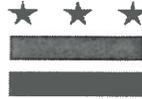


GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
ACTING DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 14-144

**JOHN W. MILLER,
Claimant-Respondent,**

v.

**DOMINION MECHANICAL, INC.
and ERIE INSURANCE COMPANY,
Employer/Insurer-Petitioner.**

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2015 MAR 30 AM 11 13

Appeal from an November 7, 2014 Compensation Order by
Administrative Law Judge Amelia G. Govan
AHD No. 14-217, OWC No. 700083

John J. Temple for the Claimant
Zachary I. Shapiro for the Employer

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

HEATHER C. LESLIE for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

The Claimant was working as a heating and air conditioning mechanic when he injured his right ankle on January 3, 2013 when he fell backwards and landed on his right leg.

Claimant does have a history of a work related right knee injury in 1999 which required surgery. After surgery Claimant underwent conservative treatment and was discharged in 2001 from care related to this work related injury.

Claimant sought treatment and came under the care of Dr. John P. Byrne. After conservative treatment failed, Dr. Byrne recommended an MRI which revealed a torn ligament and chondral defects. Dr. Byrne recommended surgery to the right ankle which Claimant underwent in March of 2013. After surgery, Claimant used crutches to ambulate for several months. Claimant began physical therapy after the surgery. During physical therapy sessions, Claimant began to experience problems with his right knee. Dr. Byrne recommended an MRI to determine the source of Claimant's right knee pain. The MRI revealed a medial meniscus tear. Dr. Byrne

opined Claimant's right knee condition was medically casually related to the work injury and recommended surgery to his right knee.

Employer sent Claimant for an independent medical evaluation (IME) with Dr. John B. O'Donnell on November 18, 2013. Dr. O'Donnell took a history of Claimant's injury and treatment to date, took x-rays, and performed a physical examination. Dr. O'Donnell opined that because the first mention of knee pain was nine months after the injury, his right knee condition is not medically casually related to his work injury. After reviewing additional records including records pertaining to Claimants prior knee injury, Dr. O'Donnell reiterated this opinion in a report dated May 21, 2014. Based on this IME, Employer did not authorize the surgery recommended by Dr. Byrne.

Employer also sent Claimant for an IME for his right ankle with Dr. Clifford Hinkes on April 11, 2014. Dr. Hinkes opined Claimant's right ankle injury had resolved and Claimant could return to work full time, full duty without restrictions. Claimant's disability benefits were terminated on April 17, 2014.

A full evidentiary hearing was held on June 5, 2014. At that hearing, Claimant sought temporary total disability benefits from April 17, 2014, interest, and payment of causally related medical benefits. The issues presented were whether Claimant's right knee condition arose out of and in the course Claimant's employment, whether the current right knee condition is medically casually related to the work injury, and the nature and extent of Claimant's disability. A Compensation Order (CO) was issued on November 7, 2014 which granted Claimant's claim for relief, concluding:

Claimant's current right knee condition, and need for surgery, arose out of and in the course of his employment and is medically casually related to his January 3, 2013 work accident. I further conclude that Claimant has been temporarily disabled, from April 17, 2014 to the present and continuing, by right lower extremity symptoms related to his employment injury.

CO at 6.

Employer timely appealed. Employer argues the CO's conclusion that Claimant's right knee condition is medically casually related to his work accident is not supported by substantial evidence.¹

Claimant opposes Employer's appeal, arguing the CO is supported by the substantial evidence in the record and is in accordance with the law.

STANDARD OF REVIEW

The scope of review by the CRB is generally 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. *See* D.C. Workers' Compensation Act of 1979, as amended, D.C. Code § 32-1501, *et seq.*, (the Act) at § 32-1521.01(d)(2)(A), and *Marriott International v. DOES*, 834 A.2d 882 (D.C. 2003).

¹ Employer does not appeal the conclusion that the right knee injury arose out of and in the scope of Claimant's employment, or the nature and extent of Claimant's disability.

