-2001-0004 (November 5, 2013).

Like the Compensation Order, the Compensation Order on Remand lists only one issue for resolution, the nature and extent of Ms. Williams’ disability. *Williams v. D.C. Public Schools*, AHD No. PBL12-031, DCP No. 760002-0001-2001-0004 (March 16, 2015). Because Employer had not offered Ms. Williams sedentary work, the ALJ again awarded Ms. Williams temporary total disability compensation benefits from April 14, 2012 to the date of the formal hearing and continuing, and Employer again appealed.

Employer asserts Ms. Williams’ “evidence was insufficient to support her burden, and [] Employer’s evidence outweighed [Ms. Williams’] evidence.” Memorandum of Points and Authorities Supporting Petitioner’s Application for Review (“Memorandum”), p. 14. Employer

also asserts the limitations set forth in the functional capacity evaluation are not related to Ms. Williams' right hand injury:

The FCE found that the Claimant tested into the "SEDENTARY" physical demand category. [Claimant's Exhibit 9] The reason for this physical demand level, however, was *not* due to the hand injury, but due to, as the ALJ noted, "demonstrated deficits [that] included kneeling, reaching above her shoulders, balance, walking, sustained bending at waist level, sustained reaching at waist level, and squatting..." COR P7 ¶3. While these physical limitations *might* result in an employee being unable to perform greater than sedentary work, *these limitations were not related to the workplace injury*. Thus, the limitations that rendered the Claimant sedentary were not compensable; here, the ALJ latched onto the "sedentary" finding of the FCE without considering what conditions rendered the Claimant as such, and found that because the Employer did not offer the Employee sedentary work, the Claimant remained compensably [*sic*] disabled. This is clearly incorrect; with no evidence showing that the *workplace injury* rendered the Claimant "sedentary," the ALJ *could not* conclude that Claimant could not return to her previous job. In other words, the fairest reading of the FCE is that Claimant could not return to her pre-injury job *not* because of her hand but because of other *non-workplace-injury-related* ailments, which do not preclude the Program from modifying the Claimant's benefits.

Id. at pp. 20-21. (Emphasis in original.) For these reasons, Employer requests the CRB vacate the Compensation Order on Remand.

Ms. Williams did not file any response to Employer's appeal.

ISSUE ON APPEAL

Is the March 16, 2015 Compensation Order supported by substantial evidence and in accordance with the law?

ANALYSIS¹

Presently, when the government seeks to terminate benefits in a public sector workers' compensation disability case,

the employer has the burden of proving by a preponderance of the evidence that conditions have changed such that the claimant no longer is entitled to the benefits.

¹ The scope of review by the CRB is limited to making a determination as to whether the factual findings of the appealed 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. See § 1-623.28(a) of the D.C. Comprehensive Merit Personnel Act of 1978, as amended. D.C. Code § 1-623.01 *et seq.*, ("Act"). Consistent with this standard of review, the CRB is constrained to uphold a Compensation Order that is supported by substantial evidence, even if there also is contained within the record under review substantial evidence to support a contrary conclusion and even if the CRB might have reached a contrary conclusion. *Marriott International v. DOES*, 834 A.2d 882, 885 (D.C. 2003).

The employer first has the burden of producing current and probative evidence that claimant's condition has sufficiently changed to warrant a modification or termination of benefits. If the employer fails to present this evidence then the claim fails and the injured worker's benefits continue unmodified or terminated.

If the employer meets its initial burden, then the claimant has the burden of producing reliable and relevant evidence that conditions have not changed to warrant a modification or termination of benefits. If this burden is met, then the evidence is weighed to determine whether employer met its burden of proving by a preponderance of the evidence that claimant's benefits should be modified or terminated.

Mahoney v. D.C. Public Schools, CRB No. 14-067, AHD No. PBL 14-004, 8-9 (November 12, 2014). Employer does not dispute that it satisfied its initial burden, and the ruling that it had done so was affirmed in the November 5, 2013 Decision and Remand Order. Employer asserts Ms. Williams did not satisfy her "burden of producing reliable and relevant evidence that conditions have not changed to warrant a modification or termination of benefits." *Id.*

To assess whether Ms. Williams had produced reliable and relevant evidence that her benefits should not have been terminated, the ALJ relied upon a functional capacity evaluation as well as the opinions of Drs. Francyne Anderson, Stuart J. Goodman, and Atlener Artis-Trower:

Claimant participated in a FCE on May 20, 2010, which was conducted by Ms. Garlington. Ms. Garlington reported that Claimant purposefully limited her ability to function with her right hand and performed the evaluation with less than full physical effort. Notably, she refused the grip test in this evaluation, because she did not want to hurt her right hand. In spite of Claimant's purported self-limitation, Ms. Garlington made a viable conclusion regarding Claimant's ability perform her job duties--that Claimant is at least able to work full-time at eight hours per day in a sedentary physical demand category. (HT 43, CE 6, 9)

