

PATRICIA FLANAGAN,
Claimant

v.

AUGER ENTERPRISES, and TRAVELERS INSURANCE COMPANY,
Employer/Carrier

Dir. Dkt. No. 94-65; H&AS No. 92-714; OWC No. 198453

DISTRICT OF COLUMBIA, DEPARTMENT OF EMPLOYMENT
SERVICES,
COMPENSATION REVIEW BOARD

May 11, 1995

Patricia Flanagan, Pro Se, Claimant
Robert J. Strayhorne, Esquire, for the Employer/Carrier.

Joseph P. Yeldell, Director

Appeal from the Compensation Order of Amelia G. Govan, Esquire
DECISION OF THE DIRECTOR

I. Preliminary Statement

This proceeding arises out of a claim for workers' compensation benefits filed pursuant to the provisions of the District of Columbia Workers' Compensation Act of 1979, as amended, D.C. Law 3-77, D.C. Code, § 36-301 et seq. (1981 Edition, as amended) (hereinafter, the "Act").

On June 23, 1993 an evidentiary hearing was held to resolve the following issues of contention between Patricia Flanagan (hereinafter, "claimant") and Auger Enterprises (hereinafter, "employer"):

- (1) the nature and extent of the disability related to July 28, 1990 work injury;
- (2) the medical causal relationship between claimant's current disability and the work injury;
- (3) whether the claimant unreasonably failed to cooperate with vocational rehabilitation;
- (4) whether the claimant voluntarily limited her income;

(5) whether medical treatment by the following physicians was reasonable and necessary: Dr. H.R. Noer; Fairfax [*2] Hospital (February 10, 1993 and March 9, 1993); Dr. Dean Bennett; Dr. Ronald Witchin; and, physical therapy after July 14, 1992;

(6) whether the employer is due a credit for unemployment compensation benefits received by the claimant; and,

(7) whether the claimant is entitled to penalties and interests on accrued benefits.

On May 20, 1994 Hearing and Appeals Examiner Amelia G. Govan issued an Order that the employer pay the claimant no additional disability benefits after November 23, 1992, and that the employer pay claimant's reasonably related medical costs consistent with the conclusions of the order. A Motion for Reconsideration and Clarification was filed on June 3, 1994. The motion was denied on July 7, 1994. On June 17, 1994 the claimant filed an Application for Review and a Motion to Extend Time to File the Memorandum of Points and Authorities with the General Counsel's office. On September 30, 1994 the claimant, now pro se, filed a memorandum. The claimant argued that the Compensation Order was arbitrary, irrational, not based on substantial evidence, and not in accordance with the law. The employer did not file a Motion to Dismiss Claimant's Application for Review until [*3] October 24, 1994.

The claimant's memorandum is a lengthy narrative which chronicles events and allegations. From the twelve pages presented, the claimant most discernibly asserts the following contentions which the Director will address as the basis of the claimant's appeal:

- (1) The verdict was excessive and inadequate in the lower court;
- (2) Evidence was rejected that should have been accepted;
- (3) Inadmissible evidence was permitted;
- (4) Testimony was excluded that should have been admitted;
- (5) The verdict was contrary to the weight of the evidence; and,
- (6) The court improperly charged the injured worker/appellant.

In addition, the claimant's memorandum contains the following questions:

- (1) what medical criteria did Hearing Examiner Govan use to support her medical opinions; and,
- (2) are there sufficient medical reasons or rationale to support Hearing Examiner Govan's determinations?

The claimant's memorandum also contains allegations of negligence; false imprisonment and restraint; slander; and, libel. These issues are beyond the adjudicative authority of this agency.

II. Background

In relation to the nature and extent of the claimant's disability, Hearing Examiner [*4] Govan accorded the greatest evidentiary weight to the medical opinions of the claimant's three treating physicians (Drs. Avery, Mikszewski, and Bennett). Hearing Examiner Govan determined that the claimant's, "pre-existing congenital cervical instability was aggravated by her July 28, 1990 work injury and became symptomatic . . . at the time when she slipped and fell." Compensation Order, (May 20, 1994) p. 9. Hearing Examiner Govan further concluded that the causal relationship between claimant's work related accident and her current disability was a residual impairment of the claimant's pre-existing permanent cervical instability. She also concluded that the residual impair-

ment ended on or before November 23, 1992 when the claimant was last examined by Dr. Bennett. Compensation Order, (May 20, 1994) p. 10.

On the issue of the claimant's cooperation with vocational rehabilitation, Hearing Examiner Govan considered evidence demonstrating the claimant's attempted participation and, willingness to commute long distances on public transportation. Compensation Order, (May 20, 1994) p. 10. Hearing Examiner Govan concluded that the claimant did not unreasonably fail to cooperate, [*5] nor did the claimant obstruct the process so as to warrant suspension of benefits. Accordingly, it was held that the claimant did not voluntarily limit her income.

