

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



F. THOMAS LUPARELLO
ACTING DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 14-059

**THERESA RATHINAM,
Claimant-Petitioner,**

v.

**HOWARD UNIVERSITY HOSPITAL and
SEDGWICK CLAIMS MANAGEMENT,
Employer/Insurer-Respondent.**

Appeal from an April 10, 2014 Compensation Order by
Administrative Law Judge Linda F. Jory
AHD No. 14-063, OWC No. 708288

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2014 SEP 15 AM 10 57

Krista N. DeSmyter for the Petitioner
William H. Schladt for the Respondent

Before MELISSA LIN JONES, JEFFREY P. RUSSELL, and HEATHER C. LESLIE, *Administrative Appeals Judges.*

MELISSA LIN JONES for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

Beginning in 1998, Ms. Teresa Rathinam was employed by Howard University Hospital (“HUH”) as an environmental services specialist. Her job duties included “lifting, cleaning, kneeling to clean, lifting beds to clean, lifting trash, mopping and sweeping. The weight that claimant lifted on a daily basis for employer was 40 to 50 pounds. Claimant’s duties required her to be on her feet with the exception of her lunch break.”¹

On January 3, 2013, Ms. Rathinam injured her lower back pulling trash; she came under the care of Dr. Karen P. Sigel, her primary care doctor. Initially, Dr. Sigel noted paralumbar spasm, L5-

¹ *Rathinam v. Howard University Hospital*, AHD No. 14-063, OWC No. 708288 (April 10, 2014), p. 2.

S1 tenderness, and decreased flexion and extension with pain radiating into Ms. Rathinam's left buttock. Dr. Sigel diagnosed lumbar strain and lumbar radiculopathy. Dr. Sigel imposed a 15 pound lifting restriction; HUH could not accommodate that restriction.²

Dr. Vaul Phillips, an orthopedic surgeon, supervised Ms. Rathinam's physical therapy. He recommended Ms. Rathinam not lift anything over 10 pounds. On June 14, 2013, Dr. Phillips revised Ms. Rathinam's light duty restrictions to "no lifting over 15 pounds, no pushing and pulling over 25 pounds, avoiding repetitive bending and stooping, standing, [and] walking activities done for 30 minutes at a time with a five-minute break."³

On July 29, 2013, Dr. Louis E. Levitt examined Ms. Rathinam on HUH's behalf. Dr. Levitt opined Ms. Rathinam could return to full duty.⁴

From September 2013 – December 2013, Dr. Sigel continued to recommend Ms. Rathinam avoid lifting more than 10 pounds. Dr. Sigel last examined Ms. Rathinam on December 2, 2013, but on February 21, 2014, Dr. Sigel authored a report recommending Ms. Rathinam not lift more than 10 pounds.⁵

HUH voluntarily paid Ms. Rathinam temporary total disability benefits from January 3, 2013 through August 21, 2013. At a formal hearing, Ms. Rathinam requested an award of temporary partial disability benefits from August 22, 2013 to the date of the formal hearing and continuing as well as causally related medical expenses.⁶ In a Compensation Order dated April 10, 2014, an administrative law judge ("ALJ") denied Ms. Rathinam's request on the grounds that as of July 29, 2013, Ms. Rathinam can perform her pre-injury duties.

On appeal, Ms. Rathinam argues the ALJ failed to apply the treating physician preference to Dr. Sigel's opinion that Ms. Rathinam is unable to return to work in her pre-injury employment:

On its face, the Compensation Order does not apply the preference for the treating physician's opinion. The Compensation Order neither articulates nor acknowledges the great weight to be accorded to Dr. Karen Sigel's opinion as the treating physician. The failure to accord preference to the opinion of the treating

² *Id.*, at pp. 2-3.

³ *Id.* at p. 3.

⁴ *Id.*

⁵ *Id.*

⁶ Although the Compensation Order states the claim for relief is "an award of temporary partial disability from August 22, 2013 to the present and continuing and payment of causally related medical expenses," *Id.* at p. 2, at the formal hearing, Ms. DeSmyter represented "the claim for relief today is for temporary total disability benefits from August 22nd, 2013 to present and continuing for interest on benefits should you award them. Also for medical expenses after the time of Dr. Levitt's deposition where he – or I'm sorry, of his opinion where he said no further treatment is necessary." Hearing Transcript, p. 13.

physician requires reversal of the Compensation Order. *See Changkit*, 994 A.2d at 387.^[7]

In the alternative, Ms. Rathinam asserts the ALJ relied upon faulty and illegitimate reasons to reject Dr. Sigel's opinion, specifically "there is no record evidence as to the specifics of Dr. Sigel's board certifications,"⁸ there is no reason to weigh Dr. Levitt's credentials greater than Dr. Sigel's credentials on the issue of work capacity, and the recommendation of home exercises and the use of anti-inflammatory medication is "an illicit medical conclusion as to what interventional means for a medical condition are sufficient to justify such a condition remaining disabling."⁹ Finally, Ms. Rathinam argues she proved her entitlement to ongoing wage loss benefits by a preponderance of the evidence. For these reasons, Ms. Rathinam requests the CRB vacate the Compensation Order.

