

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

Department of Employment Services

VINCENT C. GRAY  
MAYOR



F. THOMAS LUPARELLO  
ACTING DIRECTOR

**COMPENSATION REVIEW BOARD**

**CRB No. 14-053**

**MARIA C. GUZMAN,  
Claimant–Petitioner,**

v.

**SMITH & WOLLENSKY, DC, LLC,  
and U.S. FIRE INSURANCE Co.,  
Employer/Carrier–Respondents.**

Appeal from a April 22, 2014 Compensation Order By  
Administrative Law Judge David L. Boddie  
AHD No.13-036, OWC No. 693275

Neil J. Fagan for the Petitioner  
Joel E. Ogden for the Respondent

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

HEATHER C. LESLIE, for the Compensation Review Board.

**DECISION AND REMAND 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 22, 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 an award of permanent partial disability benefits to her right upper extremity. We AFFIRM in part, and REMAND in part.

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## BACKGROUND AND FACTS OF RECORD

On June 4, 2012 the Claimant injured her neck, right shoulder and right arm when a cart filled with food fell over and landed on her neck, right shoulder and right arm. Claimant sought medical treatment at the Washington Hospital Center when she noticed bruising. Claimant subsequently came under the care and treatment of Drs. Mininberg and Fechter. Claimant underwent a course of conservative treatment which included physical therapy and medications. On October 2, 2012, after noting significant improvement, Dr. Mininberg discharged Claimant from care.

On October 22, 2012, the Claimant underwent an independent medical evaluation (IME) with Dr. H.S. Pabla. Dr. Pabla took a history of the Claimant's injury, performed a physical examination, and reviewed medical records. Dr. Pabla opined the Claimant suffered 25% permanent partial impairment to her right arm as a result of the work injury.

On September 26, 2012, Claimant underwent an IME with Dr. Robert Gordon at the request of Employer. Similar to Dr. Pabla, Dr. Gordon took a history of the Claimant's injury, performed a physical examination, and reviewed medical records. Dr. Gordon opined Claimant was at maximum medical improvement and suffered no residual impairment to her neck or any other part of her body as a result of the work injury.

A full evidentiary hearing proceeded on February 28, 2013. Claimant sought an award of permanent partial disability in the amount of 25% to the right arm pursuant to the opinion of Dr. Pabla, interest, and causally related medical bills to be paid by Employer. The sole issue adjudicated was the nature and extent of Claimant's disability. A CO issued on April 22, 2014 that denied Claimant's claim for permanent partial disability to the right arm.

Claimant timely appealed. Claimant argues that the CO findings are not based upon the substantial evidence in the record and the conclusions of law do not flow rationally from findings. Moreover, Claimant points out that the ALJ failed to make any findings and conclusions of law regarding payment of causally related medical bills and accrued interest on benefits. Employer counters, stating the CO is supported by the facts of the record and taking into consideration the credibility finding, is 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 first points out that the ALJ failed to make any findings regarding Claimant's claim for causally related medical bills to be paid by Employer as well as accrued interest on benefits.<sup>1</sup> Employer concedes in argument that the ALJ did not address the issue of payment of medical expenses. Employer's argument at 1. A review of the administrative file reveals Claimant not only submitted the medical reports of Dr. Mininberg and Dr. Fecther, but also the corresponding bills. As the ALJ failed to make any findings of fact or conclusions of law regarding this portion of Claimant's claim for relief, we are forced to remand the case for further consideration.

Claimant next argues the ALJ did not properly consider Claimant's arm complaints as reflected in the report of Dr. Mininberg. Claimant argues the CO's statement that "no specific complaints of symptoms or problems affecting the right arm or upper extremity were reported to her treating physicians<sup>2</sup>" is not in accordance with the medical records submitted, relying upon the July 10, 2012 medical report of Dr. Mininberg. Claimant's argument unnumbered at 3. Taking this statement in context with the immediate preceding paragraph, and with the rest of the paragraph on page 2, it is clear the ALJ was referring to the October 2, 2012 medical opinion of Dr. Mininberg where he noted any complaints of numbness and tingling had resolved. The ALJ did find Claimant had injured her neck, right shoulder and right arm at the beginning of the findings of fact. Prior to the statement pointed out by Claimant, the CO noted,

Over the course of treatment, while the Claimant reported symptoms of numbness and tingling, neck pain, with turning and twisting, pushing and pulling, and lifting, she was noted to demonstrate steady improvement. On physical examination objective findings were recorded of no spasms, full range of motion and mobility of the upper extremities, no radicular pain, instability or weakness, or wasting of the upper extremities, and an intact neurological examination of the upper extremities.

CO at 2.

