

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 15-189

**SHIRLEY G. LATTIMORE,
Claimant–Petitioner,**

v.

**CVS PHARMACY and
GALLAGHER BASSETT SERVICES,
Employer/Third-Party Administrator-Respondent.**

On Reconsideration of a May 9, 2016 Decision and Order
Affirming a Compensation Order on Remand
by Administrative Law Judge Gregory P. Lambert
AHD No. 09-243F, OWC No. 641909

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2016 JUN 13 PM 1 22

(Issued June 13, 2016)

Shirley G. Lattimore, *pro se* Claimant
Joel E. Ogden for Employer

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

LINDA F. JORY for the Compensation Review Board.

ORDER DENYING RECONSIDERATION

On October 30, 2015, Administrative Law Judge (ALJ) Gregory P. Lambert issued a Compensation Order on Remand (COR) which concluded Claimant voluntarily limited her income as of March 4, 2013 and certain medications were not reasonable or necessary.

Claimant filed an Application for Review (AFR) and a memorandum of points and authorities in support thereof (Claimant's Brief) seeking reversal of the Compensation Order on Remand. Employer filed an opposition to the AFR arguing that the COR is supported by substantial evidence and in accordance with the law and should be affirmed.

On May 9, 2016, the Compensation Review Board (CRB) issued a Decision and Order affirming the COR and amending the COR to reflect that Claimant's voluntary limitation of income is effective March 29, 2013. *Lattimore v. CVS Pharmacy*, CRB No. 15-189 9 May 9, 2016).

On May 19, 2016, Claimant filed a timely Motion for Reconsideration asking that reconsideration be given to a list of facts she outlined and a handwritten addendum she added.

As it was not clear if Employer was served with a copy of Claimant's request, a copy was sent to Employer with an order to show cause on or before May 27, 2016 why the CRB should not reconsider the Decision and Order of May 9, 2016.

As of the date of this order, Employer has not filed a response.

Claimant initially takes issue with the COR's finding of fact that Claimant threatened to kill or harm vocational rehabilitation counselors on March 4, 2013. Instead Claimant asserts:

I had a follow-up appointment on that date with my primary care Dr. Erin Farrish as my medical records indicate on that date I did not threaten to do harm to myself.

On February 21, 2013 I first met with Dr. Farrish regarding anxiety issues I was having regarding Workers' Compensation that require[d] Emergency Room treatment on February 14, 2013.

On my next follow-up visit on February 27, 2013 Dr. Farrish strongly recommend[ed] I no longer participate in Vocational Rehabilitation and referred me to Ms. Tara Deveneni Social Worker at the Georgetown University Hospital [and] that she would contact the necessary persons that I no longer participate.

* * *

I never met with a psychiatrist at Georgetown University Hospital.

I was referred to several psychiatrists due to my anxiety from worker's compensation including Mary's center and Washington Psychiatric Institute as [sic] with my first visit to a psychiatrist was Dr. Sousa at the Washington Hospital Center on March 27, 2013. I did not visit any doctor at Georgetown University Hospital on March 27, 2013. Dr. Sousa informed me that I could speak freely and that whatever I said her[sic] was totally confidential.

Being that I was of the mind I was no longer was [sic] in vocational rehab and needed the treatment for what workers compensation caused me I spoke to how I felt. However, I NEVER said I would "kill" anyone. I swear to that I would challenge any document any document that say I did. I do recall Dr. Sousa as well as all other doctors at that time asked if I would do harm [to] anyone or myself and I refuse to answer. If anyone concluded from that I may do harm to

someone that was their opinion. However, when I spoke with Dr. Sousa she assured me she did not talk to anyone.

Claimant's unnumbered brief at page 2, 3 (Emphasis in original).

With regard to the alleged threat to harm, the CRB stated:

We note, at the formal hearing, counsel for Employer stated on March 4, 2013 "there is some indication that Ms. Devineni contacted your vocational counselor to discuss the situation regarding your statements about harming somebody?" HT at 149. Ms. Devineni was described as a social worker. However, Employer did not corroborate this assertion under cross examination with any supporting evidence nor did Employer call Ms. Gardiner, the vocational counselor who was handling the VR in March 2013, who allegedly received this advice, as a witness. Similarly, Employer did not present as a witness, Jason Alexander, who allegedly was contacted by a Georgetown University psychiatrist, that advised him specifically that Claimant "wants to kill Jason Alexander, Donna Westervel and M. Hayes", nor was the psychiatrist who contacted Alexander ever identified. See EE 1 at 1.

This Panel added:

While we certainly agree that a counselor who felt physically threatened should not be expected to continue to provide VR services, there is no evidence that threats were in fact made about or to Ms. Gardiner.

. . . As the March 29, 2013 report lists numerous instances of Claimant's failure to cooperate with Employer's VR efforts consistent with the pattern that Claimant has followed throughout the VR process, we find March 29, 2013 a more relevant date to find Claimant's actions and attitude culminated in a voluntary limitation of income.

The CRB is not authorized to make findings of fact, thus we are not in a position to address whether or not Claimant actually made any threats of harm. Nevertheless, we concluded that substantial evidence supported the ALJ's determination that Claimant's actions and attitude equated to a voluntary limitation of income was supported by substantial evidence notwithstanding the questionable threats of harm. We find no reason to reconsider that determination.

Claimant next repeated excerpts from the March 29, 2013 vocational status report which in the Panel's view are not contradicted by Claimant's assertions listed above. Claimant further added conversations that she had with her attorney while still represented which assumes Claimant or Claimant's counsel would be willing to divulge attorney - client communications and we will not repeat them here.

The remainder of Claimant's Motion includes various statements involving Claimant's mental health status, a request for forgiveness if anyone misconstrued she would do them harm and her need for medical treatment. As Claimant raises no new legal or factual grounds for reconsideration and merely reiterates the arguments already considered on appeal her Motion is DENIED.

So ordered.