

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



F. THOMAS LUPARELLO
INTERIM DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 13-155

**TANYA SPARROW-BEY
Claimant-Petitioner,**

v.

**HOWARD UNIVERSITY and SEDGWICK CMS,
Employer/Carrier-Respondents.**

Appeal from a November 6, 2013 Compensation Order by
Administrative Law Judge Linda F. Jory
AHD No. 13-088A, OWC No. 664536

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
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Charles Krikawa, IV, for the Petitioner
William Schladt, for the Respondents

Before HEATHER C. LESLIE, MELISSA LIN JONES and HENRY W. MCCOY, *Administrative Appeals Judges.*

HEATHER C. LESLIE for the Compensation Review Board.

DECISION AND ORDER

OVERVIEW

This case is before the Compensation Review Board (CRB) on the request for review filed by the Claimant - Petitioner (Claimant) of the November 6, 2013, Compensation Order (CO) issued by an Administrative Law Judge (ALJ) in the Office of Hearings and Adjudication of the District of Columbia Department of Employment Services (DOES). In that CO, the Claimant's request for authorization for an MRI study was denied. We affirm.

FACTS OF RECORD AND PROCEDURAL HISTORY

On October 24, 2009, the Claimant was employed by the Employer as a uniformed public safety officer. On that day, the Claimant injured her right knee when she was struck from behind by a moving golf cart.

The Claimant came under the care and treatment of Dr. Terry Thompson. Dr. Thompson performed an arthroscopic reconstruction on the anterior cruciate ligament and partial medical

menisectomy to the right knee. Due to persistent pain, the Claimant ultimately underwent a total knee replacement with Dr. Aham Onyike on April 23, 2012. The Claimant continued to experience pain in her right leg and ultimately was referred for pain management with Dr. Damon F.C. Robinson. Dr. Robinson recommended an MRI of the lower back.

The Employer sent the Claimant for an independent medical evaluation (IME) with Dr. Louis Levitt on three occasions. At the last IME on August 20, 2013, Dr. Levitt opined that her right knee injury and need for surgeries was medically causally related to the work injury.

A Formal Hearing was held on October 23, 2013. The Claimant sought authorization of the lumbar MRI. The Employer contested the medical causal relationship of the Claimant's alleged low back condition. A Compensation Order was issued on November 6, 2013 which denied the Claimant's request. The CO concluded the Claimant failed to invoke the presumption of compensability regarding the low back condition.

The Claimant timely appealed. The Claimant argues CO was in error in rejecting the opinion of the treating physician, that the CO is inherently flawed as the claim for relief was mischaracterized, and it failed to adequately address the issue presented for resolution.

The Employer opposes the Application for Review. The Employer argues the CO is supported by the substantial evidence in the record.

THE STANDARD OF REVIEW

The scope of review by the CRB is limited to making a determination as to whether the factual findings of the Compensation Order are based upon substantial evidence in the record, and whether the legal conclusions drawn from those facts are in accordance with applicable law. See District of Columbia Workers' Compensation Act of 1979, D.C. Code, as amended, §32-1501 *et seq.*, at §32-1521.01(d) (2) (A) of the ("Act") and *Marriott International v. DOES*, 834 A.2d 882 (D.C. 2003).

Consistent with this standard of review, the CRB must uphold a Compensation Order that is supported by substantial evidence, even if there is substantial evidence in the record to support a contrary conclusion, and even where the CRB might have reached a contrary conclusion. *Id.* at 885.

DISCUSSION AND ANALYSIS

We first address the Claimant's assertion that the CO is inherently flawed as the CO does not identify the claim for relief correctly. The "Claim for Relief" section states that the Claimant "seeks reimbursement for expenses related to low back pain." CO at 2. The Claimant states that the claim for relief was authorization for an MRI and that the "mischaracterization" of this claim is "overwhelming" rendering the CO "inherently flawed." Claimant's argument at 5. Moreover, the Claimant argues that the sole issue for resolution was authorization for an MRI and the CO was in error in considering whether the back condition and subsequent need for the MRI was medically causally related. We disagree.

Any mischaracterization of the Claim for relief we find to be harmless as it is clear that the CO addresses the Claimant's claim for relief and the defense raised by the Employer in the first paragraph in the analysis section. Specifically, the CO states,

Claimant contends that Employer is responsible for the payment of the requested MRI of her lumbar spine as it is needed in order to determine if the right leg pain is due to lumbar problems or if the right leg pain remains related to her work injury. Employer contends that there is no medical opinion in the record that associates claimant's low back condition with the work injury.

CO at 3.

