

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA M. MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB 11-029

**MEHERET MELLESE,
Claimant-Petitioner,**

v.

**GLOBAL FUND FOR CHILDREN AND ZURICH AMERICAN COMPANY,
Employer and Insurance Carrier-Respondents.**

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2011 SEP 9 AM 11 10

Appeal from an Order by
Administrative Law Judge Amelia G. Govan
AHD No. 10-412, OWC No. 658405

Michael J. Kitzman for the Claimant
Charles J. O'Hara for the Employer and Insurance Carrier

Before LAWRENCE D. TARR, MELISSA LIN JONES, and HENRY W. MCCOY, *Administrative Appeals Judges*.

LAWRENCE D. TARR, *Administrative Appeals Judge*, for the Compensation Review Board.

DECISION AND ORDER

OVERVIEW

This case is before the Compensation Review Board (CRB) on the request of Meheret Mellese (claimant) for review of the March 9, 2011, 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 Order, the ALJ held that the claimant's current medical condition was not causally related to the claimant's September 2007 injury at work and denied the claimant's request for additional medical treatment. We affirm.

BACKGROUND FACTS OF RECORD

The claimant worked for the Global Fund for Children (employer) from September 2006 until March 2009 as an information technology manager. There is no dispute that in September 2007, the claimant was assigned to a project that required frequent use of a computer's keyboard and mouse. Within a week of starting this project, the claimant experienced discomfort in her right shoulder, both wrists and hands, and lower back.

The claimant was examined by Dr. April Barbour at the George Washington University Medical Faculty Associates on September 7, 2007. Dr. Barbour's office note reported the claimant was "coming in for 4 year history of lower back pain, right shoulder pain, and collapsed arches on both feet" and that the claimant attributed her pain to "repetitive motion at work.". (CE3).

The claimant was examined by a primary care physician, Dr. Jennifer Gorrellick on August 11, 2008, for "Chronic shoulder and lower back pain for yrs. But lately r shoulder much worse and l shoulder and back somewhat worse. Get worse throughout the day-and bad in bed." On August 15, 2008, Dr. Gorrellick's associate, Dr. Sumi M. Sexton, referred the claimant to chiropractor Dr. William Booker.

Dr. Booker reported on September 1, 2008 that the claimant's shoulder, neck, and back pain were made worse by prolonged sitting and computer work. Dr. Booker continues to treat the claimant.

The claimant began treating with the orthopedists at Phillips & Green, M.D., on November 2, 2009. Dr. Frederic L. Salter diagnosed chronic cervical strain, dorsal strain, lumbar strain, and chronic bilateral wrist tendonitis "Secondary to chronic overuse from her workstation" The claimant was examined by Dr. Green on December 3, 2009, Dr. Phillips on December 24, 2009, and discharged by Dr. Phillips on April 21, 2010.

In his final report of April 21, 2010, Dr. Phillips stated the claimant's chronic cervical lumbar strain was "a result of the injuries sustained on 9-7-07," that there was nothing he could do, and "The only [sic] I could suggest would be a chronic pain center which would hopefully be approved by compensation to get her into a chronic management program."

Dr. Mark J. Scheer examined the claimant for the employer on November 1, 2010. Dr. Scheer concluded that there "is no anatomic basis for her prolonged subjective complaints" and that there was "no temporal relationship between the claimant's current complaints and the work-related injury in September, 2007."

The evidence further established that shortly after the claimant began experiencing symptoms in September 2007, the employer hired an assistant for the claimant. The claimant testified that although having an assistant helped, she needed other assistance to effectively manage her workload. The claimant resigned in March 2009, having not missed any time from work for health-related reasons. The claimant has worked from home as a freelance information technology consultant since her resignation.

After a formal hearing, the ALJ issued her CO on March 9, 2011. The ALJ found the claimant was entitled to invoke the presumption that the onset of her symptoms in 2007 was caused by her work activities and that the employer's evidence did not rebut the presumption with respect to the onset of the claimant's symptoms.

The ALJ further held that as to the claimant's current condition, Dr. Scheer's opinion that the claimant's conditions had resolved and her current complaints were not related to the September 2007 injury was sufficient to rebut the presumption.

The ALJ then analyzed the evidence without the presumption and concluded the claimant had not met her burden of proof:

[T]he burden reverts to Claimant to prove, by the preponderance of the evidence, her entitlement to the medical benefits claimed. (Citation omitted). The evidence of record does not support said entitlement, in that no recent medical opinion relates Claimant's current complaints to the 2007 project which aggravated her underlying condition when she was working for Employer. There is no persuasive medical evidence, for the period following Claimant's last chiropractic session on October 31, 2010, that any need for medical attention is related to the 2007 work situation.

