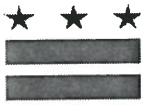
GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD

DEPT. OF EMPLOYMENT SERVICES
COMPENSATION REVIEW BOARD
2016 JUN 8 AM 11 28

CRB No. 16-004

TRACEY CLARK,
Claimant-Petitioner,

v.

HYATT REGENCY HOTEL and
GALLAGHER BASSETT SERVICE, INC.
Employer and Third-Party Administrator-Respondents.

Appeal from a December 11, 2015, 2015 Compensation Order
by Administrative Law Judge Lilian Shepherd
AHD No. 15-400, OWC No. 727003

(Decided June 8, 2016)

Rebekah A. Miller for Claimant
Tony D. Villeral for Employer

Before LAWRENCE D. TARR, *Chief Administrative Appeals Judge* AND JEFFREY P. RUSSELL AND LINDA F. JORY, *Administrative Appeals Judges*.

LAWRENCE D. TARR for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

Tracey Clark, ("Claimant"), worked as a housekeeper for Hyatt Regency Hotel ("Employer"). Claimant, who has a history of non-work-related back problems, alleged she injured her back on January 6, 2015 when she lifted a mattress to put new linens on a bed. She reported the injury, completed her work, and went to Kaiser Permanente that night. Claimant was able to work for several weeks but then stopped due to back pain.

Claimant testified that despite her pre-existing back issues , she did not miss any work because of these back problems. She further testified she could not now do her regular work because of limitations caused by her back pain. Claimant's treating physician for this injury is Dr. Rachel Mlanao at Kaiser Permanent. Orthopedic surgeon, Dr. Robert Draper, Jr. examined Claimant at the request of Employer.

On November 18, 2015, an administrative law judge ("ALJ") held a full evidentiary hearing on Claimant's claim for temporary total disability benefits from January 22, 2015 to the date of the hearing and continuing and for payment of all causally related medical expenses. At the hearing, Employer defended the claim on the grounds that Claimant did not sustain a compensable injury at work and that Claimant's disability is not medically causally related to her work injury.

In her December 11, 2015 Compensation Order ("CO") the ALJ held that Claimant sustained an injury that arose out of and in the course of her employment as alleged. The ALJ further held that Claimant's disability was not medically causally related to the accident at work.

Employer did not appeal the finding that Claimant sustained a work-related accident. Claimant appealed the finding that her disability was not medically causally related to that accident.

ANALYSIS

On appeal, Claimant asserts she met her burden of proof and that the ALJ erred by failing to give preference to the opinions of her treating physician, and that the ALJ failed to state a legitimate reason for not doing so. Claimant further argues that the ALJ erred by finding Employer rebutted the presumption of compensability.

In reaching her decision, the ALJ utilized the three-step analysis for a case involving the presumption. The ALJ determined that Claimant was entitled to the presumption that there is a medical causal relationship between her disability and the accident at work. The ALJ further held that Employer rebutted the presumption by Dr. Draper's report. The ALJ, having found the presumption rebutted, weighed the evidence without the presumption, and stated her reasons for denying the claim:

> Claimant's history of chronic low back pain is well documented. Dr. Mlanao on January 21, 2015, opined that Claimant's back problem was a chronic problem and the current episode started more than one year ago. The medical records indicated that the problem occurs constantly and it has been gradually worsening. Claimant had a follow up appointment with Dr. Mlanao on April 8, 2015, and Dr. Mlanao recalled that Claimant told her that she was making the bed at work when she experienced the sharp pain in the lower back to the neck while performing her job duties. Dr. Mlanao does not specifically opine that it is the cause of Claimant's current condition.
>
> It is appropriate to compare Claimant's current condition with her pre-existing condition. Claimant had an MRI on December 17, 2014. In the MRI report on January 25, 2015, Dr. Vinh Nguyen makes a comparison between the two MRI reports. The impressions he noted was two small nerve root sleeve cysts at L4-L5 disc space and the other structures are unchanged. No doctor has opined that Claimant tucking the bed sheet under the bed aggravated her pre-existing condition. Claimant's medical records do not demonstrate that her current condition is any worse than it was before January 6, 2015.