In response, HUH contends the ALJ gave sufficient reasons for rejecting Dr. Sigel's opinion when weighing the evidence. Furthermore, HUH counters Ms. Rathinam's arguments by asserting

[t]he ALJ was comparing the two physicians, as required by the case law concerning the preference for treating physicians. She was not engaging in extrajudicial fact finding. The ALJ was not substituting her opinion for that of the treating physician. The ALJ was articulating why she found the opinion of Dr. Levitt as a board certified orthopedic surgeon more persuasive than Dr. Sigel, a primary care physician specializing in internal medicine. The record reflects the credentials of the two physicians.

The preference for a treating physician does not require a finding that the basis of the treating physician's opinion is faulty. Only that there is a legitimate and articulated reason for rejecting the opinion of the treating. This was done by the ALJ in this case.^[10]

Because the Compensation Order is supported by substantial evidence, HUH requests the CRB affirm it.

⁷ Memorandum of Points and Authorities in Support of Application for Review, p. 6.

⁸ *Id.* at p. 7.

⁹ *Id.*

¹⁰ Employer's Memorandum of Points and Authorities in Support of Application for Review [*sic*], p. 8.

ISSUES ON APPEAL

1. Did the ALJ properly apply the treating physician preference?
2. Is the April 10, 2014 Compensation Order supported by substantial evidence and in accordance with the law?

ANALYSIS¹¹

When assessing the weight of competing medical testimony in workers' compensation cases, an attending physician ordinarily is preferred as a witness over a doctor who has been retained to examine the claimant solely for purposes of litigation;¹² however, the preference for the opinions of a treating physician is just that, a preference. When there are specific reasons for rejecting the opinion of the treating physician, the opinion of another physician may be given greater weight.¹³

Here, the ALJ recognized Dr. Sigel "remains of the opinion that claimant was could [*sic*] not lift over 10 pounds;"¹⁴ however, the ALJ found Dr. Levitt's opinion that Ms. Rathinam is able to perform her pre-injury duties more persuasive. After noting that Ms. Rathinam's muscular strain (as opposed to a structural injury) should have improved within 8-12 weeks and that her failure to improve is more a symptom of illness behavior than of organic process, the ALJ rejected Dr. Sigel's opinion regarding Ms. Rathinam's work capacity:

According to the record presented, claimant's only medical treatment for the period of relief claimed (August 22, 2013 to the present) consists only of visits on September 24, 2013 and on December 2, 2013 and possibl[y] on February 4, 2014 although the only report in the record dated February 4, 2014 is a disability slip.

* * *

¹¹ The scope of review by the CRB is limited to making a determination as to whether the factual findings of the appealed 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. Section 32-1521.01(d)(2)(A) of the District of Columbia Workers' Compensation Act, as amended, D.C. Code §32-1501 to 32-1545. Consistent with this standard of review, the CRB is constrained to uphold a Compensation Order that is supported by substantial evidence, even if there also is contained within the record under review substantial evidence to support a contrary conclusion and even if the CRB might have reached a contrary conclusion. *Marriott International v. DOES*, 834 A.2d 882, 885 (D.C. 2003).

¹² *Kralick v. DOES*, 842 A.2d 705, 712 (D.C. 2004).

¹³ See *Butler v. Boatman & Magnani*, H&AS No. 84-348, OWC No. 044699 (Remand Order December 31, 1986) citing *Murray v. Heckler*, 624 F. Supp. 1156 (D.C. 1986).

¹⁴ *Rathinam, supra*, at p. 4.

While Dr. Sigel includes HNP and lumbar radiculopathy as “active problems” [in the September 24, 2013 report,] the records do not indicate any specific treatment was rendered by Dr. Sigel for the alleged lumbar problems[, and] the undersigned cannot identify anything within Dr. Sigel’s 12 step treatment plan that is intended to address claimant’s alleged back problems. See CE 1 at 5. Just as there is no mention of claimant’s back problems in her assessment following her examination, Dr. Sigel made no treatment plan for any problems concerning claimant’s back on September 24, 2013, the only known office visit claimant had during the claimed period of disability.