Hearing Examiner Govan also relied on the claimant's treating physicians to determine whether the medical treatments rendered by Dr. Noer, on February 10, 1993 and March 9, 1993, Dr. Witchen on July 14, 1992, and Dr. Bennett were reasonable and necessary. From evidence presented, Hearing Examiner Govan concluded that the treatments of Drs. Noer and Bennett were reasonable and necessary since the claimant's complaints were medically related to the July 23, 1990 work injury. Hearing Examiner Govan rejected the contention that the claimant's treatments received from Dr. Witchen and Fairfax Hospital were medically related to the July 23, 1990 work injury since these services were rendered after November 23, 1992, the date which she determined the work related impairment ended. Hearing Examiner Govan also ordered that the employer be reimbursed for all of the unemployment compensation which the claimant received while concurrently collecting worker's compensation benefits.

III. Discussion

The Director must affirm [*6] the Compensation Order under review if the findings of fact contained therein are supported by substantial evidence in the record considered as a whole. See also: § 36-301 of the Act. *King v. District of Columbia Department of Employment Services*, 560 A.2d 1067 (D.C. 1989). Substantial evidence is such relevant evidence as a reasonable mind might find as adequate to support a conclusion. *George Hyman Construction Co. v. Department of Employment Services*, 498 A.2d 563, 566 (D.C. 1985).

For the purpose of clarity, the Director has summarized the claimant's concerns into the following three areas: evidentiary issues, contemporaneous receipt of unemployment compensation and worker's compensation; and, medical issues.

I. Evidentiary Issues

The claimant states that:

- (1) evidence was rejected that should have been accepted;
- (2) inadmissible evidence was permitted;
- (3) testimony was excluded that should have been admissible; and,
- (4) the verdict was contrary to the weight of the evidence.

The hearing is an administrative process which is designed to be less formal and is meant to be more flexible and expeditious [*7] than a formal civil trial. Hence, common law rules of evidence do not generally apply to hearing proceedings, although they may serve as a guide. Moreover, the admission of evidence that would be inadmissible in a court of law is allowed. The hearing exam-

iner has the discretion to admit evidence that has more probative value than prejudicial harm. (7 *D.C.M.R.*, § 223.3 and § 223.5)

The Director's review of the record reveals no error regarding the admission or rejection of evidence. The claimant has not referred to any specific evidence which should have been excluded or included. The claimant has not enumerated or expounded upon what evidence was more probative and should have been admitted. Neither has the claimant identified which evidence was more prejudicial and should have been excluded. Hence, Hearing Examiner Govan's findings regarding the admission and rejection of evidence are affirmed. See also: Section III, Medical Issues, *infra*.

II. Whether the Hearing Examiner Govan erred in giving credit to the employer for benefits which the claimant received from Unemployment Compensation

Although the receipt of unemployment compensation does not bar *ipso facto* [*8] a claim for worker's compensation, an employer is entitled to a credit for unemployment compensation a claimant is paid while he received worker's compensation benefits. See, *Lawson v. York Florists, Inc.*, H&AS No. 86-182 (September 11, 1986); *Stewart v. H&E Management Association*, H&AS No. 85-303 (June 11, 1986) *Tisdale v. Washington Air Compressor Rental Company*, H&AS No. 86-649. Pursuant to § 36-308(g) of the D.C. Code, which states in relevant part that,

In no event shall the total money allowance payable to an employee . . . as compensation for an injury . . . from . . . income maintenance plans . . . exceed in the aggregate the higher of 80% of the employee's average weekly wage . . . In the event the total aggregate money allowance payable to an employee . . . exceeds this limitation, the amounts otherwise payable as compensation . . . under this chapter shall be reduced accordingly.

the Director finds no error with Hearing Examiner Govan's Order that the employer be credited for unemployment benefits received by the claimant.

Our records indicate that the claimant filed for Worker's Compensation Benefits on August 12, 1991. Pursuant to the District of Columbia [*9] Unemployment Compensation Act, *D.C. Code*, § 46-101(6), her benefit amount was based on her total reported income from April 1, 1990 to March 31, 1991. This period covers the time which the claimant worked as both a front desk receptionist and a waitress. Hence, her income as a front desk receptionist and waitress was included in the unemployment compensation benefit amount and the employer is entitled to a credit as ordered by Hearing Examiner Govan.

III. Medical Issues

The claimant's contentions regarding:

- (1) what medical criteria Hearing Examiner Govan used to support her medical opinions, and;
- (2) whether there were sufficient medical reasons or rationale to support her determinations

are also rejected. A Hearing Examiner relies on the testimony of physicians and other published medical authorities to determine the medical criteria and medical rationale applied to each claimant. Furthermore, Hearing Examiner Govan's decision to rely on the testimony of the claimant's treating physicians (Drs. Avery, Mikszewski, and Bennett) was in accordance with *Butler v. Boatman & Magnani*, H&AS No. 84-349 (December 31, 1986), which held that, "the medical opinions of the

claimant's [*10] treating physicians as it concerned . . . [the] physical condition, its antecedents, and its consequences, . . . [are] accorded great weight . . ." For these reasons Hearing Examiner Govan's medical findings are also affirmed.

IV. Disposition

Accordingly, for the reasons more fully set forth above, the Compensation Order of May 20, 1994 is hereby affirmed, adopted and incorporated by reference herein.