GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR

ODIE DONALD II
ACTING DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 16-167

DEPT. OF EMPLOYMENT SERVICES
COMPENSATION REVIEW BOARD
2017 APR 5 AM 10 49

BERNIE L. FORD,
Claimant-Petitioner

v.

GEORGETOWN LAW CENTER[1] and
ZURICH NORTH AMERICAN INSURANCE CO.,
Employer-Respondent.

Appeal from a December 5, 2016 Compensation Order
of Administrative Law Judge Douglas A. Seymour
AHD No. 07-117D, OWC No. 616617

(Decided April 5, 2017)

David J. Kapson for Claimant
Sarah M. Burton for Employer

Before LINDA F. JORY, JEFFREY P. RUSSELL, *Administrative Appeals Judges,* and LAWRENCE D. TARR *Chief Administrative Appeals Judge.*

LINDA F. JORY for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

This is the fourth time Bernie L. Ford's ("Claimant") claim has been before the Compensation Review Board ("CRB"). We need not recount the factual or procedural history in detail. It is sufficient to state the following:

[1] Before the current appeal, Employer is identified as Georgetown University in compensation orders issued by the Administrative Hearings Division and decisions issued by the Compensation Review Board related to this claim. In this Decision and Order, the Employer's identity is conformed to and consistent with that which is indicated on the Compensation Order on appeal, and with Employer's filing in this appeal.

Claimant, 66 years old, a patrol and communication officer, and originally from Morocco, slipped and fell in a puddle of water on a ceramic floor at work on August 7, 2005. As a result, Claimant alleges he injured his left knee, back, neck, head, and his left shoulder. Claimant began experiencing head symptoms two days after the accident, including blurred vision. Claimant who also experienced "blackouts" went to the Virginia Hospital Center.

Prior to the incident, Claimant acknowledges he experienced headaches but that they were in the back of his head, not in front of his head as they are now, for which Claimant took Motrin. Claimant took over the counter medications from 2005 to 2009. Claimant came under the care of Dr. Salter with Drs. Phillips and Green. After Claimant became suicidal, Dr. Salter referred Claimant to Dr. V. Sharma, a neurologist. Claimant had no history of seizures and Dr. Sharma prescribed seizure medication.

Dr. Sharma referred Claimant to the University of Virginia Hospital (UVAH) in 2011, where he was observed for a week. Claimant was involved in a motor vehicle accident in 2008 but did not sustain head injuries. Claimant last saw Dr. Sharma in 2011.

Claimant alleges he informed the hospital personnel that he hit his head when he fell. Claimant admitted to a pre-existing history of depression and could not remember whether or not he told Drs. Loudon and Restak about experiencing headaches before the August 7, 2005 accident. While at UVAH, Claimant did not experience any seizures. Claimant, who alleges he has problems remembering, has been on Prozac both before and after the injury. Claimant told Dr. Sharma about his history of headaches when he first saw her.

On August 7, 2005, Claimant was seen at the Emergency Room at Georgetown University Hospital. The triage notes reflect a diagnosis of back pain, left leg numbness, and a left knee sprain as a result of a slip and fall. X-rays were taken of Claimant's thoracic and lumbosacral spine and left knee.

On September 26, 2005, Claimant came under the care of Dr. V. Sharma, a board-certified neurologist. Claimant remained under Dr. Sharma's care until June 11, 2012. In her report of September 13, 2016, Dr. Sharma opined that she had treated Claimant for post-traumatic headaches, post-traumatic seizures, post-traumatic cervical and lumbar sacral strain syndrome, and right upper and both lower extremities pain and paresthesia. Dr. Sharma concluded that "...at more than 51% likely that the above symptoms were causally related to the injury date August 7, 2005."

Claimant was admitted to the UVAH on October 17, 2011 and discharged on October 22, 2011. The UVAH records do not reflect that Claimant experienced a seizure during his six day stay.

On November 20, 2014, the parties' settlement agreement was approved by the Office of Workers Compensation. Paragraph 10 of the November 20, 2014 settlement agreement provides, in pertinent part:

> "....that the Employer and Carrier shall pay the costs of all reasonable, necessary and causally related medical care and treatment incurred prior to the date on which this agreement is approved."

