

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**Department of Employment Services**

VINCENT C. GRAY  
MAYOR



LISA MARÍA MALLORY  
DIRECTOR

**COMPENSATION REVIEW BOARD**

**CRB No. 13-079**

**PATSY PARKER,  
Claimant–Respondent,**

**v.**

**HOWARD UNIVERSITY HOSPITAL and SEDGWICK CMS,  
Employer/Carrier–Petitioner**

Appeal from a May 31, 2013 Compensation Order by  
Administrative Law Judge Amelia G. Govan  
AHD No. 11-044A, OWC No. 668948

DEPT. OF EMPLOYMENT  
SERVICES  
COMPENSATION REVIEW  
BOARD  
2013 OCT 29 AM 11 57

Krista N. DeSmyter, Esquire, for the Respondent  
Michael H. Daney, Esquire, for the Petitioner

Before: HENRY W. MCCOY, HEATHER C. LESLIE, and JEFFREY P. RUSSELL, *Administrative Appeals Judges*.

HENRY W. MCCOY, *Administrative Appeals Judge*, for the Compensation Review Board.

**DECISION AND ORDER**

**BACKGROUND AND FACTS OF RECORD**

This appeal follows the issuance on May 31, 2013 of a Compensation Order (CO) from the Hearings and Adjudication Section in the District of Columbia Department of Employment Services (DOES). In that CO, the Administrative Law Judge (ALJ) awarded Claimant temporary total disability benefits from January 11, 2013 to the present and continuing and causally related medical expenses.<sup>1</sup>

Claimant was working for Employer as a precertification specialist (admissions clerk) on March 11, 2010 when a patient became confrontational forcing her to move backward and strike

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<sup>1</sup> *Parker v. Howard University Hospital*, AHD No. 11-044A, OWC No. 668948 (May 31, 2013)(CO 2).

her head against a wall. Claimant immediately complained of dizziness, blurred vision, and a momentary lack of consciousness and received initial treatment at Howard University Hospital. Experiencing persistent headaches and dizziness, Claimant went to Baltimore Washington Medical Center on March 16, 2010 where MRI, brain, and CT scans were taken.

On April 2, 2010, Claimant started seeing Dr. Thomas Mellman, a psychiatric specialist. Dr. Mellman diagnosed posttraumatic stress disorder and mild traumatic brain injury causally related to the March 10, 2010 work injury. Claimant was prescribed antidepressants and other medications to alleviate fears of being attacked, to control her own angry outbursts and to prevent her from physically attacking others. Without these medications, Claimant's anxiety and aggressive behavior return. Dr. Mellman took Claimant off work and she has not returned.

On June 16, 2010, Claimant started treating with Dr. Michael Franchetti, an orthopedic surgeon. Dr. Franchetti initially diagnosed closed head injury and cervical strain and later added left cervical radiculopathy radiating down the left arm, all related to the work injury. This was the consistent diagnosis until April 18, 2012 when Dr. Franchetti evaluated Claimant for back pain and radicular pain down her left leg, resulting in the added diagnosis of lumbar strain and left lumbar radiculopathy, also related to the March 11, 2010 work injury.

On June 2, 2011, a formal hearing was held in response to Claimant's Application for Formal Hearing seeking authorization for causally related medical treatment and therapy as recommended by Claimant's treating orthopedist. The issues were whether Claimant's cervical condition was causally related to the March 11, 2010 work injury and whether the recommended treatment was reasonable and necessary. On October 31, 2011, Administrative Law Judge (ALJ) Joan Knight ruled in Claimant's favor on both issues and granted the claim for relief.<sup>2</sup>

With Claimant remaining off work, Employer requested that Claimant meet with a vocational counselor and that meeting occurred on December 28, 2011. The vocational counselor, Ms. Webster, produced a labor market survey identifying jobs that were within the orthopedic restrictions set by Dr. Franchetti.