On October 4, 2010, Dr. Anderson opined that Claimant has a permanent disability and marked limited use of the right hand post injury. Dr. Goodman opined, on January 19, 2012, that Claimant had reached maximum medical improvement. On July 12, 2012, Dr. Goodman examined Claimant, noting swelling of the dorsum of the right hand with some note deformities, decreased strength of the hand musculature. He opined that Claimant has progressive regional pain syndrome, which is a chronic permanent situation. (CE 2, 6, EE 9)

Dr. Goodman, on March 8, 2012, opined in a letter to Employer/Insurer that Claimant could not be gainfully employed in her prior work status. He also opined that the fact that Claimant has reached MMI does not mean that she can return back to her prior employment. (CE 3)

On March 14, 2012, Dr. Artis-Trower opined that Claimant has physical limitations on her abilities to reach, push, pull, lift, or carry objects. Further, Claimant's severe pain compounds the physical limitations and decreased

functionality associated with her pain, muscle weakness, and fatigue, as do the medications she has used to address her pain. (CE 4)

Dr. Goodman, on May 17, 2012, opined Claimant has a work-related injury and that Employer's decision for termination of benefits is inappropriate. On June 17, 2012, he opines that Claimant has a somewhat atypical chronic Regional Pain Syndrome, and that she is disabled from her occupation on a permanent basis. After his examination of Claimant on July 12, 2012, Dr. Goodman notes deformities within Claimant's right hand along with pain, and he opined that it is a chronic-permanent situation. (CE 7 CE 6, CE 7)

Claimant has produced reliable and relevant evidence that conditions have not changed to warrant a modification or termination of benefits. The evidence is now weighed to determine whether Employer met its burden of proving by preponderance of the evidence that Claimant's benefits should be modified or terminated.

Williams v. D.C. Public Schools, AHD No. PBL12-031, DCP No. 760002-0001-2001-0004 (March 16, 2015), pp. 5-6. Employer's argument that Ms. Williams did not produce reliable and relevant evidence warranting termination of benefits focuses almost entirely on the weight the ALJ gave the record evidence:

- Despite lacking any objective testing, Dr. Goodman concluded that this pain syndrome was permanent in nature and thus Claimant could not return to her job. Dr. Goodman never discussed the job duties of the Claimant. Dr. Goodman did not provide any medical rationale as to why her current condition was permanent in nature and how this alleged pain syndrome was causally related to Claimant's workplace injury. All the reports, essentially, stated that Claimant was in pain, and that the pain was what prevented her from returning to work with no objective support, Memorandum at p. 16;
- [Dr. Artis-Trower's] conclusion that Claimant "is not capable of gainful employment, even sedentary work," must be rejected, as it is a conclusion that is not supported by any evidence," *Id.* at p. 18.
- The single October 4, 2010 report did not reflect that Dr. Anderson was aware of Claimant's full medical history, Claimant's job duties, or the causes of the work place [*sic*] injury," *Id.*
- Dr. Anderson's, Dr. Goodman's, and Dr. Artis-Trower's conclusory reports are not reliable and not relevant as they do not elaborate why Claimant's current condition made her "disabled" as it related to her ability to do her prior job, *Id.* at pp. 18-19.

The CRB finds no merit in Employer's argument that Ms. Williams did not satisfy her burden because to do so would require the CRB reweigh the evidence; however, when the ALJ weighed the evidence to reach the conclusion that Ms. Williams remains entitled to benefits, the ALJ

specifically relied on Ms. Mylan D. Garlington's opinion that Ms. Williams is only capable of sedentary duty:

Dr. Anderson, Dr. Artis-Trower, and Dr. Goodman each opined that Claimant is unable to perform even sedentary work at this time. Ms. Garlington, physical therapist, opined that Claimant is capable of sedentary employment.

The May 20, 2010 FCE findings indicated that her demonstrated deficits included kneeling, reaching above her shoulders, balance, walking, sustained bending at waist level, sustained reaching at waist level, and squatting-most of them self-limiting. Ms. Garlington opined that Claimant's functional capability findings indicated that she was currently at the full time (8 hours per day) workplace tolerance level sedentary physical demand category. The findings also indicated that Claimant did not demonstrate the functional capabilities to return to work in her pre-injury position as a Teacher's Assistant at this time. (CE 9)

Ms. Garlington was the only medical provider who observed and tested Claimant's functional abilities for four hours at a time. During that time, she was able to observe and evaluate Claimant's musculoskeletal system, range of motion, manual muscle testing, soft-tissue palpitation, grip strength, hand function, manual handling capacity, static postures and position, and repeated motions and positions. None of the other medical providers conducted such a thorough examination-one wherein they could observe Claimant lifting, bending, pushing, and pulling. The opinion of Ms. Garlington is the most reliable, relevant, and substantial medical evidence.