At the request of Employer, Dr. Gary W. London, a board-certified neurologist, performed an Independent Medical Examinations (IME) of Claimant on May 23, 2015. In that report, Dr. London opined that claimant: had reached maximum medical improvement; had not suffered a brain injury; had suffered "pseudo" seizures and not true seizures which were not related to the August 7, 2005 accident; low back complaints and 2008 back surgery are not related to the August 7, 2005 accident; had experienced psychogenic, non-epileptic seizures while at UVA which were not related to the August 7, 2005 accident; undergone treatment for subjective headaches and psychogenic pseudo seizures by Dr. Sharma and UVAH which was not related to the August 7, 2005 accident; had no permanent residual whatsoever with regards to headaches and organic seizures which are not related to the August 7, 2005 accident; and, undergone treatment for his lower back which are related to his degenerative spine disease and pre-existing back condition, and are not related to the August 7, 2005 work accident.

Ford v. Georgetown Law Center, AHD No. 07-117D, OWC No. 616617 (December 5, 2016) at 2-4.

A dispute arose concerning payment of medical expenses related to neurological treatment rendered by Dr. V. Sharma, which was presented to an ALJ in AHD at a formal hearing on October 4, 2016. Following that hearing, the ALJ issued a Compensation Order ("CO") in which it was determined that although Claimant was entitled to a presumption that the medical treatment rendered was causally related to the work injury, Employer's evidence overcame that presumption, and upon weighing the evidence, Claimant had failed to meet his burden of proving medical causal relationship by a preponderance of the evidence. This appeal ensued.

ANALYSIS

In support of his position that the ALJ erred in finding that Employer rebutted the presumption of causation, Claimant asserts the CO erroneously found that the medical records of Dr. Gary London were firm and unambiguous enough to sever the presumption of causation. Specifically Claimant asserts:

> Dr. London's medical report is not firm and unambiguous because he is unable to give a coherent answer to the question of whether or not Mr. Ford injured his head in the work injury. *See Washington Post v. DOES and Reynolds,* 852 A.2d 909 at 914 (D.C. 2004)(*Reynolds*). Furthermore, Dr. London fails to note in his physical examination what specific neurological evaluation he took to exam [sic] Mr. Ford

for symptoms of traumatic brain injury, which is what Mr. Ford was claiming he suffered from. See *Jackson v. DOES,* 979 A.2d 43 (D.C. 2009)(*Jackson*). Instead, it appears from Dr. London's medical reports that he talked with Mr. Ford, looked into Mr. Ford's eyes, and determined that was sufficient evidence that Mr. Ford could not be suffering from any form of post-concussive disorder. Because Dr. London did not apply any form of traumatic brain injury screening to Mr. Ford when Mr. Ford suffered a head injury and claimed post-concussive disorder symptoms, the finding that Dr. London's medical opinion is "well-reasoned" is facially incorrect, and must be reversed. *See WMATA v. DOES and, Browne*, 926 A.2d 140 (D.C. 2007)

Claimant's Brief at 8 (citations added).

We disagree with Claimant as this Panel finds instead that Dr. London's report of his independent medical evaluation ("IME") meets the standard set forth by the District of Columbia Court of Appeals ("DCCA") decision in *Reynolds.*[2] That is, it is undisputed that Dr. London, a neurologist, is a qualified medical expert who examined Claimant, reviewed Claimant's relevant medical records, and rendered an unambiguous opinion that the work injury did not contribute to the conditions for which Claimant received treatment from Dr. Sharma.

Thus, we conclude the ALJ's determination that Employer met its burden of severing the existing relationship between the treatment of Dr. Sharma and the work-related injury is supported by substantial evidence and is in accordance with the law.

Claimant's second challenge is to the CO's reasons for rejecting Dr. Sharma's medical testimony when weighing the evidence, which Claimant asserts, are not supported by the record and must be reversed. Claimant asserts:

> . . the Compensation Order's reason for rejection of Dr. Sharma's medical opinion involves the ALJ inventing his own medical opinion (that if an EEG is not positive immediately after the injury, the injured person did not suffer TBI [traumatic brain injury] from the injury) and is therefore not in accordance with the law. The rejection of Dr. Sharma's analysis because Mr. Ford suffered from headaches prior to the work injury is likewise not legitimate, because Mr. Ford's headaches significantly worsened after the injury. *See Landesberg v. DOES*, 794 A.2d 607, at 614 (D.C. 2002).
>
> The Compensation Order's primary reason for rejecting Dr. Sharma's report was that she "provided no explanation or rationale, in her September 13, 2016 report, for her opinion that her treatment of [Mr. Ford] was medically causally related to his August 7, 2005 [injury]" is wholly without merit. Dr. Sharma provided the rationale behind her opinions in her deposition. Dr. Sharma credited the temporal

