

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

Department of Employment Services

VINCENT C. GRAY  
MAYOR



F. THOMAS LUPARELLO  
ACTING DIRECTOR

COMPENSATION REVIEW BOARD

**CRB No. 14-041**

**JOHNNA M. YOUNG,  
Claimant-Petitioner,**

v.

**USEC CORPORATION,  
and GALLAGHER BASSETT,  
Employer/Third Party Administrator-Respondents.**

Appeal from a March 14, 2014 Compensation Order By  
Administrative Law Judge Joan E. Knight  
AHD No. 12-363, OWC No. 685391

DEPT. OF EMPLOYMENT  
SERVICES  
COMPENSATION REVIEW  
BOARD  
2014 JUN 25 AM 8 36

Michael Kitzman for the Petitioner  
Barry D. Bernstein for the Respondent

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

HEATHER C. LESLIE for the Compensation Review Board.

**DECISION AND ORDER**

**OVERVIEW**

This case is before the Compensation Review Board (CRB) on the request for review filed by Claimant - Petitioner (Claimant) of the March 14, 2014, Compensation Order (CO) issued by an Administrative Law Judge (ALJ) in the Hearings and Adjudication Division (AHD) of the District of Columbia Department of Employment Services (DOES). In that CO, the ALJ denied Claimant disability benefits. We AFFIRM.

## **BACKGROUND AND FACTS OF RECORD**

Claimant was employed by Employer as an armed security officer. Claimant was required to use firearms and to maintain proficiency and certification in the use of firearms. Employer provided Claimant with training to help maintain the required proficiency.

On August 9, 2010, Claimant was scheduled to attend firearm training in West Virginia by Employer. While traveling in a fifteen passenger van for approximately 2.5 hours, Claimant began to develop a headache which progressively worsened. Claimant did not complete the training and returned home. The next day, Claimant suffered from slurred speech, dizziness, and facial weakness. Claimant went to the emergency room where she was diagnosed with having suffered a stroke. Claimant was hospitalized for three weeks, underwent multiple tests, and treated with medications.. After her release, Claimant underwent extensive rehabilitation.

Claimant then came under the care of Dr. Joseph Wityk, a neurologist. Claimant testified she told Dr. Wityk of the conditions she experienced in the van. In June 2011, Claimant testified that Dr. Wityk informed her that her stroke could have developed as a result of riding in the van to West Virginia.

Claimant underwent an independent medical evaluation (IME) with Dr. Kenneth W. Eckmann on November 14, 2012. Dr. Eckmann took a history of the injury and treatment, and performed physical and neurologic examinations. Dr. Eckmann opined Claimant's strokes were not the result of riding in the van. A full evidentiary hearing was held on January 8, 2013 at which Claimant sought an award of temporary total disability benefits from August 9, 2010 to the present and continuing, and payment of causally related medical expenses. The issues to be adjudicated were whether Claimant suffered a work injury on August 9, 2010, that arose out of an in the course of employment, whether Claimant's current condition is medically causally related to her employment, whether Claimant timely notified the Employer of a work injury, whether Claimant filed a timely claim for benefits, and the nature and extent of Claimants disability, if any. A CO was issued on March 14, 2014 that denied Claimant's request in its entirety.

Claimant timely appealed. Claimant argues that the ALJ erred in finding the stroke was not causally related and failed to apply the treating physician preference. The Employer opposes the appeal, arguing the CO is supported by the substantial evidence in the record and is in accordance with the law.

## **THE STANDARD OF REVIEW**

The scope of review by the Compensation Review Board ("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. Section 32-1521.01(d)(2)(A) of the District of Columbia Workers' Compensation Act, as amended, D.C. Code §32-1501 to 32-1545, ("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).

## DISCUSSION AND ANALYSIS

We must first address the CO's conclusion regarding whether an accidental injury arose out of and in the course of Claimant's employment, otherwise known as legal causation.<sup>1</sup> The CO states,

Claimant's testimony established that she fell ill during an employment training session on August 9, 2010 and the following day suffered a stroke. Claimant testified that on August 9, 2010, she traveled from McLean, Virginia to West Virginia with work colleagues in a crowded van supplied by Employer. She testified the ride was approximately three hours long. She further testified that she is 5'2" and during the van ride she had poor circulation in her legs due to cramped conditions in the van. The medical evidence in the record evidence shows Claimant was transported to Prince George's County Hospital Emergency Room on August 10, 2010 after stumbling and collapsing at home. Diagnostic imaging interpreting by attending radiologists, confirmed Claimant suffered two strokes from blot clots in multiple vascular territories.

