

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 15-198

**RICCO DEAL,
Claimant–Petitioner,**

v.

**WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY,
Self-Insured Employer–Respondent.**

Appeal from a December 2, 2015 Compensation Order
by Administrative Law Judge Nata K. Brown
AHD No. 10-318A, OWC Nos. 668844

(Decided May 17, 2016)

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2016 MAY 17 AM 11 20

Justin M. Beall for Claimant
Sarah O. Rollman for Employer

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

Ricco Deal (Claimant) injured his right shoulder on March 30, 2010 while pulling coin trays from fare vending machines. As a result of the injury, Claimant was initially treated by a Dr. Bridges, who recommended conservative care and opined the injury would resolve.

Claimant sought a second opinion from orthopedic surgeon Dr. Benjamin Schaffer, and based upon his recommendations, Claimant requested and Washington Metropolitan Transit Authority (Employer) authorized two surgical procedures to alleviate Claimant's pain and disability.

Employer sought an independent medical evaluation (IME) from Dr. Louis Levitt on April 22, 2014, and, pursuant to the provisions of D.C. Code § 32-1507 (b)(6)(B), obtained a Utilization

Review (UR) evaluation from Dr. Thomas S. Padgett on June 24, 2014.

Neither Dr. Levitt nor Dr. Padgett believed that additional surgery was medically reasonable and necessary.

Claimant, who is permanently restricted from performing his pre-injury job due to the weight the job requires him to handle, sought authorization for a third surgical procedure, as recommended by Dr. Schaffer on June 30, 2014. Employer declined based upon the previous UR and IME reports.

Claimant sought authorization for the third surgical procedure at a formal hearing conducted on January 20, 2014 before an Administrative Law Judge (ALJ) in the District of Columbia Department of Employment Services (DOES).

On December 2, 2015, the ALJ issued a Compensation Order (the CO) denying the requested procedure, based upon the UR and IME reports.

Claimant filed Claimant's Application for Review and memorandum in support thereof (Claimant's Brief) with the Compensation Review Board (CRB), seeking reversal of the CO. Employer filed Self-Insured Employer's Opposition to Claimant's Application for Review (Employer's Brief), opposing Claimant's appeal.

Because the CO's determinations that the requested third surgery is not reasonable and necessary are supported by substantial evidence, the CO is in accordance with the law and is affirmed.

ANALYSIS

Claimant's arguments are that: (1) The ALJ failed to accord adequate weight to Dr. Schaffer's opinion that the appearance of "an irregularity" on an MRI taken April 17, 2014, after the second surgical procedure, warranted further surgical intervention; (2) the ALJ erred "as a matter of law in concluding that Claimant had not met his burden by a preponderance of the evidence that his [third] shoulder surgery was reasonable and necessary (Claimant's Brief, Argument I A, unnumbered page 11); (3) the ALJ improperly "selectively focused" on the failure of the MRI to demonstrate "an overt tear" in the rotator cuff (*id.*, Argument I B, unnumbered page 9), and; (4) the "humanitarian nature of the Act" compels an award of the requested care (*id.*, unnumbered page 15.)

Arguments 1, 2 and 3 center upon Claimant's interpretation of, and attack upon, the reasoning of Drs. Levitt and Padgett, and can be summarized succinctly as suggesting that since both doctors agreed that the first two surgeries were reasonable and necessary when the MRI following the second surgery was similar to the MRI following the first surgery, rejection of additional surgery's reasonableness and necessity is inconsistent. *Id.*, Argument I. B, unnumbered page 9 – 10.

While there is some logic to this argument, it is not so compelling as to invalidate the opinions of the IME and UR physicians. What the ALJ was faced with was a difference of interpretation of an MRI between Drs. Padgett and Levitt on the one hand, and Dr. Schaffer on the other. Claimant also challenges other reasons cited by the ALJ, including Claimant's failure to adhere to a home exercise program.

While Claimant faults the ALJ for raising this issue without the Employer having argued it at the formal hearing (unnumbered page 11), he cites no authority and we know of none that limits the facts in the record that an ALJ can consider in reaching a conclusion. Indeed, the opposite is true: while it is not incumbent upon an ALJ to inventory the evidence considered, it is an ALJ's obligation to consider the entire record as a whole in making factual findings and reaching rational legal conclusions based upon those findings.

The discussion in the CO of the medical record, including that of the treating, UR and IME physicians, satisfies us that a complete review of the record was undertaken by the ALJ. As long as there are no significant factual errors in CO, the ALJ's assessment of the validity of the competing medical opinions is the ALJ's alone. Claimant has expressed disagreement with the ALJ's assessment of the evidence, but has pointed out no errors.

The balance of Claimant's arguments are recitations and summaries of the rejected opinions of Dr. Schaffer, and in effect are asking that we substitute our judgment for that of the ALJ. Where the ALJ's decision is supported by substantial evidence, we have no authority to do so, even where the record contains substantial evidence from which a contrary conclusion could have been drawn. *Washington Vista Hotel v. DOES*, 721 A.2d 574, 578 (D.C. 1998); *Gary v. DOES*, 723 A.2d 1205, 1209 (D.C. 1998); *Canlas v. DOES*, 723 A.2d 1210, 1211 (D.C. 1999).

Finally, we consider the Claimant's last argument. Although frequently cited as a general proposition and in very broad terms, the oft-repeated admonition to consider the "humanitarian" nature of the Act that emanates from the statutory presumptions of compensability found in D.C. Code § 32-1521 (formerly D.C. Code § 36-321). Given Employer's acceptance of liability for such benefits as the Act mandates in connection with this injury, "compensability" is not an issue in this case, and thus the humanitarian nature of the Act has been satisfied by that acceptance. While the humanitarian or remedial purposes of the Act are not *always* limited to compensability issues, it is in that context that it has its greatest applicability. Indeed, the District of Columbia Court of Appeals has written:

When our cases speak of the "humanitarian purpose of the statute, they refer specifically to the presumption of compensability, D.C. Code § 36-321(1) (1988), which enables a claimant more easily to establish his or her entitlement to benefits and is intended to favor awards in arguable cases. *See Ferreira v. District of Columbia Department of Employment Services*, 531 A.2d 651, 655 (D.C. 1987). The reason for this presumption is simply that a worker's sole remedy for a work related injury is the remedy provided by statute; consequently, if the statutory benefits are unavailable for any reason, the worker will not be compensated at all for the injury. However, when it is undisputed that a claimant's injury arises out

of his or her employment and is therefore compensable, “the presumption is no longer part of the case” because it is no longer necessary to effectuate the humanitarian purposes of the law. *Dunston v. District of Columbia Department of Employment Services*, 509 A.2d 109, 111 (D.C. 1986).

4934, Inc. v. DOES, 605 A.2d 50, 57 (D.C. 1992); *See also Washington Metropolitan Area Transit Authority v. Reid*, 666 A.2d 41, 48 n.12, (D.C. 1995), and *Drew v. Severn Construction*, CRB No. 14-061 (August 28, 2014).

A claimant is obligated to demonstrate entitlement to a particular benefit by a preponderance of the evidence. *Dunston, supra*. Indeed, Claimant acknowledges as much in citing *Stewart v. DOES*, 606 A.2d 1350, 1351-52 (D.C. 1992), . *See id.* Claimant’s Brief unnumbered page 7. Accordingly, we reject Claimant’s argument.

CONCLUSION AND ORDER

The findings of fact in the CO are supported by substantial evidence and the legal conclusions flow rationally therefrom. Accordingly the CO is in accordance with the law and is affirmed.

So ordered.