

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
ACTING DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 14-039

RHONDA K. DAHLMAN
Claimant-Petitioner

v.

AMERICAN ASSOCIATION OF RETIRED PERSONS
and **ZURICH NORTH AMERICA INSURANCE**
Employer-Respondent.

Appeal from a March 21, 2014 Compensation Order by
Administrative Law Judge David L. Boddie
AHD No. 09-056C, OWC No. 647286

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2015 FEB 11 PM 12 22

Rhonda K. Dahlman, *Pro Se*
D. Stephenson Schwinn for the Employer

Before JEFFREY P. RUSSELL, MELISSA LIN JONES, and HEATHER C. LESLIE, *Administrative Appeals Judges*.

JEFFREY P. RUSSELL for the Compensation Review Board.

DECISION AND REMAND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

The Claimant Rhonda K. Dahlman was employed as an attorney by the American Association of Retired Persons (AARP). As a result of a childhood history of sexual, emotional and physical abuse, as she came into adulthood she developed Post Traumatic Stress Disorder (PTSD) and Dissociative Identity Disorder (DID). These disorders arose as coping mechanisms to the abuse, enabling Ms. Dahlman to protect herself psychologically and to repress memories.

Ms. Dahlman began working as an attorney for AARP in 1999. She was a strong performer, a hard worker, a skilled appellate advocate specializing in housing issues and the elderly, and was

engaged in numerous employment related and professional activities, including participation in revisions to the probate procedures in the District of Columbia Superior Court.

As part of her DID, Ms. Dahlman had within her as many as seven separate personalities. She received psychological counseling and treatment over time while employed by AARP.

She continued in her professional position until taking a leave of absence commencing late summer 2005, and continuing until November 2005. The circumstances surrounding the leave of absence are that, for personal reasons relating to stress in some personal relationships and stresses at work, including her perception that her supervisor, Mr. Jan May, had turned from a supportive colleague to a hostile and abusive boss, she decided to relocate to Nova Scotia, Canada, to live. Prior to making a final decision on this, however, she and her supervisor agreed that she would take a three month leave of absence, during which time she would live in Nova Scotia.

Upon her return from the leave of absence, Ms. Dahlman was feeling anxious about her return to AARP and was granted an additional week of vacation time. However, on November 8, 2005, she received a telephone call from AARP's Human Resources department, advising her that she had to come to the office to fill out a time sheet to obtain pay for this additional week.

Upon receiving the telephone call from HR, Ms. Dahlman perceived that the request was being made at the instigation of Mr. May as a means of harassing her. Ms. Dahlman experienced the onset of an episode of psychological distress she describes as a "shattering", in which state she was unable to return to work and to which she has not since returned.

AARP had Ms. Dahlman examined by a psychiatrist, Dr. Liza Gold. Dr. Gold testified in a deposition in which she opined that Ms. Dahlman's condition was preexisting to the November 2005 event and was the result of her childhood experiences. She opined that the cause of Ms. Dahlman's disability from PTSD and DID was the failure of a number of personal relationships and the emotional trauma attendant thereto. She opined further that a consequence of Ms. Dahlman's psychological condition is the misperception and misattribution of the motives of persons around her, and that (1) "The events that occurred at Ms. Dahlman's workplace beginning in November 2004 did not cause, contribute to, or exacerbate Ms. Dahlman's severe mental illness", and (2) "There is no academic or clinical evidence to support Ms. Dahlman's assertions that routine or even unusual workplace stress can cause Dissociative Identity Disorder (DID) or a severe dissociative episode such as Ms. Dahlman describes occurred on November 8, 2005."

Ms. Dahlman filed a claim for psychological injury arising from workplace stress, which was denied by AARP as being unrelated to her employment. She presented her claim for benefits to

an Administrative Law Judge (ALJ) in the Department of Employment Services (DOES) at a formal hearing on September 27, 2012, at which hearing she testified on her own behalf, and produced the testimony of a treating psychiatrist, Dr. Norman Wilson. Dr. Wilson testified that her PTSD and DID were aggravated by her perceptions of hostility in the work environment, resulting in the “shattering” event of November 8, 2005.