Claimant again filed an AFH seeking temporary total disability benefits from January 11, 2013 to the present and continuing, payment of causally related medical expenses including those related to low back and neck pain, and for psychiatric care from Dr. Mellman after November 19, 2012. Following a formal hearing, ALJ Amelia Govan found there was a causal relationship between Claimant's current low back condition and the 2010 work injury, there was a causal relationship between Claimant's current cognitive/neuropsychiatric conditions and the work injury, and the treatment protocols for Claimant's current neck, low back/leg and psychiatric conditions after November 19, 2012 were reasonable and necessary. Accordingly, ALJ Govan concluded Claimant was totally disabled from performing meaningful employment but the provision of vocational services was not necessary or appropriate.<sup>3</sup> Employer timely appealed with Claimant filing in opposition.

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<sup>2</sup> *Parker v. Howard University Hospital*, AHD No. 11-044, OWC No. 668948 (October 31, 2011)(CO 1).

<sup>3</sup> CO 2, p. 10-11.

On appeal, Employer argues the following errors require the CO be remanded: (1) the finding of a causal relationship between the complaints of low back pain and Claimant's cognitive condition and the work injury are not supported by substantial evidence, (2) the ALJ failed to focus on treatment recommendations after November 19, 2012 for the low back and neck in determining whether it was reasonable or necessary, and (3) the ALJ failed to properly apply the *Logan*<sup>4</sup> analysis in making the determination that Claimant remained totally disabled from performing meaningful employment. Claimant counters the CO should be affirmed.

#### ANALYSIS

The scope of review by the CRB, as established by the Act and as contained in the governing regulations, is limited to making a determination as to whether the factual findings of the CO are based upon substantial evidence in the record, and whether the legal conclusions drawn from those facts are in accordance with applicable law.<sup>5</sup> See D.C. Workers' Compensation Act of 1979, as amended, D.C. Code §§ 32-1501 to 32-1545 (2005), at § 32-1521.01(d)(2)(A). Consistent with this standard of review, the CRB and this Review Panel are constrained to uphold a CO 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 reviewing authority might have reached a contrary conclusion. *Marriott*, 834 A.2d at 885.

Employer initially argues that the ALJ committed error in finding Claimant's low back complaints to be causally related to the March 11, 2010 work-related injury because there is no basis for such a finding. Specifically, Employer argues that Claimant's testimony is not credible and her testimony is not supported by the medical evidence in the record. In addition, Employer argues there is no basis to accept Dr. Franchetti's opinion of a causal relationship.

Pursuant to § 32-1521(1) of the Act,<sup>6</sup> a claimant is entitled to a presumption of compensability, "once an employee offers evidence 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."<sup>7</sup> In the instant case, the ALJ determined the presumption to be invoked by stating:

For Claimant's low back condition, the presumption is invoked by Claimant's testimony and by the medical opinions of Dr. Franchetti. Since

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<sup>4</sup> *Logan v. DOES*, 805 A.2d 237, 243 (D.C. 2002).

<sup>5</sup> "Substantial evidence," as defined by the District of Columbia Court of Appeals, is such evidence as a reasonable person might accept to support a particular conclusion. *Marriott International v. D.C. DOES*, 834 A.2d 882 (D.C. 2003).

<sup>6</sup> 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."

<sup>7</sup> *Washington Hospital Center v. DOES*, 744 A.2d 992, 996 (D.C. 2000).

April 18, 2012, Dr. Franchetti has consistently opined that Claimant's chronic lumbrosacral strain and left lumbar radiculopathy are the result of her March 11, 2010 injuries. CX 7.

While the ALJ makes no specific determination as to Claimant being a credible witness, that finding is inherent in the statement invoking the presumption. The threshold for invoking the presumption is 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.<sup>8</sup> Dr. Fanchetti's testimony satisfies the first prong and Claimant's testimony satisfies the second. We find no error in the presumption being invoked.

