

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

Department of Employment Services

VINCENT C. GRAY  
MAYOR



LISA M. MALLORY  
DIRECTOR

**COMPENSATION REVIEW BOARD  
CRB 11-114**

**EFRAIN LOPEZ,  
Claimant-Petitioner,**

v.

**C. J. COAKLEY and ZURICH AMERICAN INSURANCE CO.,  
Employer and Insurer-Respondents.**

Appeal from a Compensation Order on Remand by  
Administrative Law Judge Belva D. Newsome  
AHD No. 01-149C, OWC 564522

Michael J. Kitman, Esquire, for the Claimant  
Mark W. Bertram Esquire, for the Employer and Insurer

Before LAWRENCE D. TARR, MELISSA LIN JONES, AND HEATHER C. LESLIE,<sup>1</sup> *Administrative Appeals Judges.*

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

**DECISION AND REMAND ORDER**

This case is before the Compensation Review Board (CRB) on the request filed by the claimant for review of the October 6, 2011, Compensation Order on Remand (COR) issued by an Administrative Law Judge (ALJ) in the Hearings and Adjudication Section<sup>2</sup> of the District of Columbia's Department of Employment Services (DOES). In the COR, the ALJ denied the claimant's request for authorization to receive lumbar steroid epidural injections from her treating physician, Dr. Theresa Carlini.

**BACKGROUND FACTS OF RECORD AND PROCEDURAL HISTORY**

The claimant, Efrain Lopez,<sup>3</sup> was employed as a carpenter by the employer, C.J. Coakley. On October 13, 2000, he injured his back and right knee while lifting and moving a box. The

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

<sup>2</sup> Formerly known as the Administrative Hearings Division or AHD.

<sup>3</sup> The COR incorrectly identified the claimant's first name as "Efrin."

claimant was treated by several doctors and ultimately came under the care of Dr. Robert Layfield, who treated his knee, and Dr. Theresa Carlini, who treated the claimant's back. The current dispute centers on Dr. Carlini's recommendation that the claimant receive lumbar steroid epidural injections.<sup>4</sup>

The history of the medical treatment for the claimant's back injury has been accurately stated in the ALJ's previous orders and will not be repeated here. It is sufficient to state that the claimant began treating with Dr. Carlini on October 13, 2005. Dr. Carlini has primarily treated the claimant with muscle relaxants, physical therapy, sacroiliac joint steroid injections and lumbar facet block injections.

The claimant had MRIs taken in 2001, 2006, and in 2009. Since January 30, 2001, Dr. Marc Danziger has conducted four IMEs of the claimant for the employer.

In 2009, Dr. Carlini prescribed lumbar steroid epidural injections, for which the employer refused authorization. On June 23, 2010, ALJ McNair held a formal hearing on the claimant's request for authorization to receive the injections. Because ALJ McNair could not issue a Compensation Order due to illness, the case was assigned to ALJ Newsome. On March 11, 2011, ALJ Newsome issued a Compensation Order that denied the claim, finding that the claimant's chronic lumbar pain was not medically causally related to the work injury and that the proposed injections were not reasonable or necessary.

The CRB vacated the ALJ's decision and remanded the case with the following instructions:

On remand, the ALJ must first determine whether the disabling chronic low back pain, whether emanating for L3-4, L4-5 or both, is causally related to the work injury. If it is found to be, the ALJ can proceed to the issue of the reasonableness and necessity of the recommended treatment, which would require sending the matter to utilization review. If the disabling symptoms are not found to be causally related, the inquiry ends as the determination would be dispositive as to the claim for relief; rendering a decision on the requested treatment moot.

*Lopez v. C.J. Coakley Co., Inc.* CRB 11-027 (August 3, 2011) at page 5 (footnote omitted).

In the COR that is the subject of this review, the ALJ again denied authorization for the injections. The claimant timely appealed.

#### THE STANDARD OF REVIEW

The CRB's authority on review is limited to making a determination as to whether the factual findings of the appealed order are based upon substantial evidence in the record and whether the legal conclusions drawn from those facts are in accordance with applicable law. "Substantial

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<sup>4</sup> The injury to the claimant's right knee was held medically causally related to the injury at work in an earlier proceeding. *Lopez v. C.J. Coakley*, Dir. Dkt. No. 02-42 OHA No. 01-149 B (January 10, 2003).

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).

Consistent with this standard of review, the CRB must uphold an order 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 the COR, the ALJ first found the claimant was entitled to the presumption that his chronic back complaints were medically causally related because the employer stipulated to a work injury. The ALJ further found that the employer, through the several IME reports of Dr. Danziger, had rebutted the presumption. These findings are not appealed.

