

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA MARÍA MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 12-143

DONNA SPENCE AND ISAAC SPENCE (ALVIN CARSON, DECEASED),
Claimants-Petitioners,

v.

HONEYWELL TECHNOLOGIES SOLUTIONS INC., and
ZURICH AMERICAN INSURANCE COMPANY,
Employer and Insurer, Respondents.

Appeal of an August 8, 2012 Compensation Order on Remand by
Linda F. Jory, Administrative Law Judge
AHD No. 02-202E, OWC No. 570288

Benjamin T. Boscolo, Esquire, for the Claimant
Mark W. Bertram, Esquire, for the Self-Insured Employer and Insurer

Before LAWRENCE D. TARR, *Chief Administrative Appeals Judge*, MELISSA LIN JONES, and
JEFFREY P. RUSSELL,¹ *Administrative Appeals Judges*.

LAWRENCE D. TARR, *Chief Administrative Appeals Judge*, for the Compensation Review Board.

DECISION AND ORDER

OVERVIEW

This case is before the Compensation Review Board (CRB) on the request of Donna Spence and Isaac Spence, the surviving widow and child of Alvin Carson, for review of the August 7, 2012, Compensation Order on Remand, issued by Administrative Law Judge (ALJ) Linda F. Jory that denied their claim for workers' compensation death benefits. For the reasons stated, we AFFIRM the ALJ's Compensation Order on Remand.

BACKGROUND FACTS OF RECORD AND PROCEDURAL HISTORY

Alvin N. Carson, (hereinafter Mr. Carson or decedent) worked as a custodian for the employer, Honeywell Technology Solutions, Inc. Prior to 2001, Mr. Carson was treated for diabetes, vascular disease and hypertension.

¹ Judge Russell has been appointed by the Director of the DOES as a CRB member pursuant to DOES Administrative Policy Issuance No. 12-01 (June 20, 2012).

On August 10, 2001, caustic floor cleaning chemicals severely burned Mr. Carson's feet while he was at work. He was hospitalized, developed gangrene, and both of Mr. Carson's legs were amputated below the knee.

Dr. Allen A. Oboler, a cardiologist, and other physicians associated with Dr. Oboler, treated Mr. Carson between September 2002 and October 2003. During this time, Mr. Carson also received treatment from a diabetes specialist.

On September 20, 2002, Dr. Oboler's associate, Dr. Laura Oboler, performed a stent placement and catheterization. Mr. Carson continued to experience vascular problems that required about eight other hospitalizations. Neither Dr. Oboler, nor any other physician in Dr. Oboler's practice, treated Mr. Carson after October 28, 2003.

In June and July 2009, Mr. Carson was admitted to the Southern Maryland Hospital Center for cardiovascular complaints. After the July admission, Mr. Carson was transferred to St. Thomas Nursing Home in Hyattsville, Maryland. On August 20, 2009, Mr. Carson was found non-responsive in his room. He was taken by emergency transport to Washington Adventist Hospital but could not be resuscitated. He died that day from congestive heart failure.

Mr. Carson's wife, Donna Spence, and his child, Isaac Joseph Spence, filed for workers' compensation death benefits under D.C. Code §32-1509. An ALJ denied the claim, finding that Mr. Carson's death was not medically causally related to the work injury. *Spence and Spence (Carson, Deceased) v. Honeywell Technology Solutions et al.*, AHD No. 02-202E, OWC No. 570288 (February 27, 2012).

The ALJ's decision was vacated and remanded by the CRB on appeal. *Spence and Spence (Carson, Deceased) v. Honeywell Technology Solutions et al*, CRB No. 12-048, AHD No. 02-202E, OWC No. 570288 (May 11, 2012).

On August 8, 2012, the ALJ issued a Compensation Order on Remand (COR) in which she again denied the claim, finding that the claimants did not prove by a preponderance of the evidence that Mr. Carson's death was medically causally related to the work accident. *Spence and Spence (Carson, Deceased) v. Honeywell Technology Solutions et al*, AHD No. 02-202E, OWC No. 570288 (August 8, 2012).

The claimants have timely appealed.