Once the presumption has been invoked, it was 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."<sup>9</sup> In evaluating Employer's rebuttal evidence, the ALJ reasoned:

With regard to the back symptomology, Dr. Matz' opinion is submitted to rebut the presumption. In his report of November 19, 2012, Dr. Matz notes that Claimant's back symptoms began about May 16, 2012. He renders a one-sentence opinion on causation, as follows:

Any low back symptoms are not reasonably related to 3/11/10. RX 3 [sic], p. 24.

Dr. Matz also provided testimony via his February 11, 2013 deposition. Therein, he read from his IME report and explained that because he saw no evidence of low back complaints between the date of the accident and May of 2012, those complaints were not reasonably related to the 2010 incident. RX 11, p. 187-188.

This opinion is not specific or comprehensive enough to rebut the causal connection between Claimant's current back symptoms and the work accident. *Tolliver v. William C. Smith Co., Inc.*, CRB No. 13-034, AHD No. 08-430 B, OWC No. 649188 (May 17, 2013); *Holder v. WMATA*, Dir. Dkt. 99-90, H&AS No. 99-342, OWC No. 507781 (November 14, 2000). The absence of documented complaints for two years after the work accident, in the absence of a documented intervening cause for those complaints, does not break the chain of causation.<sup>10</sup>

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<sup>8</sup> *Ferreira v. DOES*, 531 A.2d 651 (D.C. 1987).

<sup>9</sup> *Waugh v. DOES*, 786 A.2d 595, 600 (D.C. 2001).

<sup>10</sup> CO 2, p. 5.

Employer argues that the ALJ erred in deciding the independent medical evaluation (IME) opinion of Dr. Matz was not specific or comprehensive enough to rebut the presumption. We agree, but deem the error to be harmless.

In determining that Dr. Matz's IME is not specific or comprehensive enough, the ALJ relies on the CRB's decision in *Tolliver* for support, however this reliance is misplaced. In *Tolliver*, the doctor's opinion proffered to rebut the presumption gave several possible causes for Mr. Tolliver's right foot injury and therefore was not deemed sufficiently specific or comprehensive to sever the potential connection between his right foot condition and his work-related accident. Such is not the case here.

Dr. Matz conducted a full examination of Claimant and found no basis to render a diagnosis as to her back complaints. Although Claimant expressed she was in pain when maneuvered during the lumbar examination, Dr. Matz opined that those "low back symptoms are not reasonably related" to the work injury. We consider this statement as to causation specific and comprehensive enough to rebut the presumption. Given the context in which this opinion is rendered, there is little doubt that Dr. Matz is expressing a clear opinion that Claimant's low back symptoms cannot be related to her work injury.<sup>11</sup>

While we agree with Employer that Dr. Matz' opinion was sufficiently specific and comprehensive enough to rebut the presumption, we disagree with its argument that the ALJ erred in concluding that Claimant's back symptoms are causally related to her 2010 work injury. Although the ALJ did not deem the presumption to be rebutted, she did in effect weigh the evidence as though she had. The ALJ discounted Dr. Matz's opinion for being premised on the fact that the records he reviewed made no mention of low back complaints prior to May 16, 2012, two years after the work incident, and because during those intervening two years, there was no other documented causal event that could serve to break the chain of causation between the low back symptoms and the 2010 work injury. Thus, any error committed by the ALJ is deemed harmless as there is substantial evidence in the record to support the conclusion of the claimed causal relationship.

Employer also argues that the ALJ erred in finding a causal relationship between Claimant's cognitive condition and 2010 work related injury. Employer asserts there is not substantial evidence to support this finding and the ALJ either failed to review competing medical reports or overlooked contrary findings in others. We disagree as to do otherwise would require us to reweigh the evidence in Employer's favor, something we are not permitted to do, especially when there is no basis for doing so.

The ALJ started her discussion on this causal relationship by stating:

For Claimant's cognitive/neuropsychiatric condition, the presumption of causal connection with her 2010 work accident is invoked by Claimant's testimony and by the medical opinions of Dr. Mirsky, Dr. Kurlanzik and

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<sup>11</sup> See *Washington Post v. DOES, Reynolds, Intervenor*, 852 A.2d 909 (D.C. 2004).

