

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

Department of Employment Services

VINCENT C. GRAY  
MAYOR



F. THOMAS LUPARELLO  
ACTING DIRECTOR

**COMPENSATION REVIEW BOARD**

**CRB No. 14-022**

**KELVIN JOHNSON,  
Claimant–Petitioner,**

**v.**

**DISTRICT OF COLUMBIA OFFICE OF PROPERTY MANAGEMENT,  
Employer-Respondent.**

DEPT. OF EMPLOYMENT  
SERVICES  
COMPENSATION REVIEW  
BOARD  
2014 JUN 17 PM 1 38

Appeal from a January 31, 2014 Compensation Order by  
Administrative Law Judge Fred D. Carney, Jr.  
AHD No. PBL 05-021G, DCP No. 76102300060050001

Matthew Peffer for the Petitioner  
Kevin Turner for the Petitioners

Before: JEFFREY P. RUSSELL, HENRY W. MCCOY, *Administrative Appeals Judges*, and  
LAWRENCE D. TARR, *Chief Administrative Appeals Judge*.

JEFFREY P. RUSSELL for the Compensation Review Board.

**DECISION AND REMAND ORDER**

**BACKGROUND AND FACTS OF RECORD**

Petitioner, Kelvin Johnson, injured his left shoulder in a work related accident on April 27, 2005. He filed a claim under the Public Sector Workers Compensation Act, D.C. Code § 1-623.01, *et seq.*, (PSWCA), which was accepted. He was paid periods of temporary total disability benefits and was provided causally related medical care, including surgical intervention. After a period of time, Dr. Zohair Alam, one of Petitioner’s treating physicians re-evaluated Petitioner, and recommended that he undergo additional surgery and opined that he was unable to perform his regular duties due to the injury.

Petitioner was evaluated by Dr. David Johnson at Respondent's request for the purpose of an Additional Medical Examination (AME), and he opined that Petitioner's current complaints are unrelated to the work injury, that Petitioner was no longer in need of medical care for that injury, which he opined had resolved. He opined further that any functional limits Petitioner currently suffers from relate to "other causes". Based thereon, Respondent issued a Notice of Determination terminating Petitioner's ongoing wage and medical benefits.

The matter was presented for resolution at a formal hearing, following which a Compensation Order (CO) was issued on January 31, 2014, denying Petitioner's requests for restoration of his temporary total disability benefits, shoulder surgery and causally related medical benefits. Petitioner timely filed an Application for Review challenging the CO.

On review, Petitioner argues, in effect, that the Administrative Law Judge's (ALJ's) award of medical benefits renders irrational the denial of ongoing temporary total disability benefits, that the ALJ made an "ambiguous" award of medical benefits that requires clarification, and that the denial of ongoing temporary total disability benefits is unsupported by substantial evidence. In Opposition, Respondent argues that ALJ's determinations denying surgery and temporary total disability benefits are supported by substantial evidence.

Because the CO contains numerous material inconsistencies and inaccuracies and is not in accordance with the law, we must vacate and remand for further consideration.

#### DISCUSSION

This claim arises under the District of Columbia Public Sector Workers' Compensation Act, D.C. Code § 1-623.01, *et seq.* The scope of review of by the CRB is limited to making a determination as to whether the factual findings in the Compensation Order under review are based upon substantial evidence, and whether the legal conclusions flow rationally therefrom. *Marriott International v. DOES*, 834 A.2d 882 (D.C. 2003).

The CO contains numerous material inconsistencies and inaccuracies on the significant and critical issues.

For example, in the CO's Findings of Fact section, on page 3, the ALJ writes "prior to the incident of April 27, 2005 [the work injury], and subsequent surgery [post-injury] Claimant was able to execute his regular work duties". However, on the next page, he writes "I find Since [sic] the April 27, 2005 work injury and related medical treatment, Claimant has been unable to execute the duties of his regular employment".

