

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Department of Employment Services

MURIEL BOWSER  
MAYOR



DEBORAH A. CARROLL  
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 15-137

MILLARD MOODY, JR.,  
Claimant-Respondent,

v.

PROVIDENCE HOSPITAL and  
SEDGWICK CLAIMS MANAGEMENT SERVICES,  
Employer/Third-Party Administrator-Petitioner.

Appeal from a July 31, 2015 Compensation Order on Remand by  
Administrative Law Judge Amelia G. Govan  
AHD No. 14-334, OWC No. 712010

DEPT. OF EMPLOYMENT  
SERVICES  
COMPENSATION REVIEW  
BOARD  
2016 JAN 21 PM 1 32

(Decided January 21, 2016)

Michael D. Dobbs for the Claimant  
Zachary I. Shapiro for the Employer

Before HEATHER C. LESLIE, LINDA F. JORY, and JEFFREY P. RUSSELL, *Administrative Appeals Judges*.

HEATHER C. LESLIE for the Compensation Review Board.

**DECISION AND ORDER**

FACTS OF RECORD AND PROCEDURAL HISTORY

Claimant has a history of neck and back problems, but he stopped treating for back problems in 2010. Claimant was performing his full duties as an operation manager for the Employer until January 17, 2013 when he re-injured his neck and back lifting bulk mail.

A dispute arose over Claimant's entitlement to medical treatment (physical therapy, pain management, and surgery) as well as payment of outstanding medical bills. A full evidentiary hearing took place to determine if there is a causal relationship between Claimant's post-April 8, 2014 back conditions and his work-related injury and if the requested medical treatment is reasonable and necessary.

In a Compensation Order (CO) dated October 17, 2014, an administrative law judge (“ALJ”) ruled Claimant’s back symptoms are compensable. The ALJ also ruled the treatment requested is reasonable and necessary.

Employer appealed. In a Decision and Remand Order (DRO) issued March 25, 2015, the CRB remanded the case, determining the ALJ erred in not considering contradictory statements apparent in Dr. Warren Yu’s opinions when addressing whether Claimant’s current conditions were related to the January 2013 work injury or an earlier 2008 work injury, specifically pointing the ALJ to the April 23, 2013 report. The CRB also determined the ALJ erred in not addressing Dr. Michael Goldman’s utilization review (UR) when determining the reasonableness and necessity of Claimant’s requested medical treatment. The CRB concluded:

Because the ALJ failed to address Dr. Yu’s contradictory opinions regarding causal relationship, the ALJ’s ruling that Mr. Moody’s current symptoms are causally related to his compensable accident is not supported by substantial evidence. In addition, because the ALJ did not consider Dr. Michael Goldman’s utilization review report when analyzing the issue of the reasonableness and necessity of medical treatment, the ALJ’s ruling that Mr. Moody is entitled to his claim for relief is not supported by substantial evidence. The October 17, 2014 Compensation Order is not in accordance with the law and is VACATED. This matter is remanded for further consideration consistent with this Decision and Remand Order.

DRO at 5.

A Compensation Order on Remand (COR) was issued on July 31, 2015. In that COR, the ALJ determined Dr. Yu’s reference to the 2008 work injury in his April 23, 2013 report was “semantic rather than material; his one-sentence historical note is not a medical, or legal, conclusion regarding medical causation.” COR at 6-7. The ALJ also considered Dr. Michael Goldman’s UR opinion. The ALJ found Dr. Goldman’s opinion unpersuasive. The ALJ granted Claimant’s claim for relief, concluding:

Claimant's current back condition is medically related to his January 17, 2013 work accident. The medical testing, surgery and treatment recommended by Claimant's consulting physicians is reasonable and necessary to the course of his recovery from the January 2013 work injury.

COR at 8.

Employer appealed on August 28, 2015. Employer argues the COR is unsupported by the substantial evidence in the record and not in accordance with the law as the ALJ conflated Claimant’s neck and back condition. Specifically, Employer argues Dr. Yu does medically causally relate Claimant’s back condition to the January 2013 injury, misstates the medical evidence in the record, and the ALJ erred in not analyzing the opinion of Dr. Dhruv Pateder.