The ALJ, considering the evidence without the presumption, determined that the claimant’s back complaints were not medically causally related to the work accident and denied the request for the injections. Contrary to the remand instructions, the ALJ did not end her inquiry but went on to find that the recommended treatment was not reasonable and necessary, without utilization review. COR at 5. The ALJ held:

Dr. Carlini's disagreement with the findings of Claimant's MRI and opinion that Claimant's chronic back pain would lead to Claimant's earlier degenerative disk disease are the basis of her opinion that Claimant's current symptoms are medically causally related to his October 13, 2000 work-related injury to his back. Dr. Carlini expected Claimant to develop degenerative disease at L4-5 and L5/S1 based upon his chronic back pain. Claimant developed degenerative disease at L3-4. Dr. Carlini's opinion is rejected with respect to a medical causal relationship.

Dr. Carlini has treated Claimant based upon his subjective symptomatology at L4-5. The objective evidence does not support Dr. Carlini's opinion that Claimant will receive relief from his pain after the failure of his prior treatment. Claimant's MRI of March 31, 2009 found disc degeneration and bulging without focal protrusion or stenosis at the L3-4 disc. The objective evidence does not indicate any nerve impingement or spinal column impingement or narrowing. Dr. Carlini opines that the lumbar steroid epidural injections at L3-4 would relieve the inflammation that has caused Claimant's pain. Dr. Carlini's opinion is rejected as to the reasonableness and necessity of lumbar steroid epidural injections at L3-4. Dr. Danziger's opinion that Claimant does not require this treatment is accepted.

COR at 6.

The first reason stated by the ALJ for not accepting the opinion of the treating physician, Dr. Carlini, was because that doctor’s disagreement with the findings stated on the MRI reports with respect to whether the claimant has a disc problem at L3-4. The ALJ correctly stated the radiologist read the 2009 MRI as finding no bulging disc while Dr. Carlini reviewed the films and found minimal disc bulge at L3-4. (CE at 114).

The ALJ implicitly accepted the radiologist's view that the claimant did not have a bulging disc at L3-4. This finding appears to be inconsistent with the ALJ's finding that the MRI showed a disc problem at L3-4:

Claimant's MRI of March 31, 2009 found disc degeneration and bulging without focal protrusion or stenosis at the L3-4 disc.

COR at 6.

Moreover, in the March 11, 2011 CO, the ALJ also found the claimant had an L3-4 disc problem. There the ALJ held

The objective evidence does not support a finding of inflammation at L4-5 since the degeneration and bulging disc are at L3-4.

March 11, 2011 CO at 5.

The second reason stated by the ALJ in the COR for rejecting Dr. Carlini's opinion had to do with the expected development of the claimant's back problems. The ALJ held

Dr. Carlini expected Claimant to develop degenerative disease at L4-5 and L5/S1 based upon his chronic back pain. Claimant developed degenerative disease at L3-4. Dr. Carlini's opinion is rejected with respect to a medical causal relationship.

COR at 6.

However, contrary to this finding, Dr. Carlini did not testify that she expected the injured claimant to develop back problems at L4-5 and L5-S1.

Dr. Carlini testified that for a non-injured person, she would expect injury at L5-S1 first and then at L4-5. Dr. Carlini opined the claimant's injury at work accelerated his degenerative disc disease because the claimant developed problems at L3-4 before developing problems at L5 S1:

My opinion is that an injury can lead to earlier disk degeneration and bulging in the disc can be associated with (changes in MRI results). If—the typical aging process for someone who's going to have degenerative disk disease, you would expect the L5-S1 to be the first to go because that's the one that has the most weight bearing, and then after that you would think L4-5.

So my impression is that this injury in someone who's had chronic back pain lead to an earlier degenerative disk disease than would have—he would have had because of the level that it is.

CE5 at 105-106.

Thus, the location of the claimant's degenerative disc disease is not inconsistent with Dr. Carlini's opinion.

On remand, the ALJ should resolve the apparent inconsistency regarding her finding about whether the claimant had a disc problem at L3-4 and reconsider her findings in light of Dr. Carlini's testimony that the work injury accelerated the claimant's degenerative disc disease.

If the ALJ does find the requisite medical causal relationship, the ALJ then should determine whether the proposed treatment is reasonable and necessary after requesting utilization review or finding that this defense was waived, as is more fully explained in the CRB's August 3, 2011, Decision and Remand Order at page 4.

#### CONCLUSION AND ORDER

The Compensation Order on Remand of October 6, 2011, is not supported by substantial evidence in the record and is VACATED and REMANDED for further consideration consistent with this decision and remand order.

FOR THE COMPENSATION REVIEW BOARD:

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LAWRENCE D. TARR  
ADMINISTRATIVE APPEALS JUDGE

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Date