

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
ACTING DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 14-146

**MAE TWYMAN,
Claimant-Petitioner,**

v.

**IAP WORLDWIDE SERVICES, INC. and
THE INSURANCE CO. OF THE STATE OF PA,
Employer/Insurer-Respondent.**

Appeal from a November 10, 2014 Compensation Order by
Administrative Law Judge Gerald D. Roberson
AHD No. 13-521A, OWC No. 704614

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2015 MAR 31 PM 11 05

Bruce M. Bender for Claimant
Julie D. Murray for Employer

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

MELISSA LIN JONES for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

In 2007, Ms. Mae Twyman began working for IAP Worldwide Services, Inc. ("IAP") as a project accountant. In 2011, Ms. Twyman's job duties changed; she assumed the duties of budget analyst and business manager in addition to her duties as project accountant.

On June 15, 2012, Ms. Twyman's nose began to bleed. Shortly thereafter she received a directive to report to personnel where she was given a performance improvement plan. Ms. Twyman left work and experienced a headache and blurred vision; the next day, Ms. Twyman sought treatment at Doctors Community Hospital because she had dry blood on her face and shortness of breath.

Ms. Twyman's primary care physician is Dr. Dawne Carroll. Dr. Carroll referred Ms. Twyman to a neurologist, Dr. Kenneth Kudelko, who examined Ms. Twyman for complaints of tremors and numbness.

Dr. Kudelko referred Ms. Twyman for psychiatric treatment to help manage stress. Dr. Harvey Fernbach, a psychiatrist, provided treatment from December 14, 2012 to January 11, 2013.

Dr. Thomas Green, also a psychiatrist, performed a consultation and recommended Ms. Twyman continue psychotherapy appointments as well as appointments with her neurologist and primary care physician.

Dr. Carroll referred Ms. Twyman to Delores C. Jones, LCPC, LCP, NCC. Ms. Twyman saw Ms. Jones in February and March 2014.

Ms. Twyman filed a claim for temporary total disability benefits, and IAP denied Ms. Twyman's claim. Following a formal hearing, an administrative law judge ("ALJ") denied Ms. Twyman's claim because her tremors, hand numbness, visual problems, headaches, and other conditions are not causally related to her workplace stressors. *Twyman v. IAP Worldwide Services, Inc.*, AHD No. 13-521A. OWC No. 704614 (November 10, 2014).

On appeal, Ms. Twyman asserts the ALJ erred in not considering any of Dr. Kudelko's deposition testimony. She also asserts the ALJ erred by ruling Dr. Todd Christiansen's opinion rebuts the presumption of compensability because Dr. Christiansen "gave no basis or explanation for said opinion whatsoever." Memorandum of Points and Authorities in Support of Application for Review, p. 7. Finally, Ms. Twyman asserts the ALJ failed to provide sufficient reasons for rejecting Dr. Kudelko's opinion which is entitled to the treating physician preference:

In the case *sub judice*, the closest the hearing examiner gets to setting forth his reasons for rejecting the opinion of the treating physician and accepting the opinion of the non-treating physician is when Judge Roberson stated:

"[i]n this case, Claimant has not provided evidence from a competent physician to support her contentions that workplace stressors caused her psychological conditions resulting in tremors, headaches and anxiety." (Comp. Order, page 8).

This conclusory statement is without any supporting factual basis since the Claimant did provide evidence from a competent physician, Dr. Kudelko, to support the Claimant's contentions that her workplace stressed [*sic*] caused her psychological conditions."

Id. at pp. 14-15. Because there allegedly is sufficient evidence in the record to support Ms. Twyman's claims, she requests the Compensation Review Board ("CRB") reverse the Compensation Order:

If Judge Roberson properly weighed the treating physicians' strong opinions versus those of the IME physician, Claimant met her burden. There was no basis to reject the treating physicians' opinions. Judge Roberson must be reversed. Alternatively, this matter must be remanded to Judge Roberson to properly give the treating physician preference and the proper weight to Drs. Kudelko and Green's opinions, which he did not.

Id. at p. 20.

In response, IAP contends Dr. Christiansen's opinion is supported by his report and his deposition testimony and is specific and comprehensive enough to rebut the presumption of compensability. IAP also contends the ALJ gave specific and legitimate reasons for rejecting the treating physicians' opinions. For these reasons and because Ms. Twyman has requested the CRB reweigh the evidence to reach a different conclusion than the one reached by the ALJ, IAP requests the CRB affirm the compensation order.

ISSUES ON APPEAL

1. Did the ALJ err in not inventorying Dr. Kudelko's deposition testimony?
2. Is Dr. Christiansen's opinion sufficient to rebut the presumption of compensability?
3. Did the ALJ provide sufficient reasons for rejecting Dr. Kudelko's opinion which is entitled to the treating physician preference?

