

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 16-069

**NEPTUNE O. CARRINGTON,
Claimant-Respondent,**

v.

**DISTRICT OF COLUMBIA PUBLIC SCHOOLS,
Self-Insured Employer-Petitioner.**

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2016 OCT 19 AM 11 52

Appeal from an April 21, 2016 Compensation Order on Remand
by Administrative Law Judge Nata K. Brown
AHD No. PBL 12-041, DCP No. 30100942563-0001

(Decided October 19, 2016)

Andrea G. Comentale for Employer¹
Krista N. DeSmyter for Claimant

Before GENNET PURCELL, JEFFREY P. RUSSELL, and LINDA F. JORY, *Administrative Appeals Judges.*

GENNET PURCELL for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

In a prior Decision and Remand Order the Compensation Review Board (“CRB”) described the history of the claim and prior orders as such:

On September 14, 2010, Ms. Neptune O. Carrington worked for the District of Columbia Public Schools (“Employer”) as a bus operator. On that day, Ms. Carrington’s bus broke down. When a tow-truck driver was securing the bus, he asked Ms. Carrington to remain in the bus to push the brake and to put the bus in neutral. Ms. Carrington was sitting in the driver’s seat while the bus was being

¹ Eric A. Huang appeared before the on behalf of Employer at the formal hearing before the Administrative Hearings Division and on the briefs in prior appeals before the Compensation Review Board.

lifted. A cable snapped; the bus crashed to the ground; and Ms. Carrington injured her left knee.

Ms. Carrington first sought treatment at Providence Hospital where she was diagnosed with a left leg contusion. She was held out of work until September 20, 2010.

Dr. Christopher M. Magee examined Ms. Carrington on October 13, 2010 at Employer's request. Dr. Magee requested permission from Ms. Carrington's obstetrician for a hip x-ray; he also prescribed Darvocet N-100 and continued to certify Ms. Carrington as unable to work.

Almost 3 weeks after Ms. Carrington delivered her baby, Dr. Magee examined her again. Dr. Magee recommended an MRI of Ms. Carrington's lumbar spine and an MRI of Ms. Carrington's left knee; he prescribed Naprosyn 500 and did not release Ms. Carrington to work.

Ms. Carrington continued to treat with Dr. Magee. She eventually underwent arthroscopy of her left knee, physical therapy, a Cortisone injection, and left knee manipulation under anesthesia.

Employer sent Ms. Carrington to Dr. Randall J. Lewis for an independent medical evaluation on December 19, 2011. Dr. Lewis opined Ms. Carrington could return to work as a bus driver with limitations and issued a Return to Work Preliminary Report releasing Ms. Carrington to light duty on December 20, 2011.

In December 2011, Ms. Carrington was seen for post-manipulation follow-up with Dr. Zohar X. Alam. Dr. Alam prescribed Naprosyn 500 and Percocet 5/325.

On January 19, 2012, Dr. Alam agreed with Dr. Lewis' opinions as set forth in his independent medical evaluation report. At that time, Dr. Alam also prescribed more physical therapy.

After 2 sessions, payment for Ms. Carrington's physical therapy was cut-off by the Office of Risk Management, and she was no longer authorized to treat with Dr. Alam. As a result, Ms. Carrington sought additional treatment for her knee complaints from Dr. Torrie Robinson, her primary care physician; Dr. Robinson referred Ms. Carrington to pain management, physical therapy, an orthopedic surgeon, and a psychiatrist.

Ms. Carrington could not get an appointment with the pain management specialist Dr. Robinson had recommended so she sought treatment with Dr. Netsere Tesfayohannes, an anesthesiologist. Dr. Tesfayohannes prescribed Percocet 10/325 and Skelaxin. The Percocet alleviated Ms. Carrington's knee pain, but it made her drowsy and incoherent; the Skelaxin made her dizzy and nauseated.

