

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA M. MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 12-024

GLINEX Y. BENITEZ,

Claimant–Respondent,

v.

CHARLIE PALMER STEAK D.C., LLC and, WAUSAU UNDERWRITERS INS., CO.

Employer and Carrier-Petitioner.

Appeal from a Compensation Order by
The Honorable Anand K. Verma
AHD No. 11-091, OWC No. 675707

Justin M. DiBlassio, Esquire for the Petitioner
Richard W. Souther, Esquire for the Respondent

Before HEATHER C. LESLIE,¹ JEFFREY P. RUSSELL,² and HENRY MCCOY, *Administrative Appeals Judges*.

HEATHER C. LESLIE, *Administrative Appeals Judge*, 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 Employer - Petitioner (Employer) of the January 24, 2012, 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 ALJ granted the Claimant's request for temporary total disability benefits and payment of related medical expenses. We AFFIRM.

¹ Judge Heather C. Leslie is appointed by the Director of DOES as an interim Board Member pursuant to DOES Administrative Policy Issuance No. 11-02 (June 13, 2011).

² Judge Russell has been appointed by the Director of the DOES as an interim CRB Member pursuant to DOES Administrative Policy Issuance No. 11-02 (June 13, 2011).

FACTS OF RECORD AND PROCEDURAL HISTORY

On June 25, 2010, the Claimant suffered an injury to her back when she fell on the stairs while carrying trays of food. The Claimant did not immediately seek medical treatment.

The Claimant subsequently sought medical treatment after her back pain worsened, eventually coming under the care and treatment of the medical providers at Phillips and Green. The Claimant underwent conservative treatment, including physical therapy and medication. The Claimant also underwent objective testing, including an MRI and an EMG/nerve conduction study. The Claimant was diagnosed as having posttraumatic lumbar radiculopathy and a disc protrusion. The Claimant has not returned to work.

A Formal Hearing was held on July 19, 2011 and October 20, 2011. At the Formal Hearing, the Employer raised the issues of whether or not the Claimant gave timely notice to the Employer, the nature and extent of disability, and whether the Claimant's current condition was medically causally related to the work accident. The Claimant sought an award of temporary total disability from June 25, 2010 to the present and continuing as well as payment of related medical expenses. A CO was issued on January 24, 2012 granting the Claimant's claim for relief in its entirety. The CO found the Claimant gave timely notice of injury, was temporarily and totally disabled and that the Claimant's current medical condition was causally related to her work accident.

The Employer timely appealed the CO's finding that the Claimant's current medical condition was medically causally related to the work accident.³ The Claimant opposed.

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

The Employer argues that the evidence does not medically causally relate the Claimant's condition and resultant symptoms to the work injury. The Employer specifically alleges that the Employer was prevented from presenting evidence to rebut the presumption by the ALJ's ruling, made at the October 2011 hearing, that he would not entertain the issue of medical casual

³ The Employer did not appeal the finding that the Claimant provided timely notice or the CO's findings on nature and extent.

relationship as the Employer did not present an Independent Medical Evaluation (IME). The Employer also takes specific exception to the ALJ, at the October Formal Hearing, expressing his belief that he was unable to entertain the issue of medical causation as the Employer did not have an IME.

A review of the hearing transcript reveals that the ALJ erroneously believed that it was the Employer's burden to disprove medical causal relationship and that absent an IME opinion on the issue of medical causation, the ALJ could not entertain the issue. October Hearing Transcript at 4-8. This is in error. As the Employer correctly points out, the District of Columbia Court of Appeals has held that,

It is not absolutely necessary for the employer to present a medical expert of its own. When the medical records call into question the basis and reliability of the opinion rendered by the treating physician, the ALJ may be justified in finding that opinion unpersuasive.

Golding Alleyne v. DOES, 980 A.2d 1209, 1214 (D.C. 2009).

However, we hold this error harmless. A review of the CO reveals that contrary to what the ALJ stated at the Formal Hearing, he still entertained the issue of medical causal relationship and analyzed it in light of the evidence submitted by both parties. After acknowledging the statutory presumption and finding that the presumption was invoked by the Claimant, the ALJ next turned to the Employer's rebuttal evidence. Specifically,

Employer argues that the Claimant "has the burden of proving that it's (injury) is medically causally related." HT 7. In rebuttal of the presumed nexus between Claimant's continuing infirmity and her employment on June 25, 2010, the Employer did not submit any specific and comprehensive medical evidence; instead, it relies exclusively on Claimant's medical evidence to meet its burden under the Act. However, recourse to the entirety of Claimant's medical evidence commencing from her treatment by Dr. Aikara through her most recent orthopedic treatment of May 31, 2011 by the Phillips & Green orthopedic surgeons fails to uncover any evidence that could aid Employer in sustaining its requisite burden. Accordingly absent Employer's evidence, specifically and comprehensively rebutting the invoked presumption of compensability, statutory presumption of compensability stands unrebutted.

CO at 6.

The Employer incorrectly argues if it "had been allowed to present evidence on the issue of medical causal relationship, the Employer/Carrier would have presented evidence from the Claimant's own medical records specific and comprehensive enough to sever the potential connection between the disability and the work-related event." Employer's Argument unnumbered. All of the Claimant's exhibits as well as the Employer's exhibits were submitted in their entirety, including the exhibits the Employer quotes as support in its argument. After acknowledging the Employer's reliance on the Claimant's evidence as rebuttal evidence, the ALJ

weighed the evidence and found the Employer had not met its burden in rebutting the presumption. We find no error in the above.

While there may be substantial evidence to the contrary, we are constrained to affirm a Compensation Order if there is substantial evidence to support its ultimate conclusion. What the Employer is asking us is to re-weigh the evidence in its favor regarding medical causation, a task we cannot do.

CONCLUSION AND ORDER

The findings of fact and conclusions of law contained in the January 24, 2012 Compensation Order on Remand is **AFFIRMED**.

FOR THE COMPENSATION REVIEW BOARD:

HEATHER C. LESLIE
Administrative Appeals Judge

March 22, 2012

DATE