A Compensation Order was issued by the ALJ on March 21, 2014. The ALJ denied the claim, finding that Ms. Dahlman sustained an accidental injury on November 8, 2005, but that the injury was not causally related to her employment. Ms. Dahlman filed an appeal to the Compensation Review Board (CRB) which appeal AARP opposed.

Ms. Dahlman claims in her appeal that the ALJ made factual errors concerning matters involving her personal relationships and that those errors caused him to erroneously conclude that her condition resulted from those failed relationships, that he placed too much weight on Dr. Gold’s opinion and not enough on her own physician and the notes and reports of her counselors, that the ALJ erroneously found that her work had deteriorated prior to the “shattering” incident and that her supervisor had not been hostile or abusive in the workplace.

AARP argues that the ALJ properly considered the evidence and concluded, with record support, that Ms. Dahlman’s psychological disability is unrelated to her employment at AARP.

Because the ALJ’s determination that Ms. Dahlman sustained an accidental injury on November 8, 2005 is supported by substantial evidence, we affirm that finding. Because the ALJ improperly applied the legal test of causation in psychological injury cases, we vacate the denial of the claim. Because it is undisputed that the events of November 8, 2005 (1) occurred and (2) the ALJ found that she sustained an accidental injury on that date, Ms. Dahlman was entitled to the presumption that her condition is causally related to her employment. Because the ALJ failed to properly analyze this claim in accordance with Ms. Dahlman’s entitlement to a presumption of causal relationship, we remand the matter for further consideration.

ANALYSIS

Claimant’s primary assignment of error is outlined in her first argument, and is as follows:

The ALJ “erred twice regarding Claimant’s Therapy with Judy Alexander from 2000 to 2004, and used these errors to support his conclusion that Claimant’s adult personal relationships caused Claimant’s injury of November 8, 2005.”

Claimant’s Brief, page 1.

She goes on to assert that the first of these errors was that the ALJ erroneously described a personal relationship in 2000 as being with a co-worker, when in fact “the relationship he referred to was one that had been “on and off for years *prior* to her employment with AARP” and that she was diagnosed that year with “Generalized Anxiety Disorder” by Ms. Alexander. She then states that after this relationship ended, she continued therapy during 2001 and 2002 “in order to focus on family of origin issues” and that in that therapeutic work “it became clear that Claimant had been severely abused both physically and psychologically by both parents and [her diagnosis] changed to Post Traumatic Stress Disorder (hereinafter PTSD) and that in 2002 the diagnosis of Dissociative Identity Disorder (NOS)(hereinafter, DID) after a session in which Claimant experienced a dissociative event related to childhood abuse” and that she “continued her therapy with [Ms. Alexander] into 2004.”

Claimant goes on to state that these alleged “mistakes regarding the end of Claimant’s relationship and the context of Claimant’s first DID experience led him to the false conclusion that Claimant’s latent PTSD and DID became symptomatic as a result of her ending of her personal relationship.”

Review of the Compensation Order reveals that what the ALJ wrote on this subject is as follows:

I find that Claimant was hired as an attorney for the Employer in 1099 [sic]. The Claimant was a very good performer at work. Over the course of time the Claimant developed a friendship and personal relationship with a co-worker.

I find the Claimant began to experience problems with the relationship in 2000 and sought counseling. I find that the Claimant began exhibiting associative identity disorder symptoms during the course of counseling. I find the relationship failed during 2002 to 2003. [CO 2 -3]

. . .

I find Claimant’s conditions were latent and asymptomatic as she became an adult. I find that anxiety and emotional upset are conditions that can cause her preexisting conditions [PTSD and DID] to become symptomatic and manifest itself. I find that during 2000 the Claimant sought counseling regarding a relationship she was involved in. I find that as that relationship began to deteriorate the Claimant began to exhibit symptoms of her preexisting conditions.

I find that in November 2004 after the Claimant was informed by the person she was having a relationship with that they [sic] were relocating to care for a sick relative the Claimant also made the decision to resign her job and relocate. I find that following that the Claimant’s work performance began to deteriorate and began to become sensitive to comments made to her by her supervisor. I find that

the Claimant began to believe that her supervisor was acting harshly toward her, unfairly singling her out for criticism, and was treating her in a hostile manner.