THE STANDARD OF REVIEW

On review, the CRB is limited to making a determination as to whether the factual findings of the COR are based upon substantial evidence in the record and whether the legal conclusions drawn from those facts are in accordance with applicable law. *See* D.C. Code §§ 32-1501 to 32-1545, as amended at §32-1521.01 (d) (2) (A) and *Marriott International v. DOES*, 834 A.2d 882 (D.C. 2003).

The CRB must uphold the COR if it is supported by substantial evidence, even if there is substantial evidence in the record that could support a contrary conclusion and even if the CRB might have reached a contrary conclusion based on that evidence. *Marriott*, 834 A.2d at 885. The CRB “may not consider the evidence de novo and make factual findings different from those of the hearing examiner.” *Id.*

DISCUSSION AND ANALYSIS

The pertinent medical evidence submitted are the 2002-2003 medical reports from Dr. Allen Oboler, his 2004 deposition, the May 30, 2011 IME report from Dr. Jonathon S. Fish, and a January 30, 2011, IME report from Dr. Michael Hess.

Dr. Oboler, who last examined the claimant in 2003, stated at his 2004 deposition that the physiologic stress on Mr. Carson due to his post-amputation physical activity aggravated his congestive heart failure. The claimants have not submitted any report from Dr. Oboler that stated his opinion as to the cause of Mr. Carson’s death.

Dr. Fish, an internist, stated in his May 30, 2011, IME report:

bilateral below the knee amputations which [Mr. Carson] unfortunately ultimately required as a result of his work-related injury of August 10, 2001, clearly contributed to his subsequent worsening of cardiovascular disease and ultimately death.

As a result of his bilateral below the knee operation, his activity level significant [sic] decreased. This is a known cardiovascular risk factor and contributed to the development and progression of his cardiovascular disease. In addition, he suffered from bilateral decubitus ulcers on his thumbs. This caused chronic systemic inflammation which is also a known cardiovascular risk factor and also contributed to the development and acceleration of his cardiovascular disease.

Dr. Fish further reported that amputees “are known to have increased systemic vascular resistance as a result of the amputation of a large portion of the arterial bed” and referenced two published studies involving amputees which he said documented an increased mortality rate for lower limb amputees. Dr. Fish concluded that the 2001 work injury

clearly was a contributing factor to his ultimate development and worsening of coronary artery disease, congestive heart failure, and ultimately his death. This occurred through a combination of hypercoagulability, increased circulating insulin, debility, and increased discharge of the autonomic nervous system.

Cardiologist Dr. Michael Hess reviewed about 1000 pages of the claimant’s medical records from 2001 to August 2009, and also reviewed the IME report by Dr. Fish. In his IME report, Dr. Hess criticized Dr. Fish’s analysis and stated that contrary to Dr. Fish’s report, bilateral amputation is not a risk factor for coronary artery disease that is recognized by the American College of Cardiology, the American Heart Association or the National Institutes of Health.

Dr. Hess further pointed out that “diabetes and hypercholesterolemia...have been proven to be directly associated as a cause of cardiovascular disease” and that Mr. Carson’s “amputations and sedentary lifestyle did not accelerate the disease process.” Dr. Hess concluded:

Mr. Carson was an unfortunate man with documented known diabetes when he experienced his industrial accident on August 10, 2001. As a consequence of his diabetes and the production of peripheral vascular disease, coronary artery disease, and renal failure, Mr. Carson expired from cardiovascular on August 20, 2009. I cannot incriminate the claimant’s work injury of August 10, 2001, as a contributing factor to the development of this coronary artery disease and peripheral vascular disease. It is well established that his naturally progressive disease predated his work injury and it was the underlying disease of diabetes and its vascular complications, including heart failure, that caused his demise.

In the February 27, 2012 CO, the ALJ correctly held that the statutory presumption of compensability was invoked and that the employer rebutted the presumption by the 2012 IME report of Dr. Hess. The ALJ then weighed all the evidence and denied the claim.

On review, the CRB vacated and remanded the CO because the ALJ had not given sufficient deference to the evidentiary preference for the opinion of Dr. Oboler, the treating physician’s opinion.

