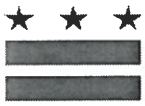
GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 16-050

DEPT. OF EMPLOYMENT SERVICES
COMPENSATION REVIEW BOARD
2016 AUG 18 PM 2 06

BRENDA JOHNSON,
Claimant–Petitioner,

v.

FEDERAL EXPRESS CORPORATION and
SEDGWICK CLAIMS MANAGMENT,
Employer/Third-Party Administrator–Respondent.

Appeal from a March 4, 2016 Third Compensation Order on Remand
by Administrative Law Judge Donna J. Henderson
AHD No. 12-359, OWC No. 688463

(Decided August 18, 2016)

Krista N. DeSmyter for the Claimant
Lisa Zelenak for the Employer

Before HEATHER C. LESLIE, GENNET PURCELL, and JEFFREY P. RUSSELL, *Administrative Appeals Judges*.

HEATHER C. LESLIE for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

In a prior Decision and Remand Order the Compensation Review Board (CRB) described the history of the claim and prior orders as such:

> The parties do not dispute the following facts of record as outlined in *Brenda Johnson v. Federal Express Corporation*, CRB No. 13-077, AHD No. 12-359, OWC No. 688463 (February 5, 2014)(DRO):
>
> > Ms. Brenda Johnson worked for Federal Express Corporation ("FedEx") for more than 26 years. On January 27, 2012, she was called to a meeting with supervisors. At that meeting, Ms. Johnson was informed that due to company reorganization, the position she had held for more than 10 years was being eliminated; in return,

> Ms. Johnson was offered a part-time position at a different location.
>
> Ms. Johnson completed her work day that Friday and returned to work the following Monday. The next day, January 31, 2012, Ms. Johnson sought treatment at Fort Washington Hospital for complaints of headaches, insomnia, and loss of appetite as a result of being "fired." Ms. Johnson was diagnosed with anxiety and was instructed to contact a crisis response hotline for counseling services.
>
> From February 6, 2012 through June 1, 2012, Ms. Johnson treated with a therapist who diagnosed Ms. Johnson as suffering from adjustment disorder with mixed depression and anxiety from the job "rearrangement and decrease in hours on the job." Thereafter, Ms. Johnson began treating with a board certified psychiatrist.
>
> On July 3, 2012 at FedEx's request, Ms. Johnson was examined by Dr. Bruce Smoller, a neuropsychiatric specialist. Dr. Smoller concluded Ms. Johnson's "reaction to the 'job termination' with anger was normal but he opined that her reaction was stronger and more exaggerated."
>
> Ms. Johnson filed a claim for temporary total disability benefits and medical treatment as a result of her mental-mental injury. Following a formal hearing, an administrative law judge ("ALJ") denied Ms. Johnson's request for benefits because her mental-mental injury is not compensable. *Johnson v. Federal Express Corporation*, AHD No. 12-359, OWC No. 688463 (May 23, 2013), p. 3.

The Compensation Review Board (CRB) vacated the Compensation Order (CO) issued by the Administrative Hearings Division (AHD) on May 23, 2013 and remanded it to the Administrative Law Judge (ALJ) as the CRB concluded the ALJ did not apply the proper legal test for mental-mental cases. *See Ramey v. Potomac Electric Power Co.*, CRB No. 06-038(R), AHD No. 05-318, OWC No. 576531 (July 24, 2008), *McCamey v. DOES*, 947 A.2d 1191, 1195 (D.C. 2008). The CRB held:

> The *Ramey* test does not require unusualness of the event or condition alleged to be the cause of the mental-mental injury nor does it incorporate an exception for business-related personnel actions including but not limited to reorganization, furlough, lay-off, and job elimination; therefore, the ALJ did not properly apply the *Ramey* test to Ms. Johnson's claim for benefits for a mental-mental injury. The May 23, 2013 Compensation Order is

> VACATED, and this matter is REMANDED for further consideration consistent with this Decision and Remand Order.

DRO at 7.

As the ALJ who conducted the formal hearing had resigned, an Order to Show Cause issued advising the parties to show cause why the matter could not be decided based on the existing record by another ALJ.