I find no reliable credible evidence that the Claimant's supervisor treated her in a hostile manner or caused or contributed to her suffering an accidental injury or the conditions she has been diagnosed with. I find that the Claimant's injury did not arise out of and in the course of her employment.

Compensation Order, p. 4.

We note that the final sentence in the preceding quote is in fact a legal conclusion, rather than a factual finding. In any event, to understand what the ALJ meant by "Claimant's injury", we direct attention to the findings that preceded this quote. The ALJ had previously found and discussed that Ms. Dahlman had experienced a DID event in November 2004 "shortly after she was informed by her co-worker of his plans to care for an ill relative." The ALJ wrote that upon learning this:

Following the Claimant's experience of having her heart leave her body, she decided to resign her job and move to Nova Scotia, Canada. ...

I find that shortly thereafter the Claimant advised her supervisor of her decision to resign and relocate to Canada. Her supervisor recommended to her that she take a leave of absence to consider her decision before making it final, to which the Claimant agreed to take a three month leave of absence.

I find that the Claimant was feeling overworked and fatigued. After informing her supervisor of her decision to resign her job and move to Canada the Claimant began to experience several incidents at work that made her feel uncomfortable, that she was being singled out and unfairly criticized and the subject of hostile treatment by her supervisor.

I find that before commencing her leave of absence in July or August 2005, all of her work was re-assigned by her supervisor. Before returning to work after her leave of absence the Claimant was feeling anxious about treatment she had received from her supervisor and wrote a letter complaining of hostile treatment by her supervisor.

The Claimant was granted an additional week of vacation before returning to work. I find that on the day before she was to return to work, November 8, 2005, the Claimant received a call from the Human Resource department requesting that she come into the office that day to complete a time sheet to make sure she would get paid for the additional week of leave taken. The Claimant feeling that her

supervisor was behind the call got upset at the request and had a breakdown or emotional shattering.

I find that since that event on November 8, 2005 the Claimant has not returned to work with the Employer. The Claimant sought medical treatment and came under the care of Dr. Norman Wilson, a psychiatrist, who diagnosed with [sic] the conditions of posttraumatic stress disorder, and dissociative identity disorder. I find that the Claimant suffered an accidental injury on November 8, 2005.

Compensation Order, p. 3.

Thus, the ALJ found that the inciting incidents leading up to her disabling onset of PTSD and DID were imagined hostility and mistreatment, culminating in a request that she come to the workplace to fill out a time sheet to insure that she got paid for an additional week of vacation after taking her extended leave of absence. The alleged “errors” of fact concerning the identity of the specific individual whose failed relationship first initiated her adult onset of PTSD and DID prior to her employment, and the fact that elsewhere in the Compensation Order a second such breakdown occurred when a personal relationship with a co-worker failed, are irrelevant to anything regarding the issue of whether and under what circumstances the Claimant suffered the November 8, 2005 accidental injury. Thus, assuming any error of fact on this matter was made, it was harmless.

However, although these supposed errors in the Compensation Order are in themselves harmless to the relationship of the record to the findings, ALJ’s factual findings lead to a conclusion out of harmony with the law as it currently stands.

Until a few years ago, the next step that the ALJ would have been required to undertake was to assess whether the event [i.e., “on the day before she was to return to work, November 8, 2005, the Claimant received a call from the Human Resource department requesting that she come into the office that day to complete a time sheet to make sure she would get paid for the additional week of leave taken”] would have caused “a normal person of average sensibilities” to have become “upset at the request and [have] a breakdown or emotional shattering” such as that found to have occurred in this case, to this claimant, on November 8, 2005. Under what was the long standing analytic scheme under the Act, if this event would *not* have caused the same or similar “shattering” and its consequent inability to work in the hypothetical “normal person of average sensibilities”, it would not have been compensable.

