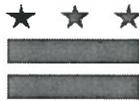


**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**Department of Employment Services**

MURIEL BOWSER  
MAYOR



DEBORAH A. CARROLL  
DIRECTOR

**COMPENSATION REVIEW BOARD**

**CRB No. 16-068**

**QUEST DELANEY,  
Claimant-Petitioner,**

**v.**

**PARAGON SYSTEMS, INC., and  
AIG CLAIMS SERVICES  
Employer/Insurer-Respondent.**

Appeal from a April 22, 2016 Compensation Order by  
Administrative Law Judge Lilian Shepard  
AHD No. 15-239A, OWC No. 724482

DEPT. OF EMPLOYMENT  
SERVICES  
COMPENSATION REVIEW  
BOARD  
2016 OCT 3 PM 12 53

(Decided October 3, 2016)

David J. Kapson for Claimant  
Kelly D. Fato for Employer

Before HEATHER C. LESLIE, GENNET PURCELL, 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 was employed as a security officer for Employer on January 7, 2015. On that day, Claimant slipped and fell, injuring his head, neck, back and ankle.

Pertinent to the appeal before us, Claimant noticed his tooth was cracked and painful. Claimant sought treatment with his dentist, Dr. Carl Oppenheim. Dr. Oppenheim noted decay present at tooth #31, and recommended root canal therapy, core and crown. On September 24, 2015, Dr. Oppenheim opined:

Subsequent to that appointment,<sup>[1]</sup> Mr. Delaney informed me that he had an accident of some sort on January 7, 2015 and he thinks he may have cracked his tooth at that time, even though I was not aware of it. Plus he reports his head and neck injury has been causing him to clench his teeth at night. It certainly is possible that a fractured tooth could lead to the decay that caused the need for the Root Canal Therapy, Core and Crown.

Claimant's exhibit 2 at 2.

Dr. Oppenheim left the practice and Claimant subsequently came under the care of Dr. Shawn Samad. Dr. Samad examined Claimant and agreed with Dr. Oppenheim that root canal therapy, core and crown were necessary. After noting a crack in Claimant's tooth after examination, Dr. Samad opined:

Based upon my professional judgment cases like the one I am describing are due to trauma. It is true that most Root Canal Treatments are necessary due to extensive decay that has reached the pulp but based on what I noticed clinically and x-rays, it is most likely due to trauma.

Claimant's exhibit 1 at 1.

At the request of Employer, Claimant attended an independent medical evaluation ("IME") with Dr. William Mitcherling on March 24, 2016. Dr. Mitcherling took a history of the injury, Claimant's dental history prior to and after Claimant's injury, and performed an examination. Dr. Mitcherling opined:

I find that tooth #31 (mandibular right 2<sup>nd</sup> molar) had irreversible pulpitis due to deep dental caries not related to the accident of January 7, 2015. It is further my opinion based upon a reasonable medical certainty that the deep dental caries resulting in the irreversible pulpitis in tooth #31 was not due to or casually [sic] due to the work accident on January 7, 2015.

Employer's exhibit 1 at 2.

The parties proceeded to a Formal Hearing. Claimant sought authorization for dental treatment, specifically root canal therapy with core buildup and a crown. Hearing transcript at 8. The issue to be adjudicated was whether Claimant sustained an injury to his tooth which arose out of and in the course of his employment on January 7, 2015. A Compensation Order ("CO") was issued on April 22, 2016, Claimant's claim was denied. The CO concluded that Claimant did not sustain an injury to his tooth which arose out of and in the course of his employment on January 7, 2015.

Claimant appealed on May 23, 2016. Claimant argues the CO is neither supported by the substantial evidence in the record nor in accordance with the law. Specifically, Claimant argues the Administrative Law Judge's ("ALJ") rejection of the treating physician's opinion is in error.

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<sup>1</sup> Dr. Oppenheim was referring to Claimant's September 16, 2015 appointment.

Claimant also states the CO failed to address whether the slip and fall aggravated Claimant's underlying dental issues.