Dr. Mellman. [footnote omitted]. Dr. Mirsky, on October 19, 2010, found Claimant to have marked symptoms of brain damage (severely impaired memory, concentration, speech) related to the work injury. CX 2, p. 43. Dr. Kurlanzik's assessment, on June 16, 2010, was that Claimant suffered a cerebral concussion on March 11, 2010 and that she was having a postconcussive syndrome, with headaches and memory problems. He also found that she was experiencing a "rather severe anxiety reaction." CX 3, p. 50. On December 29, 2011 [sic], Dr. Mellman opined that Claimant had posttraumatic stress disorder and traumatic brain injury which was caused or contributed to by the March 2012 [sic] work accident.<sup>12</sup>

With the presumption invoked, the ALJ moved to consider whether Employer presented evidence to rebut the causal connection and stated:

The presumption of causal connection between Claimant's cognitive impairment/neuropsychiatric condition and her work accident is rebutted by the expert opinions of A. Jerry Friedman, M.D. and Dr. Schulman. Dr. Friedman opined that Claimant's strokes after March 11, 2010 were not related to her work injury. RX 1.<sup>13</sup>

As to Dr. Schulman's IME reports, the ALJ focused on the July 31, 2012 report wherein Dr. Schulman determined that Claimant displayed evidence of three psychiatric disorders, but stated within a reasonable degree of medical probability that "those disorders were not caused by sequelae of the subject event." RX 3, p. 21. With the presumption rebutted, the ALJ proceeded to weigh the evidence without its benefit.

In weighing the evidence, the ALJ reasoned:

Dr. Mellman's opinion, as augmented by the initial opinion of Dr. Schulman and the expert opinions of Dr. Kurlanzik and Dr. Mirsky, supports the causal connection between Claimant's severe cognitive disorder and her March 2010 concussion. CX 1, p. 1-37; CX 2, p. 38; CX 3, p. 50, 59-61; CX 9, p. 160.

Prior to the 2010 work accident, Claimant had no history of panic attacks or symptoms of posttraumatic syndrome. Within weeks of the accident, there is medical documentation of the occurrence of panic attacks, diagnosed post traumatic syndrome, a mood disorder due to brain-injury related impairments, and stroke symptoms. The August 2010 neuropsychiatric examination of Dr. Mirsky reflects severe cognitive disorder caused by Claimant's March 2010 head injury. Dr. Mirsky's

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<sup>12</sup> CO 2, p. 5-6.

<sup>13</sup> CO 2, p. 6.

findings and opinion are supported by cognitive testing, examination and observation.

Dr. Mellman also opines, in the months immediately following the work accident, that Claimant's cognitive disorder is related thereto. He considers her complaints of memory problems, notes her halting speech, depression and anxiety, and explains the causal connection of those symptoms to the March 2010 head injury. The debilitating cognitive/neuropsychiatric symptoms described by Claimant's treating physicians began prior to the stroke for which she was treated in July of 2010. There is no persuasive medical documentation to break the chain of causation connecting the March 2010 head injury with Claimant's current cognitive condition.<sup>14</sup>

The ALJ's conclusion that the weight of the evidence supports Claimant's claim that her current cognitive condition is causally related to the March 2010 work injury is supported by substantial evidence in the record and will not be disturbed.

The next assignment of error asserted by Employer is that the ALJ misapplied the law in determining that the treatment for Claimant's neck and low back after November 19, 2012 was reasonable and necessary. In addition, Employer faults the ALJ for finding Dr. Franchetti's opinion more persuasive arguing that he fails to provide an explanation and basis for his treatment recommendations to the neck and low back. We disagree.