In the August 7, 2012, COR, in response to the remand, the ALJ stated that she accepted Dr. Oboler’s opinion that the added physiological stress on the decedent caused by the amputations after the work accident aggravated his cardiac problems. However, the ALJ noted that the issue before her was whether Mr. Carson’s death was caused by that aggravation and that Dr. Oboler did not examine the claimant during the 5 years preceding his death and never was asked whether the aggravation caused or contributed to the death.

The ALJ further states she did not accept IME Dr. Fish’s opinion that Mr. Carson’s death was caused in part by the work accident because of the deficiencies in his analysis: Dr. Fish did not review significant medical reports, he never discussed how Mr. Carson’s diabetes affected his medical problems and he was not aware of when Mr. Carson’s diabetes began.

Moreover, the ALJ also was not persuaded by Dr. Fish’s deposition testimony:

Speculation as to claimant's life expectancy; whether he was a greater risk of dying from his pre-existing arteriosclerotic cardiovascular disease; or whether death by amputees is 5.1% higher, does not meet the standard of establishing that his death is causally related to the 2001 work injury by a preponderance of the evidence. In contrast, claimant's treating physician, Dr. Oboler, testified that claimant's coronary artery disease is not a function of the 2001 injury. CE 6 at 62. Moreover, employer has submitted the opinion of Dr. Hess who is clearly more cognizant of [Mr. Carson’s] medical complications specifically complications from diabetes.

The ALJ concluded:

Inasmuch as Dr. Fish was not a treating physician of claimant he is not entitled to any preference and as such it is concluded that the well-reasoned, well-informed opinion of Dr. Hess, that claimant's underlying disease of diabetes and its vascular complications, including heart failure, was the cause of decedent's death.

* * *

As claimant has not established by a preponderance of the evidence the medical causal relationship of the decedent's death to the work injury, the widow and child's entitlement to death benefits and the timeliness of the request need not be discussed.

The ALJ's determinations that opinions of Dr. Fish and Dr. Oboler were not sufficient to meet the requisite burden of proof are supported by substantial evidence in the record and in accordance with the law. The ALJ correctly held that IME Dr. Fish's opinion is not given any evidentiary preference. The ALJ further identified legitimate reasons why she did not accept his conclusions and why she favored Dr. Hess's medical opinion.

Moreover, the ALJ, in apparent direct response to the CRB's Decision and Remand Order, noted there was no legitimate reason to award the claim based on the preference given to the opinion of the treating physician, Dr. Oboler because he never opined as to the cause of the death. While acknowledging that her CO was less than clear, the ALJ (with emphasis in the original text) wrote:

It is even more unfortunate that the undersigned did not specifically state that the opinion of Dr. Oboler's that the physiological stress of Mr. Carson's ambulation in 2002 and 2003 aggravated his cardiac problems *was not being rejected* as the issue before the undersigned was whether claimant's work injury contributed to claimant's death in 2009. Obviously, what is even more unfortunate is that Dr. Oboler was not called back after decedent's death to ask him whether his death in 2009 remained in part related to his physiological stress or, as the undersigned noted in the CO, whether he was still ambulating in the same fashion.

Thus, the ALJ did not err in failing to follow the treating doctor's opinion as to the cause of Mr. Carson's death. As she correctly stated, the treating doctor never opined as to the cause of death. Moreover, the ALJ did not, as argued by the claimants, find or concede that Mr. Carson's "injury was causally related to the aggravation of Mr. Carson's disability, and that disability caused Mr. Carson's death."

The claimants' memorandum correctly notes that there is evidence in the record that Mr. Carson experienced added cardiovascular stress resulting from the bilateral amputations and that this evidence could support awarding this claim. However, the CRB is not authorized to reweigh the evidence. Our authority on review is to determine if the ALJ's opinion is supported by substantial evidence and whether her legal conclusions based on that evidence are legally correct.

We find the ALJ's decision that Mr. Carson's death was caused by his pre-existing diabetes and not, in any way by the 2001 industrial accident (or the treatment for that conditions caused by the accident such as the amputations) is supported by substantial evidence and is in accordance with the law.

CONCLUSION AND ORDER

The August 7, 2012, Compensation Order on Remand is AFFIRMED because it is supported by substantial evidence and is in accordance with the law.

FOR THE COMPENSATION REVIEW BOARD:

LAWRENCE D. TARR
Administrative Appeals Judge

February 11, 2013
DATE