

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services

VINCENT C. GRAY
MAYOR



F. THOMAS LUPARELLO
ACTING DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 14-029

JOHN T. CARTER,
Claimant-Petitioner,

v.

DISTRICT OF COLUMBIA DEPARTMENT OF CORRECTIONS,
Employer-Respondent

Appeal from a February 21, 2014 Compensation Order on Remand
by Administrative Law Judge Fred D. Carney, Jr.
AHD No. PBL 01-036A & C, DCP No. LTDMPPSJ004144

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2014 OCT 30 PM 1 21

John T. Carter, *pro se* Claimant
Andrea Comentale and Margaret P. Radabaugh for Employer

Before JEFFREY P. RUSSELL, HEATHER C. LESLIE, and MELISSA LIN JONES, *Administrative Appeals Judges*.

JEFFREY P. RUSSELL on behalf of the Compensation Review Board.

DECISION AND ORDER

BACKGROUND

This appeal follows the issuance of a Compensation Order on Remand (COR) from the Administrative Hearings Division (AHD) of the Office of Hearings and Adjudication (OHA). In that COR, which was filed on February 21, 2014, the Administrative Law Judge (ALJ) denied Petitioner's request for temporary total disability benefits from November 2, 2005 to the present and continuing and medical care allegedly related to Petitioner's November 13, 1996 work injury. That work injury has been the subject of numerous Compensation Order and Compensation Orders on Remand dealing with a variety of issues, none of which need be recounted here.

The matter was remanded for further consideration for three reasons: (1) the ALJ appeared to misapply the burden of proof (substantial evidence vs. preponderance of the evidence); (2) the ALJ's heavy reliance upon Dr. Dorn's impairment rating was misplaced because (i) only 1 report in the record was authored by Dr. Dorn, and (ii) his impairment rating was clearly not intended to be a permanency rating; and (3) rejection of Dr. Jackson's opinion based upon unspecified

“inconsistencies” with similarly unspecified “other credible medical reports” is insufficiently specific to support rejection of Dr. Jackson’s views.

However, because the hearing transcript of October 2009 upon which the prior Compensation Order on Remand was based was lost and is unobtainable, the ALJ re-heard the matter on July 31, 2012, and the COR was issued based upon the issues raised and identified at that hearing, and the record produced in those proceedings.

In the COR, the ALJ again denied the claims, finding that Mr. Carter had failed to establish that the complained of disabling injuries were causally related to the original work injury. Mr. Carter appealed the denial to the CRB, which appeal is opposed by Employer.

ANALYSIS

Preliminarily we address the request that the ALJ be recused from this case. The request is not supported by any cognizable evidence that the ALJ is in any way biased, has an interest in the outcome of this case, or is otherwise unable to render a fair and impartial decision based upon the facts. Thus granting the request is not warranted.

Although Mr. Carter raises numerous issues in this appeal, the focus of our review would normally begin with whether the ALJ carried out the instructions contained in the DRO. However, because the matter was reheard in a new proceeding, we will not analyze the appeal based upon the COR’s conformance with the DRO, but rather will review the matter anew.

At the time of the formal hearing, Mr. Carter sought an award of temporary total disability from when they were terminated “sometime in mid 2005” through the present and continuing. HT 27. From the prior Compensation Order and Compensation Order on Remand, we have determined that the commencement date sought is November 2, 2005. In the COR, the ALJ indicated that post-hearing, Mr. Carter sought additional benefits for permanency. The ALJ properly declined to consider that claim inasmuch as it was not presented at the formal hearing and Employer was not provided with an opportunity to defend the claim.

At the formal hearing, the parties discussed what exhibits were offered, and each party noted objections to numerous exhibits offered by the other. *See* HT 32–78. However, the ALJ indicated that he would not rule on the admissibility of any of the exhibits proffered, even those to which no objections had been raised, but rather, would “take all the exhibits and all the objections under advisement”. HT 79. The ALJ didn’t rule specifically on what exhibits were admitted at the time of the rehearing. *See* HT 4–6, noting the identification of exhibits proffered, but at no point in the proceedings were any ever admitted.