CO at 6.

The ALJ then decided the controversy concerning the nature and extent of the claimant's disability. The ALJ correctly noted that there is no presumption regarding nature and extent and that the opinions of the claimant's treating physicians are entitled to an evidentiary preference.

The ALJ analyzed the evidence with respect to the shifting burdens described in *Logan v. DOES*, 509 A. 2d 1350 (D.C. 2002) and concluded that the aggravation of the claimant's preexisting orthopedic condition by the September 2007 accident at work resolved by October 21, 2010 and that the employer was not liable for any medical treatment after that date:

Claimant herein has not demonstrated inability to perform her current job. Claimant, through her testimony and the medical evidence presented, has also failed to establish total disability or the need for further medical treatment from October 31, 2010 to the present and continuing.

CO at 7

The ALJ entered an award finding the claimant entitled to reimbursement for medical treatment for her causally related orthopedic symptoms prior to October 31, 2010 (the date of her last visit with Capital Rehab Physical Therapy) and denied her claim for ongoing medical benefits, after October 31, 2010.

The claimant timely appealed the ALJ's determinations that she is not entitled to reimbursement for her medical expenses after October 31, 2010, and that her medical condition resolved by that date.

The claimant makes two challenges to the ALJ's finding with respect to the nature and extent of her disability. The claimant first argues that the ALJ erred in discussing the nature and extent of her disability because the claimant did not request indemnity benefits. The claimant further asserts that the ALJ's decision was wrong in determining that the claimant was not disabled.

THE STANDARD OF REVIEW

The scope of review by the CRB is 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* District of Columbia Workers' Compensation Act of 1979, D.C. Code, as amended, §32-1501 *et seq.* at §32-1521.01(d) (2) (A) of the ("Act") and *Marriott International v. DOES*, 834 A.2d 882 (D.C. 2003).

Consistent with this standard of review, the CRB must uphold a Compensation Order that is supported by substantial evidence, even if there is substantial evidence in the record to support a contrary conclusion, and even where the CRB might have reached a contrary conclusion. *Id.* at 885.

ANALYSIS

In finding that the claimant's medical treatment after October 31, 2010 was not causally related to the September 2007 work assignment, the ALJ properly analyzed the evidence with respect to the three-step burden shifting scheme; 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. Once the presumption of compensability is invoked, it is the employer'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." Upon a successful showing by the employer does the burden return to the claimant to prove by a preponderance of the evidence, without the benefit of the presumption of compensability, the injuries arise out of and in the course of employment.

The claimant challenges the ALJ's decision with respect to the third step—that without the benefit of the presumption the claimant did not prove by a preponderance of the evidence that her medical treatment after October 31, 2010, was causally related to the September 2007 injury at work. The claimant argues that the ALJ erred by not accepting the opinion of her treating physician at Phillips & Green, M.D. that she required a chronic management program. We disagree.

In our jurisdiction, there is a well-established preference for the opinion of a treating physician. *Stewart v. DOES*, 606 A.2d 1350, 1353 (D.C. 1992) However, 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. *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).

The ALJ found Dr. Scheer's opinion "thorough and comprehensive" and stated other reasons for not favoring the opinion of the claimant's treating doctors:

The evidence of record does not support said entitlement, in that no recent medical opinion relates Claimant's current complaints to the 2007 project which aggravated her underlying condition when she was working for the employer. There is no persuasive medical evidence for the period following Claimant's last

chiropractic session on October 31, 2010, that any need for medical attention is related to the 2007 work situation.

CO at 6.

Thus, the ALJ provided specific reasons for decision and we will not disturb her rulings on appeal.

The claimant also challenges the ALJ's decision regarding the nature and extent of her disability. The ALJ held

The aggravation of Claimant's underlying orthopedic condition has resolved, with no remaining disability related to the aggravation. There is no persuasive medical opinion to indicate otherwise.

CO at 7.

The ALJ accepted Dr. Scheer's opinion that the claimant's condition had resolved and, as previously discussed, this decision is supported by substantial evidence in the record.

The claimant argues that the ALJ erred by deciding any issues relating to the nature and extent of her disability because she did not request indemnity benefits. However, at the formal hearing, claimant's attorney specifically agreed that the ALJ should decide the nature and extent of the claimant's disability. HT at 7, in the context of the three issues in dispute that were identified at the hearing.

CONCLUSION AND ORDER

The March 9, 2011, Compensation Order is supported by substantial evidence and is in accordance with the law. It is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:


LAWRENCE D. TARR
Administrative Appeals Judge

3/9/2011
Date