Claimant opposed the Application for Review on September 18, 2015. In the cover letter accompanying the Application, Claimant’s counsel noted that it did not receive the Employer’s

Application in the mail and had only been apprised of the appeal when the CRB issued a Notice of Application for Review on August 31, 2015. Employer moved to strike Claimant's opposition as untimely filed on September 22, 2015. Employer argued it served Claimant's counsel with a copy of the appeal via first class mail, and upon request of counsel, faxed the application for review on September 8, 2015, leaving time for counsel to timely file his opposition by September 14, 2015. Claimant responded to Employer's motion, arguing Employer failed to serve Claimant's counsel with the appeal, pointing to the certificate of service which did not include the zip code of counsel's office and reasserted Claimant's counsel only became aware of the appeal on September 8, 2015. Employer responded on October 8, 2015, arguing that it had served Claimant counsel with the appeal, attaching records showing an attempted delivery, but that counsel had failed to pick up the application from the United States Postal Service.

#### ANALYSIS<sup>1</sup>

Preliminarily, we address Employer's Motion to Strike Claimant's Opposition. Employer argues Claimant's opposition was untimely filed pursuant to 7 DCMR § 258.8, as the opposition was filed more than 15 days after the Application for Review was filed on August 28, 2015.. Claimant responds by stating Claimant was unaware of Employer's appeal until it received notice from the CRB that an appeal had been filed.

A review of the administrative file reveals that Notice of Application for Review issued on August 31, 2015, states:

Employer filed an Application for Review with the Compensation Review Board in the above-entitled case on August 28, 2015. Any opposition to the Application shall be filed with the Clerk of the Board within fifteen (15) calendar days from the filing date of the Application for Review, after which this appeal will be assigned to a three-judge panel of the Board for review and disposition.

Fifteen calendar days from August 28, 2015 is September 12, 2015. As September 12, 2015 fell on a Saturday, Claimant's opposition was due on Monday, September 14, 2015. Claimant was aware of the Application for Review on Tuesday, September 8, 2015.

The parties focus on whether or not Employer properly served Claimant with the Application for Review. We conclude that Employer did serve Claimant, through the United States Post Office with the Application for Review. For an unknown reason, Claimant's counsel did not receive the appeal through the mail. Claimant's counsel received the appeal via email on September 8, 2015. However, Claimant's counsel was aware of the Notice of Application for Review and the time allowed for the filing of an opposition. Claimant's counsel did not file a Motion to Extend the Time

---

<sup>1</sup> The scope of review by the CRB 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 and this review panel 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.

to File an Opposition or appraise the CRB in any way that an opposition would be filed, albeit late due to circumstances beyond its control. For this reason, we grant Employer's Motion to Strike Claimant's opposition. Claimant's arguments in opposition to the appeal will not be considered.

Turning to Employer's appeal, Employer argues the ALJ erred in conflating the lumbar and cervical spinal injuries, pointing to the ALJ's quote of Dr. Yu's March 21, 2013 report. Employer urges that as the ALJ misstated the medical opinion of Dr. Yu and concluded Dr. Yu's opinion supported Claimant's back pain to be of two month duration, the COR is not supported by the substantial evidence in the record or in accordance with the law. We disagree.

We do not read the ALJ's summary of Dr. Yu's March 21, 2015 medical report as conflating the neck and back conditions. Dr. Yu's report, quoted by the ALJ, is very explicit that Claimant has neck and back pain. In the summary section of the report, Dr. Yu does state Claimant has "two separate issues" with the cervical complaints to be the more prominent problem. Claimant's exhibit 5 at 11. While the sentence "he has had symptoms for about two months" appears when Dr. Yu is discussing Claimant's neck pain, taking this statement in context and considering the whole report is it clear Dr. Yu is more concerned with the cervical spine at that time. We also note that the ALJ took into consideration Dr. Yu's opinions in conjunction with Claimant's credible testimony of his back pain after the January 2013 injury. As the ALJ stated:

The record medical reports support the existence of a medical causal connection between Claimant's current spinal symptoms, which include radiculopathy radiating into his lower extremities, and his most recent work injury. In this case, there is no reason to reject Claimant's credible testimony, combined with the medical conclusions of Claimant's treating physicians, regarding his lumbar symptoms and their causal connection with the 2013 work accident. Any seeming contradiction in treating physician Yu's causation opinion is semantic rather than material; his one-sentence historical note is not a medical, or legal, conclusion regarding medical causation.

