

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER  
MAYOR



DEBORAH A. CARROLL  
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 16-098

LALONDA B. REEDER,  
Claimant-Respondent/Cross-Petitioner,

v.

GEORGE WASHINGTON UNIVERSITY and  
PMA GROUP,  
Employer/Third-Party Administrator- Petitioner/Cross-Respondent.

Appeal from a July 8, 2016 Second Compensation Order on Remand  
by Administrative Law Judge Joan E. Knight  
AHD No. 13-490, OWC No. 697818

DEPT. OF EMPLOYMENT  
SERVICES  
COMPENSATION REVIEW  
BOARD  
2016 NOV 18 AM 10 46

(Decided November 18, 2016)

Krista N. DeSmyter for Claimant  
Sarah M. Burton for Employer

Before, LINDA F. JORY, GENNET PURCELL, and HEATHER C. LESLIE, *Administrative Appeals Judges*.

LINDA F. JORY, for the Compensation Review Board:

**DECISION AND ORDER**

FACTS OF RECORD AND PROCEDURAL HISTORY

The parties do not dispute the following facts of record as outlined in *LaLonda Reeder v. George Washington University*, CRB No. 15-021 (June 12, 2015) (“DRO 1”).

On October 16, 2012 while working as a housekeeper for George Washington University (“GWU”), Ms. LaLonda Reeder fell and injured her low back and left hip. After treating with the George Washington University Emergency Room, Ms. Reeder was discharged with instructions to limit her work activities and to seek follow-up care.

Ms. Reeder sought follow-up care with her primary care physician, Suresh Kumar Mutath. Dr. Mutath cleared Ms. Reeder to return to work with no restrictions on February 13, 2013.

On March 7, 2013, Ms. Reeder began treating with Dr. David Dorin. Dr. Dorin placed Ms. Reeder on a 10 pound lifting restriction with no mopping or vacuuming. Dr. Dorin continued to impose physical limitations and restrictions during April, May, and June 2013.

On April 8, 2013, Dr. Marc Danziger examined Ms. Reeder at GWU's request. Dr. Danziger opined Ms. Reeder was at maximum medical improvement, needed no additional treatment, and could work full duty.

On October 21, 2013, Ms. Reeder was in a car accident. She injured her shoulder, neck, and back.

A dispute arose over Ms. Reeder's entitlement to temporary total disability benefits from April 13, 2013 to the date of the formal hearing and continuing, authorization for physical therapy and epidural steroid injections, payment of medical expenses, and interest. In a Compensation Order dated January 16, 2015, an administrative law judge ("ALJ") granted Ms. Reeder's claim for relief. The ALJ ruled Ms. Reeder's current condition and her current disability are medically causally related to her on-the-job injury. *Reeder v. George Washington University*, AHD No. 13-490, OWC No. 697818 (January 16, 2015).

DRO 1 at 1.

After considering the parties' arguments, the Compensation Review Board ("CRB") issued DRO 1 which affirmed the Compensation Order's ("CO") determination that the presumption of compensability had been invoked and Employer rebutted it. The DRO 1 remanded the CO for the ALJ to weigh the evidence in the record to address the impact, if any, Claimant's non-work-related car accident had on the medical opinions relied on to conclude both causal relationship and the nature and extent of Claimant's work-related disability.

A Compensation Order on Remand ("COR 1") issued on October 30, 2015 which concluded Claimant's current low back, sciatic and left hip symptoms were not medically causally related to her October 16, 2012 work injury but Claimant was entitled to temporarily and totally disabled from April 13, 2013 to October 21, 2013 as a result of her work accident. Claimant filed an Application for Review (AFR) and a memorandum of points and authorities in support thereof (Claimant's Brief) and Employer filed Employer's Carrier's Memorandum in Opposition of Claimant's Application for Review (Employer's Brief).

A second Decision and Remand Order ("DRO 2") issued on May 2, 2016 which reversed the COR 1's determination that Claimant's motor vehicle accident severed the medical causal relationship between Claimant's low back, sciatic and left hip symptoms and the October 16, 2012 work injury. The DRO 2 further found the ALJ's determination with regard to the nature

and extent of disability was based upon the ALJ's unsupported determination that the motor vehicle accident severed the medical causal relationship, therefore the nature and extent determination was also reversed. The COR was vacated and remanded for an award of temporary total disability through February 25, 2014.

