GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR

LISA M. MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 11-103

DONNA M. BUTLER,
Claimant–Petitioner,

v.

DEANWOOD REHABILITATION and GUARANTEE INSURANCE CO.,
Employer and Insurer—Respondent

Appeal from a Compensation Order by
Administrative Law Judge Linda F. Jory
AHD No. 10-540A, OWC No. 670420

David J. Kapson, Esquire, for the Claimant-Petitioner
Elisabeth Fisher, Esquire, for the Employer-Respondent

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

HENRY W. MCCOY, *Administrative Appeals Judge*, for the Compensation Review Board.

DECISION AND ORDER

JURISDICTION

Jurisdiction is conferred upon the Compensation Review Board (CRB) pursuant to D.C. Official Code §§ 32-1521.01 and 32-1522 (2004), 7 DCMR § 230, *et seq*., and the Department of Employment Services Director's Directive, Administrative Policy Issuance 05-01 (February 5, 2005).

[1] Judge Leslie has been appointed by the Director of DOES as an interim CRB member pursuant to DOES Policy Issuance No. 11-03 (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. 11-01 (June 23, 2011).

OVERVIEW

This case is before the CRB on the request for review filed by Claimant of the September 12, 2011 Compensation Order (CO) issued by an Administrative Law Judge (ALJ) in the Hearings and Adjudication section of the Office of Hearings and Adjudication (OHA) of the Department of Employment Services (DOES). In that CO, the ALJ denied Claimant's request for authorization for an MRI of her right hip.

BACKGROUND

Claimant was employed by Employer as a certified nursing assistant. On April 3, 2010, she injured her lower back while holding a patient in order to prevent him from falling out of bed and in order to get him back into bed. Although Claimant felt a sharp pain in her back, she continued working and sought initial treatment the next day from Unicare Medical Center, with follow-up on April 7 and 12, 2010 at Washington Occupational, where she was given a restriction of lifting no more than 10 pounds and no repetitive lifting.

At Employer's request, Claimant was treated on two occasions by Dr. Jonas Rudzki at Washington Orthopaedics & Sports Medicine. After Claimant complained of urination problems on May 14, 2010, Dr. Rudzki advised her to go to the emergency room at George Washington Hospital, where an MRI of the lumbar spine was performed, which revealed no evidence of lumbar spine pathology.

On May 20, 2010, Claimant came under the care of Dr. Neil Green, of Phillips and Green, with a chief complaint of low back pain. While he diagnosed Claimant with acute lumbar strain, his physical examination noted that her hip, knee, and ankle were non-remarkable. Dr. Green's associate, Dr. Richard Meyer, also noted on July 9, 2010 there was no pain on pain on hip rotation or tenderness over the hip joint.

The first report of hip pain occurred on August 4, 2010 in an examination with another Phillips and Green associate, Dr. Frederic Salter. While he retained a diagnosis of acute lumbar strain, he recommended an MRI of the right hip to rule out any injury in that region. In an independent medical examination (IME) on November 23, 2010, Dr. Marc Danziger opined that Claimant required no further medical treatment, including an MRI of the back and hip. Although, Dr. Salter agreed there was no need for another MRI of the lumbar spine, he still recommended the MRI of the right hip.

After a formal hearing to consider Claimant's request for authorization for an MRI of her right hip, the presiding ALJ concluded that Claimant had not proven by a preponderance of the evidence that her right hip problems with the attendant need for an MRI was causally related to the work injury sustained on April 3, 2010. Claimant timely appealed and Employer has filed in opposition.

On appeal, Claimant argues that contrary to the ALJ's determination, her need for an MRI is causally related to her work injury. Employer argues the ALJ's ruling was correct and that the Compensation Order (CO) should be affirmed.

DISCUSSION AND ANALYSIS

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. *See* D.C. Workers' Compensation Act of 1979, as amended, § 32-1501 *et seq.*, at § 32-1521.01 (d)(2)(A). "Substantial evidence", as defined by the District of Columbia Court of Appeals, is such evidence as a reasonable person might accept to support a particular conclusion. *Marriott International v. D.C. Dept. of Employment Services*, 834 A.2d 882 (D.C. 2003). Consistent with this standard of review, the CRB and this Review Panel are constrained to uphold a Compensation Order that is supported by substantial evidence even if there is also 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*, 834 A.2d at 885.

Turning to the case under review, Claimant primarily argues that the IME opinion of Dr. Danziger "is insufficient as a matter of law to break the presumption of causation" and then in the alternative that even if the presumption was rebutted, she proved entitlement to the requested MRI by preponderance of the evidence.[3] In support its primary argument, Claimant cites the CRB's decision in the matter of *Romero v. V & V Construction, Inc*., CRB No. 11-025 (September 9, 2011) for the propositions that for an IME to considered unambiguous, it "must affirmatively state that the work accident could not have caused the disability" and if the IME even remotely concedes the possibility that the claimant's disability is caused by the work injury, it is insufficient as a matter of law to rebut the presumption.[4] Claimant misreads and misinterprets our decision in *Romero*.

