

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services



MURIEL BOWSER
MAYOR

ODIE DONALD II
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 17-065

**MATTHEW BATTLE,
Claimant–Petitioner,**

v.

**MAGNOLIA PLUMBING and
BUILDERS MUTUAL INSURANCE COMPANY,
Employer/Insurer–Respondents.**

Appeal from a May 26, 2017 Compensation Order
by Administrative Law Judge Donna J. Henderson
AHD No. 15-108A, OWC No. 718196

(Decided August 11, 2017)
(Corrected August 14, 2017)

Krista N. DeSmyter for Claimant
Jason A. Heller for Employer

Before HEATHER C. LESLIE, LINDA F. JORY and JEFFREY P. RUSSELL *Administrative Appeals
Judges.*

HEATHER C. LESLIE for the Compensation Review Board.

DECISION AND ORDER

BACKGROUND

The following facts, as outlined in the Compensation Order are not in dispute:

Claimant is a 65 year-old man who worked as a plumber for Magnolia Plumbing. As a plumber he did indoor and outdoor installations and repairs of sewer pipes, water pipes, bathroom fixtures, boilers and hot water heaters. In this position, he used a dolly to move very heavy objects. Claimant received assistance on days when he needed to move the heaviest objects. Claimant drove a work-vehicle to his job sites. HT at 21 - 22.

On June 3, 2014, Claimant was driving his work-vehicle from a job in Virginia

when he was rear-ended by another vehicle. HT at 23. As a result of the motor vehicle accident, Claimant sustained an injury to his lower back. HT at 24.

Matthew Battle v. Magnolia Plumbing, AHD No. 17-065, OWC No. 718196 (May 26, 2017) (“CO”) at 2.

Claimant sought treatment with several physicians for his back injury, including physicians at Concentra, Dr. Mohsin Sheikh, Dr. Amin Amini, and Dr. Abraham Rasul. Initially, Claimant underwent conservative care, including injections and physical therapy. After Claimant’s condition continued to remain symptomatic, Dr. Sheikh opined Claimant may require surgery. Dr. Amini recommended a lumbar decompression from L3 to L5.

Claimant underwent an independent medical evaluation (“IME”), at his own request, with Dr. Matthew Ammerman on May 2, 2016. Dr. Ammerman took a history of Claimant’s treatment, performed a physical examination, and reviewed objective testing. Dr. Ammerman opined that Claimant is suffering from an aggravation of a pre-existing condition attributable to his work-related accident. Dr. Ammerman further opined that Claimant was a candidate for surgery and could not work in part because of his lumbar condition. Dr. Ammerman reiterated these opinions in an April 17, 2017 deposition.

Claimant also underwent IMEs at the request of Employer with Dr. Robert Smith on December 10, 2014 and September 14, 2016. At the first IME, Dr. Smith took a history of Claimant’s treatment and performed a physical examination. Dr. Smith opined Claimant was at maximum medical improvement and could return to work full duty without restrictions. Dr. Smith reiterated these opinions in the second IME and a deposition on April 19, 2017.

A full evidentiary hearing occurred on May 5, 2017. Claimant sought authorization for surgery, specifically a two-level laminectomy at L3-L4 and L4-L5. The sole issue to be adjudicated was whether the need for surgery is medically causally related to the work injury of June 3, 2014. On May 26, 2017, the CO issued which denied Claimant’s claim, concluding:

... that Claimant has failed to prove, by a preponderance of the evidence, that his radicular left leg pain, and thus his need for two-level lumbar laminectomy, is medically causally related to his work-related motor vehicle accident on June 3, 2014.

CO at 11.

Claimant appealed. Claimant argues the CO “erred in finding Mr. Battle’s current back problems are not causally related to his work injury.” Claimant’s brief at 8. Employer opposes Claimant’s appeal, arguing the CO should be affirmed as it is supported by the substantial evidence in the record and in accordance with the law.

ANALYSIS

We address Claimant's second argument first. Claimant argues that the CO's rejection of Dr. Ammerman's medical opinions in favor of Dr. Smith's conclusions is not supported by substantial evidence in the record.

It is important to note at this juncture that Dr. Smith and Dr. Ammerman are both physicians who performed IMEs.¹ Thus, neither physician enjoys a treating physician preference, wherein the Administrative Law Judge ("ALJ") must explain reasons why the treating physician's opinion is rejected, or in the alternative, when a treating physician's opinion is accepted over that of an IME physician, reasons for rejecting the IME opinion is unnecessary. *Stewart v. DOES*, 606 A.2d 1350 (D.C. 1992).

The ALJ gave several reasons why Dr. Ammerman's opinion was rejected. The ALJ rejected Dr. Ammerman's opinion because:

- Dr. Ammerman did not have all Claimant's medical records prior to his examination. CO at 8.
- Dr. Ammerman's opinion that Claimant had few pre-injury radicular complaints is inconsistent with the medical records. CO at 8.
- Dr. Ammerman's opinion is inconsistent with the treating physicians, Dr. Sheikh and Dr. Rasul. CO at 9-10.