Employer opposed the appeal on June 6, 2016 and simultaneously filed a Motion to Dismiss Claimant's Application for Review, arguing the appeal was untimely. Claimant replied to Employer's Motion to Dismiss, arguing the Application for Review was filed timely.

#### ANALYSIS<sup>2</sup>

We address first Employer's Motion to Dismiss Claimant's Application for Review. Employer argues the Claimant's appeal was untimely as 30 days after the CO falls on May 22, 2016. Claimant opposes the motion, pointing out that May 22, 2016 fell on a Sunday, and Monday, May 23, 2016 was the next business day Claimant could file his application. We agree with Claimant.

D.C. Code § 32-1522(2A)(A) in pertinent part, provides

[a] party aggrieved by a compensation order may file an application for review with the [CRB] within 30 days of the issuance of the compensation order. A party adverse to the review may file an opposition answer within 15 days of the filing of an application for review.

Also, 7 DCMR § 258.2 provides

[a]n Application for Review must be filed within thirty (30) calendar days from the date shown on the certificate of service of the compensation order or final decision from which appeal is taken.

7 DCMR § 299 defines the word "day" as a "calendar day, unless otherwise specified in the Act or this chapter;" however, pursuant to 7 DCMR §256.3,

[t]he Office of the Clerk of the Board shall be open from 8:30 a.m. to 5:00 p.m. on all days except Saturdays, Sundays, and legal holidays, for the purpose of receiving Applications for Review and such other pleadings, motions and papers as are pertinent to any matter before the Board.

Thus, when the thirtieth (30th) calendar day falls on a Saturday, Sunday, or legal holiday, the deadline is extended to the next business day. *See Jackson v. ECAB*, 537 A.2d 576, 578 (D.C.

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<sup>2</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.*, ("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.

1988). Such is the case before us. Employer's motion is denied as the Application for Review was filed timely.

Claimant first argues the ALJ erred in not accepting the opinions of the treating physicians, Dr. Samad and Dr. Oppenheim because they were based upon Claimant's questionable testimony and there was a gap in time between the injury and diagnosis. Claimant argues:

Given that there was a tooth fracture that could have arisen from the fall, and the treating physicians both opined that the tooth fracture could have led to the necrotic pulp in tooth #31, it was in error for the Compensation Order to dismiss these opinions.

Claimant's argument at 7.

On this point, the ALJ concluded:

In weighing the evidence, due to the omissions and discrepancies in the testimony and medical reports, Claimant has not provided credible evidence that the irreversible pulpitis arose out of and in the course of his employment. There is an eight month passage of time with no complaints to any of Claimant's treating physician about pain or problems to his mouth or jaw. Although, he was on pain medications, he was able to feel pain to his head, neck and back but not in his mouth. Claimant testified that he's unclear about dates and times because of memory loss, yet he's clear that he clenched his teeth as he fell eight months prior. Claimant's testimony simply does not ring true and this is the information he would have provided to his physicians in order for them to form an opinion about the cause of his damaged tooth.

Claimant's testimony is viewed as non-credible and is rejected. In addition, the medical reports that support a conclusion that the cracked tooth was caused by a work related injury, were based upon Claimant's non-credible testimony. Therefore, there is sufficient justification to reject Dr. Oppenheim and Dr. Samad's opinions. The medical report of Dr. Mitcherling is found to be more persuasive. His report goes into great detail as to the lack of any mention in the emergency room reports, treating physician reports of Dr. Dobyms and Dr. Mathews or the reports of Drs. Oppenheim and Samad of any fracture to tooth # 31 after the work related accident. Accordingly, in weighing the evidence, the Claimant has failed to present a preponderance of credible evidence supporting the claim that he cracked his tooth at work which resulted in the alleged injury.

CO at 7-8.

A review of the medical reports of Dr. Samad and Dr. Oppenheim reveal that they do rely in large part to Claimant's testimony that he cracked his tooth on January 7, 2015. The ALJ rejected Claimant's testimony, concluding Claimant's testimony involved "omissions and discrepancies" and outlined these omissions and discrepancies. As Claimant concedes, his

memory is questionable. Claimant's argument at 7. Thus, Claimant's argument that the tooth fracture noted by his treating physicians "could have" arisen from the fall and "could have" led to the need for the requested treatment is not persuasive as the ALJ weighed his testimony and found the testimony not credible. It is noteworthy that Claimant has not appealed the credibility determination the ALJ made of him.

