GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR

LISA M. MALLORY
INTERIM DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 11-029(R)

MEHERET MELLESE,
Claimant,
v.

GLOBAL FUND FOR CHILDREN AND ZURICH AMERICAN COMPANY,
EMPLOYER and INSURER.

Upon Remand from the District of Columbia Court of Appeals,
DCCA No. 11-AA-1262,
AHD No. 10-412, OWC No. 658405

Michael J. Kitzman, Esq., for the Claimant
Mark W. Bertram, Esq., for Employer and Insurer

Before: LAWRENCE D. TARR, HENRY M. MCCOY, AND MELISSA LIN JONES, *Administrative Appeals Judges*

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

DECISION AND REMAND ORDER

INTRODUCTION

This case is before the Compensation Review Board (CRB) on the June, 4, 2012, decision by the District of Columbia Court of Appeals (DCCA), *Mellese v. DOES*, No. 11-AA-1262, reversing and remanding the Compensation Review Board's Decision and Order, *Mellese v. Global Fund For Children*, CRB 11-029, AHD No. 10-412, OWC No. 658405 (September 9, 2011)..

BACKGROUND FACTS AND PROCEDURAL HISTORY

The claimant, Meheret Mellese, worked for the employer, Global Fund For Children, as an information technology manager. In September 2007, the claimant was working on a project for the employer that required her to frequently use a computer and mouse for data entry. After doing this work for about one week, the claimant developed pain in her right shoulder, both wrists and hands, and her lower back. The claimant received medical treatment for her discomfort and the employer provided her with additional assistance at work. Despite the additional assistance, the claimant resigned in March 2009 and has worked from her home as a freelance information technology consultant since then.

From November 2, 2009, until discharged on April 21, 2010, the claimant was treated four times by the physicians at Phillips & Green, M.D. The claimant was discharged by Dr. Phillips, who wrote on April 21, 2010, in his final report that Ms. Mellese had a chronic cervical and lumbar strain. Dr. Phillips also said

> There is nothing that I can do for her orthopedically. The only [thing] I could suggest would be a chronic pain center which would hopefully be approved by compensation to get her into a chronic [pain] management program.

The employer had the claimant evaluated for an IME by Dr. Scheer on November 1, 2010. Dr. Scheer reported 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."

It should also be noted that both before and after her treatment at Philips & Green, M.D. the claimant received chiropractic treatment form Dr. William Booker, D.C. The last chiropractic session before the evidentiary hearing was on October 31, 2010.

In the Compensation Order issued on March 9, 2011, the ALJ noted that Dr. Phillips had recommended the claimant enter a pain management program but held that the evidence proved that any medical care needed after October 31, 2010, (the date of the last chiropractic session) was not causally related to the work injuries. Therefore, the ALJ held the employer liable for causally related medical expenses through October 31, 2010, and denied the claimant's request for payment of future treatment such as the pain management program.

In reaching her decision the ALJ found the claimant was entitled to invoke the presumption with respect to her current complaints and that the employer, by Dr. Scheer's opinion that the claimant's conditions had resolved and her current complaints were not related to the September 2007 injury, had rebutted the presumption. The ALJ then analyzed the evidence without the presumption and concluded the claimant had not met her burden of proof.

The CRB affirmed the ALJ's Compensation Order:

> 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 complains 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.

Mellese v. Global Fund For Children, CRB 11-029, AHD No. 10-412, OWC No. 658405 (September 9, 2011).

The DCCA vacated and remanded. *Mellese v. DOES*, No. 11-AA-1252 (June 4, 2012). The DCCA held:

> The CRB found that the ALJ satisfied its requirement to provide "specific and legitimate reasons" for rejecting the treating physician preference by holding that a non-treating physician's report was "thorough and comprehensive" and providing a general statement that there was no recent persuasive medical evidence. To the extent that the ALJ found that there was no recent medical evidence which supported a current injury related to the 2007 project the legal conclusions do not flow rationally from the facts…The only reasonable reading of (Dr. Phillips April 2010 report) is that his recommendation to continue treatment through chronic pain management is related to his treatment of the injuries which resulted from the workplace injury.
>
> Further, simply finding that a non-treating physician's report is "thorough and comprehensive" is not sufficient to provide the necessary "specific and legitimate reasons" to reject the treating physician preference…
>
> As the CRB's conclusion that the ALJ provided specific reasons for rejecting the treating physician preference did not flow rationally from the evidence to which it is cited, "we cannot be confident that [the ALJ] properly considered [the chronic pain management recommendation] in coming to a decision.

Id. (footnotes and internal citations omitted).

Therefore, we must remand this case to the Office of Hearings and Adjudication.

On remand the ALJ, when weighing the evidence without the presumption, should give proper evidentiary weight to the treating physician preference. In the event the ALJ decides not to accept the treating physician's opinion, the ALJ should identify specific and legitimate reasons for rejecting the treating physician's opinion and, if appropriate, explain how the competing medical opinion accepted by the ALJ is more thorough and comprehensive.

ORDER

This case is remanded to the Hearings and Adjudication Section, Office of Hearings and Adjudication for further proceedings that are consistent with this decision and the decision of the DCCA.

FOR THE COMPENSATION REVIEW BOARD:

_____
LAWRENCE D. TARR
Administrative Appeals Judge

July 26, 2012
DATE