On May 8, 2012, Employer sent Ms. Carrington a letter advising her that a modified duty position had been created for her and that she was to report to the Parent Call Center on May 16, 2012. Before she reported to work, Ms. Carrington typed a letter to the supervisor, Ms. Kim Davis; the letter listed Ms. Carrington's medications and the effects they have on her.

When Ms. Carrington reported to the light duty position, "[s]he was still taking the medications prescribed to her by Dr. Tesfayohannes, which made her sleepy and drowsy, and prevented her from performing all of the requirements of the job." Ms. Davis witnessed Ms. Carrington sleeping on the job, and by the third day, Ms. Davis arranged a telephone call with Mr. Drew Morton, Human Resources Specialist. During that call, Ms. Carrington told Mr. Morton about her medications. She left work after that call and did not return.

Ms. Carrington's benefits were terminated on June 1, 2012, and she requested a formal hearing to adjudicate her entitlement to ongoing wage loss benefits as well as authorization for medical treatment. In a Compensation Order dated June 24, 2013, an administrative law judge ("ALJ") granted Ms. Carrington's claim for relief because Ms. Carrington was unable to perform the light duty job.

Carrington v. District of Columbia Public Schools, CRB No. 13-093 (August 29, 2013) at 1-3.

The CRB affirmed the June 24, 2013 Compensation Order ("CO") issued by the Administrative Hearings Division ("AHD") on August 29, 2013, holding that substantial evidence in the record supported the administrative law judge's ("ALJ") finding that Claimant was unable to perform light duty as a result of the effects of medication prescribed to treat her work-related injury and thus, the conclusion that the modified duty position did not qualify as suitable, alternative employment was in accordance with the law. *Id.* at 9.

Employer appealed. In its review, the District of Columbia Court of Appeals ("DCCA") identified three (3) "key questions" the record left unanswered concerning Dr. Tesfayohannes' treatment of Claimant. The DCCA held that the ALJ did not know the answers to these key questions in rendering her decision and remanded the CO as a result. Those questions were:

- what records or information Dr. Tesfayohannes had been furnished about the treatment claimant received from previous physicians, including the level of pain management they provided and its relative success;
- what knowledge the doctor acquired, if any, of claimant's simultaneous treatment and medication by the psychiatrist; and
- whether Dr. Tesfayohannes was informed of claimant's physical effects from the Percocet 10/325 and psychiatric medicine in combination, such that he was able to consider prescribing alternative and less disabling pain medication before claimant ceased doing her light-duty job.

District of Columbia Public Schools, v. DOES and Neptune Carrington, No. 13-AA-1052, Mem. Op. & J. (D.C. December 19, 2014).

Holding that the CRB's August 29, 2013 decision affirming the June 24, 2013 CO was not supported by substantial evidence, the DCCA remanded the case for a reopening of the record. AHD was ordered to permit Claimant to supplement the record with medical records or testimony of Dr. Tesfayohannes. *Carrington v. District of Columbia Public Schools*, CRB No. 13-093(R), (January 14, 2016)

Pursuant to the DCCA's remand, AHD issued a March 4, 2016 order instructing Claimant to obtain additional medical evidence supporting her claim for benefits. On March 25, 2016, pursuant to AHD's order, Claimant submitted a narrative report consisting of seven (7) questions and responses written by Dr. Tesfayohannes (the "Narrative Report").

On April 21, 2016, the ALJ issued a Compensation Order on Remand ("COR") concluding that the increased prescription of Percocet was medically necessary to manage Claimant's knee injury pain, and that the side effects of Percocet were "disabling on its own". The COR concluded Claimant was temporarily totally disabled and was entitled to the benefits awarded in the June 24, 2013 CO.

Employer timely appealed the COR to the CRB by filing an Application for Review and Petitioner's Memorandum of Points and Authorities in Support of its Application for Review ("Employer's Brief") seeking reversal of the COR and asserting the COR, is not based on substantial evidence or otherwise in accordance with the applicable law. Employer's Brief at page 15.