Herein, the medical records established Claimant had two strokes on August 10, 2010 after attending an out-of-town training session and she sought medical diagnosis and treatment. Claimant has produced evidence of an initial showing to establish a work related activity which had the potential of contributing to her condition. Thus, an accidental injury arising out of in the course of employment within the scope of the Act has not been established.

CO at 5.

Claimant, in argument, states the above discussion lacks clarity and that the CO must be vacated and remanded for clarification. We agree the discussion standing alone is unclear. After having found an initial showing to establish a work related injury, the ALJ stops the analysis and then states that an accidental injury arising out of the and in the course of employment was *not* established. Normally after having found an initial showing has been made showing a work event, the ALJ would analyze the Employer's case theory of why the accident did not arise out and in the course of Claimant's employment and determine whether the evidence rebuts the presumption.<sup>2</sup> If so, the presumption drops from the case and the evidence is analyzed without

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<sup>1</sup> Questions pertaining to "arising out of and occurring in the course of" employment deal with legal causation, i.e., the question of whether a particular incident which caused (or is alleged to have caused) an injury occurred under circumstances making the injury a compensable event under the Act. "Medical causal relationship", on the other hand, presents the question of whether a given condition for which medical or disability benefits are sought is related to the work injury. See *Philpot v. KBC Nursing Group*, CRB No. 13-167, AHD No. 13-186 (April 1, 2014).

<sup>2</sup> It is well settled under the Act that to be compensable an injury must both arise out of, and in the course of, the employment. D.C. Code § 36-301(12); *Grayson*, *supra*. Both requirements must be met to be compensable. *Id.*

"In the course of" refers to whether the injury took place within the time, place and circumstances of the employment. *Kolson v. DOES*, 699 A.2d 357 (D.C. App. 1997).

reference to the presumption.<sup>3</sup> Rather than proceed through these steps, the ALJ then discussed whether Claimant's condition is medically causally related to the injury.

However, taking into consideration the rest of the CO, as well as the findings of facts, it is clear the ALJ concluded that an accidental injury occurred which arose out of and in the course of Claimant's employment. We conclude this based on several observations. The ALJ analyzes whether or not the Claimant's medical condition is medically causally related to the work injury, an analysis that would have been unnecessary had the ALJ determined Claimant had not suffered an accidental injury. We also note in the findings of fact, the CO states that the Claimant should have known her condition may have been related to riding in the van on August 9, 2010, and therefore *work related*. CO at 4. In light of the continued discussion of whether or not Claimant's condition is medically causally related, a step not necessary had the ALJ found the accident not legally related, as well as the statement in the finding of facts that Claimant had awareness of the *work related event*, we conclude the ALJ found that Claimant suffered an accident under the Act.

We are cognizant that in argument Employer takes the position that the ALJ found in fact an accident did not occur under the Act. Had the ALJ granted the Claimant the requested benefits, we would be forced to vacate the CO for clarification and proper analysis of whether or not an accidental injury occurred. However, as the ALJ ultimately denied the claim, finding Claimant's medical condition not causally related to the work accident we conclude any error harmless and that no prejudice occurred against the Employer in the finding of an accidental injury.

We disagree with Claimant's argument that the ALJ erred in concluding Claimant's stroke was not medically causally related. The ALJ found that based on the medical evidence presented and the opinion of Dr. Wityk, Claimant had invoked the presumption of compensability.

Once invoked, the burden then shifted to the Employer to rebut the presumption. Claimant first argues the medical opinion of Dr. Eckmann was not enough to rebut the presumption as his opinion was qualified. Specifically, Claimant points to Dr. Eckmann's statement that "I do not think there is definitive evidence that (the deep venous thrombosis) was directly caused in this case." However, this overlooks Dr. Eckmann's statement that "I do not believe the claimant's stroke is the result of her employment on 08/09/2010" -- a statement the ALJ relied upon to find Employer rebutted the presumption. See CO at 7. We agree that this unequivocal statement is specific and comprehensive enough to rebut the presumption.