A review of the treatment notes after July 10, 2012 supports the ALJ's conclusion. In discussing the medical reports, the CO stated,

By September 18, 2012 Dr. Mininberg recorded earlier reported findings of bilateral upper extremity numbness and tingling were improving, and that there continued to be no signs of radicular pain. On examination full range of motion and mobility of the cervical area and upper extremities was found, without pain, spasm, or instability, weakness or muscle wasting. CE 2.

In his final progress note of October 2, 2012, Dr. Mininberg reported any

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<sup>1</sup> As the CO awarded no permanent partial disability to the right arm, a finding we affirm, the issue of payment of interest on accrued benefits is rendered moot.

<sup>2</sup> CO at 2.

symptoms of numbness and tingling had abated, and there continued to be no radicular pain noted. Concluding, after a physical examination, that the Claimant had made significant improvement of the cervical spine from her work injury with full range of motion without pain or spasm, as well as of the upper extremities bilaterally, full mobility, range of motion, and an intact neurological examination, the Claimant was discharged from treatment. CE 2.

CO at 4.

It is clear the ALJ took into consideration all of the reports presented by the treating physician, including the report relied upon by Claimant in argument. We disagree with Claimant's reading of the medical reports.

Claimant next argues the ALJ's reliance on Dr. Gordon's opinion is in error as Dr. Gordon only evaluated Claimant's neck injury and ignored Claimant's contention that her disability is due to a combination of injuries to her neck, right shoulder and right arm. In discussing Dr. Gordon's opinion, the CO stated,

Dr. Gordon diagnosed the Claimant with a history of cervical strain, and recommended, based on his examination, that there was no evidence from review of medical records and radiological reports to indicate any further treatment was needed. He concluded that her neck area was still symptomatic, but she had no radicular complaints, and opined that she had reached maximum medical improvement. He further opined that there were no limitations on the Claimant's physical capacity, and that she had no condition related to the work injury to produce symptoms or affect endurance and function, nor any sign of weakness, atrophy, or any other objective findings on examination or radiographic studies.

CO at 6.

We disagree that Claimant's interpretation of the medical evidence is the only reasonable interpretation. We note that Claimant's chief complaint at the IME was her neck, which Dr. Gordon examined and evaluated. After having evaluated her neck and opining there was no radiculopathy, an opinion consistent with Dr. Mininberg's final assessment, Dr. Gordon opined not only did she not suffer from a permanent impairment to her neck because of the work injury, but did not suffer from any permanent impairment to any other body part. After analyzing Dr. Pabla's opinion, the ALJ credited the opinion of Dr. Gordon, finding his opinion "the most consistent with and supported by the evidence in the record". CO at 7. We affirm the ALJ's conclusion.

Claimant also takes issue with the ALJ's finding that Claimant was an incredible witness, stating this conclusion was unsupported and pointing to instances where Claimant asserts her testimony was consistent with the medical records. We note credibility determinations of an ALJ are accorded special deference. *Georgetown University v. DOES*, 830 A.2d 865, 870 (D.C. 2003). The ALJ found Claimant's testimony regarding the degree of her symptoms and problems, including the complaints to Dr. Pabla, inconsistent with the medical evidence submitted.

Considering the ALJ's thorough review of the medical evidence, the ALJ's observation of the Claimant's demeanor at the Formal Hearing, as well as the deference accorded to the fact finder on credibility issues, we will not substitute our judgment for that of the ALJ. Claimant's argument is rejected.

Finally, Claimant argues the CO's conclusions of law do not flow rationally from the findings, stating, "the ALJ's analysis considers only one side of the evidence and ignores the other side of the evidence instead of balancing it." Claimant's argument unnumbered at 4-5. We disagree. A review of the CO reveals the ALJ took into consideration Claimant's evidence, including thorough discussions of Dr. Mininberg's opinions as well as Dr. Pabla's IME, and Claimant's testimony in coming to the conclusion that Claimant did not suffer from any permanent partial disability to her right arm. We affirm the CO's ultimate conclusion the Claimant did not suffer from any permanent partial disability to her right upper extremity. Claimant is in essence asking us to weigh the evidence in her favor, a task we cannot do. We conclude the CO supported by the substantial evidence in this case. Stated another way, the CO is supported by such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Marriott, supra*.

#### CONCLUSION AND ORDER

The April 22, 2014 Compensation Order is AFFIRMED in part and REMANDED in part.

The conclusion the Claimant suffered no permanent partial disability to her right upper extremity is supported by the substantial evidence in the record and in accordance with the law, and is AFFIRMED.

We REMAND the case for further findings of fact and conclusions of law regarding the Claimant's request for an award of medically casually related medical expenses.

FOR THE COMPENSATION REVIEW BOARD:



HEATHER C. LESLIE  
*Administrative Appeals Judge*

August 14, 2013

DATE