Claimant opposed Employer's appeal by filing Claimant's Opposition to Application for Review ("Claimant's Brief"). In her opposition, Claimant asserted the COR is supported by substantial evidence and should be affirmed.

ISSUES ON APPEAL

Whether Claimant presented medical evidence to show that her inability to perform light-duty work for Employer in May 2012 was casually related to medical treatment for pain related to the work-related knee injury.

ANALYSIS²

² The scope of review by the CRB as established by the District of Columbia Workers' Compensation Act ("Act") and as contained in the governing regulations is limited to making a determination as to whether the factual findings of a Compensation Order on appeal are based upon substantial evidence in the record, and whether the legal conclusions drawn from those facts flow rationally from those facts and are otherwise in accordance with applicable law. D.C. Code §32-1521.01(d)(2)(A). "Substantial evidence" as defined by the District of Columbia Court of Appeals ("DCCA"), is such evidence as a reasonable person might accept to support a particular conclusion. *Marriott Int'l. v. DOES*, 834 A.2d 882 (D.C. 2003) ("Marriott"). Consistent with this scope of review, the CRB is also bound to uphold 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 the members of the CRB review panel considering the appeal might have reached a contrary conclusion. *Marriott*, 834 A.2d at 885.

Employer asserts that the ALJ erred in concluding that Claimant presented sufficient evidence to show that her increased use of Percocet as prescribed by Claimant's pain physician Dr. Tesfayohannes, was medically necessary to manage the pain from her knee injury, and the side effects therefrom, were "disabling on its own". COR at 6.

On remand, the DCCA was specific about the evidentiary questions left unanswered in the record. The DCCA also determined that in order to fill those medical evidentiary gaps in the record, and in order for the ALJ to determine the contested issue of causation those answers were required. Without those answers, the court concluded no sustainable award was possible.

Specifically, the court asked:

1. What did Dr. Tesfayohannes know about Claimant's prior medical treatment from other doctors for this condition?
2. What did Dr. Tesfayohannes know about Claimant's co-incidental, unrelated psychiatric treatment and medication; and
3. Did Dr. Tesfayohannes know about "Claimant's physical effects from Percocet in combination with her psychiatric meds"; and
4. In light of what Dr. Tesfayohannes knew about the possible adverse reactions between Percocet and the psychiatric meds, did Dr. Tesfayohannes, or was Dr. Tesfayohannes able, to consider alternate, less disabling medication than Percocet?

Although Claimant submitted the Narrative Report, the inquiry from Claimant's counsel to Dr. Tesfayohannes only asked one of the specific DCCA questions, question number 7, which read as follows:

"Is there any contraindication in the medication you recommended and the medication that Dr. Bergina Isabell prescribed for Ms. Carrington's psychiatric treatment? Please see enclosed medicals."

COR at 5.

We do not know what medicals were enclosed, but that is of no consequence, since Dr. Tesfayohannes did not answer question 7 at all. The Narrative Report, albeit instructive as to the duration and specificity of pain medication Dr. Tesfayohannes provided to Claimant, is wholly unresponsive to the gaps in evidence identified by the DCCA. When specifically requested to opine on the possibility of a contraindication in the medication he recommended and the medication Dr. Isabell prescribed, Dr. Tesfayohannes declined to do so. In light of this, the COR cannot, as a matter of law, satisfy the court's remand mandate, by which we are bound. The evidentiary gaps remain; Dr. Tesfayohannes does not appear to possess the pertinent information the court seeks. We have no choice but to reverse the decision and vacate the award.

CONCLUSION AND ORDER

The finding that the increase of the strength of Percocet was medically necessary to manage Claimant's knee injury pain, and is disabling on its own, is not supported by substantial evidence in the record. The Compensation Order on Remand is not supported by substantial evidence in the record nor in accordance with the law and is, REVERSED. The award of temporary total disability benefits, from May 23, 2012 to the present and continuing and for causally related medical benefits is, VACATED.

So ordered.