COMPENSATION REVIEW BOARD

CRB No. 12-073

MARY MONDESTIN,
Claimant–Petitioner,

v.

COMPASS GROUP and GALLAGHER BASSETT SERVICES,
Employer/Carrier-Respondent.

Appeal from a Compensation Order by
The Honorable Linda F. Jory
AHD No. 12-009, OWC No. 673805

Ryan J. Foran, Esquire for the Petitioner
Julie D. Murray, Esquire for the Respondent

Before MELISSA LIN JONES, JEFFREY P. RUSSELL,[1] and LAWRENCE D. TARR *Administrative Appeals Judges*.

MELISSA LIN JONES, *Administrative Appeals Judge*, for the Compensation Review Board.[2]

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

Ms. Mary Mondestin was employed by Compass Group as a food service supervisor at American University. On August 10, 2010, Ms. Mondestin hyper-extended her right thumb while attempting to open a bag of lettuce.

Dr. H.S. Pabla, Ms. Mondestin's treating physician, diagnosed post-traumatic sprain (right wrist) and carpal tunnel syndrome. Compass Group disputed the causal relationship between Ms. Mondestin's carpal tunnel syndrome and her compensable accident, and the parties proceeded to a

[1] Judge Russell has been appointed a temporary CRB member pursuant to the Department of Employment Services' Director's Administrative Policy Issuance No. 12-01 (June 20, 2012).

[2] Jurisdiction is conferred upon the Compensation Review Board ("CRB") pursuant to D.C. Code §§32-1521.01 and 32-1522 (2004), 7 DCMR §250, *et seq*., and the Department of Employment Services Director's Directive, Administrative Policy Issuance 05-01 (February 5, 2005).

formal hearing for resolution of that issue as well as Ms. Mondestin's entitlement to permanent partial disability benefits.

On April 18, 2012, an administrative law judge ("ALJ") ruled Ms. Mondestin's carpal tunnel syndrome was not compensable. The ALJ awarded Ms. Mondestin 3% permanent partial disability of the right hand for her thumb injury.[3]

Ms. Mondestin argues the ALJ improperly gave deference to Dr. Keith A. Segalman's opinion over the opinion of Dr. Pabla because Dr. Segalman's opinion regarding the causal relationship between Ms. Mondestin's carpal tunnel syndrome and her work-related accident are too ambiguous to rebut the presumption of compensability. Ms. Mondestin, therefore, requests we reverse the April 18, 2012 Compensation Order.

In response, Compass Group asserts that Dr. Segalman's opinion is sufficient to rebut the presumption of compensability and that Dr. Pabla's opinion is not entitled to the treating physician preference because his opinion is vague, sketchy, and imprecise. Because it is supported by substantial evidence, Compass Group requests we affirm the Compensation Order.

ISSUES ON APPEAL

1. Is Dr. Segalman's opinion sufficient to rebut the presumption of compensability?

2. Did the ALJ properly apply the treating physician preference?

3. Is the April 18, 2012 Compensation Order supported by substantial evidence and in accordance with the law?

ANALYSIS[4]

Pursuant to §32-1521(1) of the Act, a claimant may be entitled to a presumption of compensability ("Presumption").[5] 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.[6] "[O]nce an employee offers evidence

[3] *Mondestin v. Compass Group*, AHD No. 12-009, OWC No. 673805 (April 18, 2012).

[4] 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, D.C. Code, as amended, §32-1501 *et seq*. (the "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).

[5] Section 32-1521(1) of the Act states, "In any proceeding for the enforcement of a claim for compensation under this chapter it shall be presumed, in the absence of evidence to the contrary: (1) That the claim comes within the provisions of this chapter."

[6] *Ferreira v. DOES*, 531 A.2d 651 (D.C. 1987).

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."[7] There is no dispute the ALJ appropriately ruled that the Presumption properly had been invoked.

Once the Presumption was invoked, it was Compass Group'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."[8] Only upon a successful showing by Compass Group would the burden return to Ms. Mondestin to prove by a preponderance of the evidence, without the benefit of the Presumption, her carpal tunnel syndrome arose out of and in the course of employment.[9]

To rebut the Presumption, the ALJ relied upon Dr. Segalman's opinion. Dr. Segalman performed a personal examination of Ms. Mondestin, reviewed the relevant medical records, and stated an unambiguous opinion contrary to the Presumption:

> As rebuttal evidence, employer submits the IME report and deposition testimony of Dr. Keith A. Segalman, orthopedic surgeon who specializes in upper extremities. Dr. Segalman examined claimant and Dr. Pablas's records including the EMG and opined:
>
> > I would state with a reasonable degree of medical certainty her carpal tunnel symptoms are not related to the injury at work. First, she is at high risk for it given her morbid obesity and the mechanism of injury would not support it. Likewise, she has evidence electrically of it present in both hands.
>
> EE 1 at 2. In keeping with the Court of Appeals guidance in *Washington Post v. District of Columbia Dep't of Employment Services and Raymond Reynolds, Intervenor*, 852 A.2d 909 (D.C. 2004), employer's evidence is sufficient to rebut the presumption when it is rendered by a qualified independent medical expert who, having examined the employee and reviewed the medical records, and [*sic*] renders an unambiguous opinion that the work injury no longer contributes to the disability. 214, 1219-20 (D.C. 2002).
>
> It is concluded that Dr. Segalman's opinion is unambiguous as well as specific and comprehensive enough to sever the potential connection between claimants's alleged right carpal tunnel symptoms disability and her employment with employer. *Reynolds, supra*. [10]

There is nothing ambiguous about Dr. Segalman's specific and comprehensive opinion that Ms. Mondestin's carpal tunnel syndrome is not caused by her compensable accident. Although Dr.

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[7] *Washington Hospital Center v. DOES,* 744 A.2d 992, 996 (D.C. 2000).

[8] *Waugh v. DOES,* 786 A.2d 595, 600 (D.C. 2001) (Citations omitted).

[9] See *Washington Hospital Center v. DOES,* 821 A.2d 898 (D.C. 2003).

[10] *Mondestin*, *supra,* at p. 3. (Emphasis added.)

Segalman lists other risk factors which may or may not have contributed to Ms. Mondestin's bilateral carpal tunnel syndrome, he repeatedly states her right carpal tunnel syndrome is not related to her injury at work, and pursuant to the *Reynolds* standard,[11] Substantial evidence in the record supports the finding that Dr. Segalman's opinion is sufficient to rebut the Presumption.

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;[12] however, the preference for the opinions of a treating physician is just that, a preference. Contrary to Ms. Mondestin's position that the preference must be given to the opinion of a treating physician when there is a reasonable dispute between two or more physicians regarding medical causal relationship,[13] the preference is not absolute, and when there are specific reasons for rejecting the opinion of the treating physician, the opinion of another physician may be given greater weight.[14]

Here, the ALJ determined a

> thorough review of Dr. Pabla's reports reveals that while he clearly diagnosed claimant with carpal tunnel syndrome in addition to the right thumb or "post-traumatic sprain ulnar collateral ligament", he has not expressed his opinion that the carpal tunnel problems were caused or aggravated by the ulnar collateral ligament sprain in any of the reports submitted by claimant at the formal hearing or in the supplemental report submitted post-hearing. As noted in the findings of facts herein, Dr. Pabla did state in the September 16, 2010 report that claimant had no predisposing factor except cumulative trauma disorder. Dr. Pabla does not provide further explanation, in his reports, as to what he was labeling as a disorder or what claimant was doing repetitively which could cumulatively cause trauma. While, he concluded his "treatment plan" by stating that claimant's normal job involves writing, typing and using the computer keyboard, the undersigned cannot fill in the gaps by assuming Dr. Pabla was of the opinion that claimant's typing or writing was so repetitive that it was the cause of her carpal tunnel symptoms.[15]

Thus, even assuming a diagnosis constitutes an imprecise opinion regarding causal relationship, when weighing the competing medical evidence, the ALJ gave specific examples of the inconsistencies in Dr. Pabla's testimony and rejected Dr. Pabla's opinions because

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[11] *Washington Post v. DOES*, 852 A.2d 909 (D.C. 2004)

[12] *Kralick v. DOES*, 842 A.2d 705, 712 (D.C. 2004).

[13] Memorandum of Law in Support of the Claimant/Appellant's Application for Review, p. 4.

[14] See *Butler v. Boatman & Magnani*, H&AS No. 84-348, OWC No. 044699 (Remand Order December 31, 1986) citing *Murray v. Heckler*, 624 F. Supp. 1156 (D.C. 1986).

[15] *Mondestin*, *supra*, at p. 4.

> Dr. Pabla's imprecise reports, contradictory testimony, and failure to support his cumulative trauma disorder diagnosis warrant disregard of his opinion in favor of Dr. Segalman's. Dr Segalman's opinion with regard to the causal relationship of claimant's carpal tunnel syndrome and the permanent effects of the thumb injury is [*sic*] afforded more weight than the treating physician's contradictory and unreasonable opinions.[16]

The ALJ provided specific reasons for rejecting Dr. Pabla's opinions. Those reasons are supported by the record, and we will not disturb the ruling on appeal.[17]

CONCLUSION AND ORDER

Dr. Segalman's opinion is sufficient to rebut the presumption of compensability, and the ALJ properly applied the treating physician preference. The April 18, 2012 Compensation Order is supported by substantial evidence, is in accordance with the law, and is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

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MELISSA LIN JONES
Administrative Appeals Judge

October 26, 2012
DATE

[16] *Id.* at p. 7.

[17] Ultimately, Ms. Mondestin requests we re-weigh the evidence in her favor. Such a request exceeds the authority of this tribunal. *Marriott*, *supra*.