With the presumption rebutted, the evidence was then weighed by the ALJ. Claimant argues that Dr. Eckmann's opinion does not address Claimant's case theory that the van ride contributed to Claimant's deep vein thrombosis which caused the stroke, and thus the CO cannot be said to be supported by the substantial evidence. Claimant further argues that the ALJ's rejection of the

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<sup>3</sup> The Act's presumption of compensability operates only "in the absence of evidence to the contrary." In *Ferreira v. DOES*, the Court of Appeals held, that "[o]nce the presumption is triggered, the burden is upon the employer to bring forth 'substantial evidence' showing that a disability did not arise out of and in the course of employment." *Ferreira*, 531 A.2d 651 (D.C. 1987) at 655; *Parodi v. DOES*, 560 A.2d 524 (D.C. 1989) at 526; *Waugh v. DOES*, 786 A.2d 595, 600 (D.C. 2001)

treating physician's opinion is not in accordance with the law and not supported by the substantial evidence. We disagree.

In the CO, the ALJ held:

In weighing the competing medical evidence of record the undersigned rejects the medical opinion of the treating physician as it appears to be solely based upon Claimant informing Dr. Wityk several months after her diagnosis that she was traveling in cramped conditions the day before her stroke. It is noted that Dr. Wityk began treating Claimant in December 2010 and he initially opined the cause of Claimant's stroke is unclear. Contemporaneous treatment records do not reference Claimant traveling in cramped conditions in a van the day prior to her stroke. It was not until sometime in June 2011 when Claimant asked Dr. Wityk's opinion on whether her traveling conditions could have caused her stroke. On August 9, 2011, Dr. Wityk wrote in his clinical notes that he last saw Claimant in April 2011 and had a discussion with her on August 9, 2011 regarding his opinion of whether her riding in a "cramped situation" could have contributed to the development of the deep venous thrombosis. Dr. Wityk then opined that Claimant's riding in a cramped van might be a precipitating event and could possibly be related to her condition. Furthermore, on October 7, 2012, Dr. Wityk wrote a letter on behalf of Claimant noting she had deep venous thrombosis and a pulmonary embolism on August 10, 2010. He wrote:

The patient tells me she was required to take a long car or van ride shortly before the diagnosis of the deep venous thrombosis. She said it was cramped and she was not able to move around much. I think this could have contributed to the deep venous thrombosis.

Applying the standard set forth in *Stewart, supra*, Dr. Wityk's notes are vague and lack the necessary detail and specificity to make a determination of the cause of the pulmonary embolism and deep venous thrombosis leading to Claimant's stroke. Furthermore, Dr. Wityk's medical opinions on August 9, 2011 and October 7, 2012 was at the prompting of Claimant and are unsupported by any documentary, medical record or a contemporaneous examination; and lacks any explanation for its contents or rationale for his conclusions that are not self-evident and are not explained. Dr. Wityk's opinion on causation is therefore rejected.

The IME examination and opinion of Dr. Eckmann provides a more thorough explanation regarding the likely cause of Claimant's condition and is therefore accorded greater weight. The record reflects Dr. Eckmann examined Claimant contemporaneously and reviewed Claimant's medical history and medical records including diagnostic imaging scans. In explaining why he opined Claimant's stroke is not the result of her employment conditions Dr. Eckmann wrote:

It has been proposed that the period of time spent traveling in the van on the day prior to the stroke contributed to the development of a clot that served as a source of embolic material that then traveled to the brain. The model for this scenario was derived from the development of pulmonary emboli in passengers on long airplane flights. I believe the index case was a young woman who traveled between Australia and London who suffered a fatal pulmonary embolus upon arrival to her destination after sitting more than twelve hours.

In this case Ms. Young had been traveling for no more than a three hour period during which time she indicates that she moved her legs quite a bit. Thus, although prolonged sitting may be a risk factor for the formation of deep venous thrombosis, I do not think there is definitive evidence that it was directly caused in this case. Furthermore, a lower extremity venous duplex study obtain 8/23/10 at the time of her pulmonary embolus showed no evidence of superficial or deep venous thrombosis in either leg.

Accordingly, the undersigned is persuaded that Dr. Eckmann's medical opinion is more comprehensive and explains his reasons for his medical conclusion which outweighs the medical opinion of the treating physician, Dr. Wityk, in this case. Based upon the forgoing, Claimant has not shown by a preponderance of the evidence that the stroke she suffered on August 10, 2010 is medically causally related to her employment.

CO at 7-8.