However, the landscape of legal causation in cases like this, that is “mental-mental” cases in which it is alleged that a work-related event, condition or occurrence is emotionally, psychiatrically or psychologically injurious and disabling, changed dramatically with the District of Columbia Court of Appeals (DCCA)s’ decision in *Ramey v. DOES*, 997 A.2d 694, 699 (D.C. 2010) and *McCamey*. Quoting the court:

Over the five years in which Mr. Muhammad has attempted to resolve his case through the workers' compensation system, the legal landscape for claims of psychological injury has changed dramatically. When Mr. Muhammad originally filed his claim, this jurisdiction applied an "objective standard" requiring "the claimant [to] show[] that the actual working conditions could have caused similar emotional injury in a person who was not significantly predisposed to such injury." *Dailey v. 3M Co.*, H & AS No. 85-259, 1988 DC Wrk. Comp. LEXIS 1, at (D.C. Dep't of Employment Servs. May 19, 1988); *see also Porter v. District of Columbia Dep't of Employment Servs.*, 625 A.2d 886, 889 (D.C. 1993) (endorsing the objective test). However, in *McCamey*, a 2008 en banc decision, we rejected this "objective standard," which delves into an "employee's particular susceptibilities," as contrary to the fundamental, humanitarian purpose of the Workers' Compensation Act. 947 A.2d at 1206, 1209. Two years later, in *Ramey*, we upheld the Board's decision to "adopt[] the test announced by this court in *McCamey* for use in physical-mental cases, for application in mental-mental cases." 997 A.2d at 700 (reviewing the Board's mental-mental rule announced in *Ramey v. Potomac Electric Power Co.*, CRB No. 06-38, 2008 WL 3338467 (D.C. Dep't of Employment Servs. July 24, 2008)).

Muhammad v. DOES, 34 A.3rd 488 (D.C. 2012), pp. 491 – 492.

Under the paradigm established in these cases, the DCCA determined that the “*Dailey* test”, sometimes referred to as “the objective test”, was inconsistent with the “aggravation” rule, under which the disabling result of a work-related event is compensable regardless of whether such an event could have had the same or similar disabling effect on a person not otherwise predisposed psychological or psychiatric injury. The DCCA ruled that the only permissible “objective” test that could defeat a claim for such mental-mental injuries was one that focused solely upon the existence, in reality, of the work-related condition or event which precipitated the onset of disabling mental injury.

The following represents the current state of the law, as expressed by the DCCA:

An injured worker invokes the statutory presumption of compensability by showing actual workplace conditions or events which could have caused or aggravated the psychological injury. The injured worker’s showing must be supported by competent medical evidence. The ALJ, in determining whether the injured worker invoked the presumption, must make findings that the workplace incident existed or occurred, and must make findings on credibility.

Ramey, at 699 – 700.

In its brief, AARP argues that the ALJ's legal determination that Ms. Dahlman's disability is not causally related to her employment should be sustained primarily because the ALJ accepted the opinions of Dr. Gold, who, in AARP's words:

opined that the failure of [a particular personal] intimate relationship triggered the emergence of repressed feelings and dissociative symptoms. Claimant's repressed feelings of victimization and abuse were projected on her boss, Jan May. In other words, Claimant's mental illness caused her to believe she was the victim of workplace abuse. In reality, Mr. May never treated claimant in a hostile or abusive manner. [The ALJ] found that Claimant's testimony accurately described *her perception* of the events, but "her perception did not match the reality." *Id.*, at 22. [The ALJ] found no credible evidence to corroborate Claimant's perception of the events that occurred in the workplace. Accordingly, [the ALJ] held that Claimant's mental illness was not work related because the events she described did not actually occur **in the manner that she perceived them**. This decision is amply supported by the evidence of record, and by applicable law. *See, Ramey v. DC DOES*, 997 A.2d 694, 699 (D.C. 2010).

AARP's Brief, p. 5 (italics in original, bold added).

In cross-examination of Ms. Dahlman's treating psychiatrist, Dr. Wilson, we find the following colloquy:

Q [by Mr. Schwinn] She was abused, sexually abused as a three-year-old by her father?

A [the witness, Dr. Wilson] Well, that's - -

Q Is that right?

A That's what she reports. Now, the healer is pretty self-evident. The protector kind of helps the child, but she was working very - - all these parts were working very well together. She was doing super work in therapy until what she calls her shattering, and then all these parts got disconnected, the way she says I shattered, I went to the edge of the universe and shattered with the stars.

And so a lot of - - she wasn't able to work functionally with these different parts. Part of her therapy was to have that happen.

