

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 15-186

LALONDA REEDER,
Claimant-Petitioner,

v.

GEORGE WASHINGTON UNIVERSITY and
PMA MANAGEMENT CORP.,¹
Self-Insured Employer/Third-Party Administrator-Respondent.

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2016 MAY 2 PM 11 26

Appeal from an October 30, 2015 Compensation Order on Remand
by Administrative Law Joan E. Knight
AHD No. 13-490, OWC No. 697818

(Decided May 2, 2016)

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

Before LINDA F. JORY, JEFFREY P. RUSSELL, *Administrative Appeals Judges* and LAWRENCE D. TARR, *Chief Administrative Appeals Judge*.

LINDA F. JORY for the Compensation Review Board.

DECISION AND REMAND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

The underlying facts of the injury and treatment are described by the CRB in a prior Decision and Remand Order, *LaLonda Reeder v. George Washington University*, CRB No. 15-021 (June 12, 2015) (DRO).

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.

¹ As of November 1, 2015, Employer’s claims are administered by PMA Management Corp.

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 at 1,2.

After considering the parties' arguments, the DRO affirmed the CO's determination that the presumption of compensability had been invoked and Employer rebutted it. The DRO 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 were proven.

A Compensation Order on Remand (COR) 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).

ISSUE ON APPEAL

Is the October 30, 2015 CO supported by substantial evidence and in accordance with the law.

ANALYSIS

The scope of review by the CRB as established by the District of Columbia Workers' Compensation Act (the Act) and as contained in the governing regulations, is limited to making a determination as to whether the factual findings of a Compensation Order on appeal are based upon substantial evidence in the record, and whether the legal conclusions drawn from those facts flow rationally from those facts and are otherwise in accordance with applicable law. D.C. Code § 32-1521.01(d)(2)(A). "Substantial evidence" as defined by the District of Columbia Court of Appeals (DCCA), is such evidence as a reasonable person might accept to support a particular conclusion. *Marriott Int'l. v. DOES* 834 A.2d 882 (D.C. 2003) (*Marriott*). Consistent with this scope of review, the CRB is bound 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 members of the CRB review panel considering the appeal might have reached a contrary conclusion. *Marriott*, 834 A.2d at 885.

Despite the DRO's determination affirming the ALJ's finding that Employer had rebutted the presumption, Claimant spent a considerable portion of her brief asserting that Employer's evidence was not sufficient to rebut the medical causal relationship of Claimant's alleged disability and the work injury. The DRO specifically stated in the Conclusion and Order:

The ALJ's rulings that the Presumption has been invoked and has been rebutted are AFFIRMED but this matter is REMANDED for further weighing of the evidence in the record as a whole to assess the causal relationship between Ms. Reeder's current complaints and her on-the-job injury; the ALJ must address the impact, if any, Ms. Reeder's October 21, 2013 car accident has on the medical opinions relied on to conclude both causal relationship and the nature and extent of Ms. Reeder's work-related disability, if any.

DRO at 5.

Claimant asserts:

Assuming, without conceding that the Employer had rebutted the presumption of the compensability of Ms. Reeder's condition after October 2013, the ALJ erred in the determination that the intervening car crash in October 2013 severed the medical connection between Ms. Reeder's lumbar spine, sciatic, and hip injuries which disabled her between her work injury and October 21, 2013. The Court of Appeals has previously held that where a fair reading of the record establishes that the fact finder substituted their [sic] judgment as to what was medically significant evidence for that of the treating physician and that the fact finder relied on the substituted judgment to support a finding of fact, such a finding cannot be said to be supported by substantial evidence in the record. *Landesberg v. Dept. of Emp. Servs.*, 794 A.2d 607, 614 (D.C. 2002). There is no medical opinion whatsoever in the record that Ms. Reeder's L3-4 herniated disc and bilateral radiculopathies were changed or were even affected by her car crash of October

2013. There is no opinion by any medical provider that Ms. Reeder's testimony, which the ALJ deemed credible, supports this. She testified that she had new/different injuries to her shoulders and neck, but no increase in her symptoms to her lower back. HT at 54-56. It defies logic that the ALJ would determine that Ms. Reeder's disabling medical condition, her L3-4 herniated disc and bilateral radiculopathies, was not medically causally related to her work injury after October 21, 2013 when no medical opinion exists to support that finding in the record. Because the determination that Ms. Reeder's condition after October 21, 2013 is no longer medically causally related to her work injury is based on a medical opinion not in the record and because the determination is not based on substantial evidence, the Compensation Order on Remand must be reversed.

Claimant's Brief at 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:

The uncontroverted medical evidence demonstrates that the Claimant sustained a new injury to her back in October 2013. As the ALJ noted, it is clear that none of her treating physicians were aware of the new injury in providing their diagnoses and request for ongoing treatment. See COR p. 6. Further, Dr. Danziger has opined that Claimant's ongoing complaints of pain a year after the original work injury do not correlate with the MRI findings. As such, the Claimant's current complaints are not medically causally related and the COR should be affirmed.

Employer's Brief at 6, 7.

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 Muttath 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 conclude 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.

With regard to the nature and extent of Claimant's 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 overlook the fact the 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'. EE 4 at 1.

While it is unclear when Dr. Dorin authored this release, his colleague Dr. Leonid Selya provided Claimant with disability slips through November 24, 2013. Thus substantial evidence supports a finding that Claimant was in off work status when the car accident occurred. Thus, while Dr. Danziger stated the MVA "may have exacerbated" Claimant's back problems we cannot conclude that the ALJ's determination that Claimant's disability due to his work related back injury stopped when the automobile accident occurred is supported by substantial evidence. As 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, we must remand the matter once again to the ALJ to award disability benefits through February 25, 2014.

CONCLUSION AND ORDER

The ALJ's determination that Claimant's October 21, 2013, MVA accident has severed the medical causal relationship between Claimant's low back, sciatic, left hip symptoms and the October 16, 2012 work injury is not supported by substantial evidence and is reversed. Because 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 is reversed.

The COR is accordingly VACATED and the matter is REMANDED for an award of temporary total disability benefits through February 25, 2014.

So ordered.