

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services
Labor Standards Bureau

Office of Hearings and Adjudication
COMPENSATION REVIEW BOARD



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CRB No. 06-11

RAYMOND REYNOLDS,

Claimant – Respondent,

v.

THE WASHINGTON POST,

Self-Insured Employer – Petitioner.

Appeal from a Compensation Order of
Administrative Law Judge Linda F. Jory
OHA No. 97-596; OWC Nos. 508696, 291606

John F. Ward, Esquire for the Petitioner

Matthew Peffer, Esquire, for the Respondent

Before: E. COOPER BROWN, *Chief Administrative Appeals Judge*; FLOYD LEWIS and SHARMAN J. MONROE, *Administrative Appeals Judges*.

FLOYD LEWIS, *Administrative Appeals Judge*, on behalf of the Review Panel:

DECISION AND ORDER

JURISDICTION

Jurisdiction is conferred upon the Compensation Review Board pursuant to D.C. Official Code §§ 32-1521.01 and 32-1522 (2004), 7 DCMR § 230, and the Department of Employment Services Director's Directive, Administrative Policy Issuance 05-01 (February 5, 2005).¹

¹ Pursuant to Administrative Policy Issuance No. 05-01, dated February 5, 2005, the Director of the Department of Employment Services realigned the Office of Hearings and Adjudication to include, *inter alia*, establishment of the Compensation Review Board (CRB) in implementation of the District of Columbia Fiscal Year 2005 Budget Support Act of 2004, Title J, the D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, sec. 1102 (Oct. 1, 1994), *codified at* D.C. Code Ann. §§ 32-1521.01, 32-1522 (2005). In accordance with the Director's Policy Issuance, the CRB replaces the Office of the Director in providing administrative appellate review and disposition of workers' and disability compensation claims arising under the D.C. Workers' Compensation Act of 1979, as amended, D.C. Code Ann. §§ 32-1501 to 32-1545 (2005) and the D.C. Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Code Ann. §§ 1-623.1 to 1.643.7 (2005), including

BACKGROUND

This appeal follows the issuance of a Compensation Order on Remand from the Administrative Hearings Division (AHD) of the Office of Hearings and Adjudication (OHA) in the District of Columbia Department of Employment Services (DOES). In that Compensation Order, which was filed on October 19, 2005, the Administrative Law Judge (ALJ) granted the request by Claimant-Respondent (Respondent) for temporary total disability benefits, concluding that Respondent's disability from September 14, 1996 through March 17, 1997 was causally related to the injury he sustained at work on September 9, 1995. Employer-Petitioner (Petitioner) now seeks review of that Compensation Order.

As grounds for this appeal, Petitioner alleges as error that the Compensation Order is not supported by substantial evidence and is not in accordance with the law.

ANALYSIS

As an initial matter, the scope of review by the Compensation Review Board (CRB) and this Review Panel, 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 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. D.C. Official Code §32-1522(d)(2). "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 Int'l. v. District of Columbia Department of Employment Services*, 834 A.2d 882 (D.C. 2003). Consistent with this scope of review, the CRB and this Review Panel are constrained to uphold 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 the reviewing authority might have reached a contrary conclusion. *Marriott*, 834 A.2d at 885.

In a May 11, 1998 Compensation Order, Respondent's request for compensation benefits was granted, as it was determined that his knee injury was causally related to a September 9, 1995 work injury. Petitioner appealed that decision to the Director and on December 24, 2001, the Director affirmed the Compensation Order. Thereafter, Petitioner filed an appeal with the D.C. Court of Appeals and on June 3, 2004, the Court reversed the Director and remanded the matter to the ALJ to weight the conflicting evidence of causation without relying on the presumption of compensability.

Turning to the case under review herein, Petitioner alleges that the ALJ's decision is erroneous in relying on the medical opinions of Drs. John Starr and Kenneth Fine and disregarding, without explanation, the medical opinion of Dr. Louis Levitt. Respondent counters

responsibility for administrative appeals filed prior to October 1, 2004, the effective date of the D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004.

that the ALJ, after properly choosing between conflicting medical opinions, drew a reasonable inference that Respondent's condition was medically related to the September 9, 1995 work injury, and thus, the Compensation Order should be affirmed.

In concluding that Respondent's knee condition was causally related to his work injury, the ALJ specifically relied on the opinions of Respondent's treating physicians, Drs. Starr and Fine. The ALJ noted:

Dr. Starr responded:

I do agree that his x-rays are probably abnormal even before this injury; however, it was the injury; itself in September that caused him to have clinical knee problems. Therefore, I do think his knee injury is causally related to the injury he described at work. CE 4 at 4.

Dr. Starr's opinion is certainly consistent with Dr. Fine's, who performed claimant's left-knee abrasion arthroplasty-cartilage biopsy-removal of loose bodies-partial meniscectomy on December 11, 1996. . . . Dr. Fine wrote on March 31, 1995 "I am able to state to the best of my knowledge this patient's injury was directly caused by the incident occurring at Mr. Reynold's employment on September 9, 1995." CE 13.

Compensation Order at 4.

In contrast, Petitioner's physician, Dr. Levitt, concludes that Respondent's September 1995 work injury is not the cause of his knee problems. Petitioner contends that the ALJ erred in disregarding Dr. Levitt's opinion on Respondent's knee condition, especially without adequate explanation. However, in his opposition to the appeal, Respondent stresses that on cross-examination, Dr. Levitt admitted that if he knew that Respondent continued to be symptomatic and received treatment after September 1995, he would have had to consider a causal connection between Respondent's work injury and his subsequent knee condition.

In this jurisdiction, in evaluating the medical evidence of record, the testimony of a treating physician is ordinarily preferred over that of a physician retained solely for litigation purposes. *Harris v. Dep't. of Employment Servs.*, 746 A.2d 297, 302 (D.C. 2000); *Stewart v. Dep't. of Employment Servs.*, 606 A.2d 1350, 1353 (D.C. 1992). Despite Petitioner's arguments that the ALJ disregarded Dr. Levitt's opinion, without explanation, it should be noted that the treating physician preference is so strong, that when an ALJ relies on the opinion of a treating physician to the detriment of conflicting evidence, the ALJ does not need to provide an explanation for not accepting the opinions of the other medical opinions of record. *See Metropolitan Poultry v. Dist. of Columbia Dep't. of Employment Servs.*, 706 A.2s 33, 35 (D.C. 1998). After reviewing this matter, this Panel determines that the ALJ's reliance on the opinions of Drs. Fine and Starr is in accordance with the law in this jurisdiction and should not be disturbed.

Accordingly, the ALJ's conclusion that Respondent's disability from September 14, 1996 through March 17, 1997 was causally related to this work injury of September 9, 1995 is supported by substantial evidence, is in accordance with the law.

CONCLUSION

The Compensation Order of October 19, 2005 is supported by substantial evidence in the record and is in accordance with the law

ORDER

The Compensation Order of October 19, 2005 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

FLOYD LEWIS
Administrative Appeals Judge