

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA M. MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 12-121

MIRNA PLACIDO,
Claimant–Petitioner,

v.

COMPASS GROUP USA, INC. and GALLAGHER BASSETT SERVICES,
Employer/Carrier-Respondent.

Appeal from a Compensation Order on Remand by
The Honorable Amelia G. Govan
AHD No. 11-074A, OWC No. 674168

David J. Kapson, Esquire for the Petitioner
Barry D. Bernstein, Esquire for the Respondent

Before MELISSA LIN JONES, LAWRENCE D. TARR, and HENRY W. MCCOY, *Administrative Appeals Judges*.

MELISSA LIN JONES, *Administrative Appeals Judge*, for the Compensation Review Board.

DECISION AND ORDER

JURISDICTION

Jurisdiction is conferred upon the Compensation Review Board (“CRB”) pursuant to §§32-1521.01 and 32-1522 of the District of Columbia Workers’ Compensation Act of 1979, D.C. Code, as amended, §32-1501 *et seq.*, (“Act”), 7 DCMR §250, *et seq.*, and the Department of Employment Services Director’s Administrative Policy Issuance 05-01 (February 5, 2005).

FACTS OF RECORD AND PROCEDURAL HISTORY

On August 25, 2010, Ms. Mirna Placido worked for Compass Group USA, Inc. (“Compass Group”) at the American Indian Museum as a food preparer. On that day, Ms. Placido slipped on grease on the kitchen floor and injured her left shoulder and back.

Following conservative treatment that did not relieve Ms. Placido's shoulder symptoms, her treating physician, Dr. Joel D. Fechter, suggested arthroscopic surgery. Compass Group obtained a utilization review report and an independent medical examination report and denied authorization for surgery.

The parties proceeded to a formal hearing, and on June 29, 2012, an administrative law judge ("ALJ") denied Ms. Placido's request for arthroscopic surgery. The ALJ determined arthroscopic surgery is not reasonable and necessary to treat Ms. Placido's compensable left shoulder injury.¹

On appeal, Ms. Placido asserts "substantial evidence in the record demonstrates that she is entitled to the [requested] arthroscopic procedure."² Ms. Placido argues the ALJ improperly weighed the independent medical examination physician's opinion because "the ALJ is precluded from weighing the opinions of an IME doctor in determining the issue of reasonableness and necessity of medical treatment"³ and Dr. Fechter's opinion because the statement that Dr. Fechter did not strongly recommend left shoulder surgery is not supported by substantial evidence. Finally, Ms. Placido argues the reasons given for accepting the opinions in the utilization review report over those of Dr. Fechter are "unreasonably vague and arbitrary and otherwise not supported by substantial evidence."⁴

In response, Compass Group contends that regarding the issue of reasonableness and necessity of medical treatment, all the medical opinions in the record must be considered with the opinions contained in a utilization review report and the treating physician's opinions placed on equal footing. Because the ALJ gave clear reasons for choosing the opinions contained in the utilization review report over the opinions of Dr. Fechter, the decision should be affirmed.

ISSUE ON APPEAL

1. Was the issue of reasonableness and necessity of medical treatment properly analyzed in the June 29, 2012 Compensation Order?

¹ Neither party appeals the rulings that Ms. Placido sustained an accidental injury to her left shoulder and that Ms. Placido's left shoulder injury is medically-causally related to her on-the-job accident.

² Memorandum of Points and Authorities in Support of Claimant's Application for Review, unnumbered p. 3.

³ *Id.* at p. 5.

⁴ *Id.* at p. 4.

ANALYSIS⁵

Initially, regarding a request for authorization for medical treatment, the burden is on the claimant to prove entitlement by a preponderance of the evidence, not by substantial evidence which is the standard of review by this tribunal.⁶ Furthermore, when the issue for resolution is reasonableness and necessity of medical treatment, the utilization review process is mandatory.⁷

Once a utilization review report has been submitted into evidence, that report is not dispositive but is entitled to equal footing with an opinion rendered by a treating physician.⁸ The ALJ

is free to consider the medical evidence as a whole on the question, and is not bound by the outcome of the UR report. The issue should be decided based upon the ALJ's weighing of the competing medical evidence and [the ALJ] is free to accept either the opinion of treating physician who recommends the treatment, or the opinion of the UR report, without the need to apply a treating physician preference.^[9]