A second Compensation Order on Remand ("COR 2") issued on July 8, 2016 which awarded temporary total disability benefits from October 22, 2013 to February 25, 2014. Employer filed an Application for Review ("AFR") and Employer/Carrier's Memorandum in Support of Their Application for Review (Employer's Brief) and Claimant filed Opposition to the Application for Review and Cross-Application for Review. ("Claimant's Brief"). Employer filed Employer's Carrier's Memorandum in Opposition of Claimant's Cross-Application for Review.

### ISSUE ON APPEAL

Is the May 17, 2016 COR 2 supported by substantial evidence and in accordance with the law?

### ANALYSIS

Employer asserts the ALJ erred in determining the Claimant's ongoing complaints were medically causally related to the work injury. As it argued to the CRB following the initial Compensation Order Employer asserts Claimant sustained a new injury to her back when she was involved in a car accident on October 21, 2013. Employer argues again:

It is clear the Claimant never advised Dr. Selya of her subsequent car accident nor did Dr. Dorin review the medical records associated with the car accident. Dr. Selya evaluated the Claimant on November 22, 2013 and failed to mention the Claimant's subsequent car accident. EE 8. Dr. Selya evaluated the Claimant again on January 31, 2014 and again made no mention of the subsequent injury CE 1A-1C.

Finally, Dr. Danziger evaluated the Claimant again on February 25, 2014 and reviewed the medical records from the Claimant's October 21, 2013 motor accident. He opined that the accident exacerbated her work injury. EE 9.

Employer's Brief at 6, 7.

The ALJ's conclusion with regard to the causal relationship of Claimant's current condition was addressed in DRO 2:

We agree with Claimant that there is no medical opinion in the record that Ms. Reeder's L3-4 herniated disc and bilateral radiculopathies were changed by her car crash of October 2013 and disagree with Employer's assertion (quote omitted)

We also disagree that the medical evidence demonstrates that Claimant sustained a new injury to her back in October 2013. While the Washington Hospital Center

records indicate Claimant complained of back pain at her emergency room visit, the record is devoid of any diagnostic tests performed of Claimant's back after the motor vehicle accident (MVA). Claimant followed up with her primary care physician, Dr. Suresh Muttah twice after the MVA and on November 15, 2013 he authored a report stating he had treated claimant for neck pain, shoulder pain and back pain. We find the mere mention of pain does not equate to a demonstration that Claimant sustained a new injury to her back.

We further find the failure of Dr. Selya's to know about or at least mention the MVA is not evidence that Claimant's L3-4 herniated disc and bilateral radiculopathies were changed or were affected by the October 2013 MVA.

We must further acknowledge that while it is clear Employer's IME physician Dr. Danziger has consistently been of the opinion that Claimant's lumbar strain had resolved and Claimant did not need further treatment, he stated "With regard to the motor vehicle accident on 10/21/13, if anything it only exacerbated or aggravated the condition. It is difficult to tell how much of this is based on her subjective complaints from the work injury vs. subjective complaints from the motor vehicle accident, but I don't think either one of those rendered her symptomatic enough to require additional treatment". EE 9.

We are mindful that a previous panel remanded this matter to the ALJ to specifically address the impact, if any, Claimant's October 21, 2013 MVA had on the medical opinions relied on to concluded both causal relationship and nature and extent of disability. However, we do not agree that even Dr. Danziger's use of the words "exacerbated or aggravated" substantially supports the ALJ's conclusion that the MVA "severed" the causal relationship between Claimant's back problem and her disability. Thus we cannot conclude that the ALJ's determination that Claimant's October 21, 2013 MVA severed the medical causal relationship between Claimant's low back, sciatic, left hip symptoms and the October 16, 2012 work injury is supported by substantial evidence. .

DRO 2 at 4, 5.

Claimant responds and we agree that the DRO 2's analysis with regard to the causal relationship question is the law of the case and Employer is not entitled to re-litigate this issue. *Cf. Levy v. WMATA*, CRB No. 15-063 (September 25, 2015).

