GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR

LISA MARÍA MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 13-019

JUDY BENARD,
Claimant-Petitioner,

v.

DATA SOLUTIONS TECHNOLOGIES and TRAVELERS INSURANCE,
Employer and Insurer-Respondents.

Appeal from a February 1, 2013 Compensation Order issued by
Administrative Law Judge Joan E. Knight
AHD No. 12-167, OWC No. 679800

Michael J. Kitzman, Esquire, for the Claimant
Roger S. Mackey, for the Employer and Insurer

Before: LAWRENCE D. TARR, *Chief Administrative Appeals Judge*, and *Administrative Appeals Judges* HENRY W. MCCOY, and JEFFREY P. RUSSELL.

LAWRENCE D. TARR, *Chief Administrative Appeals Judge*, for the Compensation Review Board.

DECISION AND REMAND ORDER

This case is before the Compensation Review Board (CRB) on the claimant's request for review of the February 1, 2013, Compensation Order issued by Administrative Law Judge (ALJ) Joan E. Knight, of the District of Columbia's Department of Employment Services (DOES). In the Compensation Order (CO) the ALJ denied the claimant's request for continuing temporary total disability benefits beginning on May 3, 2011. For the reasons stated below, we VACATE and REMAND.

BACKGROUND FACTS OF RECORD

The claimant, Judy Benard, was employed by this employer, Data Solutions Technologies, a federal government contractor. The claimant worked as an administrative assistant performing secretarial and clerical duties.

On May 2, 2011, the claimant was assigned to the Office of the Chief Human Capital, the human resource unit of the Department of Energy, and was instructed to work at Suite 4E084, a new work area for her.

The claimant arrived at work at about 8:00 a.m., placed her personal items at the new work station, and then went to her regular work station to get supplies. At about 8:30 a.m. the claimant opened mail, although the claimant said, she wasn't sure if she did this at her regular work station or at after she returned to the new work station. (HT 30).

The claimant further testified that she saw that the new work station was dusty.[1] At about 9:00 a.m. she felt her left hand itching. The itching continued and eventually the claimant noticed a red blister on the palm of her left hand. The claimant applied some rubbing alcohol but this did not relieve the itching or diminish the blister.

The claimant told her supervisor about her problem and he suggested she go to the nursing station that was located in the basement of the building. The nurse there gave the claimant an injection of Benadryl. This provided temporary relief but at about 11:00 a.m. or noon, her itching returned and the claimant left work and returned home.

On May 3, 2011, Dr. Kimberly Bolling, the claimant's primary care physician, evaluated the claimant and removed her from work. Dr. Bolling suspected that the claimant might have been exposed to Anthrax so she made a report to the Prince George's County Health Department. As a result, the claimant was evaluated by Dr. Scott Kelso at the Southern Maryland Hospital Emergency Room. After testing, it was determined that the claimant was not exposed to Anthrax.

Dr. Bolling released the claimant to work on May 11, 2011. Dr. Bolling's release stated:

> Due to recent incident @ DOE involving contact dermatitis most likely from handling mail, (patient) needs to be relocated to another job site (illegible) where she is less likely to come in contact with (illegible) irritant.

Because the employer did not have any other work locations at the work site, the claimant was let go as of June 2, 2011.

About one year later, on May 2, 2012, Dr. Jonathan Fish evaluated the claimant at her request. Dr. Fish found the claimant had a 15% permanent partial impairment "of the whole person." Dr. Fish further reported:

> This is solely due to the occupational exposure of May 2, 2011. Despite the fact that the offending agent was never determined, it is clear to me that Mrs. Benard was exposed to something at her workplace that day.

Claimant's memorandum stated Dr. Fish also "recommended that she be able to return to work, albeit at a different location." However that recommendation does not appear in Dr. Fish's May 2, 2012, report.

[1] The CO stated the claimant "cleaned off the surface of her desk with a 'window cleaner' and her left hand began to itch." However, the hearing transcript stated that a coworker gave the claimant a can of window cleaner but the claimant testified "I did not use that, though, and I sat down and just proceeded with just getting the day started." (HT 30) None of the medical reports stated the claimant used window cleaner.

