

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



F. THOMAS LUPARELLO
ACTING DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 14-027

**ANDREA L. GRANT-HOPKINS,
Claimant-Petitioner,**

v.

**ALION SCIENCE AND TECHNOLOGY
and CHUBB INSURANCE GROUP,
Employer and Insurer-Respondent.**

Appeal from a February 11, 2014 Compensation Order By
Administrative Law Judge Nata K. Brown
AHD No. 05-254B, OWC No. 606489 and 607735

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2014 JUN 26 AM 9 20

Krista N. DeSmyter for Petitioner
Charles F. Midkiff for the Respondent

Before: JEFFREY P. RUSSELL, MELISSA LIN JONES, *Administrative Appeals Judges*, and
LAWRENCE D. TARR, *Chief Administrative Appeals Judge*.

JEFFREY P. RUSSELL, for the Compensation Review Board.

DECISION AND REMAND ORDER

OVERVIEW

On October 30, 2007, a Compensation Order was issued by an Administrative Law Judge (ALJ) in the Administrative Hearings Division (AHD) of the Office of Hearings and Adjudications (OHA) in the Department of Employment Services (DOES). That Compensation Order led to a number of appeals to the Compensation Review Board (CRB), Decisions and Remand Orders, and Compensation Orders on Remand, most of which are not germane here. What is of note is that the ALJ found that Claimant sustained work related carpal tunnel injuries to both wrists while working for a prior employer which led her to obtain bilateral carpal tunnel releases and removal of a cyst from her right wrist, that she subsequently came to be employed by Alion Science, where she sustained two new injuries. One such was an “aggravation” of her bilateral carpal tunnel syndrome (CTS) in January 2004, and the other a discrete new “crush” injury to her right wrist on February 22, 2004 when a door slammed closed on it.

On January 15, 2014, Claimant presented additional claims at a formal hearing before an ALJ in DOES, seeking surgery and temporary total disability in connection with problems associated with her right shoulder. On February 11, 2014, the ALJ issued a Compensation Order denying the claims on the basis that the complained of shoulder condition is not causally related to the February 22, 2004 right wrist injury. Claimant filed a timely appeal with the CRB, to which Employer filed a timely response in opposition. It is the February 11, 2014 Compensation Order that is under review herein.

DISCUSSION AND ANALYSIS¹

Claimant's appeal is premised upon two claims of error: first, that the ALJ improperly failed to accord her the statutory presumption that her shoulder injury is causally related to her stipulated work injury of February 2004, and second, that the Compensation Order fails to address Claimant's primary theory of causation, that being that her wrist injury has resulted in a deleterious change in the mechanical motion when she uses her arm, which has thus caused her sustain a new injury in her shoulder.

Turning to the contentions of error, we agree that Claimant has adduced sufficient evidence to invoke the presumption that her shoulder injury is causally related to the subject incident involving her wrist. As the ALJ noted, Claimant testified that she hurt her shoulder in the incident. In addition, she produced a medical report from her treating physician, Dr. Rida Azer, dated July 14, 2010 (CE 3, CE exhibits page 43) wherein Dr. Azer wrote "The patient's conditions, treatment, residuals are caused by her work injury of 8/19/01 when her right hand was jammed in a door which shut on it. She stretched backwards stretching her shoulder and her neck. This also caused a rotational angle injury which caused a stretch injury." And, she produced an independent medical evaluation report from Dr. Michael Franchetti, dated September 13, 2011 (CE 4, CE exhibits page 70), where Dr. Franchetti writes:

I feel that her ulnar neuropathies and her bilateral impingement syndromes of her shoulders are the natural and unavoidable result of the mechanical changes in the use of her upper extremity secondary to her bilateral carpal tunnel syndrome.

I feel her cervical disc syndrome and cervical neuritis is due to a combination of her injury sustained to her neck on September 21, 2001 and direct combination of her injuries sustained to her neck on February 22, 2004.

Claimant adduced two medical opinions that support a causal link between the door/wrist crush incident and the shoulder problems at issue in this case. Claimant has adduced sufficient evidence to invoke the presumption, as a matter of law.

We recognize that the ALJ made a specific factual determination that Claimant lacked credibility, stating that "This finding is based upon the absence of congruence between Claimant's testimony and the other record evidence." Compensation Order, page 2.

¹ The CRB reviews a Compensation Order to determine whether the factual findings are based upon substantial evidence in the record, and whether the legal conclusions drawn from those facts are in accordance with applicable law. The CRB will affirm 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.

However, this “finding” is unaccompanied by a discussion as how the Claimant’s testimony was in conflict with “other record evidence”. Without the ALJ pointing out what record evidence the ALJ perceives to be in such conflict as to render the witness incredible, we are in no position to assess whether the determination is impermissibly arbitrary. While great deference should be accorded to a fact finder’s credibility findings, on review we must be given some amount of detail and specificity to permit a determination as to whether that credibility assessment is arbitrary and capricious.

Because the ALJ improperly failed to accord Claimant the benefit of the presumption that her complained of condition is causally related to the instant injury, we must remand the matter for further consideration of the evidence and a determination as to whether the presumption has been overcome.

If upon further consideration, the ALJ determines that the presumption has been overcome, then the evidence is to be weighed anew, with Claimant bearing the burden of proof by a preponderance of the evidence.

CONCLUSION AND ORDER

The determination that Claimant had failed to adduce evidence sufficient to invoke the presumption that her complained of shoulder condition is not in accordance with the law, and is reversed. The matter is remanded for further consideration in a manner consistent with the foregoing Decision and Remand Order.

FOR THE COMPENSATION REVIEW BOARD:



JEFFREY P. RUSSELL
Administrative Appeals Judge

June 26, 2014
DATE