It is clear the ALJ addressed the claim for relief and issue presented for resolution. Moreover, as the Claimant concedes in argument, the Employer did raise the medical causal relationship of the Claimant's back condition as a defense. Claimant's argument at 6. As the hearing transcript shows, the ALJ recited the issue as the medical causal relationship of the lumbar condition which Claimant's counsel acknowledged. Hearing transcript at 8-9. Thus, whether or not the Claimant's back condition was medically causally related to the work injury was properly raised as an issue for adjudication. The Claimant's arguments are rejected.

The Claimant also argues that the CO erroneously rejected the treating physician's opinion. The Claimant, in argument, asserts,

The shortcomings of the ALJ's analysis and decision are even more glaring when it is obvious that she did not explain in sufficient detail why she rejected the opinion of one of the claimant's treating physicians (Dr. Robinson) in favor of the HU's evaluating physician, Dr. Louis E. Levitt.

Claimant's argument at 6.

The Claimant's argument fails to take into consideration however, that the CO concluded that the Claimant failed to invoke the presumption of compensability, a finding the Claimant has not appealed. As the CO noted,

Under the Act of this jurisdiction, there is a presumption of compensability pursuant to D.C. Code § 32-1501(1). The scope of the presumption under paragraph (1) entitles claimant to a presumption that her claim is compensable, i.e. that her injury arose out of [her] employment. The statutory presumption also operates to establish a causal connection between her alleged disability or medical condition with the work-related event. See *Baker v. District of Columbia Department of Employment Services*, 531 A.2d 651 [sic] (D.C. App 1992); *Ferreira v. District of Columbia Department of Employment Services*, 531 A.2d 651 (D.C. App 1987); *Charles Whittaker v. District of Columbia Department of Employment Services*, 688 A.2d 844 (D.C. 1995).

CO at 3.

The CO notes that the Claimant conceded, as she does in argument before us, that the treating physician has not opined that the Claimant's low back condition is casually related to the work injury and indeed doesn't know.

Dr. Robinson has not indicated that he was trying to determine if claimant's right leg problems are the result of the right knee replacement. To the contrary, Dr. Robinson does not mention claimant's right knee in its rationale for the MRI and his primary diagnosis is low back pain with radiculopathy secondary to lumbar disc displacement.

CO at 3.

Taking into consideration the above case law and the opinion of the treating physician (or lack thereof), the ALJ turned to the Claimant's testimony and determined that the Claimant failed in her burden of invoking the presumption.

Claimant testified that she did not have any problems with her back before the October 2009 work injury. HT at 23. No other testimony was elicited from claimant with regard to the connection of the low back pain and the work accident. Notwithstanding the "humanitarian nature" of the Act the undersigned is unable to reach a conclusion that claimant has met her minimal burden of showing some evidence that her employment has the potential to result or contribute to the low back pain and accordingly must conclude claimant has not invoked the presumption of compensability of treatment for low back problems which the pain management specialist has assessed as secondary to lumbar disc displacement.

CO at 4.

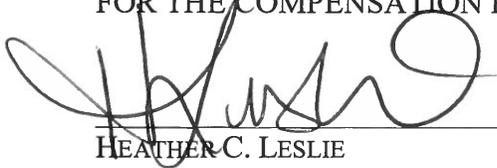
We agree with the above analysis. Having failed in invoking the presumption, the CO denied the Claimant's claim for relief. The CO did not reject the opinion of the treating physician in favor of Dr. Levitt, whose opinion was not even discussed, as the Claimant argues. Dr. Levitt's opinion is not discussed as the CO, having found the presumption was not invoked, did not have address whether the Employer had rebutted that presumption. The inquiry had ended with the finding that the Claimant had not invoked the presumption, through testimony and evidence.

The Claimant's main argument is that the MRI was necessary for the physician to diagnose whether or not the Claimant's back condition was in some way related to the work injury. Such speculation however, does not carry the Claimant's burden. Rather, such speculation defeats the Claimant's request for an MRI. As the District of Columbia Court of Appeals has succinctly stated, "in some cases, rather, the weakness of the proponent's proof... may be enough to defeat a claim." *Golding-Alleyne v. DOES*, 980 A.2d 1209, 1217 (D.C. 2009).

CONCLUSION AND ORDER

The November 6, 2013 Compensation Order is supported by the substantial evidence in the record and is in accordance with the law. It is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

A handwritten signature in black ink, appearing to read 'Heather C. Leslie', written over a horizontal line.

HEATHER C. LESLIE
Administrative Appeals Judge

March 18, 2014
DATE