

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 14-157

**QUINZELLA WILLIAMS,
Claimant-Petitioner,**

v.

**DISTRICT OF COLUMBIA DEPARTMENT OF CHILD AND FAMILY SERVICES,
Employer-Respondent.**

Appeal from a December 16, 2014 Compensation Order
by Administrative Law Judge Fred D. Carney, Jr.
AHD No. 09-061B, C and D, DCP No. 761006-0001-2005-0003,

Lindsay M. Neinast for the Employer
Harold L. Levi for the Claimant

Before JEFFREY P. RUSSELL, LINDA F. JORY, and HEATHER C. LESLIE, *Administrative Appeals Judges.*

JEFFREY P. RUSSELL for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

Before us for review is a Compensation Order issued December 16, 2014. The following facts and history are taken from that document.

On February 1, 2005, Claimant sustained bilateral carpal tunnel syndrome (CTS) while working as a Research Database Assistant for Employer. Claimant filed a claim for benefits under the workers' compensation disability provisions of the District of Columbia Comprehensive Merit Personnel Act of 1978, as amended, D.C. Code § 1-623.01 et seq. (the Act), now known as the Public Sector Workers' Compensation Act (PSWCA). On September 14, 2006, the claim was accepted by Employer, which commenced paying wage loss and medical benefits.

Claimant underwent right-sided CTS surgery on June 4, 2007, and left-sided CTS surgery on October 29, 2007.

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Dr. Rafael Lopez, the physician who performed the CTS surgeries and provided Claimant with other medical care, released Claimant to return to “modified work” as of January 8, 2008. Claimant returned to work for various periods not specified in the Compensation Order before us, on and off.¹

On December 8, 2011, Employer sent Claimant a certified letter, addressed to the same address to which Employer mailed the disability compensation checks, advising her to attend an Additional Medical Evaluation (AME) scheduled for January 5, 2012 with Dr. David Johnson. The letter was returned by the post office as unclaimed on January 4, 2012². On January 10, 2012, Claimant had not attended the AME and Employer issued a notice suspending Claimant’s benefits as of January 15, 2012.

Employer re-scheduled the AME with Dr. Johnson for March 1, 2012, and mailed Claimant a notice of this appointment by certified mail. Claimant attended the AME on that date, as well as a follow up examination on April 9, 2012. Claimant’s benefits were restored as of February 29, 2012.

Dr. Johnson authored a report in which he expressed the opinion that Claimant had reached maximum medical improvement. He noted inconsistencies in his examinations and found no objective evidence of continuing limitations that would prevent Claimant from returning to work.

On August 7, 2012, Employer issued a Notice of Determination (NOD) advising Claimant that her benefits were terminated effective August 25, 2012 due to Claimant being able to return to work.

Claimant sought to have her benefits restored for both the period of the suspension and from the date of the termination, at a formal hearing before an Administrative Law Judge (ALJ) in the Department of Employment Services (DOES) on June 5, 2013.

At the hearing, Claimant testified that she and her neighbors have frequent problems with mail delivery, including mail that is not delivered, and mail that has been delivered to a wrong address. She testified also that she did not receive the first notice scheduling the AME, and that on occasion her disability checks had been delivered to a neighbor who brought them to her. The ALJ credited this testimony and ordered that Employer pay the suspended benefits. Employer has not appealed that decision.

At the hearing, Employer offered the reports and opinions of Dr. Johnson, and Claimant offered the reports of various treating physicians, including Dr. Lopez and Dr. Daniel Ignacio, the surgeon and current treating physician, respectively. Dr. Ignacio expressed the view that Claimant had reached MMI and was disabled from employment.

A Compensation Order was issued December 16, 2014, awarding restoration of the suspended benefits and denying the request for reinstatement of ongoing wage loss benefits.

¹ Claimant presumably was paid wages when working, and disability benefits when not. The Compensation Order does not specify the dates, but they are not at issue in this appeal.

² Due to an apparent typographical error, the Compensation Order erroneously gives the date as January 24, 2012.

Claimant appealed the Compensation Order, to which appeal Employer responded in opposition.

Because the facts as found by the ALJ are supported by substantial evidence, and the conclusions reached flow rationally from those facts, we affirm the Compensation Order.

ANALYSIS

The scope of review by the CRB is limited to making a determination as to whether the factual findings of the appealed 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 §1-623.28(a) of the Act. Consistent with this standard of review, the CRB is constrained to uphold a Compensation Order 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 different conclusion. *Marriott International v. DOES*, 834 A.2d 882, 885 (D.C. 2003).

We begin by noting that the ALJ properly identified the legal standard by which the issue of nature and extent of disability is to be resolved where a claim has been accepted and benefits paid, and Employer seeks to terminate those benefits, and the proper three step process outlined by the CRB in *Mahoney v. DCPS*, CRB No. 14-067, AHD No. PBL 14-004, PSWCP No. 76000 50001 2005-008 (November 12, 2014) (en banc).

Claimant's arguments are centered upon two main points: that the ALJ did not directly discuss or explain why he was not convinced that Claimant's medical evidence was superior to that of Employer's AME, and an assertion that Employer, the ALJ and the AME doctor, Dr. Johnson, use the term "maximum medical improvement" (MMI) as meaning the same thing as having fully recovered without any residual symptoms.

Taking the second point first, Claimant is correct that MMI is not the same thing as a full recovery. An injured worker may reach MMI and remain disabled. But the converse is also true: an injured worker can reach MMI, still have residual problems, yet be able to return to work.

In this case, neither Dr. Johnson nor the ALJ stated that because Claimant had attained MMI, she could return to work. What Dr. Johnson stated was that she had undergone carpal tunnel releases, has reached MMI, she had negative Phalen's test and Tinel's signs, her complaints on examination were inconsistent, and she could return to work. The ALJ accepted Dr. Johnson's opinions. He did not do so because of the MMI finding. Rather, he did so because of the opinion that Claimant could return to work.

Which leads to Claimant's first argument, that her medical evidence is so strong, the ALJ was obligated to address point-by-point why he accepted Dr. Johnson's views over that her treating physicians. She asserts that the Compensation Order is defective because, for example, the ALJ didn't reconcile a number of diagnostic studies with positive findings, many dating back several years, with Dr. Johnson's findings and conclusions.

We respectfully disagree. Nothing in the Compensation Order suggests that the ALJ didn't consider all the evidence, and nothing in Dr. Johnson's reports that we have seen necessarily indicates that the negative and inconsistent findings made in his examination are inconsistent with Claimant having had other positive diagnostic results in the past.

What Claimant asks us to do is to substitute our judgment for that of the ALJ, reweigh the evidence, and reach a different conclusion. Such an exercise we are not empowered or inclined to undertake.

Dr. Johnson's reports are such evidence that a reasonable person might accept them to support the proposition that Claimant is capable of returning to work. In other words, they are substantial evidence supporting the ALJ's Compensation Order.

CONCLUSION AND ORDER

The findings of fact in the Compensation Order are supported by substantial evidence, and the conclusions drawn therefrom are in accordance with the law. The Compensation Order is affirmed.

FOR THE COMPENSATION REVIEW BOARD:

/s/ Jeffrey P. Russell

JEFFREY P. RUSSELL

Administrative Appeals Judge

May 13, 2015

DATE