

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 16-019

**YVETTE SHEPPARD,
Claimant– Petitioner,**

v.

**WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY,
Self-Insured Employer– Respondent.**

Appeal from a January 28, 2016 Compensation Order
by Administrative Law Judge Gennet Purcell
AHD No. 15-311, OWC Nos. 681008

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2016 JUN 29 PM 12 03

(Decided June 29, 2016)

Justin M. Beall for Claimant
Cheryl D. Hale for Employer

Before LINDA F. JORY, HEATHER C. LESLIE and JEFFREY P. RUSSELL, *Administrative Appeals Judges.*

LINDA F. JORY for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

Yvette Sheppard (Claimant) worked for Washington Metropolitan Area Transit Authority (Employer) as a bus operator. On May 21, 2011, Claimant sustained injury to her right shoulder while trying to steer the bus away from a tractor trailer that she thought was going to collide with her bus. Claimant underwent three surgeries to the right shoulder performed by Dr. Zohair S. Alam. She began to complain of left shoulder pain to Dr. Alam on April 23, 2015.

A dispute arose between the parties as to whether any left shoulder problems were causally related to the May 21, 2011 incident at work. On November 10, 2015, a formal hearing was conducted by an Administrative Law Judge (ALJ) in the Administrative Hearings Division (AHD) in the District of Columbia Department of Employment Services (DOES).

On January 28, 2016, the ALJ issued a Compensation Order (CO) denying claimant's request for medical treatment for the left upper extremity problems.

Claimant filed an Application for Review and Memorandum of Points and Authorities in Support thereof (Claimant's Brief), with the Compensation Review Board (CRB), seeking reversal of the CO. Employer filed a Memorandum of Points and Authorities in Opposition of Claimant's Application for Review (Employer's Brief) opposing Claimant's appeal.

Because the CO's determination that Claimant's left upper extremity symptoms are not medically causally related to her May 21, 2011 work injury is supported by substantial evidence and in accordance with the law, it is affirmed.

ANALYSIS

In support of her position that her left shoulder symptomology is a direct and natural consequence of the May 21, 2011 injury and therefore causally related, Claimant relies on the AHD's decision in *Glenda Knox v. WMATA*, AHD No. 07-251C (August 13, 2015)(*Knox*), which holds no precedential authority over our review. The ALJ found Claimant Knox developed a right leg condition over time by compensating for a left foot condition. Claimant asserts that like Knox, she was forced to rely on her left arm to compensate for the functional loss of her right arm.

We note the ALJ acknowledged that "A subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury" citing the District of Columbia Court of Appeals' (DCCA) decision in *Brown v. DOES*, 700 A.2d 787, 791-92 (D.C. 1997).

Upon weighing the evidence of record to determine if Claimant's evidence was sufficient to outweigh Employer's on the causal relationship question that exists between Claimant's left shoulder and her right shoulder, without the benefit of the presumption, the ALJ afforded more weight to the opinion of Dr. Danziger, the independent medical examiner over the opinion of the treating physician, Dr. Alam. The ALJ properly acknowledged this jurisdiction's treating physician's preference and the requirement that the ALJ must provide specific reasons for rejecting a treating physician's opinion citing *Short v. DOES*, 723 A.2d 845 (D.C. 1998); *Stewart v. DOES*, 606 A.2d 1350 (D.C. 1992). In rejecting the opinion of Dr. Alam, Claimant's treating physician the ALJ stated:

. . . Despite his dedication to Claimant's care, diagnosis and treatment over the years, I was unpersuaded by his medical opinion as it relates to her current left upper extremity symptomology and as such reject his medical causal findings related thereto.

CO at 8.

The ALJ explained the difficulty she had with Dr. Alam's opinion that Claimant's left shoulder problems are related to the right shoulder:

Dr. Alam initially noted on April 23, 2015, that Claimant had come to see him for pain in her left shoulder “which was reminiscent of the symptoms she use to have on the right side” and diagnosed Claimant with left shoulder derangement. CE 1 at 20. Dr. Alam’s treatment notes reference that Claimant’s left shoulder symptoms have been present for 3 to 4 months, and that, as a result, those symptoms “[are] related to her right shoulder and work injury [and] compensatory in nature.” Claimant also testified to first experiencing left upper extremity pain about one year and a half prior (to the date of the hearing). HT at 27-28.