On May 15, 2012, Dr. Ross S. Meyerson, board certified in occupational and environmental medicine and the medical director of occupational and environmental health at the Washington Hospital Center, examined the claimant for the employer.

Contrary to the statement made in claimant's memorandum that Dr. Meyerson "diagnosed Ms. Benard as suffering from contact dermatitis," Dr. Meyerson stated in his May 15, 2012 report that contact dermatitis was "an unlikely diagnosis." In his report, Dr. Meyerson wrote:

> Given the location of the lesion and the fact that the lesion was a discreet small lesion on the palm of the hand, contact dermatitis is an unlikely diagnosis. Contact dermatitis from an irritant would not be present with a single small lesion, rather would present with a more generalized rash over the entire hand. It is more likely that the lesion was the result of either an insect bite or a common blister from material handling. It is my understanding that Ms. Benard's job involves handling mail. This is a low-risk job for contact with any type of skin irritant. The recommendation by Dr. Bolling for Ms. Benard to be transferred to another facility is not based on any objective or rational assessment of risk for contact dermatitis in this job.

In her February 1, 2013, CO, the ALJ first decided that the claimant had not presented sufficient evidence to invoke the statutory presumption that her injury and disability arose out of and in the course of her employment. The ALJ stated:

> It is determined that the record evidence is not sufficient to invoke the statutory presumption under the Act. Both Dr. Bolling and Dr. Kelso, attending physicians at Southern Maryland Hospital assessed Claimant had contact dermatitis. Neither medical diagnosis specifically relates the condition to work environment contaminants, they appeared, based upon Claimant's complaints assumption [sic] of a workplace exposure that had not been verified. The Claimant has failed to adduce sufficient credible evidence to establish the left palm itching and blister or any residuals are causally related to occupational exposure while performing her work duties. Claimant simply did not bring forth the requisite evidence to establish the causal link or nexus relating her condition to her employment. In other words that "a work-related event, activity, or requirement which has the *potential* of resulting in or contributing to" her itching episode and resulting blister. *Ferreira, supra*.

CO 6. (Italics in original).

The ALJ then made an alternative determination. She assumed the claimant had proven entitlement to the presumption and held the employer had rebutted the presumption:

> Presuming arguendo, had it been found, Claimant met the statutory presumption, under the Act, Employer argued there is no causal connection between the Claimant's left palm rash and any current or residual condition and her work environment. To rebut the presumption, Employer presented substantial evidence to show the disability alleged by Claimant did not arise out of and in the course of employment.

Id.

The ALJ next analyzed all the evidence without the benefit of the presumption and, giving due deference to the opinion of the treating physician, concluded the evidence did not preponderate in proving that the claimant's condition was medically causally related to her employment:

> Herein, the treatment records, relied upon by Claimant, do not reflect the type of details essential to draw the necessary conclusions needed on the issue of causation, and are rejected. On this record, Dr. Bolling's treatment notes are void of detailed medical findings relating Claimant's left hand blister to her employment, and to do so would be purely speculative. Applying the standard set out in *Stewart* and *Mexicano supra*, the medical treatment notes are sketchy, vague, and lack necessary detail and specificity to make a determination of causation under the Act. Based on the forgoing, the undersigned is not persuaded by the medical opinions or medical reports of Dr. Bolling to establish that Claimant's blister and subsequent left palm tenderness is causally related to her employment. Dr. Meyerson's testimony and medical opinion are more persuasive and comprehensive, and indicates reasons for his medical conclusion which outweighs the medical opinion of the treating physician on this issue. Had Claimant met the presumption, it would have been found that Employer rebutted the presumption and Claimant failed to show by a preponderance of the evidence that her condition claimed herein, was caused by the work injury. *Georgetown University, supra*.

CO 7.

The ALJ denied the claim. The claimant timely appealed.

STANDARD OF REVIEW

The scope of review by the CRB is limited to making a determination as to whether the factual findings of the appealed 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. "Substantial evidence" is relevant evidence a reasonable person might accept to support a conclusion. *Marriott International v. DOES*, 834 A.2d 882, 885 (D.C. 2003) and D.C. Worker Workers' Compensation Act of 1979, as amended, D.C. Code §§ 32-1501, *et seq*., (Act) at §32-1521.01(d) (2) (A).