Moreover, Claimant's Claim for Relief included "restoring his temporary total disability benefits from May 4, 2013 through the present and continuing, with authorization for medical treatment including left shoulder surgery and payment of all related medical expense". On page 4

of the CO, the ALJ's wrote:

I find that Since [sic] the April 27, 2005 work injury and related medical treatment, Claimant has been unable to execute the duties of his regular employment.

\* \* \*

I find the reports of Dr. Phillips the most persuasive. I find Claimant continues to experience left shoulder pain, stiffness and decreased range of motion in his left shoulder. I find the symptoms of Claimant's left shoulder are due in part to degeneration and in part to the April 27, 2005 work injury leaving Claimant with a partial impairment that is permanent, I find Claimant will require further palliative medical attention as a result of his injury.

Despite finding Claimant in need of ongoing medical care, the Order portion of the CO inconsistently reads "It is Ordered that the claim for relief be, and hereby is DENIED."

The ALJ also has made irreconcilable findings with respect to the conclusions of the medical experts:

- In the CO, the ALJ said Dr. Phillips agrees with Dr. Alam's recommendation for surgery, but also stated that Dr. Alam apparently does not believe the surgery is needed after reading Dr. Johnson's report.
- Although the ALJ found Dr. Phillips' opinions to be "the most persuasive," the ALJ denied the claim even though Dr. Phillips stated Claimant is a good candidate for arthroscopic surgery.
- On page 8 of the CO, the ALJ writes "Dr. Phillips after recognizing Claimant's limitations opined that: 'I do not believe that he requires any restrictions related to his left shoulder from the April 27, 2005 injury and any restrictions he might warrant (if any) would be due to other causes.' (EE 2)." However, the quotation and citation does not come from Dr. Phillips, but from Employer's IME physician, Dr. David Johnson.
- While the ALJ accepted Dr. Phillips' opinion which include his assessment that Claimant's condition has deteriorated and that he is in need of surgery, the ALJ incompatibly also finds that Claimant has reached maximum medical improvement and his condition is permanent.

The CO also is contradictory with respect to the issues to be decided.

In the CO, the Claim for Relief is stated as "restoring his temporary total disability benefits from May 4, 2013 through the present and continuing, with authorization for medical treatment including left shoulder surgery and payment of all related medical expense." Yet, the ALJ wrote the only issue he had to decide was to "Determine the nature and extent of Claimant's

work related disability, if any.” These two descriptions of the disputes presented are at best incomplete.

In addition to these problems the CO is, at best, ambiguous. Although the record and the CO contains reference to specific medical procedures (i.e., arthroscopy and debridement), and the CO finds that Claimant is in need of medical care, the ALJ does not make any conclusion as to what medical care is required.

Finally, the ALJ employed a practice that, while not improper as a matter of law, renders review of an already problematic Compensation Order all the more difficult: incorporating wholesale findings of fact from prior Compensation Orders. While the ALJ did highlight portions of those prior Compensation Orders with specificity, he also incorporated them both in their entirety.

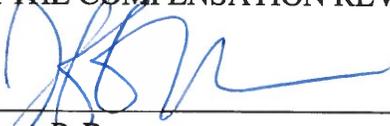
#### CONCLUSION

The CO contains contradictory and inaccurate findings and conclusions on material matters. Therefore, the CRB must vacate the Award and remand this matter so that the ALJ can issue a new CO that accurately identifies the issues to be decided, and which contains Findings of Fact that are identifiable as such and are supported by substantial and identified record evidence, which contains Conclusions of Law that logically flow therefrom and which has an Order that conforms to those factual findings and legal conclusions and which clearly states what benefits have been awarded, if any. Accordingly, we must vacate the Compensation Order.

#### ORDER

The Compensation Order of January 31, 2014 and the Order denying the claim for relief is vacated. The matter is remanded for further consideration and the issuance of a new Compensation Order.

FOR THE COMPENSATION REVIEW BOARD:

  
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JEFFREY P. RUSSELL  
*Administrative Appeals Judge*

\_\_\_\_\_  
June 17, 2014  
DATE