COMPENSATION REVIEW BOARD

CRB No. 14-153

ALMA ATKINS,
Claimant–Respondent,

v.

DISTRICT OF COLUMBIA DEPARTMENT OF CORRECTIONS
Self-Insured Employer–Petitioner.

Appeal from a November 21, 2014 Compensation Order by
Administrative Law Judge Fred D. Carney, Jr.
AHD No. PBL 12-102, DCP No. 7610320001-1999-0057

Harold L. Levi for Claimant
Frank Mc Dougald for Employer

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

LINDA F. JORY for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

Claimant worked for employer as a Medical Records Technician at the Lorton Reformatory. Claimant sustained work-related injuries on November 19, 1993, when she was thrown to the floor of a bus she was travelling in. Claimant sustained injuries to her neck, back, and both knees. Her claim was accepted by the Public Sector Workers' Compensation Program (PSWCP). Claimant received medical treatment and returned to work one week later. Claimant sustained injuries to her neck, back and both knees in another bus accident on June 14, 1994. PSWCP reinstated Claimant's benefits. Claimant has not returned to work since 1994. Claimant has been treating with Dr. Daniel Ignacio since 1999. Based on an Additional Medical Evaluation performed by Dr. Marc Danziger, PSWCP terminated Claimant's benefits on November 18, 2011 and the matter went to a formal evidentiary hearing on April 17, 2012. Claimant's benefits were reinstated pursuant to a January 31, 2014 Compensation Order (CO) which was appealed to the Compensation Review Board (CRB). In a Decision and Remand Order (DRO), the CRB agreed with Employer that the CO awarded benefits based in part on an June 14, 1994 accident was not properly before the Administrative Hearings Division (AHD). The DRO directed the

AHD administrative law judge (ALJ) to reconsider the evidence in the record with respect to the November 19, 1993 injury only and award or deny benefits accordingly. The conclusion that the June 14, 1994 incident was not properly before AHD was based upon a determination that a Notice of Determination had not been issued regarding the June 14,1994 injury and according to D.C. Code § 1-623.24(b)(1), an ALJ is without ancillary authority to adjudicate claims that have not been first presented to PSWCP.

An ALJ issued a Compensation Order on Remand (COR) on November 21, 2014. The ALJ concluded Claimant continues with remaining impairment to her lumbar and cervical spine and both knees as a result wholly or in part of her November 19, 1993 work injury. The ALJ further concluded Employer had failed to prove by a preponderance of the evidence that Claimant's benefits should be terminated.

Employer timely appealed. Employer asserted that the CO should be reversed as the ALJ improperly provided a preference for the opinion of the treating physician. Claimant opposed Employer's appeal, asserting the ALJ applied the law correctly and relied on substantial evidence in reaching his conclusions.

STANDARD OF REVIEW

The scope of review by the Compensation Review Board (CRB) and this Review Panel (Panel) as established by the District of Columbia Comprehensive Merit Personnel Act of 1978, as amended, D.C. Code § 1-623.01 et seq. (the Act) and as contained in the governing regulations 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. D. C. Code § 1-623.28(a). "Substantial evidence", as defined by the District of Columbia Court of Appeals (DCCA), is such evidence as a reasonable person might accept to support a particular conclusion. *Marriott Int'l. v. DOES* 834 A.2d 882 (D.C. 2003) (*Marriott*). Consistent with this scope of review, the CRB and this panel are bound to uphold a Compensation Order that is supported by substantial evidence, even if there is also contained within the record under review substantial evidence to support a contrary conclusion, and even where the reviewing authority might have reached a contrary conclusion. *Marriott*, 834 A.2d at 885.

ANALYSIS

Employer correctly asserts that following the DCCA's decision in *District of Columbia Public Schools v. DOES*, 95 A.3d 1284 (D.C. 2014) (*DCPS*), the CRB has vacated and remanded compensation orders that are based on the treating physician preference, instructing the ALJs to weigh the opinions of the physicians equally, without preference.

Employer concedes that the ALJ did not specifically state that the award to Claimant of PSWC benefits was based on the treating physician preference, however according to Employer:

> . . . it appears that the ALJ did rely on the preference in stating that 'I find no reason to reject the report of the treating in this case who has chronicled the Claimant's symptomology for years.'

Memorandum of Points and Authorities in Support of Petitioner's Application for Review at 6.