HT at 88 - 89.

The problem with AARP's argument is that what it deems Ms. Dahlman's "misperception" was determined by the ALJ to be a manifestation of the preexisting condition. It is true that Dr. Gold's report and Mr. May's testimony amply support a finding that Ms. Dahlman, in eyes of

someone outside looking in, could reasonably have concluded that Ms. Dahlman misapprehended Mr. May's motives, methods and actual feelings towards Ms. Dahlman. However, Dr. Gold's medical opinion that Ms. Dahlman's ultimate disabling breakdown was a triggering of her preexisting mental illness does not negate a finding of *legal* causation. Dr. Wilson's testimony, which is not contradicted *vis a vis* the events of November 8, 2005, and Ms. Dahlman's testimony which the ALJ credited, established the date of injury as November 8, 2005.

Returning to the DCCA's ruling with respect to compensability, it is apparent that Ms. Dahlman has, at a minimum, supplied sufficient evidence to invoke the presumption that she sustained a work-related "shattering" on November 8, 2005. Having done so, the ALJ should have then proceeded to examine the evidence adduced by AARP to ascertain whether the presumption that her mental disability was caused or aggravated by her employment had been rebutted. Although the ALJ laid out the process that should have been undertaken (see, Compensation Order, p. 22), he never explicitly states whether he finds Ms. Dahlman's evidence sufficient to invoke the presumption, nor does he explicitly determine how and why such a presumption has been overcome. Rather, he immediately recites that many aspects of the pre-shattering elements of Ms. Dahlman's reported history were "misperceptions", and concludes that

there was no evidence in the record that supports or corroborates the Claimant's perception of events that occurred in the workplace.

I find that the Employer's evidence presented in opposition to the Claimant, regarding workplace conditions or events more credible, based upon the evidence in the record. I therefore find that the Claimant's injury did not arise out of and in the course of the employment.

Compensation Order, p. 22.

In this passage, the ALJ commits the same analytic error as does AARP: despite the fact that Ms. Dahlman had a preexisting mental disorder which caused her, in the ALJ's words, to "misperceive" the nature of many workplace events preceding November 8, 2005, the "misperception" was (a) part of the preexisting disorder, and (b) did not become disabling until the "shattering" on November 8, 2005.

In this case, there is no dispute concerning the events of November 8, 2005, and the record establishes without doubt that, prior thereto, Ms. Dahlman was a highly skilled, effective, respected and hard-working attorney for AARP. The finding that Ms. Dahlman sustained a disabling work-related event on that date is undisputed factually, is supported by substantial evidence, and must therefore be affirmed. AARP's argument is, as a legal matter, beside the point. Ms. Dahlman did not imagine the November 8, 2005 incident, and her "misperception" of it, if in fact it was a perception, was a function of her preexisting mental illness.

We recognize a certain similarity between this case and the ultimate outcome of *Ramey*. Quoting AARP's brief:

The Ramey test denies compensation in cases where the worker's delusions cause the worker to misinterpret events that actually occurred. In *Ramey*, the claimant's supervisor transported him in a car to take a drug test. The claimant was heavily intoxicated, and believed he was being kidnapped, which caused him to suffer a mental injury. The ALJ—in a decision affirmed by the CRB and the Court of Appeal—held that the injury was not compensable. Even though the claimant did ride in the supervisor's vehicle, the alleged kidnapping occurred only in the claimant's mind.

AARP's brief, p. 23.

AARP mischaracterizes the DCCA decision in *Ramey*. The court upheld the ALJ's ultimate determination that the claimant in *Ramey* not only was not being kidnapped, but that the only evidence that would suggest that he *held that belief* was the non-credible testimony of Mr. Ramey. All the other evidence that the ALJ credited failed to support a finding that Mr. Ramey actually believed that was being kidnapped. The court wrote:

The record supports the ALJ's factual findings and her legal conclusions reflect no error. In reaching her decision, she considered the entire record evidence and acknowledged petitioner's version of events, discussed the material factual disputes, and credited the version of events elucidated by the employer's witnesses. Namely, she found that petitioner

was not forcibly restrained or coerced into going [to the testing facilities]; that he understood that he was being driven to find a facility which would administer a Breathalyzer test; that it was not dark when he and the other PEPCO employees . . . left the downtown office; that they were driving around trying to find a facility for no longer than five hours; that the atmosphere in the car was friendly and relaxed rather than oppressive, and that no one in the car or at the office . . . was aware of claimant's urinating on himself.