ANALYSIS¹

Ms. Twyman's first argument is that the ALJ erred in not mentioning any of Dr. Kudelko's deposition testimony. The ALJ provided a detailed review of Dr. Kudelko's medical reports, and even though Dr. Kudelko is Ms. Twyman's treating physician, the ALJ is not required to "inventory the evidence and explain in detail why a particular part of it was accepted or rejected." *Washington Hospital Center v. DOES*, 983 A.2d 961 (D.C. 2009). If Dr. Kudelko's opinions in his deposition were different from those in his medical reports, the ALJ may have had to reconcile the discrepancy before relying on Dr. Kudelko's opinions, but in this situation, the ALJ did not err by not specifically addressing Dr. Kudelko's deposition testimony.

In essence what Ms. Twyman is asserting is that the ALJ should have given more weight to Dr. Kudelko's opinions, including those opinions explained in his testimony; however, the CRB's

¹ The scope of review by the 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 of 1979, as amended, D.C. Code § 32-1501 *et. seq.* ("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).

authority is limited to assessing whether the findings of fact and conclusions of law in a compensation order are supported by the record and by the law. The CRB has no authority to reweigh the evidence. *Marriott, supra*.

Similarly, Ms. Twyman asserts the ALJ gave too much weight to Dr. Christiansen's purportedly unsupported opinion which should not have rebutted the presumption of compensability. Pursuant to § 32-1521(1) of the Act, a claimant may be entitled to a presumption of compensability ("Presumption"). In order to benefit from the Presumption, the claimant initially must show some evidence of a disability and the existence of a work-related event, activity, or requirement which has the potential to cause or to contribute to the disability. *Ferreira v. DOES*, 531 A.2d 651 (D.C. 1987). "[O]nce an employee offers evidence demonstrating that an injury was potentially caused or aggravated by work-related activity, a presumption arises that the injury is work-related and therefore compensable under the Act." *Washington Hospital Center v. DOES*, 744 A.2d 992, 996 (D.C. 2000). There is no dispute the Presumption was invoked.

Once the Presumption was invoked, it was IAP's burden to come forth with substantial evidence "specific and comprehensive enough to sever the potential connection between a particular injury and a job-related event." *Waugh v. DOES*, 786 A.2d 595, 600 (D.C. 2001) (citations omitted). Only upon a successful showing by IAP would the burden return to Ms. Twyman to prove by a preponderance of the evidence, without the benefit of the Presumption, her conditions are causally related to her employment. See *Washington Hospital Center v. DOES*, 821 A.2d 898 (D.C. 2003).

In this case, the ALJ relied upon Dr. Christiansen's opinion to rebut the Presumption:

Employer relied on the medical evidence from Dr. Christiansen regarding the possible mechanism of injury to rebut the presumption. Employer noted Claimant attributed her tremors, headaches and other problems to being overworked. On July 15, 2013, Dr. Christiansen offered the Axis III diagnosis of essential hypertension, essential tremor and peripheral vascular disease. Dr. Christiansen noted Claimant had a history of smoking and hypertension prior to the work incident, and Dr. Carroll stated the vascular changes in her brain were consistent with a history of hypertension and smoking. Dr. Christiansen stated "By definition essential hypertension and essential tremor are diagnosed when there are no known causes of the conditions in a person." EE 1, p. 7. Dr. Christiansen stated "Ms. Twyman's essential hypertension and essential tremor are biological conditions and not caused by work stress or the alleged incident on 6-15-2012." EE 1, p. 7. Dr. Christiansen indicated any episodes of [panic] attacks or elevated clinically significant anxiety would not be causally related to the June 15, 2012 incident. EE 1, p. 7. With the medical evidence from Dr. Christiansen, Employer has rebutted the presumption of compensability regarding causal relationship of Claimant's medical conditions. Therefore, Claimant loses the benefit of the statutory presumption, and the record medical evidence must be weighed without further reference thereto.

Twyman, supra, at pp. 7-8. The Presumption is rebutted when the record demonstrates a physician has performed a personal examination of the injured worker, has reviewed the relevant medical records, and has stated an unambiguous opinion contrary to the causal relationship presumption. *Washington Post v. DOES and Raymond Reynolds*, 852 A.2d 909 (D.C. 2004). Dr. Christiansen examined Ms. Twyman and her medical records, and based upon that examination, those records, and his medical expertise, he offered an unambiguous opinion that her symptoms and conditions are not work related. Dr. Christiansen's opinion suffices to rebut the Presumption.

Finally, Ms. Twyman asserts the ALJ rejected Dr. Kudelko's opinion on the grounds that Kudelko "as a neurologist was not competent to testify that the workplace stressors caused her psychological conditions resulting in tremors." Memorandum of Points and Authorities in Support of Application for Review, p. 13. Contrary to Ms. Twyman's assertion, the ALJ did not reject Dr. Kudelko's opinion because Dr. Kudelko is a neurologist; the ALJ rejected Dr. Kudelko's opinion because "Dr. Kudelko does not offer neurological findings or medical rationale explaining how the identified employment factors caused these conditions." *Twyman, supra*, at p. 8.