> On the other hand, Dr. Draper reviewed Claimant's medical reports and examined Claimant. He opined that Claimant's current condition is not causally related to a work event on January 6, 2015, it is not based on any work injury or occupational disease. He opined it is a due to the pre-existing conditions which are documented in the imaging studies and the medical records and that there is no causal connection of the Claimant's current low back pain to her occupational activities as a housekeeper. In this case, Claimant has not met the evidentiary burden by a preponderance of the evidence.
>
> The IME examination and opinion of Dr. Draper provides a more thorough explanation regarding the likely cause of Claimant's condition and is therefore accorded greater weight. The undersigned is persuaded that Dr. Draper's medical opinion is more comprehensive and explains his reasons for his medical conclusion which outweighs the medical opinion of Dr. Mlanao which is silent on the causation of Claimant's current condition.
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> CO at 7-8.

With respect to Claimant's argument that the ALJ erred in finding that Employer rebutted the presumption at the second step of the presumption analysis, an employer's evidence is sufficient to rebut the presumption when it is rendered by a qualified independent medical expert who, having examined the employee and reviewed the medical records, renders an unambiguous opinion that the work injury no longer contributes to the disability. *Washington Post v DOES and Reynolds, Intervenor,* 852 A. 2d 909 (D.C. 2009).

We agree that the presumption was rebutted. Dr. Draper's report shows he reviewed claimant's medical records and rendered an unambiguous opinion that Claimant no longer is affected by the work injury. In his IME report, Dr. Draper concluded:

> The current complaints in the low back are due to the preexisting conditions which are documented in the imaging studies and the medical records, as stated in this report.

Claimant argues that Dr. Draper's report does not rebut the presumption because it is "speculative, incomplete, and unsupported." Claimant's memorandum at 9. These criticisms, if true, would go to the weight given his report at the third step of the presumption analysis, not the second step.

Claimant's other argument goes to the ALJ's decision that Claimant did not prove, by a preponderance of the evidence, that her current disability is medically causally related to the January 6, 2015 accident at work. Related to this argument is Claimant's assertion that the ALJ erred by failing to give preference to the opinions of her treating physicians and failed to state a legitimate reason for not doing so.

The ALJ reviewed the medical evidence and compared the opinion of Claimant's treating physician, Dr. Mlanao, with the opinion of the independent medical evaluation (IME) examiner, Dr. Draper and concluded that Dr. Draper's opinion was more persuasive.

Dr. Draper, while acknowledging the accident at work on January 6, 2015, "did cause an initial lumbosacral strain" reported that current complaints "are due to the preexisting conditions which are documented in the imaging studies and the medical records." He also opined that while Clamant had lifting, bending, and stooping restrictions, "These restrictions would be causally related to the preexisting conditions and not the accident dated 01/01/2015."

Under the law of this jurisdiction, the opinion of a treating physician is accorded great weight, and generally is to be preferred over a conflicting opinion by an IME physician. It is also settled that the deference given to a treating physician is not absolute, and where there are persuasive reasons to do so, an IME doctor's opinion can be accepted over the treating doctor's opinion, so long as the ALJ identifies specific, record-based reasons for doing so.

The ALJ's analysis is consistent with these legal principles. The ALJ acknowledged the treating physician preference and then stated specific, record-based reasons for accepting Dr. Draper's opinion. The ALJ wrote she was convinced by Dr. Draper's opinion, noting that he clearly stated that Claimant's current condition was not due to the work accident but due to her preexisting conditions.

The ALJ concluded:

> The IME examination and opinion of Dr. Draper provides a more thorough explanation regarding the likely cause of Claimant's condition and is therefore accorded greater weight. The undersigned is persuaded that Dr. Draper's medical opinion is more comprehensive and explains his reasons for his medical conclusion which outweighs the medical opinion of Dr. Mlanao which is silent on the causation of Claimant's current condition.

CO at 7, 8.

The ALJ also noted that Dr. Mlanao never specifically stated that the events of January 6, 2015 were the cause of the claimant's current disability. The ALJ further compared the report of the MRI taken nineteen days after the accident with the report of the MRI taken twenty one days before the accident and noted that these tests and the medical records "do not demonstrate her current condition is any worse than it was before January 6, 2015."

It is immaterial that there may be evidence in the record that supports a contrary conclusion because our authority is limited to assessing whether the ALJ's decision is supported by substantial evidence and in accordance with the law. The ALJ's CO is and therefore must be affirmed.

CONCLUSION

The ALJ"s December 11, 2015 Compensation Order is supported by substantial evidence in the record and is in accordance with the law. The Compensation Order is AFFIRMED.

So ordered.