However, on page 3 of the COR, the ALJ states that claimant’s exhibits CE 1-13, and employer’s exhibits EE 1-10 were admitted at the July 31, 2012 proceedings.¹

At the time of the rehearing, Mr. Carter, through then counsel, identified the parts of his body that he maintains were injured in the work injury and that keep him from working: injuries to his low

¹ The ALJ excluded Claimant’s Supplemental Exhibits A–E. *See* COR, footnote 4.

back, right knee and left ankle. HT 120–121. He testified that the low back injury is a “ruptured disk”. (HT 240). During the course of the hearing, however, Mr. Carter testified not only about those body parts, but also about injuries to his right shoulder (HT 146–147) neck (HT 147), left ankle (HT 157), left eye and mouth (HT 163) and neck, which he says is “a herniated disk” (HT 240).

When asked specifically which injuries are preventing him from working, he responded that his right shoulder keeps popping out (HT 163) and claims this stems from having torn the rotator cuff in the work injury (HT 194), his right knee gives out on him (HT 163), his left ankle “pops” (HT 163) and swells (HT 181) and that he has “torn ligaments” in the left ankle from the work incident (HT 181, 195), he experiences numbness in both legs from the knee to the foot and has “pins and needles sensations” and “burning” in his hands (HT 164), he has left knee pain which he attributes to “overcompensating” for the right knee (HT 165), which he says “gives out” when going down steps but not up (HT 178). He also attributes his inability to work partly to the hand and foot complaints (HT 242).

When asked what activities or functional limits are caused “as far as your neck and back are concerned”, he responded he is unable to do any “heavy lifting” (HT 169) and is unable to bend at the waist (HT 170). He also testified that he has difficulty reaching his arms across his chest (HT 170) and that he sometimes drops things (HT 170). He testified that Dr. Azer, a treating physician, has recommended “seven major surgeries” (HT 175).

He testified that he has developed diabetes, but does not attribute that the work injury (HT 187). He also testified that he has Crohn’s disease and “carpal tunnel” without specifying whether it is left, right or bilateral. He did acknowledge that he has “withdrawn” his claim for Crohn’s disease, carpal tunnel, and depression (HT 191).

In the COR before us, the ALJ found that:

The WC records indicate that on January 7, 1996 WC issued a notice of determination to Claimant accepting his claim for multiple bruises injuries [sic] to his face his back, and with multiple back and knee bruises. There was no mention of Claimant’s alleged herniated disk, back, and cervical spine. It stated:

“Accepted conditions
Multiple Face Laceration, multiple back bruises and bilateral knee bruises.”(EE 1).

COR, page 7.

Review of the submitted exhibits confirms that EE 1 states what the ALJ describes. None of the maladies described in this record by Mr. Carter as causing him to be unable to work are the subject of the Notice of Determination. Further, the ALJ wrote:

On January 7, 1997, I find Claimant’s claim was accepted for multiple facial laceration multiple back bruises and bilateral knee bruises. I find Claimant did not

seek reconsideration or a formal hearing of the order limiting his claim to facial, back and knee bruises. I find that WC has issued no initial determination, or eligibility determination on accepting or rejecting claims for Claimant's low back, right knee and left ankle.

COR, page 5.

EE 1 confirms the ALJ's findings.

Accordingly, as a matter of law, AHD was without jurisdiction to entertain any claim for disability for any of the conditions about which Mr. Carter testified at the rehearing as being disabling. Further, the AHD had no jurisdiction to make findings of fact concerning any of those injuries, whether said finding is favorable or unfavorable to Mr. Carter's case. *See Tinsley v. District of Columbia Office of the State Superintendent of Education*, CRB No. 11-051, AHD No. PBL09-036A, DCP No. 30008021753 (January 5, 2011). The ALJ did not need to go any further. The forum was without jurisdiction to determine whether any of the allegedly disabling conditions about which Mr. Carter testified were causally related to the work injury or were disabling, due to the lack of an Notice of Determination.

Accordingly, although the ALJ erred in considering those claims, the ultimate denial is in accordance with the law.

CONCLUSION AND ORDER

The record evidence demonstrates that neither the Office of Risk Management nor the Public Sector Workers' Compensation Program has issued a Notice of Determination concerning Mr. Carter's allegedly disabling conditions. Accordingly, AHD was without jurisdiction to entertain said claims, and the denial of the benefits claimed is therefore affirmed.

FOR THE COMPENSATION REVIEW BOARD:



JEFFREY P. RUSSELL
Administrative Appeals Judge

October 30, 2014

DATE