

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA M. MALLORY
DIRECTOR

CRB No. 12-058

CHARLINE SMITH-THOMPSON,

Claimant–Petitioner,

v.

DISTRICT OF COLUMBIA DEPARTMENT OF CORRECTIONS,

Employer–Respondent.

Appeal from a Compensation Order of
Administrative Law Judge David L. Boddie
AHD No. PBL 10-009C, DCP No. 30090325759-0001

William J. Howard, for the Petitioner

Ross Buchholz, Esquire, for the Respondent

Before JEFFREY P. RUSSELL,¹ LAWRENCE D. TARR and HENRY W. MCCOY, *Administrative Appeals Judges*.

JEFFREY P. RUSSELL, for the Compensation Review Board:

DECISION AND ORDER

BACKGROUND

Petitioner is a guard at the District of Columbia jail. She injured her low back on March 11, 2009. Although there is no finding in the Compensation Order concerning the mechanism of injury, from the record it appears that the injury occurred when she was struck in the back by a heavy door. Petitioner filed a claim for disability compensation, which Respondent accepted. Respondent commenced voluntary payments of temporary total disability benefits, and authorized Petitioner to obtain medical care.

¹ Judge Russell is appointed by the Director of DOES as an CRB member pursuant to DOES Administrative Policy Issuance No. 12-01 (June 2, 2012).

Petitioner obtained that medical care from Dr. Hampton Jackson, an orthopaedic surgeon, beginning March 25, 2009. Dr. Jackson saw Petitioner on approximately a monthly basis, about 20 times. Petitioner was also seen on two occasions, June 20, 2011 and November 16, 2011, by Dr. Tristan Shockley of the “Metro Spine” medical office. Dr. Jackson expressed his opinion that work activities will increase Petitioner’s complaints and worsen her condition. Dr. Shockley does not appear to have addressed Petitioner’s work status in either report.

During that period, after approximately a year of treatment and disability payments, Petitioner was seen by Dr. Robert Gordon, an orthopaedic surgeon, at Respondent’s request for the purpose of an Additional Medical Evaluation (AME). A second AME was performed at Respondent’s request by Dr. Robert Collins on May 3, 2011. Both AME physicians were of the opinion that Petitioner had attained maximum medical improvement and could return to her pre-injury employment without restrictions.

Petitioner was notified by Notice of Intent to Terminate Public Sector Workers’ Compensation Payments issued July 19, 2011 that based upon the AMEs, disability compensation payments would be terminated, and Respondent terminated those payments effective August 18, 2011.

Petitioner appealed the termination by seeking a formal hearing before a Department of Employment Services (DOES) Administrative Law Judge (ALJ). The ALJ conducted the formal hearing on December 6, 2011, and issued a Compensation Order (CO) on March 16, 2012, wherein he denied Petitioner’s request that her disability compensation payments be reinstated. She filed a timely appeal of the CO with the CRB, to which appeal Respondent filed an opposition.

DISCUSSION

The sole basis of this appeal is set forth succinctly in Petitioner’s AFR as follows:

The medical records submitted by employer are at odds with the determination by Dr. Jackson and [sic] Shockley. Judge Boddie in his conclusion accepted the opinion of Doctors Gordon and Collins over that of Doctors Jackson and Shockley. Based upon the case law Judge Boddie failed to accord reasonable weight and sufficiency to the testimony of Doctors Jackson and Shockley who were the claimants [sic] attending physicians.

Clearly, Judge Boddie has entered a conclusion of law contrary to facts and legal precedent of this forum. At worst, Ms. Smith-Thompson should be entitled to a remand and hearing on the nature and extent of her disability, and, at best, a determination that the compensation order is in error and the employer be directed to reinstate benefits.

Petition for Review, unnumbered page 2. As noted above, Dr. Shockley has not expressed an opinion concerning Petitioner’s work status. Thus, Petitioner’s appeal must be based solely upon rejection of the opinion of Dr. Jackson.

As Respondent points out, although for a brief time the Act did include a requirement that treating physician opinions be given an evidentiary preference where there is a conflict between the opinions of treating and AME physicians, that mandatory treating physician preference rule has been repealed in public sector cases. See, *Fiscal Year 2011 Budget Support Act of 2010*, D.C. Law 18-233, § 1062 (b), 57 D.C. Reg. 6242, deleting the sentence “In all medical opinions used under this section, the diagnosis or medical opinion of the employee’s treating physician shall be accorded great weight over other opinions, absent compelling reasons to the contrary” from D.C. Code § 1-623.23 (a-2) (4). That legislative deletion did away with the mandatory application of a treating physician preference rule in public sector cases.

We also note, as does Respondent, that the ALJ gave reasons for rejecting Dr. Jackson’s opinions. We need not consider whether, if there were still a treating physician preference under the Act, the ALJ’s reasons were adequate to justify rejection of Dr. Jackson’s views relating to Petitioner’s capacity to perform her duties as a guard. All that is required for affirmance is that the decision by the ALJ be supported by substantial evidence, and in this case it is undisputed that both AME opinions support the determination that Petitioner is capable of returning to work. Hence that finding is supported by substantial evidence, and the denial of the request for reinstatement of disability compensation payments is in accordance with the law.

CONCLUSION

The ALJ’s determination that Petitioner is capable of returning to work is supported by substantial evidence, and the denial of the request for reinstatement of disability compensation payments is in accordance with the law.

ORDER

The Compensation Order of March 16, 2012 is affirmed.

FOR THE COMPENSATION REVIEW BOARD:

JEFFREY P. RUSSELL
Administrative Appeals Judge

July 25, 2012
DATE