[2] The law is clear that an employer has met its burden and rebuts the presumption of causality when it produces the opinion of a qualified independent medical expert who, having examined the employee and reviewed the employee's medical records, renders an unambiguous opinion that the work injury did not contribute to the disability. *Reynolds, supra.*

> causation of the injury to the onset of seizures and worsening of headaches, and the existence of the seizures was verified by a February 11, 2009 EEG which demonstrated a paroxysmal spike. EE at 72. Dr. Sharma also noted that TBI symptoms do not necessarily manifest immediately after injury. EE at 83. Because there was diagnostically veriable [sic] evidence of seizures, and the temporal correlation is consistent with the onset of seizures and worsening of headaches, rejecting Dr. Sharma's medical reports because they "provided no explanation or rationale" is wholly without merit, and must be reversed. *See Changkit v. DOES*, 994 A.2d 380 at 388 (D.C. 2010).

Claimant's Brief at 10 (citations added).

We disagree with Claimant that the ALJ's findings concerning Dr. Sharma's deposition testimony were erroneous. The issue before us is whether the ALJ had adequate reasons to reject that opinion, and whether those reasons are adequately explained in the CO.

In this regard Employer asserts:

> . . . As the ALJ noted, Dr. Sharma admitted that she had not reviewed Claimant's prior medical records, which are substantial. EE 10 p. 81-82. Claimant has had years of prior treatment for significant headaches and depressions. Dr. Sharma did not review the medical reports from the University of Virginia from October of 2011, where Claimant was hospitalized for 6 days for observation and monitoring of his alleged seizures. EE 10, p. 89. This is significant since the findings of the UVA neurologist that Claimant does not suffer from seizures and should not be taking anti-seizure medication, contradicts Dr. Sharma's opinion concerning seizures.
>
> In addition, Dr. Sharma was not familiar with the Claimant. When asked what type of work Mr. Ford performed, she indicated that she was a driver, EE 10, p. 88, when in fact Claimant was a campus patrol officer. Dr. Sharma was not aware that Claimant returned to work for two years, between 2006-2008. EE 10, p. 87. Dr. Sharma never witnessed any seizure activity and despite the multitude of normal diagnostic studies and extensive video monitoring establishing no seizure disorder, Dr. Sharma still finds evidence of seizure activity. EE 10, p. 86-87.
>
> Finally, the ALJ noted that Dr. Sharma provided no explanation or rationale in her September 13, 2016 report for her opinion that her treatment of the Claimant was medically causally related to the work injury. Instead, she concluded "at more than 51% likely that the above symptoms were causally related to the injury date August 7, 2005." CE 1, 2; CO p.3. The ALJ provided an ample basis for rejecting Dr. Sharma's opinions and his conclusions should not be disturbed.

Employer's Brief at 5, 6.

We note that Claimant's arguments are not that the CO is unsupported by substantial evidence, but rather the CRB should reweigh the evidence and substitute its judgment for that of the ALJ.

This, of course, is something we cannot do. The scope of review by the CRB as established by the District of Columbia Comprehensive Merit Personnel Act of 1978, D.C. Code § 1-623.01 *et seq.*, and as contained in the governing regulations, is to determine whether the factual findings of a 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). We are not empowered to independently review the evidence and come to our own conclusions *de novo*. *See Marriott Int'l. v. DOES*, 834 A.2d 882 (D.C. 2003); *see also Westbrook v. District of Columbia Public Schools*, CRB No. 14-046 (August 25, 2015).

"Substantial evidence" is such evidence as a reasonable person might accept to support a particular conclusion. *Marriott*, *supra.* Consistent with this scope of review, the CRB is 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*, *supra*, 834 A.2d at 885.

CONCLUSION AND ORDER

The CO's conclusion that the medical treatment from Dr. Sharma that Claimant requests payment for is not causally related to his August 7, 2005 work injury is supported by substantial evidence, is in accordance with the law and is **AFFIRMED.**

So ordered.