We find no fault in the above analysis. Claimant argues the IME does not address her case theory that the van ride contributed to Claimant's deep vein thrombosis which caused the stroke. We disagree and note that after relying on case study wherein sitting for 12 hours was shown to contribute to strokes, Dr. Eckmann's opinion not only discounted any direct evidence that a three hour car drive could have caused her deep venous thrombosis, but also relied upon a test taken shortly after the accident which showed no evidence of deep vein thrombosis, the very condition Claimant argues contributed to her stroke.

We also affirm the ALJ's rejection of the treating physician, Dr. Wityk.<sup>4</sup> In the findings of fact, the ALJ noted,

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<sup>4</sup> In the District of Columbia, there is a preference for the testimony of treating physicians over doctors retained for litigation purposes. *See Short v. DOES*, 723 A.2d 845 (D.C. 1998); *see also, Stewart v. DOES*, 606 A.2d 1350 (D.C. 1992). However, even with this preference, this trier of facts may choose to credit the testimony of a non-treating physician over a treating physician. *Short, supra*. And where there are persuasive reasons to do so, a treating physician's opinions may be rejected. *Stewart v. DOES*, 606 A.2d 1350 (D.C. 1992). Among the reasons that have resulted in such a rejection are sketchiness, vagueness and imprecision in the reports of the treating physician. *Erickson v. Washington Metropolitan Area Transit Authority*, H&AS No. 92-63, OWC No. 181489 (October 28, 1993), *aff'd.* Dir. Dkt. No. 93-82 (June 5 1997).

Claimant testified beginning in January 2011, she informed Dr. Wityk that she was riding in a "cramped" van the day before her stroke and sought out his opinion on whether it could be related to her condition. Dr. Wityk's clinical notes dated December 22, 2010, January 21, 2011, March 14, 2011 and April 10, 2011 are void of any history of Claimant riding in cramped conditions the day prior to her stroke. She further testified in June 2011, Dr. Wityk informed her that the cause of her stroke most likely could have developed as a result of riding in a cramped space with poor circulation. HT pp. 42-43; CE 1, CE 3; EE 2.

CO at 4.

A review of the evidence supports the ALJ's analysis. The December 22, 2010 report of Dr. Wityk indicate the "cause of her stroke is unclear." Claimant's exhibit 1 at 6. The Claimant testified that in January of 2011 she began to mention the three hour van ride. However, no mention is made of any potential relationship between the van ride and her stroke until August 9, 2011 wherein Dr. Wityk states

She tells me today that prior to the stroke she had been in a cramped situation in a van, driving about 3 hours heading to a place to undergo evaluation for a job, and I said this might be a precipitating event in terms of clot formation, and therefore possibly related to her job.

Claimant's exhibit 1 at 23.

Dr. Wityk repeated the same theory in his October 7, 2012 opinion, stating the van ride "could have contributed to the development of deep venous thrombosis." Claimant's exhibit 3.

The ALJ rejected the opinion of Dr. Wityk as being vague and lacking specificity regarding his opinion of the cause of the Claimant's stroke. It is clear that the ALJ was not persuaded by the treating physician's later opinions which were at the prompting of Claimant, especially in light of his earlier opinion that the cause of her stroke was unclear.<sup>5</sup> The ALJ found the August 9, 2011 and October 7, 2012 reports to lack any support and explanation for the conclusion that the deep vein thrombosis "could have" or "might" be precipitated by the van ride. We affirm the ALJ's rejection of the treating physician's opinion.

As the ALJ stated, it is Claimant's burden to prove, by a preponderance of the evidence that her deep vein thrombosis which led to her stroke was caused in part by the van ride. This the ALJ concluded she failed to do. On appeal, what Claimant is in essence asking us to do is to reweigh the evidence in her favor, a task we cannot do. The CRB is 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*, supra at 885.

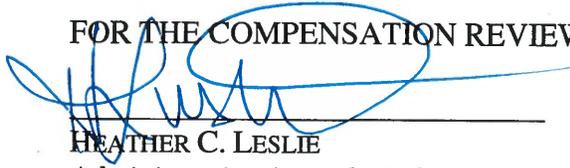
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<sup>5</sup> We also note that on March 3, 2012, Dr. Wityk opined that Claimant developed deep vein thrombosis *after* the stroke. Claimant's exhibit 1 at 1.

**CONCLUSION AND ORDER**

The March 14, 2014, Compensation Order is supported by the substantial evidence in the record and in accordance with the law and is **AFFIRMED**.

FOR THE COMPENSATION REVIEW BOARD:



HEATHER C. LESLIE

*Administrative Appeals Judge*

June 25, 2014

DATE