In *Romero*, the ALJ used a letter by the claimant's treating physician opining on medical causal relationship in which it was stated that the possibility of the claimant's then current complaints being related to the work injury while possible was very remote. We deemed this less than unambiguous opinion as not meeting the standard set by the D.C. Court of Appeals when seeking to rebut medical causation.[5]

The DCCA standard holds that an employer meets its burden to rebut the presumption when it proffers a qualified independent medical evaluator who, after examining the employee and reviewing his medical records, unambiguously opines that the work injury did not contribute to the disability.[6] In addition, the presumption of causation may be rebutted by presenting evidence "specific and comprehensive" to rebut the connection between the disabling condition and the work injury.[7]

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[3] *Claimant's Memorandum of Points and Authorities in Support of Application for Review*, p. 6.

[4] *Id*.

[5] See *Washington Post v. DOES (Reynolds)*, 852 A.2d 909 (D.C. 2004).

[6] *Id*.

[7] See *Jackson v. DOES*, 955 A.2d 728, 732 (D.C. 2008).

After determining Claimant had invoked the presumption that her right hip strain was causally related to her work injury, the ALJ evaluated the November 23, 2010 IME of Dr. Danziger offered by Employer to rebut the presumption. The ALJ determined that, after examining Claimant and reviewing her available medical records, Dr. Danziger rendered an unambiguous opinion to the effect:

> The MRI of the hip requested by Dr. Meyer is also unnecessary. It would have no causal relationship to the work related injury and her hip exam is completely benign with full range of motion and there is no pain with heel strike or log roll and no groin pain.

CO at 4.

The ALJ went on to state that she could find nothing ambiguous in Dr. Danziger's opinion and thus concluded that it rebutted "the causal relationship between the MRI of the right hip and her back injury." *Id.* at 5. Contrary to the assertions made by Claimant, we can find nothing in Dr. Danziger's IME that amounts to an admission that Claimant has hip joint problems. His examination of Claimant's hips found full range of motion with no pain on heel strike. He also stated in his assessment:

> Dr. Meyer continues to request MRI scans and I think this absolutely unnecessary base on the fact she has already had one normal MRI of the back, has no radicular symptoms, neurological deficits and there is no indication on any hip joint pathology that would be in any way related to the work accident.[8]

Accordingly, there is no basis to Claimant's argument that Dr. Danziger's IME is insufficient as a matter of law to rebut the presumption. The ALJ's determination that the evidence adduced by Employer has rebutted the presumption in this matter is supported by the record evidence and will not be disturbed.

With the presumption properly rebutted, the burden reverted to Claimant to prove, without benefit of the presumption, the causal relationship by a preponderance of the evidence. In this regard, Claimant asserts the ALJ committed reversible error by improperly rejecting the treating physician's reports. Specifically, Claimant asserts that, contrary to the ALJ's reasoning, the reports of Drs. Meyer and Salter explain how her low back injury led to a right hip strain four months after the work injury.

It is a long-standing proposition in this jurisdiction that the opinions of a treating physician are ordinarily preferred over that of a physician retained solely for litigation purposes.[9] Even with the preference, the ALJ may reject the opinion of the treating physician and credit the

[8] EE No. 1, p. 2.

[9] *Stewart v. DOES*, 606 A.2d 1350, 1353 (D.C. 1992).

opinion of another physician when there is conflicting evidence. In doing so, the fact-finder must give reasons for rejecting the opinion of the treating physician.[10]

In determining whether Claimant had met her burden of proof, the ALJ conducted a review of the medical reports containing the opinions of her treating physicians at Phillips and Green. The initial report on record, but not the initial consultation report, for May 20, 2010 was significant for no report of hip pain. The ALJ noted Dr. Meyer reported left side back pain on June 11, 2010, but right-sided pain on June 25, 2010. And while there was no pain on hip rotation on July 9, 2010, complaints of pain radiating into the hip were reported on August 4, 2010, and an MRI was ordered to assist determining the cause of the pain.

The ALJ took particular note of Dr. Meyer's responses to a questionnaire submitted by Claimant's counsel. When asked to explain how the work accident caused the condition diagnosed, Dr. Meyer responded that Claimant's "symptoms and conditions were caused by the injury sustained on 4-3-10." CO at 5. The ALJ reasoned that "Dr. Meyer did not provide any explanation or answer to this question." *Id.*

Given the response by Dr. Meyer and her assessment of the other treating physician reports, the ALJ concluded:

> Without a proffered opinion as to how the low back injury led to a right hip strain four months after the work incident and given the inconsistencies of the reports of physicians' of Phillips and Green, the undersigned cannot assign any preference to the treating physician's opinions and instead find the opinion of Dr. Danzinger (sic) that there is no causal connection to be more reliable. (Citation omitted.)

Claimant argues that by ordering an MRI to determine if her hip pain could be the result of an occult injury, her treating physicians have explained how the low back injury led to the right hip strain. We disagree. All the treating physicians have done is state a possibility as to the cause of Claimant's hip pain and ordered an MRI to rule out that cause. Under these circumstances, it would have been more appropriate to determine whether the requested MRI was reasonable and necessary and submit the matter to utilization review. As this matter was submitted on the issue of causal relationship and the ALJ has given reasons, supported by substantial evidence in the record, for rejecting the treating physician's opinions, we find no basis for disturbing that determination.

[10] Canlas v. DOES, 723 A.2d 1210, 1211-12 (D.C. 1995).

CONCLUSION AND ORDER

The ALJ's determination that there is no causal relationship between the requested MRI of the right hip and the work injury is supported by substantial evidence in the record. Accordingly, the Compensation Order of September 12, 2011 is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

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HENRY W. MCCOY
Administrative Appeals Judge

March 6, 2012
DATE