The ALJ acknowledged that it was Claimant's burden to prove that the treatment recommendations to her neck and low back after November 19, 2012 were reasonable and necessary.<sup>15</sup> In addition, it is now recognized that when disputes arise involving the reasonableness and necessity of medical care, utilization review (UR) is mandatory,<sup>16</sup> and in weighing the treating physician's recommendations against the UR opinion, the ALJ is free to accept either opinion, provided an explanation is given, and without the need to apply a preference as to either.<sup>17</sup>

In reviewing the medical evidence regarding further treatment to Claimant's neck and low back, the ALJ acknowledged the opinions expressed by Dr. Matz's IME and his deposition and the January 7, 2013 UR report by Dr. Robert Holladay that such treatment was no longer reasonable or necessary. The ALJ discounted these reports in favor of Dr. Franchetti and reasoned:

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<sup>14</sup> *Id.*, p. 7.

<sup>15</sup> See *Stewart v. DOES*, 606 A.2d 1350 (D.C. 1992).

<sup>16</sup> *Gonzalez v. UNICCO Service Co.*, CRB No. 07-005, AHD No. 06-155 (February 21, 2007).

<sup>17</sup> *Green v. Washington Hospital Center*, CRB No. 08-208, AHD No. 07-130B, OWC No. 628552 (June 17, 2009).

Dr. Franchetti, Claimant's treating orthopedic specialist, responded to the Corvel orthopedic UR on February 19, 2013. In his response, Dr. Franchetti addressed, with specificity, the UR opinions regarding medical treatment of Claimant's cervical and lumbar conditions. He noted the mischaracterization of Claimant's cervical condition in the UR report (explaining that Claimant has a cervical disc protrusion with radiculopathy rather than a mere cervical strain). He further explained the documented need for, and effectiveness of, trigger point injections to address Claimant's symptoms. I reject the opinion of Employer's IME and UR providers, in favor of Dr. Franchetti's recommendations.<sup>18</sup>

The ALJ's decision to favor the opinion of Dr. Franchetti over that of Employer's IME and UR physicians is supported by substantial evidence and in accordance with the law. As the ALJ noted, Dr. Franchetti specifically addresses the points raised in the UR opinion with regard to Claimant's cervical condition and although not mentioned by name, he also addresses and disputes Dr. Matz's contention that Claimant's lumbar condition is not causally related to the March 2010 work injury. As the ALJ has explained her decision for choosing Dr. Franchetti's opinion and that decision is supported by the evidence, there is no reason to disturb it.

Finally, we address Employer's argument that the ALJ erred in deciding the issue of the nature and extent of Claimant's disability. Employer contends that as the ALJ has predicated the determination that Claimant is temporarily and totally disabled because of her cognitive condition, this matter should be returned because that condition is not causally related to the work injury.<sup>19</sup> This argument has no merit given our determination above that the ALJ's finding of a causal connection between Claimant's cognitive condition and her work injury is supported by substantial evidence. Further, as Dr. Mellman has not released Claimant to return to work in any capacity, thus giving support to the ALJ's determination that Claimant is totally disabled and unable to return to her pre-injury job and pursuant to Logan, the burden shifted to Employer show there was suitable alternative employment, which it has failed to do as the jobs identified in a Labor Market Survey do not account for Claimant's cognitive deficits.

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<sup>18</sup> CO 2, p. 8.

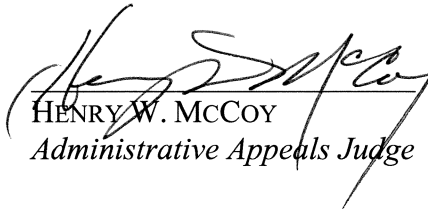
<sup>19</sup> Dr. Franchetti rendered an opinion that "[F]rom an orthopedic standpoint, if she were employed, she would be available for only totally sedentary work duty status." CX 7, p. 95.



CONCLUSION AND ORDER

The May 31, 2013 Compensation Order is supported by substantial evidence in the record and is in accordance with the law and therefore is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

  
HENRY W. MCCOY  
*Administrative Appeals Judge*

October 29, 2013

DATE