Consistent with this standard of review, the CRB must 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, supra.*

DISCUSSION

On review, the claimant argues that the ALJ's CO contains errors of law and fact. The claimant asserts she proved entitlement to the presumption and that the employer's evidence did not rebut the presumption. The claimant also argues that even if the presumption was rebutted, she proved that she sustained a work injury.

We first find that the ALJ erred with respect to whether the claimant invoked the statutory presumption.

Case law has established that there are three sequential steps when analyzing a case with respect to the statutory presumption: the invocation step, the rebuttal step, and the weighing all evidence without the presumption step.

At the first step, an ALJ must determine whether the presumption is invoked. To invoke the presumption, the claimant's evidence must establish two elements: (1) that she sustained a work-related event and (2) that event had the potential of resulting in or contributing to her disability. *Georgetown University v. DOES and Bentt, M.D., intervenor*, 830 A. 2d 865 (D.C. 2003).

There does not appear to be any dispute as to whether the first element of the first step was proven; that the claimant sustained a work-related event. The claimant testified that while she was working, her left hand began to itch and she developed a blister. The ALJ stated that she found credible the claimant's testimony with regard to her symptoms. Moreover, the parties stipulated that the claimant sustained an accidental injury.[2]

The ALJ based her decision that the claimant did not invoke the presumption on the second element of the first step; finding that work-related event did not have the potential of resulting in, or contributing to, disability. The ALJ acknowledged that Dr. Bolling and Dr. Kelso diagnosed contact dermatitis, but held:

> Neither medical diagnosis specifically relates the [claimant's] condition work environment contaminants, they appeared based upon Claimant's complaints assumption [sic] of a workplace exposure that had not been verified.

CO 6.

We find this evidence sufficient to invoke the statutory presumption.

The claimant needed to prove that the work event potentially could have resulted in, or contributed to, her disability. Dr. Bolling thought the claimant's contact dermatitis was most likely caused by her handling mail while at work. Dr. Fish opined that the claimant's condition was solely due to the work exposure. These medical opinions are sufficient to establish the second element of the first step; that the work-related event (the exposure) had the potential to cause or contribute to disability.

That these doctors' diagnoses might not be persuasive because they were based on unverified exposure would be a factor in the third step of the analysis; where all the evidence is weighed without the presumption. At the first step, the invocation step, it is not necessary that a claimant prove medical causal relationship. It is sufficient if she proves potential medical causation, which she did.

[2] The CO stated the parties stipulated the claimant sustained an accidental injury on May 16, 2011. We assume the date is a typographical error. However, even if it wasn't an error, the claimant's credible testimony establishes the requisite work related event.

Once the presumption has been invoked, the burden shifts to the employer to rebut the presumption by producing evidence that is specific and comprehensive enough to sever the causal connection between the work injury and the alleged subsequent disability.
The ALJ alternatively found that the presumption was rebutted by Dr. Meyerson's May 15, 2012, report, his hearing testimony, the May 4, 2011, indoor air quality survey, and the health department's pronouncement that the claimant was not exposed to Anthrax:

> Presuming arguendo, had it been found, Claimant met the statutory presumption, under the Act, Employer argued there is no causal connection between the Claimant's left palm rash and any current or residual condition and her work environment. To rebut the presumption, Employer presented substantial evidence to show the disability alleged by Claimant did not arise out of and in the course of employment. Employer relied upon the report and opinion of Dr. Meyerson, results of an independent indoor quality assessment and findings by the health department.

Because the record is not clear as to whether the ALJ considered all of Dr. Meyerson's views regarding causation, we must remand.

A review of the evidence shows that in his May 15, 2012, report, Dr. Meyerson, discounted the diagnosis of contact dermatitis and opined that the claimant's lesion was "more likely" "the result of an insect bite or a common blister from material handling." He then noted that the claimant's job involved handling mail and that the claimant was in a "low-risk job for contact of any type with a skin irritant."

During direct examination at the formal hearing, Dr. Meyerson testified:

> Well, it sounds like it was a blister. It could have been from an insect bite. It could have been just from mechanical friction, from you know, just—you know, you can get blisters if you're turning a screwdriver and you're not used to it, that kind of thing.

HT 78.