In argument, Claimant states that the ALJ's rejection of Dr. Ammerman's opinion requires more explanation by the ALJ and a re-analysis based upon a credibility determination of Claimant. We disagree. The ALJ gave cogent reasons as to why Dr. Ammerman, an IME physician, was rejected in favor of Dr. Smith, another IME physician. These reasons were explained in some detail based upon the record evidence. *See* CO 8-10. The CO's rejection of Dr. Ammerman's opinion is supported by the substantial evidence in the record and in accordance with the law.

Having rejected the opinion of Dr. Ammerman, as well as the opinions of the treating physicians, Dr. Sheikh and Dr. Rasul², the ALJ found persuasive the opinion of Dr. Smith. Specifically, the ALJ concluded:

Dr. Smith opined that Claimant suffered from a lumbar strain. EE 3, p. 22. When Dr. Smith examined Claimant in 2014, he found Claimant's lumbar strain had

¹ In response to the ALJ's inquiry as to whether Dr. Ammerman is a treating physician, Claimant's counsel stated:

He is not really a treating physician. I think – so Dr. Ammerman, he explained in his testimony that he considers what he did to be an independent evaluation.

Hearing Transcript at 56.

² Claimant did not appeal the CO's rejection of Dr. Rasul or Dr. Sheikh, the treating physicians, in favor of Dr. Smith.

resolved. Dr. Smith explained that his examination revealed "no adverse soft tissue abnormalities" such as atrophy, trigger points or muscle spasms. *Id.* Dr. Smith also reviewed pre-injury diagnostic reports that evidenced Claimant's prior complaints of low back pain with radiation into the lower extremity. EE 3, pp. 23 - 28. Dr. Smith opined that the findings of the CT scan and the MRI studies were "consistent with stable age related degenerative disease." EE 3, p. 28. Dr. Smith also testified that the MRIs would reveal nerve inflammation if it were present. EE 3, p. 44. Dr. Smith also reviewed the October 23, 2006 report of orthopedist Dr. Stephen Michaels. EE 3, pp. 28 - 29. Dr. Smith testified that Claimant did not complain of leg pain when he examined him in 2014 and he found no evidence of on-going soft tissue injury. EE 3, pp. 22 - 23, 33 - 34 and 45 - 46.

I find that Dr. Smith's opinion is based upon a more complete medical history, is consistent with the medical records, and is more consistent than Dr. Ammerman's opinion with the findings of the Concentra physicians, Dr. Rasul and Dr. Sheikh. Thus, I find Dr. Smith's opinion more persuasive and give it more weight.

CO at 11.

We affirm the ALJ's conclusion that Dr. Smith's opinion is more persuasive compared to the opinion of Dr. Ammerman as being supported by the substantial evidence in the record and in accordance with the law.

Claimant's first argument is that the ALJ erred in not referencing Claimant's testimony, and such failure requires remand, relying in part on the CRB's recent decision of *Ortiz v. Sharcon Hotel Management*, CRB No. 17-025 (June 16, 2017) ("*Ortiz*") and referencing the hearing transcript. Specifically, Claimant argues "an assessment of Mr. Battle's credibility in comparison with Dr. Ammerman and Dr. Smith's opinion is necessary because both Dr. Ammerman and Mr. Battle claim that Mr. Battle's method of walking has changed. Dr. Smith claims it has not." Claimant's brief at 10. We disagree.

Addressing Claimant's reliance on *Ortiz*, in that case the CRB did remand, in part, because the ALJ did not make an explicit credibility finding when the issue of permanent partial disability was being discussed in light of conflicts between Claimant's testimony and the record medical evidence. We decline to follow this rationale in the case at bar. Significantly, contrary to Claimant's argument, the ALJ in the case before us did take into account Claimant's testimony.

We note that in the findings of fact section, the ALJ referenced the hearing transcript numerous times, including page 27 that Claimant references, wherein Claimant states that his symptoms were worse after the injury.³ While not specifically discussed in the analysis portion of the CO,

³ Notable on page 27 is the following exchange between Claimant and Counsel:

Question:	Okay. Before June 3 rd of 2014, did you have symptoms going all the way down to your foot in your left leg?
Answer:	I had some symptoms, but not as bad as they are now.

the ALJ did in fact take into consideration the complaints of Claimant before and after the work injury as the finding of facts reflect.

While the ALJ did not make an explicit credibility finding, she clearly did review the hearing transcript and took into account Claimant's testimony. Furthermore, as noted above, the rejection of Dr. Ammerman's opinion is supported by the substantial evidence in the record and in accordance with the law, as the ALJ found Dr. Smith's opinion more persuasive.

The ALJ concluded, after reviewing the evidence in the record including the testimony of Claimant, that

...Claimant has failed to prove by a preponderance of the evidence that his complaints of radicular left leg pain and weakness and, thus, his need for two-level laminectomy is medically causally related to his work-related accident and injury on June 3, 2014.

CO at 11.

We affirm. The CRB is constrained to uphold a Compensation 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 International v. DOES*, 834 A.2d 882 (D.C. 2003).

Such is the case before us. The CO is supported by the substantial evidence in the record and in accordance with the law.

CONCLUSION AND ORDER

The May 26, 2017 Compensation Order is AFFIRMED.

So ordered.

Question: What do you mean by that?

Answer: Because the pains are more sharper, getting the pains more often, the numbness. Cause me not to be able to be able to walk the way I was before.