Even though Dr. Anderson, Dr. Artis-Trower, and Dr. Goodman, opined that Claimant is unable to perform even sedentary work at this time, none of them had the advantage of observing Claimant performing physical [*sic*] for an extended matter of time as did Ms. Garlington, physical therapist. Claimant is capable of performing of sedentary employment. Employer has not offered Claimant a sedentary job. Therefore, Claimant remains temporarily totally disabled.

Williams v. D.C. Public Schools, AHD No. PBL12-031, DCP No. 760002-0001-2001-0004 (March 16, 2015), p. 7. The problem with the ALJ's analysis is that Ms. Williams' restrictions on "kneeling, reaching above her shoulders, balance, walking, sustained bending at waist level, sustained reaching at waist level, and squatting[,],lifting, bending, pushing, and pulling," *Id.*, are not related her hand injury; they are related to evaluation of "Claimant's musculoskeletal system, range of motion, manual muscle testing, soft-tissue palpitation, grip strength, hand function, manual handling capacity, static postures and position, and repeated motions and positions." *Id.* Because the physical limitations and restrictions that the ALJ relied upon to rule Ms. Williams is capable only of sedentary duty do not relate to Ms. Williams' compensable injury, they are irrelevant to an assessment of Ms. Williams' entitlement to workers' compensation disability benefits; however, the analysis cannot end here.

When weighing the evidence to reach the conclusion that Ms. Williams remains entitled to benefits, by relying on Ms. Garlington's opinion the ALJ placed the burden on Ms. Williams to prove her benefits should not have been terminated. The burden rested with Employer to prove

by preponderance of the evidence that Claimant's benefits should be terminated, *Mahoney, supra*, but the ALJ rejected Employer's evidence:

Dr. Zamani's October 10, 2011 addendum has numerous mistakes. He refers to Claimant as a male throughout the report, references an incident on March 18, 2010, which is not the date [*sic*] her injury, and also references a July 15, 2011 examination that did not take place. In his January 11, 2012 report, Dr. Zamani, opines that Claimant has a pre-existing condition, and that her chronic condition is not related to the October 30, 2000 accident. Dr. Zamani's conclusion that Claimant's current condition is not related to the October 30, 2000 accident is not supported by the record evidence. Five months before his January 2012 report, Dr. Zamani opined, in his initial report on July 13, 2011, that Claimant had a very minimal residual from the date of the accident, and that Claimant was capable of doing pre-injury status work. In the July 2011 report, he also mistakenly stated that Claimant's injury occurred on March 18, 2010. Dr. Zamani's reports are not reliable or persuasive.

The surveillance tapes show Claimant using her right hand while performing some activities of daily living, such as opening and closing car doors, opening doors to buildings, carrying her handbag, and gripping small objects with her hand. Claimant's ability to perform those tasks does not prove that she is able to return to her previous line of work. The film does not show Claimant performing tasks similar to those that would be required of her former job--the ability to instruct, insure safety, and handle special needs children--for a full eight-hour day.

Williams v. D.C. Public Schools, AHD No. PBL12-031, DCP No. 760002-0001-2001-0004 (March 16, 2015), pp. 6-7. Employer asserts there was no basis for the ALJ to reject its evidence, but again Employer's argument goes to the weight the ALJ gave the evidence of record:

- Dr. Zamani's report was complete, and represented a comprehensive review of the Claimant's condition, Memorandum at p. 22;
- [Dr. Zamani's] report and the two objective tests established that Claimant's initial injury was merely a soft tissue contusion and that there remained no structural damage that would continue to disable the Claimant. The ALJ, however, did not address the objective tests in evaluating the evidence. Instead, the ALJ focused on typographical errors that Dr. Zamani committed. The Employer would assert that these typographical errors do not undermine the physical examination and review of medical records that Dr. Zamani conducted in his initial report, *Id.* at pp. 23-24;
- [T]he actions shown on the surveillance tape undermine the credibility of the Claimant's subjective complaints of pain, *Id.* at p. 24.

Because at this final stage the burden was on Employer and because the ALJ rejected all of Employer's evidence, as a matter of law, Ms. Williams remains entitled to workers' compensation disability benefits.

CONCLUSION AND ORDER

Because the ALJ used an incorrect standard of proof in his analysis, the March 16, 2015 Compensation Order on Remand is not in accordance with the law. As a matter of law, Ms. Williams remains entitled to workers' compensation benefits.

So ordered.