

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA M. MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB 11-117

**VICTOR GOODING,
Claimant-Respondent,**

v.

**CLARK CONSTRUCTION GROUP, LLC AND ZURICH NORTH AMERICA
Employer and Insurer-Petitioner**

Appeal from a Compensation Order by
Administrative Law Judge Amelia G. Govan
AHD No. 10-193A, OWC 655062

Carlos A. Espinosa, Esquire, for the Claimant
Jeffrey W. Ochsman, Esquire, for the Employer and Insurer

Before LAWRENCE D. TARR, HENRY W. MCCOY, AND HEATHER C. LESLIE,¹ *Administrative Appeals Judges*.

LAWRENCE D. TARR, *Administrative Appeals Judge*, for the Compensation Review Board.

DECISION AND ORDER

This case is before the Compensation Review Board (CRB) on the request filed by the employer for review of the September 29, 2011, Compensation Order (CO) issued by an Administrative Law Judge (ALJ) in the Administrative Hearings Division (AHD) of the District of Columbia's Department of Employment Services (DOES). In the CO, the ALJ awarded the claimant payment of causally related medical expenses recommended by his treating physician, finding that the claimant's lumbar symptoms and his need for treatment and surgery were causally related to his August 18, 2009, accident at work. We AFFIRM.

BACKGROUND FACTS OF RECORD

The claimant, Victor Gooding, worked as a plumber's assistant for a subcontractor of the employer. There is no dispute that on August 18, 2009 the claimant fell about fifteen feet through an air shaft between two floors at a construction site. He received emergency room care at

¹ Judge Heather C. Leslie has been appointed by the Director of DOES as a CRB member pursuant to DOES Policy Issuance No. 11-03 (June 13, 2011).

Howard University Hospital. A CT scan taken at that hospital showed the claimant had an acute compression fracture at L1.

The claimant was admitted to the hospital for one week and after discharge came under the care of orthopedist, Dr. Joel D. Fechter on September 16, 2009. Dr. Fechter treated the claimant for about eight months and then referred him to Dr. Matthew D. Ammerman, a neurosurgeon.

Dr. Ammerman has continued to treat the claimant. After a May 2010 MRI showed a herniated nucleus polposus at L5 S1, Dr. Ammerman tried to treat this with injections and therapy. When those treatments did not alleviate the claimant's back and radiating pain, Dr. Ammerman recommended a lumbar discectomy.

On November 2, 2010, Dr. Donald Hope, a neurosurgeon, examined the claimant for an IME at the employer's request. In June 2011, Dr. Hope reviewed the claimant's CT scans and MRI report. Both of Dr. Hope's reports were admitted into evidence at the formal hearing.

At the formal hearing on September 2, 2011, the employer challenged the proposed surgery on the grounds that the claimant's current back condition (disc herniation at L5 S1) was not causally related to the August 18, 2009, work injury and because the proposed surgery was not reasonable and necessary. The ALJ found the claimant's condition was medically causally related and found that the surgery was reasonable and necessary.

The employer timely appealed. On review, the employer only challenges the finding that the claimant's current back condition is causally related to his accident at work.

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 appealed CO are based upon substantial evidence in the record and whether the legal conclusions drawn from those facts are in accordance with applicable law. "Substantial evidence" is relevant evidence a reasonable person might accept to support a conclusion. *Marriott International v. DOES*, 834 A.2d 882, 885 (D.C. 2003) and D.C. Code §32-1521.01(d) (2) (A).

Consistent with this standard of review, the CRB is constrained to uphold a CO 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, supra*.

ANALYSIS

In reaching her decision, the ALJ determined the claimant was entitled to the rebuttable presumption that there is a causal relationship between the accident and his current back condition, and also determined that the employer's evidence was sufficient to rebut the presumption.

The ALJ then analyzed the evidence without the presumption. The ALJ relied on the evidentiary preference given to treating physicians and awarded the claim, finding that the opinion of treating physician Dr. Ammerman, who stated that the claimant's lumbar radiculopathy was "brought on" by the work accident (CE3 at 77) was more persuasive than the opinion of IME Dr. Hope, who opined that the claimant's current back problems were due to degenerative changes, not the work accident.

The employer does not challenge the ALJ's determination that the claimant proved entitlement to the presumption and, of course, does not challenge the determination that it rebutted the presumption. The employer first argues the ALJ erred because the ALJ failed to articulate the substantial evidence relied upon to credit treating physician Dr. Ammerman's opinion over that of IME Dr. Hope.

We disagree with this argument. The ALJ found that the claimant was a credible witness and adequately explained the basis for her decision:

Claimant's uncontradicted testimony indicates that when he fractured his spine in the August 2009 fall, the initial focus was on healing the most serious fracture, for which the heavy metal brace was prescribed. Although he felt some left leg discomfort, it was overshadowed by the major problem. The low back and radicular problems became more severe after the heavy brace was removed, worsened thereafter, and have continued. Claimant's credible testimony is consistent with the record medical reports.

Thus, there is persuasive medical evidence showing Claimant has debilitating lumbar radicular symptoms, related to his August 2009 work accident, for which his treating physician recommended surgery after palliative medical protocols failed. Both treating physicians' reports reflect worsening lumbar radicular symptoms after the heavy metal brace was removed. Dr. Ammerman, who recommends the contested surgery to address Claimant's lumbar symptoms, directly relates claimant's lumbar symptoms to the work accident.

When the medical evidence is weighed, Dr. Hope's opinion does not persuasively contradict the existence of a causal connection between claimant's work accident and his current lumbar condition. The medical reports of Claimant's treating physicians fully support the causal connection between his current lumbar condition and his fall. In weighing the medical evidence regarding causation, the opinion of Dr. Ammerman was deemed most persuasive.

Relying on this opinion, it is decided that claimant's current back condition is related to his August 2009 work injury. As such, medical benefits related to claimant's 2007 lumbar injury, and any residuals thereof, are compensable pursuant to the Act.

Thus, claimant prevails on the issue of causal relationship regarding his debilitating lumbar symptoms, including those radicular symptoms emanating

from the herniated L5 lumbar disc, which are deemed medically causally related to his August 18, 2009 work injury.

CO at 5-6.

The employer also argues that the ALJ erred by not being more specific as to why she was not persuaded by Dr. Hope's opinion. However, the CRB has held that an ALJ does not have to specify reasons for not accepting an IME's opinion:

The CRB, in the past, has stressed that the treating physician preference is so strong, that when the ALJ relies on the opinion of a treating physician to the detriment of conflicting evidence, the ALJ does not need to provide an explanation for not accepting the opinions of the other medical experts of record.

Oliver v. George Washington, CRB No. 09-001, AHD No. 95-376E, OWC No. 282571 (November 17, 2008).

CONCLUSION AND ORDER

The ALJ's determination that the claimant's current back condition is medically causally related to his work injury is supported by substantial evidence in the record and is in accordance with the applicable law. The September 29, 2011, Compensation Order is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

LAWRENCE D. TARR
ADMINISTRATIVE APPEALS JUDGE

March 5, 2012

Date