

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. 08-031

JOAN B. PARSONS-YEAGER,

Claimant – Petitioner

v.

GREATER SOUTHEAST COMMUNITY HOSPITAL, ET. AL.,

Self-Insured Employer – Respondent.

Appeal from a Compensation Order of
Administrative Law Judge Terri Thompson-Mallett
AHD No. 96-106C, OWC No. 285321

Heather C. Leslie, Esq., for the Petitioner

Gail Elkins, Esq., for the Respondent

Before FLOYD LEWIS, SHARMAN J. MONROE and JEFFREY P. RUSSELL, *Administrative Appeals Judges.*

SHARMAN J. MONROE, *Administrative Appeals Judge*, on behalf of the Review Panel:

DECISION AND REMAND 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).

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 October 3, 2007, the Administrative Law Judge (ALJ) granted the Claimant-Petitioner's (Petitioner) request for authorization for surgery recommended by Dr. Joseph Ciacci and for reimbursement for medical expenses causally related to the 1995 work injury. However, the ALJ

denied the Petitioner's request for temporary total disability benefits from September 12, 2006 to October 17, 2006 and medical expenses related to the 2006 work injury based upon a determination that the Petitioner's current disability is not causally related to her 1995 work injury. On November 2, 2007, the Petitioner filed an application seeking review of that Compensation Order.

As grounds for this appeal, the Petitioner alleges as error that the Compensation Order is not supported by substantial evidence and is not in accordance with the law. The Self-Insured Employer-Respondent (Respondent) did not file an opposition.

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. 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 committed errors of law and of fact. Specifically, the Petitioner asserts that, in finding that she sustained a new injury, the ALJ erroneously substituted her judgment for those of the physicians of record thus the finding is not supported by substantial evidence. The Petitioner cites *Landesburg v. D.C. Department of Employment Services*, 794 A.2d 607, 614 (D.C. 2002) as legal support for her argument. The Petitioner maintains that the physicians of record, Drs. Ciacci, Muawwad and Johnson, all opined that her current back problems are causally related to her 1995 work injury. The Petitioner asserts that the ALJ's reliance on D.C. Official Code § 32-1508(6) is based upon an incorrect reading of the statute. Finally, the Petitioner asserts that, per *Whittaker v. D.C. Department of Employment Services*, 668 A.2d 844 (D.C. 1995), she presented sufficient evidence to invoke the presumption of compensability not just between her 1995 work injury and the employment, but also between her 1995 work injury and her current back problems and that the Respondent did not present any evidence in rebuttal. Therefore, the Petitioner maintains that she is entitled to the presumption that her current condition is causally related to her 1995 work injury.

After a review of the record evidence, the Panel determines that the ALJ's finding that the Petitioner sustained a new injury is not supported by substantial evidence, that the reliance on

D.C. Official Code § 32-1508(6) is improper in this case and that the presumption was not properly applied.

“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, supra*. Herein, the Petitioner testified that since her 1995 back injury, the condition of her back has worsened, that she experiences flare-ups all the time and that she has not sustained any new injuries to her back. Hearing Transcript (HT) at pp. 16-17.

In addition, the medical evidence shows that all of the physicians attributed the Petitioner’s current back symptoms, not to a new injury, but to her 1995 injury. Dr. Mauwwad had treated the Petitioner for her 1995 work-related back injury on and off since its occurrence and the Petitioner went to him for treatment when, in September 2006, her back “locked up” while at work and she was unable to straighten up. In his August 22, 2006 report, Dr. Muawwad indicates that the Petitioner “continues with symptoms in her lower back” which radiate into her right hip area and describes her back condition as “chronic”. Later in his September 12, 2006 report, Dr. Muawwad indicates that he is providing “follow-up” care and that the Petitioner “has continuing symptoms” in her back consisting of severe lower back pain, stiffness and severe restricted range of motion. At no time does he opine that the Petitioner sustained a new injury to her back. *See* Claimant Exhibit No. 3. Dr. Ciacci, in his April 5, 2007, opines that the Petitioner has “an old work-related back injury that has been treated conservatively without success.” *See* Claimant Exhibit No. 2. Dr. Johnson saw the Petitioner at the behest of the Respondent in January 2007. In his January 4, 2007 report, Dr. Johnson indicates that he had performed an independent medical evaluation of the Petitioner for the 1995 work injury in February 2005. He opines, “I believe that her current complaints are causally related to her work injury of 04/07/1995 superimposed on a multilevel degenerative disk disease that was preexistent to this particular injury.” *See* Employer Exhibit No. 1.

Thus, there no evidence in the record that a reasonable person might accept to support the conclusion that the Petitioner sustained a new injury and the Panel determines that the ALJ’s finding is not supported by substantial evidence.

Given the state of the record, it is not necessary for the Panel to address, in detail, the Petitioner’s assertion with respect to the presumption of compensability. Suffice it to say that the Respondent’s evidence in the form of the opinion of Dr. Johnson does not rebut the presumption, which is an employer’s burden in order to prevail on a causal relationship issue. *See Whittaker, supra*. Given that lack of medical evidence, the presumption supplies the necessary support for the conclusion the claim in this case should be granted. Also, without further elaboration, the Panel is compelled to note that D.C. Official Code § 32-1508(6) has no application to this case on appeal. This provision relates to an employer’s request to the Office of Workers’ Compensation for special fund relief and such a request is presented at this point in time.

As there is no evidence in this record to support a contrary conclusion and no need to resolve differing versions of the facts, no purpose would have been served by remanding the case to the ALJ for further findings and, therefore, the Panel will remand this matter for such purpose. *See Clair v. D.C. Department of Employment Services*, 658 A.2d 1040, 1044 (D.C. 1995). However,

per *Washington Metropolitan Area Transit Authority v. D.C. Department of Employment Services*, 926 A.2d 140 (D.C. 2007)(Juni Browne), the CRB is precluded from awarding benefits requested below and must remand this matter to the AHD to issue a decision awarding to the Petitioner.

CONCLUSION

The Compensation Order of October 3, 2007 is not supported by substantial evidence in the record and is not in accordance with the law.

ORDER

The Compensation Order of October 3, 2007 is hereby REVERSED AND REMANDED.

Per *Washington Metropolitan Area Transit Authority, supra*, this matter is remanded to AHD for the sole purpose of issuing a Compensation Order granting the relief requested by the Petitioner.

FOR THE COMPENSATION REVIEW BOARD:

SHARMAN J. MONROE
Administrative Appeals Judge

March 6, 2008

DATE