

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA M. MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 11-144

DONNA GRAHAM,

Claimant–Respondent,

v.

PEPCO,

Self Insured Employer -Petitioner.

Appeal from a Compensation Order by
The Honorable Amelia G. Govan
AHD No. 10-539, OWC No. 672370

Shawn M. Nolen,¹ Esquire for the Petitioner
David Kapson,² Esquire for the Respondent

Before HEATHER C. LESLIE,³ LAWRENCE D. TARR, and HENRY W. MCCOY *Administrative Appeals Judges*.

HEATHER C. LESLIE, *Administrative Appeals Judge*, for the Compensation Review Board.

DECISION AND REMAND ORDER

OVERVIEW

This case is before the Compensation Review Board (CRB) on the request for review filed by the Employer - Petitioner (Employer) of the November 10, 2011, 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

¹ The Petitioner was represented by Erin Pride at the Formal Hearing.

² The Respondent was represented by Jennifer Griffith at the Formal Hearing.

³ 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).

Claimant's request for payment of related medical expenses and authorization for medical treatment with a neurologist. We VACATE AND REMAND.

FACTS OF RECORD AND PROCEDURAL HISTORY

The Claimant was a Senior Planner/Scheduler with the Employer, for whom she has worked for over 26 years with, mostly in an administrative capacity. The Claimant's duties included typing, answering calls, and clerical work. Prior to the alleged work injury, the Claimant suffered from a non-work related cervical condition which required surgery. The Claimant returned to work from this surgery and was able to perform her regular duties with no difficulties.

On March 29, 2010, the Claimant first sought treatment with Dr. James D. Abbott, for neck pain and bilateral upper extremity numbness extending into both hands. After further testing, the Claimant was diagnosed with severe bilateral carpal tunnel syndrome.

On July 12, 2010, October 11, 2010, and January 26, 2011, Dr. Abbott opined that he could not support or deny that her condition was related to her work. On October 20, 2010, Dr. Abbott checked "no" when asked whether or not the Claimant's condition was due to an injury or sickness involving her employment, in an attending physician statement.

After conservative treatment failed, the Claimant underwent bilateral carpal tunnel release to both her right and left wrist. The Claimant continues to experience residual pain and numbness related to her bilateral carpal tunnel syndrome. The Claimant alleged that her carpal tunnel syndrome was related to her employment.

The Employer sent the Claimant for an independent medical evaluation (IME) with Dr. Richard Barth on September 30, 2010. Dr. Barth opined the Claimant's carpal tunnel syndrome was not related to her employment.

A Formal Hearing was held on February 17, 2011. The Claimant requested an award for payment of out-of-pocket related medical expenses and bills and authorization for medical treatment with a neurologist. The issues raised were whether or not the Claimant's bilateral carpal tunnel syndrome arose out of and in the scope of the Claimant's employment and if so, is there a medical causal relationship between the Claimant's bilateral carpal tunnel syndrome and her work.

A CO was issued on November 10, 2011 which awarded the Claimant's claim for relief in its entirety. The ALJ found the Claimant has suffered an injury that arose out of and in the scope of her employment and that the Claimant's condition was medically causally related.

The Employer timely appealed. The Employer argues that the "ALJ failed to determine whether or not the Claimant proved that her current medical condition is causally related to her employment by a preponderance of the evidence." Employer's Argument at 4. The Employer further argues that there is no evidence within the record to support a determination that the Claimant's bilateral carpal tunnel syndrome is related to her employment. The Claimant opposes

the application for review and argues that the CO is supported by the substantial evidence in the record and is in accordance with the law.

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 ALJ was in error first by finding that the Claimant had even invoked the presumption of compensability stating that there is "no statement from a physician which mentions a work activity that could have caused it." Employer's Argument at 5. We disagree.

The ALJ, when discussing whether or not the Claimant had invoked the presumption relied upon not only the Claimant's testimony but also the July 2010 opinion of Dr. Abbott. A review of the July 2010 opinion of Dr. Abbott shows reveals the following opinion,

I advised her to consult with an attorney as I can neither support nor deny her condition as definitely work related. It certainly is within the realm of possibility to a reasonable degree of medical certainty that this is a related to repetitive motion injury. However, I cannot state unequivocally that this is the cause for this problem.

As the Employer concedes, the threshold to invoke the presumption of compensability is a low "hurdle" to overcome. Employer's Argument at 5. As the ALJ noted, all the Claimant must show is the existence of work related activities which had the potential to cause or contribute to the Claimant's condition. Although the opinion of Dr. Abbot is not "unequivocal," as the ALJ acknowledges, it was enough, along with the Claimant's testimony to invoke the presumption. Stated another way, Dr. Abbott's opinion in conjunction with the Claimant's testimony showed the existence of work activities which had the *potential* to cause or contribute to her current condition. We find no error in this.

The Employer's next argument is that the ALJ did not indicate how the Claimant proved, by a preponderance of the evidence, that her condition is medically casually related to her employment. Specifically, the Employer argues that the Claimant only submitted her own lay testimony on the issue of medical casual relationship and that this testimony alone, especially in light of Dr. Barth's opinion, does not satisfy her burden. The Claimant argues that the testimony of the Claimant was "corroborated by the medical opinion from Ms. Graham's treating physician which found, within a reasonable degree of medical certainty, that Ms. Graham's bi-lateral carpal

tunnel syndrome could have been caused by the work injury complained of.” Claimant’s Argument unnumbered.

A review of the CO reveals that when addressing whether or not the Claimant proved by a preponderance of the evidence her entitlement to the medical benefits claimed, the ALJ stated,

In that Dr. Barth's opinion successfully rebuts the presumption regarding Claimant's *current* condition, the burden reverts to Claimant to prove, by the preponderance of the evidence, her entitlement to the medical benefits claimed. *McNeal, supra*. I found Dr. Abbott's opinion, when considered in conjunction with Graham's testimony and the May 2010 EMG/NCS study interpretation, to be more persuasive than that of Dr. Barth.

CO at 5-6.

The opinions of Dr. Abbott are equivocal. A review of the evidence shows that Dr. Abbott stated there was a possible causal connection but that he also checked “no” when asked if the Claimant’s condition was due to her employment. Claimant’s Exhibit 1 at 12. The ALJ did not explain why, in light of these inconsistencies, she awarded the claim.

While it is not within our authority to re-weigh the evidence, we are summarizing the evidence in the case at bar to point out why we must remand the case back to the ALJ for further discussion regarding the medical evidence and how, in light of the treating physician’s equivocal opinion, the Claimant sustained her burden. We can no more “fill in the gaps” and glean from the record what the ALJ ultimately relied upon in coming to the conclusion that the Claimant had sustained her burden and proved, by a preponderance of the evidence, that her bilateral carpal tunnel syndrome is related to the work injury. *See Mack v. D.C. Department of Employment Services*, 651 A.2d 804, 806 (D.C. 1994).

CONCLUSION AND ORDER

The Compensation Order of November 10, 2011 is not supported by substantial evidence in the record and is not in accordance with the law. Accordingly, the Award is VACATED, and this case is REMANDED for further consideration consistent with this Decision and Remand Order.

FOR THE COMPENSATION REVIEW BOARD:

HEATHER C. LESLIE
Administrative Appeals Judge

May 16, 2012
DATE