There is no prohibition on considering the evidence as a whole when determining which opinion deserves greater weight, but regardless of which opinion the ALJ gives greater weight, it is incumbent upon the ALJ to explain why one opinion is chosen over the other.¹⁰

In reaching the conclusion that arthroscopic surgery is neither reasonable nor necessary to treat Ms. Placido's current left shoulder condition, the ALJ determined

Dr. Fechter does not strongly recommend the left shoulder surgery; in his September 2011 report, he suggests the option of living with the symptoms. In his December 2011 report, although he indicates they are waiting for arthroscopic evaluation and treatment to be approved, he does not set forth persuasive rationale to proceed with

⁵ The scope of review by the CRB is limited to making a determination as to whether the factual findings of the appealed Compensation Order on Remand are based upon substantial evidence in the record and whether the legal conclusions drawn from those facts are in accordance with applicable law. Section 32-1521.01(d)(2)(A) of the Act. Consistent with this standard of review, the CRB is constrained to uphold a Compensation Order on Remand that is supported by substantial evidence, even if there also is contained within the record under review substantial evidence to support a contrary conclusion and even if the CRB might have reached a contrary conclusion. *Marriott International v. DOES*, 834 A.2d 882, 885 (D.C. 2003).

⁶ *Dunston v. DOES*, 509 A.2d 109, 111 (D.C. 1986).

⁷ See *Gonzalez v. UNICCO Service Company*, CRB No. 07-005, AHD No. 06-155, OWC No. 604331 (February 21, 2007).

⁸ See *Children's National Medical Center v. DOES*, 992 A.2d 403 (D.C. 2010).

⁹ *Green v. Washington Hospital Center*, CRB No. 08-208, AHD No. 07-130, OWC No. 628552 (June 17, 2009) (Emphasis added.)

¹⁰ *Haregewoin v. Loews Washington Hotel*, CRB No. 08-068, AHD No. 07-041A, OWC No. 603483 (February 19, 2008). The Compensation Review Board's Decision and Order transposes the claimant's name; the claimant's name is Haregewoin Desta not Desta Haregewoin. See *Desta v. Loew's Washington Hotel*, AHD No. 07-041A, OWC No. 603483 (December 7, 2007).

the surgery. It is noted that there are no rotator cuff symptoms described and that no rotator cuff repair is anticipated by Dr. Fechter.

Dr. Gordon weighs in with his opinion that Claimant's very mild symptoms do not warrant surgery at this time and that the MRI does not support invasive measures. Finally, the UR report indicates there are no significant functional deficits, as shown by the most recent MRI, to support the request for surgical intervention at this time. After considering the record medical opinions, it is determined that at this juncture, surgical treatment for Claimant's left shoulder complaints is not reasonable or necessary.^[11]

The record supports the ALJ's declaration that Dr. Fechter's opinion is not strongly asserted, and given that Dr. Fechter gave Ms. Placido the option of living with the symptoms and managing them as best she can, Dr. Fechter's failure to explain why surgery is required is a reasonable basis for the ALJ to discount his opinion. Furthermore, although the ALJ next refers to Dr. Robert O Gordon's opinion, it is clear she accepted the opinions in the utilization review report because

[t]he left shoulder MRI does not establish significant findings that would support the request for surgical intervention. In addition, the most recent examination narrative does not indicate evidence of red flags or significant objective functional deficits regarding the left shoulder that would support the request for surgical intervention at this juncture. . . . RX 3, p. 11.^[12]

That Dr. Gordon's opinion supports the opinions contained in the utilization review report only supports the ALJ's weighing of the competing medical evidence.

CONCLUSION AND ORDER

The ALJ properly analyzed the issue of reasonableness and necessity of medical treatment. The June 29, 2012 Compensation Order is supported by substantial evidence in the record, is in accordance with the law, and is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

MELISSA LIN JONES
Administrative Appeals Judge

September 20, 2012
DATE

¹¹ *Placido v. Compass Group USA, Inc.*, AHD No. 11-074A, OWC No. 674168 (June 29, 2012), p. 8.

¹² *Id.* at p. 5.