Claimant's position regarding causation is cogent and consistent with the Act, the record evidence and with the most applicable case precedent. The opinions attributing his current condition to causes which pre-date the January 2013 work accident, which aggravated those conditions, are rejected. At this juncture, Employer is responsible for the requested medical benefits. See *Logan, supra.*; *Smith, supra.*; *Warmack v. Fischback & Moore Electric*, CRB No. 03-159 (July 22, 2005); *Negussie v. DOES*, 915 A.2d 391 (D.C. 2007).

COR at 6-7.

Employer's argument on this point is rejected.

We also don't agree that the ALJ misstated Dr. Damirez Fossett's opinion and "converted" the injury to the cervical spine into an injury to the lumbar spine. Contrary to Employer's argument that Dr. Fossett does not mention any complaints or recent injury to the lumbar spine, Dr. Fossett does specifically mention a work-related injury which happened at work in the history section of his

report. Claimant's exhibit 5 at 17. His diagnosis also includes one of back pain. Claimant's exhibit 5 at 19.

Employer further argues that as Dr. Yu was not "instructive" with respect to the Claimant's causal relationship of the lumbar conditions, Dr. Yu's opinion should be rejected. Employer also argues that the reports of Dr. Leonid Selya, Dr. Paul Asdorian, and Dr. Edward Aluisi are silent as to whether Claimant's lumbar condition is medically causally related to the work accident of January 2013. Moreover, Employer argues that the opinion of Dr. Cohen should be credited in favor of Dr. Yu. We disagree.

The ALJ found no reason to reject the opinion of the treating physicians, Dr. Yu and Dr. Fossett in favor of the Employer's physicians. COR at 6. We are mindful that it is only with respect to the rejection of the treating physician's opinions, does the ALJ have to specify specific reasons for doing so. See *Short v. DOES*, 723 A.2d 845 (D.C. 1998); see also *Stewart v. DOES*, 606 A.2d 1350 (D.C. 1992). The ALJ does not have to give reasons for not rejecting the opinion of the treating physician. It is clear the ALJ accorded the opinion of Dr. Yu and Dr. Fossett the treating physician preference accorded in the District of Columbia. We reject Employer's argument.

We also reject the Employer's argument that the COR is unsupported by the substantial evidence as it did not consider the opinion of Dr. Pateder and that he did not medically causally relate Claimant's lumbar condition to the work-related accident. Quite simply, the ALJ did acknowledge Dr. Pateder's opinion, finding:

In March of 2013, orthopedic IME Dhruv Pateder, M.D. opined that there was no causal relationship between Claimant's current symptoms and his 2013 work injury. He further opined that he would recommend no further treatment beyond physical therapy. RX 2. In May of 2013 Dr. Aulisi recommended against any surgical intervention but opined that a lumbar epidural block would be prudent. ex 6, p. 23.

COR at 4.

As we are affirming the ALJ's conclusion that Claimant's lumbar injury is medically causally related to the work injury, we need not address Employer's assertion that "if the Claimant's current lumbar complaints are found to be unrelated to the subject claim, then the Administrative Law Judge's opinion regarding reasonableness and necessity of medical treatment to the lumbar spine must be reconsidered pursuant to the UR of Dr. Goldman." Employer's argument at 15.

The ALJ took into consideration the totality of the evidence, including Claimant's credible testimony regarding his back condition both before and after the January 2013 injury, and determined Claimant's back condition was medically casually related to the work injury. We affirm this conclusion. What Employer is asking us to do in argument is to reweigh the evidence in its favor, a task we cannot do. The CRB is tasked with affirming 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. *Marriott, supra*. Such is the case here.

**CONCLUSION AND ORDER**

The July 31, 2015 Compensation Order on Remand is supported by the substantial evidence in the record and in is in accordance with the law. It is **AFFIRMED**.

*So ordered.*