Consistent with this standard of review, the CRB and this review panel must affirm 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 this panel might have reached a contrary conclusion. *Id.*, at 885.

ANALYSIS

Employer argues the ALJ “erred by determining that the Claimant’s alleged injuries to the right knee are casually related to the January 3, 2013 work injury.” Employer’s argument at 5. Specifically, Employer argues that the opinion of Dr. Byrne is “imperfect” and the ALJ, when weighing whether Claimant had proved his case by a preponderance of the evidence, failed to “explain the discrepancy between the normal right knee examination taken on the date of accident, the lapse in treatment to Claimant’s right knee, and the Claimant’s history of pre-existing right knee injury.” Employer’s argument at 5-6. We reject Employer’s assertions.

As the Employer concedes, there is a preference for the opinions of treating physicians in the District of Columbia. As the ALJ notes:

Where conflicting medical positions have been proffered, the fact-finder can draw any reasonable inference from the evidence presented. *George Hyman Construction Company v. DOES*, 498 A.2d 563, 566 (D.C. 1985). When assessing the weight of competing medical testimony in workers' compensation cases, attending physicians are ordinarily preferred as witnesses rather than those doctors who have been retained to examine injured workers solely for purposes of litigation. *Stewart v. DOES*, 606 A.2d 1350, 1353 (D.C. 1992). In that medical conclusions of treating physicians are given preference, a decision to credit another physician must be explained. See *Velasquez v. DOES*, 723 A.2d 401, 405 (D.C. 1999), citing *Canlas v. DOES*, 723 A.2d 1210 (D.C. 1999); *Stewart, supra*.

CO at 5.

After noting the treating physician preference, the ALJ went on to state:

Claimant's position regarding causation is cogent and consistent with the Act, the record evidence and with the most applicable case precedent. The opinion of Claimant's treating physician is given greater weight than that of Dr. O'Donnell. The IME opinion, in sum, indicates that there was a pre-existing degenerative condition and previous right knee injury; however, Dr. O'Donnell does not satisfactorily explain his conclusion that the mechanism of Claimant's January 2013 fall had no effect on his current right knee condition.

The reports of Dr. Byrne support the existence of a medical causal connection between Claimant's right knee symptoms and his 2013 accident. Dr. Byrne opined that Claimant's January 2013 accident caused the right knee problems which began thereafter. He based his opinion upon his repeated examinations and treatment of Claimant, upon his review of MRI results and upon his consideration

of the mechanism of injury. In this case, there is no reason to reject the medical conclusions of Claimant's treating physician regarding the right knee symptoms, the causal connection with the 2013 work accident, and the need for immediate right knee surgery.

CO at 5.

Thus, the ALJ gave reasons why not only the IME opinion was rejected, but also why the treating physician's opinion was found more persuasive. Dr. Byrne's opinion was given more weight because of his numerous examinations, his review of objective testing, and his knowledge of the mechanism of the injury. A review of the evidence supports the ALJ's conclusion above.

While certainly an ALJ can question a treating physician's opinion based upon the facts, testimony, and medical evidence as a whole, the ALJ in the case before us did not and we do not find any error in this. The ALJ's reliance upon the treating physician's opinion is not in error. We reject Employer's argument that the treating physician's opinion is inconsistent, sketchy, or vague by selectively pointing to what the Employer considers deficiencies in Dr. Byrne's treatment, diagnosis, and opinions regarding the right knee. By so doing, what Employer is asking this panel to do is to reweigh the evidence in its favor by questioning the ALJ's reliance on the treating physician, a task we cannot do. As we stated above, the CRB and this review panel must affirm 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 this panel might have reached a contrary conclusion. *Marriott* at 885.

CONCLUSION AND ORDER

The November 7, 2014 Compensation Order is supported by the substantial evidence in the record and in accordance with the law. It is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:



HEATHER C. LESLIE

Administrative Appeals Judge

March 30, 2015

DATE