Employer asserts that the treating physician preference is based in part, "on the amount of time the doctor has worked with the patient" citing to the private sector DCCA decision in *Lincoln Hockey, LLC v. DOES,* 831 A.2d 913 (D.C. 2003)(*Lincoln Hockey*)

This Panel agrees that the DCCA in *Lincoln Hockey* accepted AHD's rationale for the treating physician preference in workers' compensation cases arising under the private sector act "in part because of the typically greater amount of time the doctor has worked with the patient". However, we find that the mere characterization of Dr. Ignacio as the treating physician and the ALJ's mention that Dr. Ignacio has chronicled the Claimant's symptomology for years does not warrant a determination by the CRB that the ALJ applied an improper treating physician preference, which was statutorily eliminated by an act of the District of Columbia Council. *See DCPS* at 1289.

As the Employer correctly concedes, the ALJ in the instant matter did not indicate in the COR that the treating physician was entitled to an evidentiary preference. Instead, the ALJ stated he found the opinion of Dr. Ignacio to be more persuasive. Among the reports of Dr. Ignacio that the ALJ quoted in the CO was the May 21, 2009 letter to a Claims Examiner after he reviewed the March 31, 2009 report of Dr. Danziger. Therein Dr. Ignacio challenged Dr. Danziger's statement that Claimant has no significant findings by first recounting the results of Claimant's cervical spine MRI as revealing disc herniation at the C3-4 level as well as disc degeneration at C5-6 causing significant nerve root impingement. Further, Dr. Ignacio described Claimant's lumbar MRI as showing progression of the lumbar disc injury with post-traumatic spinal stenosis at the L4-5 level.

The ALJ referred to and quoted a subsequent report of Dr. Ignacio who responded to Dr. Danziger's September 6, 2011 IME expressly rejecting the suggestion that Claimant's symptoms are magnified in any way. The ALJ quoted Dr. Ignacio:

> The records indicated that she has been highly symptomatic when she was injured and she has significant neurological dysfunction. She is taking multiple medications in order to control her pain and because of the complex neuro-spinal condition and the use of multiple medications, she is not fit to return to her regular job. Dr. Danziger indicated she has reached maximum medical improvement. I disagree with this as this woman continues to be symptomatic and requires continuing medical treatment, and in fact, in the future, there is a high probability that she may need other surgical procedures, which we are trying to avoid . . . The medical condition described above has been related to the injury that she sustained at work when she took a fall on November 19, 1993.

COR at 8.

Dr. Danziger has not opined whether Claimant's symptoms are related to an injury that occurred in 1993 versus one that occurred in 1994. Instead, Dr. Danziger stresses in his AMEs that Claimant's current symptoms are unrelated to the work injury but are related to her age and other health problems. In his December 13, 2011 addendum which is the opinion contemporaneous with Employer's termination of benefits, Dr. Danziger opines that "None of her current symptomology has any relationship to an 18 year old injury. Rather, it is related to the aging process and she has normal degenerative disc disease that one would expect to see in someone who is 68 years of age with minimal clinical findings correlating with that." EE 2 at 2.

In concluding that Employer did not meet its burden per *Mahoney v. D.C. Public Schools,* CRB No. 14-067, AHD No. PBL 14-004 (November 12, 2014), the ALJ concluded that the weight of the evidence preponderates in the favor of Claimant. We conclude that ALJ did not improperly apply a treating physician preference as he fully explained why he found Dr. Ignacio persuasive and his conclusion is supported by substantial evidence.

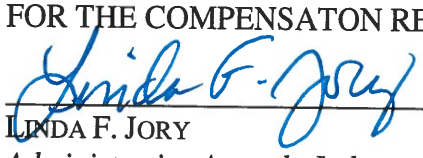
In so concluding, we reject Employer's assertion that the evidence compels the conclusion that the injuries Claimant suffered have resolved and that she is able to return to work. The report Employer relied on in addition to Dr. Danziger AME opinions is a report of Dr. Melissa Neiman who in 2001 reviewed a 1995 MRI and concluded that Claimant could return to work ten years prior to employer's termination of Claimant's benefits.

Given Dr. Ignacio's specificity about the etiology of claimant's problems, we must conclude the ALJ's conclusion is supported by substantial evidence. The CRB does not reweigh evidence so long as there is substantial evidence in the record to support the ALJ's finding. Although we may have reached a conclusion contrary to that of the ALJ on this issue, we cannot substitute our judgment for that of the ALJ. *Marriott,* 834 A.2d at 885.

CONCLUSION AND ORDER

The November 21, 2014 Compensation Order is supported by substantial evidence and is accordance with the law and is hereby AFFIRMED.

FOR THE COMPENSATON REVIEW BOARD:



LINDA F. JORY
Administrative Appeals Judge

March 25, 2015
DATE