

**DISTRICT OF COLUMBIA COURT OF APPEALS**

No. 15-AA-779

VILMA F. CERON, PETITIONER,

v.

DISTRICT OF COLUMBIA DEPARTMENT OF EMPLOYMENT SERVICES, RESPONDENT,

and

CHIMES OF VIRGINIA, INC., *et al.*, INTERVENORS.

Petition for Review of a Decision of the Compensation Review Board  
of the District of Columbia Department of Employment Services  
(CRB-22-15)

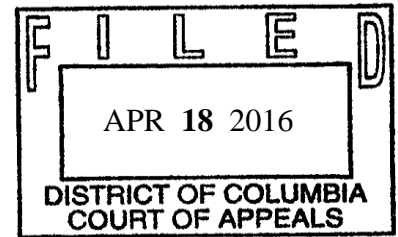
(Submitted April 15, 2016)

Decided April 18, 2016)

Before FISHER and BECKWITH, *Associate Judges*, and NEWMAN, *Senior Judge*.

**MEMORANDUM OPINION AND JUDGMENT**

PER CURIAM: Vilma Ceron filed a claim for medical expenses under the Workers' Compensation Act. D.C. Code §§ 32-1501 – 1545 (2012 Repl.). After a full evidentiary hearing on December 11, 2014, an Administrative Law Judge ("ALJ") denied Ceron's request. The Compensation Review Board ("CRB") affirmed, concluding that substantial evidence supported the ALJ's determination that the left shoulder condition of which Ceron complained was not causally connected to her on-the-job accident. We affirm on the same grounds.



## I. Background

On July 8, 2013, Ceron was employed as a housekeeper by Chimes of Virginia (“Chimes”) when she slipped and fell while cleaning a bathroom. She sustained soft tissue injuries to her left shoulder and upper left arm, for which she began chiropractic treatment.<sup>1</sup> Her chiropractor then referred her to an orthopedic surgeon, Dr. Mehrad Malek, whom she saw in April of 2014.

Based on Ceron’s “subjective complaints” and an MRI of her left shoulder (taken on November 21, 2013), Dr. Malek recommended arthroscopic surgery to fix two perceived problems: “post traumatic imping[e]ment syndrome of her left shoulder” and a “tear of [the] shoulder labrum.” He believed the tear to be the direct result of her work-related fall and the impingement syndrome to be the result of the fall aggravating a preexisting condition.

At the December 2014 hearing, counsel for Chimes challenged Dr. Malek’s opinion. Dr. Louis Levitt, hired by the employer to conduct an independent medical examination (“IME”), stated in his January 21, 2014, report that he believed Ceron’s complaints to be “feigned.” In May 2014, Dr. Levitt reviewed the official MRI results and confirmed this opinion, concluding that the scan report did not reflect a “musculoskeletal pathology” resulting from her fall.

Ceron, however, continued to insist that her arm was basically useless, testifying that the pain in her shoulder did not allow her to sleep or even lift her arm to “grab . . . a bottle of water or coffee.” She also stated that she almost always wore a sling, except when sleeping. During cross-examination, counsel for the employer presented photographic evidence from November 8, 2014, which showed Ceron, without a sling, using her left arm and hand to drive and carry a bag. Ceron denied using her left arm and hand to carry the bag and drive, but she did not deny that the photographs were of her.

In a Compensation Order dated January 15, 2015, the ALJ denied authorization for arthroscopic surgery and “payment of causally-related medicals.” He found that Ceron was an “incredible” witness, Dr. Levitt’s opinion was more reliable than Dr. Malek’s, and therefore any existing shoulder impairment was not medically-causally related to her workplace injury. The CRB affirmed, concluding

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<sup>1</sup> The parties stipulated that the initial injury arose out of and in the course of employment.

that the ALJ's order was supported by substantial evidence in the record. Ceron petitioned for review.

## II. Analysis

"If [the agency's factual findings are] supported by substantial evidence, we must accept the findings, even if the record could support a contrary finding." *Jackson v. District of Columbia Dep't of Emp't Servs.*, 979 A.2d 43, 49 (D.C. 2009). An agency's legal conclusions are reviewed *de novo*. *Id.* (citation omitted). In this case, the ALJ's determination that Ceron's "left shoulder complaints are not causally related to her on-the-job accident" is supported by substantial evidence.

First, Dr. Levitt determined that Ceron's alleged shoulder condition was "feigned." He based this conclusion on several factors: (1) the MRI scan report showed that Ceron's shoulder exhibited "little evidence of significant shoulder pathology";<sup>2</sup> (2) the external, physical examination (revealing that she had "full range of motion on forward elevation, abduction and rotation") could not explain the severe symptoms currently reported by Ceron; (3) her symptoms were incongruous with the expected improvement trajectory for "five months post-injury"; (4) the lack of evidence of atrophy was inconsistent with Ceron's alleged "paralysis"; and (5) "there [were] no clinical indications for surgery."

Second, the evidence presented at the hearing corroborated Dr. Levitt's conclusion that Ceron's complaints were mostly contrived. Although Ceron claimed that she could not use her left arm, the employer's counsel introduced recent photographs of her doing so. Ceron's further denial that she was using her left arm in those photographs suggests, as the ALJ concluded, that her testimony about her shoulder condition is "unreliable."

The "specific and comprehensive" nature of Dr. Levitt's opinion, especially in light of Ceron's testimony, was enough to override the statutory presumption of causation between Ceron's alleged disability and her work-related fall. *Jackson*,

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<sup>2</sup> Dr. Levitt also stated that any "questionable changes of a [labrum] tear" that the MRI scan may have shown were "consistent with her 54 years of age and [did] not reflect acute injury from her fall."

979 A.2d at 50 (citation omitted).<sup>3</sup> Once the burden shifted to Ceron, *see Washington Post v. District of Columbia Dep't of Emp't Servs.*, 852 A.2d 909, 911 (D.C. 2004) (citation omitted), she was unable, by a preponderance of the evidence, to prove her case.

Although Dr. Malek opined that Ceron's shoulder required surgery, the ALJ's finding that Dr. Malek's medical records and opinion were unreliable is supported by substantial evidence. Dr. Malek's recommendation of surgery rests at least in significant part on Ceron's dubious complaints about her shoulder. Ceron argues that Dr. Malek did not rely on her subjective complaints in forming his conclusions, but Dr. Malek stated that the external examination of Ceron's left shoulder "objectively" revealed "not much of a finding." It was only when he "put [] together" Ceron's "subjective complaints" with the MRI imaging that he was able to diagnosis her injury.

### III. Conclusion

The agency's conclusion that Ceron's left shoulder complaints are not causally related to her workplace fall is supported by substantial evidence, and its decision denying medical benefits is hereby

*Affirmed.*

ENTERED BY DIRECTION OF THE COURT:



JULIO A. CASTILLO  
Clerk of the Court

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<sup>3</sup> This evidence was also enough to rebut the treating physician "preference." *See Clark v. District of Columbia Dep't of Emp't Servs.*, 772 A.2d 198, 202 (D.C. 2001). The ALJ specifically described why he rejected the opinion of Dr. Malek, who, although technically Ceron's treating physician, only saw Ceron once. Among other reasons, the ALJ referenced: the hastiness and inattentiveness which Dr. Malek's medical records reflect, the weight Dr. Malek gave to Ceron's complaints, and Dr. Malek's failure to recognize that Ceron may have exaggerated her symptoms.

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