Claimant also takes issue with the ALJ noting the documentary evidence shows Claimant waited until eight months to complain about his tooth, pointing out Claimant was treating with other physicians who were not trained in dentistry. However, the ALJ pointed out discrepancies in his testimony over what pain he could and could not feel, and what he could and could not remember, finding the testimony incredible. Moreover, the ALJ listed other reasons to reject the treating physicians' opinions and beyond the Claimant's testimony. The ALJ questions Dr. Samad's opinion, stating:

To contrast Dr. Oppenheim's treatment of Claimant with Dr. Samad, it isn't clear when Dr. Samad treated Claimant but it is presumed to be in March, 2016. Claimant testified that he saw him a few weeks ago and the fax date on Dr. Samad's first letter is March 14, 2016, and the second one, the fax date is March 24, 2016. Dr. Samad does not indicate whether he reviewed the x-rays Dr. Oppenheim took of Claimant or even Dr. Oppenheim's treatment report. Dr. Samad took x-rays and although he concurs with Dr. Oppenheim that the Claimant needs a root canal, he does not observe any decay underneath. He observed a clear cut break in the tooth and opined it was due to trauma. He opined that most root canal treatments are due to extensive decay that has reached the pulp, what he noticed clinically and on x-rays is most likely due to trauma. He opined that he believed the accident caused the trauma but he does not provide any information. Dr. Samad treated Claimant one time and presumably the information about the accident he would have received from Claimant. He doesn't address the impact of the temporary treatment done by Dr. Oppenheim on his observation of Claimant, whom he's seeing six months after Dr. Oppenheim.

CO at 6-7.

The ALJ also took issue with the lack of specificity of Dr. Oppenheim's opinion, noting:

Dr. Oppenheim examined Claimant and took x-rays and stated that tooth # 31 had deep decay on the distal and pulp and tests showed the pulp was necrotic. Dr. Oppenheim was subsequently told by the Claimant that he may have cracked his tooth at the time of the January 7, 2015, accident and that he clenches his teeth at night. Dr. Oppenheim then opined that it is a possible that a fractured tooth could lead to decay that caused the need for the root canal. He does not definitively say, that the fractured tooth or that Claimant clenching his teeth led to the fractured tooth. Dr. Oppenheim did a pulpal treatment on Claimant's tooth to eliminate the pain until he received further treatment.

CO at 6.

The ALJ listed several reasons beyond the incredible testimony of the Claimant, why the treating physicians' opinions were rejected. We find no error in the ALJ's analysis and reject Claimant's argument.

Claimant further argues the CO is in error as it lacks any discussion whether the injury aggravated Claimant's underlying tooth issues. A review of the evidence reveals no physician opined Claimant's fall aggravated the Claimant's underlying tooth condition with any certainty. Dr. Samad simply opines "trauma" caused Claimant's need for treatment. Dr. Oppenheim notes Claimant told him he "may have cracked his tooth" on January 7, 2015 and that "certainly it is possible that a fracture tooth could lead to the decay that caused the need for the Root Canal Therapy, Core and Crown." Indeed, Dr. Mitcherling opined specifically that the need for treatment was not in any way causally related to the injury of January 7, 2016. We reject Claimant's argument.

In summary, the ALJ reviewed the evidence, found that the presumption of compensability had been invoked by Claimant's evidence, that it had been overcome by Employer's evidence, and upon weighing the evidence without reference to the presumption, Claimant's evidence did not meet his burden of establishing medical causal relationship even considering the treating physician preference. The CO reflects sound, record based reasons for rejecting the treating physicians' opinions. For us to find otherwise would require us reweigh the evidence and substitute our judgment for that of the ALJ, a task that we are not empowered to undertake.

#### CONCLUSION AND ORDER

The April 22, 2016 Compensation Order is supported by the substantial evidence in the record and is in accordance with the law. It is **AFFIRMED**.

*So ordered.*