Employer further asserts that the ALJ erred in awarding temporary total disability ("TTD") benefits from April 13, 2013 to February 25, 2014. We note that Employer concedes in a footnote:

The Employer/Carrier recognize the ALJ's findings are consistent with the directive of this Court in the May 2 2016 Decision and Remand order. The Employer/Carrier re-raise their arguments in order to protect their appellate rights.

Employer's Brief at 7, n.7.

We understand Employer's legal strategy as the DRO 2 was not a final order.

Claimant argues in her cross-appeal:

The finding of fact that Ms. Reeder was not entitled to temporary total disability after February 25, 2014 was made by the CRB, and the Compensation Order must be remanded for entry of an order finding Mr. Reeder is entitled to temporary total disability benefits from April 13, 2013 to the present and continuing.

Claimants' Brief at 15.

Claimant explained:

The finding that Ms. Reeder was not entitled to temporary total disability benefits after February 25, 2014 was made by the CRB in the Second Decision and Remand Order. Ms. Reeder notes that this finding should be vacated, since it was not made by the initial Compensation Order.

*Id.*

Employer has responded:

This Court's May 2, 2016 Decision and Remand Order ("DRO") required the ALJ to issue a COR denying TTD benefits beyond February 25, 2014. The Claimant erroneously contends this is not [in] accordance with the law because it was not in the original Compensation Order. As this Court noted:

With regard to the nature and extent of Claimants' disability, it is clear that the ALJ felt constrained by the DRO's remand on the causal relationship issue and possibly on the nature and extent issue. The DRO, however, was not meant to constrain the ALJ to only one outcome, but to remand for further analysis. We cannot over[look] the fact that both the ALJ and the CRB did not acknowledge the treating physician Dr. Dorin's response to a June 28, 2013 letter from Claimant's counsel "At this point, the condition of Ms. Reeder has improved and she can work without restrictions."

This Court goes on to note that the only nature and extent opinion that exists in the record after Dr. Selya's September 18, 2013 disability certificate is Dr. Danziger's February 25, 2014 extensive follow up report.

Claimant alleges that this Court improperly reweighed the evidence in the DRO. This is a mischaracterization of what this Court did. Claimant bears the burden as to the nature and extent for her injuries and this Court found that although the

ALJ erred in only awarding benefits through October 21, 2013 (the date of the subsequent intervening accident), the only substantial evidence in the record was that the Claimant was temporarily and total disabled through February 25, 2014. Simply put, Claimant failed to meet her burden and as such, the COR as it relates to an award of TTD benefits should be affirmed.

Employer's Opposition at 4.

We have reviewed the DRO 1 as well as the COR 1. While we agree the DRO 1 did not indicate in the Conclusion and Order that it was vacating the CO, it is clear the ALJ was directed to re-visit the medical causal relationship issue and the nature and extent issue, thus the DRO 1 did not affirm either conclusion of the ALJ. Further, on remand the ALJ concluded because the October 21, 2013 MVA severed the medical causal relationship, Claimant's temporary total disability benefits were terminated as of October 21, 2013.

The CRB subsequently concluded that the ALJ's determination with regard to the nature and extent of disability is based on her unsupported determination that the MVA of October 21, 2013 severed the medical causal relationship, the ALJ's nature and extent determination is also not supported by substantial evidence and was reversed.

Contrary to Claimant's assertion, we conclude the DRO 2 did not disregard the original CO's findings of fact with regard to entitlement to TTD benefits, as the CRB remanded the matter for reconsideration of the nature and extent issue. We agree with Employer that the only substantial evidence in the record was that the Claimant was temporarily and totally disabled through February 25, 2014 as there is no medical record after Dr. Selya's September 18, 2013 disability certificate. Thus, we conclude there was but one result that remained and the ALJ followed the CRB's direction to award benefits for the period of April 13, 2013 through February 25, 2014. *Cf. WMATA v. DOES and Juni Browne*, 926 A.2d 140 (D.C. 2007).

#### CONCLUSION AND ORDER

The July 8, 2015 Second Compensation Order on Remand is supported by substantial evidence and in accordance with the law and is AFFIRMED.

*So ordered.*