These findings are consistent with the testimony of all of the witnesses except for petitioner himself. Mr. Dudley testified that he was with petitioner the entire time that the men were attempting to find a testing facility, that everyone in the car was levelheaded, that they were all "joking around" and that "everything went okay." When asked if he observed anyone mistreat petitioner, Mr. Dudley replied that he did not. Mr. Johnson testified that he did not observe Mr. Duarte make any

threatening statements or movements toward petitioner before the men left to find a testing facility, that petitioner was informed that he was being taken for a drug and alcohol test, and that he did not notice that petitioner had urinated on himself. Likewise, Mr. Birratu testified that he did not observe Ramey urinate on himself and that he did not make fun of him for doing so. Mr. Birratu also testified that nothing happened during the trip to the testing facilities that was life-threatening and that petitioner never complained of being in fear. The ALJ's findings support her conclusion that petitioner did not sustain a compensable psychological injury on the morning of August 30, 2003, in spite of the presumption, which initially operated in his favor this time around.

Ramey, supra, pp. 700 -701.

The perhaps subtle but crucial distinction between the case before us and *Ramey* is that, while the ALJ in *Ramey* initially accorded the claimant the presumption that his alleged PTSD was the result of his perception of being kidnapped, she ultimately rejected his testimony that he truly believed that he was being kidnapped, thereby denying the claim *not* because of an erroneous belief that his supervisor was kidnapping him could not be the basis of a compensable PTSD claim, but rather that this particular claimant's tale was not credible, and he did not in reality believe he was being kidnapped or in any other way physically threatened or abused.

The ALJ also committed a fundamental analytic omission. He should have first determined whether Ms. Dahlman had adduced sufficient evidence to invoke the presumption, then considered whether AARP had adduced sufficient evidence to overcome, and if so, he should have proceeded to then weigh the entire record without reference to any presumption, and determine whether Ms. Dahlman's November 8, 2005 "shattering" was work-related.

This error requires that we remand for further consideration of whether Ms. Dahlman's accidental injury as found to have been sustained on November 8, 2005 was work-related. We point out that it is presumed to be so. Therefore, the next step is to determine whether AARP's evidence is sufficient to overcome that presumption. That process requires analysis under *Washington Post v. DOES*, 852 A.2d 909 (D.C. 2004).

Then, if it is found that AARP's evidence meets the standard, what remains is for the ALJ to reweigh the evidence, without reference to the presumption, but bearing in mind that in this jurisdiction there is a preference for the opinion of a treating physician over that of an independent medical examiner, and any rejection of the opinion of Dr. Wilson needs to be explained, particularly in light of the ALJ's finding, which we affirm, that Ms. Dahlman sustained an accidental injury on the date claimed.

Lastly, because the ALJ denied the claim on compensability grounds, there were no findings or legal conclusions concerning the nature or extent of Ms. Dahlman's disability, whether the claim was filed timely, whether employer had notice of the injury under the Act, or whether the claim was timely controverted. Accordingly, if on remand the ALJ determines that Ms. Dahlman's November 8, 2005 accidental injury was caused or aggravated by a work-related condition or event, the ALJ must make further findings of fact and conclusions of law concerning the remaining contested issues.

CONCLUSION AND ORDER

The ALJ's determination that Ms. Dahlman sustained an accidental injury on November 8, 2005 is supported by substantial evidence, and is affirmed. The conclusion that the accidental injury was not caused or aggravated by a work-related condition or event was reached without adequate or proper analysis under the *Ramey* doctrine, the presumption of compensability or in light of the treating physician preference, and is vacated. The matter is remanded for further consideration of the claim in a manner consistent with the foregoing Decision and Remand Order.

FOR THE COMPENSATION REVIEW BOARD:

/s/ Jeffrey P. Russell
JEFFREY P. RUSSELL
Administrative Appeals Judge

February 11, 2015
DATE