Similarly, on December 2, 2013, the History of Present Illness is:

f/u HTN [*sic*], DM, anemia – patient comes in today to review labs – needs refills – She continues to have very heavy menses and still has not seen gyn. She is taking the vitronC. She continues to have problems with back/HNP traveling to India next month and needs note for assistance in airport.

The active problems are the same as September 24, 2013 with the addition of “Flu vaccine needed”. The Assessment was changed to reflect that the first diagnosis is Obesity and the second problem Dr. Sigel lists is lumbar radiculopathy the third problem listed is HNP. The change of the order of claimant’s assessment is clearly due to the claimant’s request for accommodations on her flight to India. Nevertheless, Dr. Sigel still did not recommend any treatment for claimant’s back problem nor did she mention claimant’s back in her Discussion/Summary.

In sum, claimant is asking the undersigned to find and conclude that claimant has established by a preponderance of evidence that she is entitled to ongoing temporary total disability benefits based on three disability slips, two reports of treatment for claimant’s obesity, vitamin deficiency and hyperthyroidism and a letter claimant requested Dr. Sigel prepare, for the purpose of the instant litigation and in lieu of her deposition testimony, wherein Dr. Sigel explained her 10 pound lifting restriction. Dr. Sigel explains the restriction simply by stating “The purpose of this restriction was and still is to prevent additional aggravation of the back injury”. Dr. Sigel, who is not a physician who is board certified in orthopedics, recommended only that claimant continue with home exercise and non-steroidal anti-inflammatory medication. No other treatment or follow-up care is suggested and as claimant told Dr. Levitt she did not anticipate any further treatment.

The undersigned is not persuaded that the reports of Dr. Sigel establishes [*sic*] by a preponderance of evidence that claimant remains entitled to temporary total disability benefits because a 10 pound lifting restriction would prevent additional aggravation of the back injury. The undersigned accepts as more probative the

cogent and well supported report of Dr. Levitt, who found claimant to be able to resume her pre-injury duties as of July 29, 2013.^[15]

Although the ALJ did not specifically use the phrase “treating physician preference,” there is no requirement that a Compensation Order contain specific words to demonstrate the ALJ properly applied the law.¹⁶ In this case, the ALJ clearly set forth specific reasons for rejecting Dr. Sigel’s opinion, and there is no reason to disturb the ALJ’s rejection of Dr. Sigel’s opinion.

While Ms. Rathinam objects that “there is no record evidence as to the specifics of Dr. Sigel’s board certifications,”¹⁷ any such deficiency rests with Ms. Rathinam, and in the absence of more specific evidence, the ALJ was well within her authority to classify Dr. Sigel’s opinion as that of Ms. Rathinam’s primary care doctor and to weigh the competing experts’ qualifications when assigning weight to their opinions. Similarly, the ALJ was free to draw inferences from Dr. Sigel’s recommendations of home exercises and the use of anti-inflammatory medication when assessing Ms. Rathinam’s work capacity. To do so was weighing the evidence presented; it was not an inappropriate medical conclusion rendered by the ALJ.

Finally, Ms. Rathinam’s remaining argument that when weighing the evidence the ALJ failed to consider (1) Ms. Rathinam’s credible testimony regarding her inability to return to her pre-injury employment, (2) Dr. Phillips’ restrictions, and (3) Dr. Levitt’s opinion is based on a “one-time, brief insurance examination”¹⁸ are rejected. There is no requirement that an ALJ inventory all evidence when reaching a conclusion.¹⁹ What Ms. Rathinam’s argument amounts to is a request that the CRB reweigh the evidence in her favor, but so long as the record contains substantial evidence to support the ALJ’s findings of facts, the CRB lacks authority to reweigh the evidence on appeal.²⁰

¹⁵ *Id.* at pp. 5-7.

¹⁶ See *Washington Hospital Center v. DOES*, 744 A.2d 992 (D.C. 2000).

¹⁷ [Employer’s] Memorandum of Points and Authorities in Support of Application for Review [*sic*], p. 7.

¹⁸ Memorandum of Points and Authorities in Support of Application for Review, p. 9.

¹⁹ *Washington Hospital Center v. DOES*, 983 A.2d 961 (D.C. 2008).

²⁰ *Marriott, supra.*

CONCLUSION AND ORDER

Even without using the phrase “treating physician preference,” the ALJ provided sufficient justification for rejecting Dr. Sigel’s opinion regarding Ms. Rathinam’s work capacity. The April 10, 2014 Compensation Order is supported by substantial evidence, is in accordance with the law, and is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:



MELISSA LIN JONES
Administrative Appeals Judge

_____ September 15, 2014

DATE