Notably however, there is no mention of, or reference to, any left upper extremity pain, stiffness or other left shoulder symptoms in any of Claimant’s earlier follow up medical records prior to April 23, 2015. Most relevantly, Claimant saw Dr. Alam only one month prior, on February 24, 2015 for a follow up orthopaedic evaluation of her “neck, right shoulder and right upper extremity.” CE 1. Again, no reference or notation was made to any left upper extremity complaints, neither were any evaluation notes referring to Claimant’s left upper extremity symptoms noted anywhere in the medical notes from that , or any previous exam. CE 1 at 18.

CO at 8.

While we note the ALJ misstated the number of months between Claimant’s February exam and the April exam as one when it is actually two months, we find no error in the ALJ’s rejection of Dr. Alam’s opinion. Dr. Alam failed to provide any explanation as to how Claimant’s left shoulder symptoms were generated by the right shoulder injury when the right shoulder symptoms occurred after a popping sensation. While it is quite possible that Claimant could suffer injury due to overuse of the left extremity over a lengthy period of time, this was not the case here nor did Dr. Alam describe any overuse. The ALJ questioned, too, Dr. Alam’s classification of the severity of Claimant’s symptoms as “reminiscent of the symptoms she used to have on the right side”:

Claimant has not returned to driving an Employer bus since the date of her initial May 21, 2011 injury. Indeed, Claimant testified to using her left arm to carry out the duties of her role as a mother i.e., cooking, cleaning, caring for her children, but not to driving a bus, or to any other extra force activity which would expose her to suffering any similar mechanism of injury, to cause what Dr. Alam described as symptoms reminiscent of the symptoms she use [sic] to have on [her] right side. Claimant testified and the record supports, that since the date of her initial injury she has simply been carrying out the day-to-day activities of her role as a mother, just as she did prior to her initial injury, albeit primarily with her left hand.

CO at 9.

While we give no precedential authority to the *Knox* case cited by Claimant, we find it helpful to highlight, as Employer did in opposition, how different the facts of the instant matter are from those in *Knox*:

In *Knox* Claimant alleged a right knee problem arose due to [an] altered gait after a left foot injury and multiple surgeries. The record in the *Knox* case included statements of three of Claimant's treating physicians regarding a well-documented history of [an] altered gait and causal relationship to the foot injury, a positive MRI, as well as Claimant's own testimony, which the ALJ found to be credible. In the present case, there is only one mention of left shoulder problems in the medical record, despite Claimant's testimony (found to be not credible) that the condition had persisted since May 2014, and there were no objective findings regarding the shoulder.

Employer's Brief at 5.

The evidence of record supports the ALJ's reliance on Dr. Danziger's re-evaluation confirming a hyperactive pain response with regard to the onset of left upper extremity pain and opines there are "no objective findings that would warrant continued treatment for the left shoulder even if it was tied together." EE 2 at 10.

Lastly, although there is no discussion in the CO of the distinction between Professor Arthur Larson's "direct and natural consequence rule" adopted by the Director of this agency and the "aggravation rule", we find this omission harmless in light of the ALJ's failure to find Claimant actually sustained any injury which could be considered causally related to the original injury regardless of whether an injury resulted as a result of an aggravation or natural consequence. The ALJ's findings of fact simply contain no finding that Claimant sustained any injury to her left shoulder after Claimant's surgeries to her right shoulder -- only that she suffered pain. See *Jackson v. WMATA*, CRB No. 03-143 (September 2005) citing *Gabriella O'Rose v. Washington Hospital Center*, Dir. Dkt. No. 98-96 (1999) citing Professor Arthur Larson's WORKER'S COMPENSATION LAW at §3-503.

CONCLUSION AND ORDER

The ALJ's conclusion that problems Claimant has with her left upper extremity are not causally related to the injury Claimant sustained to her right shoulder on May 21, 2011 is supported by substantial evidence and is in accordance with the law.

The Compensation Order issued on January 28, 2016 is hereby **AFFIRMED**.

So ordered.