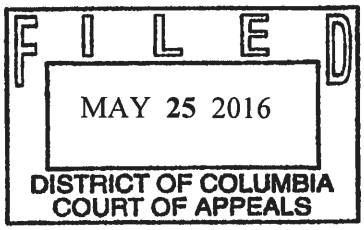
DISTRICT OF COLUMBIA COURT OF APPEALS

No. 15-AA-596



EARL S. WILSON, PETITIONER,

v.

DISTRICT OF COLUMBIA DEPARTMENT OF EMPLOYMENT SERVICES, RESPONDENT,

and

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY, INTERVENOR.

On Petition for Review of an Order of the District of
Columbia Department of Employment Services
Compensation Review Board
(CRB-160-14)

(Submitted March 8, 2016 Decided May 25, 2016)

Before FISHER, EASTERLY, and MCLEESE, *Associate Judges*.

MEMORANDUM OPINION AND JUDGMENT

PER CURIUM: Petitioner Earl S. Wilson challenges a ruling by the Compensation Review Board ("CRB") that intervenor Washington Metropolitan Area Transit Authority ("WMATA") does not have to pay for Mr. Wilson to have back surgery. We affirm.

I.

Except as indicated, the following facts are undisputed. In June 2000, Mr. Wilson was injured when a vehicle struck the WMATA bus he was about to operate. At first, Mr. Wilson sought treatment from Dr. Hampton Jackson, an orthopedic surgeon, who administered intradiscal electrothermal therapy in 2001. Immediately following that procedure, Mr. Wilson began experiencing pain and swelling in his left leg, which persisted thereafter. In 2002, Mr. Wilson began seeing Dr. Edward Aulisi, a neurosurgeon. Dr. Aulisi concluded that surgery

would not alleviate Mr. Wilson's pain and referred Mr. Wilson to Dr. Babak Arvanaghi, a pain-management specialist. Dr. Arvanaghi administered pain injections and prescribed pain medication. In September 2003, Dr. Aulisi reviewed updated MRI scans and again concluded that surgical intervention was not warranted.

In May 2013, Dr. Arvanaghi concluded that Mr. Wilson should be seen by a surgeon. Dr. Arvanaghi referred Mr. Wilson back to Dr. Aulisi, who determined that Mr. Wilson's condition had not improved in response to conservative measures and recommended a surgical procedure called decompressive lumbar laminectomy. Mr. Wilson decided to have the surgery after discussing with Dr. Aulisi the potential risks and benefits, including the possibility that surgery might not fully resolve Mr. Wilson's symptoms.

Following Dr. Aulisi's recommendation that Mr. Wilson undergo surgery, three physicians evaluated Mr. Wilson's case. In July 2013, WMATA referred Mr. Wilson to Dr. Arthur Kobrine for an independent medical evaluation. Dr. Kobrine concluded that a decompressive lumbar laminectomy would not relieve Mr. Wilson's pain, which Dr. Kobrine attributed to arachnoiditis resulting from earlier treatment. In October 2013, Dr. Kobrine reviewed an MRI scan of Mr. Wilson's lumbar spine taken earlier that year. Dr. Kobrine concluded that the MRI further supported his conclusion that surgical intervention was unwarranted.

In November 2013, Dr. Arvanaghi diagnosed Mr. Wilson with radiculopathy of the thoracic and lumbar spine, lumbar facet syndrome, and mild arachnoiditis. Dr. Arvanaghi also documented a positive straight-leg-raise test. Dr. Arvanaghi concluded that the surgery Dr. Aulisi recommended could address the "mechanical component" of Mr. Wilson's pain, but noted that the surgery would not address the "chronic component," referring to Mr. Wilson's arachnoiditis.

Later that month, Dr. Phillip E. Williams issued a utilization-review report in response to a request by WMATA. *See* 7 DCMR § 232 (West, Westlaw through 2016). In his report, Dr. Williams listed the Official Disability Guidelines ("ODG") criteria for a decompressive lumbar laminectomy, which include, in relevant part, (1) "[o]bjective findings" of "radiculopathy," and (2) diagnostic imaging showing "[n]erve root compression," "[l]ateral disc rupture," or "[l]ateral recess stenosis." Dr. Williams concluded that Mr. Wilson's case did not meet either of those criteria. Accordingly, Dr. Williams determined that the surgery was not reasonable or medically indicated.

After a hearing, an Administrative Law Judge (ALJ) issued a compensation order denying Mr. Wilson's claim for authorization, relying principally upon the opinions of Dr. Williams and Dr. Kobrine that the proposed surgery was not reasonable or medically indicated. Mr. Wilson appealed to the CRB, which affirmed.

II.

"Our limited role in reviewing the decision of the CRB permits us to reverse only if we conclude that the decision was arbitrary, capricious, or otherwise an abuse of discretion and not in accordance with the law." *Washington Hosp. Ctr. v. District of Columbia Dep't of Emp't Servs.*, 983 A.2d 961, 965 (D.C. 2009) (internal quotation marks omitted). "Although our review in a workers' compensation case is of the decision of the CRB, not that of the ALJ, we cannot ignore the compensation order which is the subject of the CRB's review." *Reyes v. District of Columbia Dep't of Emp't Servs.*, 48 A.3d 159, 164 (D.C. 2012) (internal quotation marks and brackets omitted). "The CRB must affirm a compensation order if the ALJ's factual findings are supported by substantial evidence and the ALJ's legal conclusions flow rationally from those facts." *Id.*

Mr. Wilson contends that the compensation order impermissibly relies on Dr. Kobrine's independent medical evaluation. In Mr. Wilson's view, when a claim for authorization of medical treatment undergoes utilization review, the ALJ must focus exclusively on the opinions of the utilization-review report and the claimant's treating physicians. To the contrary, we have held that an ALJ may rely on an independent medical evaluation as corroboration of a utilization-review report. *Placido v. District of Columbia Dep't of Emp't Servs.*, 92 A.3d 323, 326-27 (D.C. 2014).

Mr. Wilson also contends that the compensation order impermissibly rejects Dr. Arvanaghi's diagnosis of radiculopathy. Under the applicable regulations, a utilization review must "accept[] as a given the diagnosis of injury" and instead may focus only on the "necessity, character or sufficiency of medical services" at issue. 7 DCMR § 232.3. In Mr. Wilson's view, the compensation order's conclusion that there was no objective evidence of radiculopathy impermissibly failed to take the diagnosis of injury as a given.

We need not address this issue, because the CRB relied on an independent and sufficient ground to affirm the compensation order. *Cf., e.g.*, *Washington Press Club v. District of Columbia Alcoholic Beverage Control Bd.*, 476 A.2d

1107, 1107 n.1 (D.C. 1984) (upholding agency determination on one ground without addressing alternative ground for agency's ruling). In addition to concluding that there was no objective evidence of radiculopathy, Dr. Williams concluded that Mr. Wilson's diagnostic imaging did not show nerve-root compression, lateral disc rupture, or lateral recess stenosis. In other words, Dr. Williams's report lists two independent ODG criteria, each of which is necessary before surgery is indicated. The ALJ credited Dr. Williams's conclusions as to both of those criteria and the CRB affirmed on both grounds. Mr. Wilson does not contest Dr. Williams's alternative conclusion regarding diagnostic imaging. We therefore conclude that the CRB did not err in affirming the compensation order on that ground.

The order of the CRB is therefore

Affirmed.

ENTERED BY DIRECTION OF THE COURT:

JULIO A. CASTILLO
Clerk of the Court