Also during direct examination, the following exchange took place between employer's counsel and Dr. Meyerson:

> Q. From what you reviewed, do you have an opinion within a reasonable degree of medical certainty, whether that blister had anything to with her work environment?
>
> A. I cannot see what connection it had with her work environment.

HT 79.

Additionally, during cross examination by claimant's counsel the following took place:

> Q. Doctor, it's your opinion today that Ms. Benard had a blister and some type of dermatitis that was caused by an unknown situation, correct?
>
> A. I don't think she had dermatitis. I think this was a blister.
>
> Q. And you believe that—it's your opinion that it was caused by something, but you don't know—or are unable to determine the cause of the blister, correct?
>
> A. Correct.

HT 84-85

Therefore, Dr. Meyerson has opined that the claimant's blister (1) could have been caused by material handling, (2) could have been caused by mechanical friction, (3) had no connection to work environment and he also said that (4) he was unable to determine the cause of the blister.

However, in analyzing whether the presumption was rebutted in the Discussion section of the CO, the ALJ did not discuss or reconcile these four opinions. The ALJ only stated that Dr. Meyerson opined the claimant's blister might have been caused by an insect bite.

> Dr. Meyerson opined and testified Claimant's blister was possibly from an insect bite and nothing infectious, and "certainly not anthrax."[3]

CO 6.

When the employer attempts to rebut the presumption by evidence from an IME doctor, as in this case, the employer can meet its burden if it proffered evidence from a medical expert who examined the claimant and reviewed her medical records, and who rendered an unambiguous opinion that the work injury did not contribute to the disability. *Washington Post v. DOES and Reynolds, Intervenor*, 852 A.2d 909, 910 (D.C. 2004).

The failure to discuss and reconcile all of Dr. Meyerson's testimony is significant and reversible error because of the requirement that an IME's opinion must be unambiguous to rebut the presumption.

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[3] Earlier in the Findings of Fact section of the CO, the ALJ found

> Dr. Meyerson offered a medical opinion as to Claimant's diagnosis of contact dermatitis. Dr. Meyerson testified Claimant was in a low risk job for exposure to contact dermatitis which was the unlikely diagnosis and Claimant's lesion was more likely form an insect bite or blister from material handling.

CO at 3.

There is nothing in the CO that explains why this factual finding was not relied upon, or even mentioned, in the ALJ's discussion about whether the presumption was rebutted or why the ALJ identified only an insect bite and Anthrax as potential causes in the Discussion section.

By identifying the different statements, the CRB is not deciding that Dr. Meyerson's views are ambiguous. The ALJ, as the fact finder, must make that determination first. On the one hand, the ALJ might find that his statements are contradictory and therefore ambiguous. On the other hand, the ALJ might decide that Dr. Meyerson's testimony at the formal hearing that he did not see any connection between the claimant's work environment and her blister clarifies his other statements and is controlling.

We should state that it is possible that the ALJ considered all of Dr. Meyerson's statements in concluding that the presumption was not rebutted. However, the CO does not state or intimate that. As we held in *Leidelmeyer v. NBC News*, CRB No. 13-012, AHD No. 10-279B, OWC No. 654170 April 18, 2013:

> While it is well settled that there is no requirement for an ALJ to inventory the evidence in a case, there is a requirement to acknowledge and address evidence that is presented in direct support of, or in opposition to, a claim. See, *Kyle v. Safeway Stores, Inc.*, CRB No. 12-117, AHD No. 12-116, OWC No. 685101 (October 9. 2012), *Green v. Palomar Hotel*, CRB No. 11-065, AHD No. 10-582, OWC Nos. 673571 and 673273 (November 10, 2011).

In conclusion, the CRB finds that the claimant has presented sufficient evidence to invoke the presumption. We remand this case to the ALJ so that she can consider Dr. Meyerson's several statements and decide whether or not the employer rebutted the presumption. The ALJ only shall consider the other issue in dispute, the nature and extent of the claimant's disability, if she decides the presumption was not rebutted.

ORDER

The ALJ's February 1, 2013, Compensation Order is VACATED and this case is remanded for further proceedings that are consistent with this Decision and Remand Order.

FOR THE COMPENSATION REVIEW BOARD:

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LAWRENCE D. TARR
Chief Administrative Appeals Judge

May 20, 2013
Date