When assessing the weight of competing medical testimony in workers' compensation cases, a treating physician ordinarily is preferred as a witness over a doctor who has been retained to examine the claimant solely for purposes of litigation, *Stewart v. DOES*, 606 A.2d 1350, 1353 (D.C. 1992); however, the preference for the opinions of a treating physician is just that, a preference. When there are specific reasons for rejecting the opinion of the treating physician, the opinion of another physician may be given greater weight. See *Olsen v DOES*, 736 A.2d 1032 (D.C. 1999). The ALJ provided a specific reason for rejecting Dr. Kudelko's opinion.

Also, the ALJ's use of the phrase "a competent physician" is not grounds for reversal. The phrase refers to the *Ramey* test for mental-mental injuries which requires "[t]he injured worker's showing must be supported by competent medical evidence." *Ramey v. DOES*, 997 A.2d 694, 700 (D.C. 2010). Furthermore, the ALJ was referring not specifically to Dr. Kudelko but to any of the physicians treating Ms. Twyman:

In this case, Claimant has not provided evidence from a competent physician to support her contentions that workplace stressors caused her psychological conditions resulting in tremors, headaches and anxiety. Claimant received medical treatment from a neurologist, Dr. Kudelko, who diagnosed anxiety and tremors and treated Claimant with Klonopin on July 2, 2012. Dr. Kudelko subsequently documented findings related to Claimant's left hand numbness and headaches. On July 11, 2012, Dr. Kudelko ruled out any type of brain lesions as the source of the left hand numbness, indicating they were rather nonspecific. Dr. Kudelko stated the right sided headaches could be cervicogenic headaches or tension type headaches. Dr. Kudelko does not offer neurological findings or medical rationale explaining how the identified employment factors caused these conditions. On September 27, 2012, Dr. Kudelko stated Claimant experienced tremors, numbness in her hand, visual symptoms and headaches, and he suspected the conditions were the result of her significant psychological stress from work. Dr. Kudelko referred Claimant to psychiatry. CE 1.

Unfortunately, the psychiatric evidence does not establish workplace stressors caused Claimant's tremors, numbness in her hand, visual symptoms and headaches. Claimant received treatment from two psychiatrists and a psychotherapist, but these providers failed to offer a medical opinion regarding whether the workplace stressors identified by Claimant caused her medical condition. The record contains the handwritten medical notes of Dr. Harvey Fernbach, a psychiatrist, who provided medical treatment from December 14, 2012 to January 11, 2013. CE 8. These handwritten records are not legible, and therefore, the notes cannot serve as a basis for causally relating Claimant's tremors, hand numbness, visual symptoms and headaches to the identified workplace stressors.

On February 24, 2014, Dr. Thomas Green, a psychiatrist, performed a consultation. The Mental State Exam was remarkable for severe agitation, continuous tremors of head and arms, dismayed affect consistent with Claimant's complaint of depressed and anxious mood. Claimant denied ideas of suicide or delusional thought. Claimant expressed conviction that she had been targeted for unfair treatment at her workplace. Claimant described how she had suffered due to the maltreatment at her former workplace, compulsively returning to detailed recitation of the events and dates of the traumatizing experiences with which she had been preoccupied and tormented for the past almost two years. Her cognitive function appeared grossly intact, and her insight and judgment appeared unimpaired. Dr. Green diagnosed posttraumatic stress disorder, and major depressive disorder, severe, with anxious distress. Dr. Green recommended Claimant attend scheduled appointments with her neurologist and primary care physician, and continue medication as prescribed by them. He stated Claimant would continue psychotherapy appointments, and return in two weeks. CE 5. Dr. Green, however, does not offer an opinion regarding whether the workplace stressors caused the diagnosed conditions.

Similarly, Delores C. Jones, LCPC, LCP, NCC, provided Claimant with therapy services on February 21 and 24 and March 1, 5 and 7, 2014 as a result of a referral from Claimant's primary care physician. Ms. Jones documented findings related to abnormal movement behaviors (involuntary movements of head and hands were noticed). Claimant had difficulty sitting still and appeared restless and tense. Ms. Jones understood Claimant attributed her symptoms to increased work in the accounting department when Claimant's coworkers were laid off, but Ms. Jones did not offer an opinion regarding whether the workplace stressors were responsible for the major depressive disorder. CE 2.

Twyman, supra, at pp. 8-9. There is no legal basis for the CRB to disturb the ALJ's rulings.

CONCLUSION AND ORDER

The ALJ did not err in not inventorying Dr. Kudelko's deposition testimony, and the ALJ provide sufficient reasons for rejecting Dr. Kudelko's opinion which is entitled to the treating

physician preference. In addition, Dr. Christiansen's opinion is sufficient to rebut the presumption of compensability. The November 10, 2014 Compensation is supported by substantial evidence, is in accordance with the law, and is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

/s/ Melissa Lin Jones
MELISSA LIN JONES
Administrative Appeals Judge

March 31, 2015
DATE