

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**Department of Employment Services**

VINCENT C. GRAY  
MAYOR



F. THOMAS LUPARELLO  
ACTING DIRECTOR

**COMPENSATION REVIEW BOARD**

**CRB No. 14-072**

**LILLIE McDONALD,  
Claimant-Petitioner,**

v.

**CVS PHARMACY INC.,  
and GAB ROBINS INSURANCE CO.  
Employer/Carrier-Respondents.**

DEPT. OF EMPLOYMENT  
SERVICES  
COMPENSATION REVIEW  
BOARD  
2014 OCT 6 PM 12 04

Appeal from a April 30, 2014 Compensation Order By  
Administrative Law Judge Leslie Meek  
AHD No. 13-478, OWC No. 660672

Michael Kitzman for the Petitioner  
Joel Ogden for the Respondent

Before HEATHER C. LESLIE, JEFFREY P. RUSSELL, *Administrative Appeals Judges* and LAWRENCE  
D. TARR, *Chief Administrative Appeals Judge*

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 the Claimant - Petitioner (Claimant) of the April 30, 2014, Compensation Order (CO) issued by an Administrative Law Judge (ALJ) in the Hearings and Adjudication Section of the District of Columbia Department of Employment Services (DOES). In that CO, the ALJ denied Claimant's request for payment of certain medical expenses. We AFFIRM.

## BACKGROUND AND FACTS OF RECORD

Claimant was a cashier for the Employer. On June 23, 2009, a stack of two liter bottles of tea fell onto her right leg and ankle. Claimant sought treatment with Dr. Kevin McGovern and then Dr. Peter Kwon. Claimant contends the current medical condition of her right leg and ankle are still medically causally related to the work injury.

On September 30, 2013, Claimant, at the request of the Employer, underwent an independent medical evaluation (IME) with Dr. Kevin Hanley. Dr. Hanley took a history of the Claimant's injury, performed a physical examination, and reviewed medical records. Dr. Hanley opined Claimant did not suffer from any residuals of her work accident and did not require any further treatment, including therapy. Employer's exhibit 1.

A full evidentiary hearing proceeded on November 5, 2013. Claimant sought an award of medically causally related expenses to be paid by the Employer. The sole issue to be adjudicated was whether Claimant's claimed medical conditions are medically causally related to the work accident of June 23, 2009. A CO issued on April 30, 2014 denying Claimant's request.

Claimant timely appealed. Claimant argues the CO erred in rejecting the findings of Dr. Kwon, and as such, the CO is not supported by the substantial evidence in the record nor in accordance with the law.

Employer opposes Claimant's application for review. Employer argues the CO is supported by the substantial evidence and in accordance with the law.

## STANDARD OF REVIEW

The scope of review by the CRB, as established by the Act and as contained in the governing regulations, 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). Consistent with this standard of review, the CRB 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.

## DISCUSSION AND ANALYSIS

Claimant argues:

Ms. McDonald remained under the treatment of her primary care physician, Dr. Kwon, from 2009, through the present. This included treatment for her right leg

that continued after her July 27, 2009 release from orthopedic care. At that point, the medical records show that Ms. McDonald had continued problems with her right leg and ankle. EE-2. These complaints continued into August, 2009 when her treatment continued with Dr. Kwon. CE-1, 8. Dr. Kwon continued to see Ms. McDonald for complaints of right leg pain in November, 2009, February 2010, January 2011, into 2012. See CE-1.

Throughout this time period, the records reflect the same complaints that Ms. McDonald had immediately following the injury and during her last visit with Dr. McGovern. Further, the history of complaints is consistent with her statements that these problems had been persistent and ongoing since the 2009 work injury. By rejecting the findings of Dr. Kwon, which are consistent with the Claimant's history, the Compensation Order failed to give the proper weight to the records of the treating doctor and reached a conclusion that is not supported by the substantial evidence.

Claimant's argument at 4-5.

In addressing whether Claimant's current right leg and ankle condition is medically causally related to the accident, the ALJ summarized Claimant's medical visits to Dr. Kwon and Dr. McGovern. After having found the Claimant triggered the presumption that her current right leg and right ankle condition were medically casually related to the work accident of June 23, 2009 and that Employer had rebutted the presumption by the IME of Dr. Hanley, the ALJ concluded:

Claimant's treating physicians do not relate Claimant's current right leg and right ankle conditions to the work incident of June 23, 2009. Claimant has failed to meet her burden. Upon weighing the record evidence by the preponderance of the evidence standard, I find Claimant's current medical condition is not casually related to the work incident of June 23, 2009.

CO at 5.

On review, Claimant argues the ALJ erred by rejecting the opinion of Dr. Kwon, the treating physician. We find no merit in this argument. The ALJ concluded that, quite simply, no physician expressed an opinion that her current right leg and right ankle condition is medically casually related to the work accident. A review of the evidence supports the ALJ's conclusion. Having reviewed and summarized the medical evidence, the ALJ concluded the Claimant had failed to prove, by a preponderance of the evidence, that Claimant's current right leg and right ankle medical condition is medically causally related to her work injury. We affirm the ALJ's conclusion.

What Claimant is asking this Panel to do is to reweigh the evidence in Employer's favor. This is a task we cannot do. The CRB's role is limited to determining whether the CO is supported by

the substantial evidence in the record and in accordance with the law. We cannot reweigh the evidence as Claimant would wish us to do. The CRB 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. *Marriot, supra*.

**CONCLUSION AND ORDER**

The April 30, 2014 Compensation Order is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

A handwritten signature in black ink, appearing to read 'H. C. Leslie', written over a horizontal line.

HEATHER C. LESLIE  
*Administrative Appeals Judge*

October 6, 2014  
DATE