Claimant consented to have the matter decided by a new ALJ based on the existing record and Employer responded that it would object to a new hearing to take Claimant's testimony. The ALJ issued a subsequent order on February 18, 2015 wherein the parties were ordered:

> . . . to provide, for the record, evidence of the definition, criterion, and symptoms of these mental disorders from the source of your choice by February 25, 2015. You are ORDERED to serve opposing counsel with your responses and make objections to the other party's exhibit, if any, by March 2, 2015. If no objections are received by March 2, 2015, each part's evidence will be admitted as an exhibit.

According to the Compensation Order on Remand (COR), the ALJ re-opened the record to admit evidence that was identified in the record before the presiding ALJ but not ruled upon, as well as the requested definitions described above. The COR denied in part and granted in part Claimant's claim for relief.

The ALJ concluded:

> Claimant has demonstrated by a preponderance of the evidence that she sustained an accidental mental stress injury as a result of the original meeting and her subsequent lay off. The mental stress injury which Claimant sustained was an adjustment disorder with mixed anxiety and depression. Claimant did not sustain PTSD or major depression. Claimant's evidence established that Claimant was disabled from January 30, 2012 through and including July 3, 2012, the date of Claimant's examination by Dr. Smoller. Claimant has failed to prove by a preponderance of the evidence that she continued to be temporarily totally disabled after July 3, 2012. Claimant's claim for causally related medical expenses for her medical treatment related to adjustment disorder with mixed anxiety and depression are causally related to the work-related injury on January 27, 2012. Claimant's diagnoses of PTSD and major depression injuries are denied and any medical treatment for these conditions is denied.

COR at 13.

Claimant's appeal, asserting the ALJ applied the law correctly and relied on substantial evidence in reaching her conclusions.

Johnson v. Federal Express, CRB No. 15-058 (July 30, 2015) (DRO2).

The DRO2 determined the following:

- The ALJ did not err in re-opening the record for receipt of new evidence;
- The ALJ did not err in relying on extrinsic evidence not contained in the record, thereby violating Claimant's due process rights to rebut such evidence;
- The ALJ did not substitute her own medical opinion to deny the claimed benefits;
- The ALJ did not err in rejecting the opinion of the treating physician; and,
- The ALJ did not err in determining that claimant was not entitled to temporary total disability benefits to the present and continuing as a result of her psychological injury.

DRO2 also held the ALJ failed to correctly determine whether Employer had rebutted the presumption of compensability that Claimant's diagnosis of major depression was causally related to the work injury. The ALJ was directed upon remand to address whether Dr. Smoller's report rebutted the presumption of compensability, taking into account the standard enunciated in *Washington Post v. DOES and Raymond Reynolds, Intervenor*, 852 A.2d 909 (D.C. 2004).

On August 21, 2015, a Second Compensation Order on Remand (COR2) was issued. The COR2 determined Employer had rebutted the presumption of compensability that Claimant's major depression was work related. The COR2 also determined Claimant had failed to establish, by a preponderance of the evidence, that this major depression was related to the work injury.

Claimant timely appealed. In a Decision and Remand Order issued on March 1, 2016 (DRO3), the CRB determined the conclusion that the COR2 erred in concluding Employer had rebutted the presumption of compensability. Thus, the CRB remanded the case with instructions to enter an award awarding Claimant medical expenses related to her major depression.

A Third Compensation Order on Remand (COR3) issued on March 4, 2016. The ALJ concluded Employer failed to rebut the presumption of compensability that Claimant suffers from major depression as a result of her work injury.

Claimant appealed. Claimant attaches not only the COR3 to her appeal, but also the March 16, 2015 Compensation Order on Remand which was the appeal the CRB disposed of in the DRO2. Claimant reiterates the arguments presented to the CRB which were addressed in DRO2.

Employer opposes Claimant's appeal, relying upon DRO2. Employer did not appeal COR3's determination that Claimant's major depression is casually related to the work injury.

ANALYSIS[1]

In the first paragraph of Claimant's Application for Review, Claimant summarizes her argument as follows:

> Specifically, Ms. Johnson contends that the portions of the First Compensation Order on Remand that the subsequent orders are based upon is arbitrary, capricious, unsupported by substantial evidence in the record and is not in accordance with the law and should therefore be reversed.

Claimant's Application for Review at 1.

A review of Claimant's memorandum reveals the same arguments that were addressed in our prior DROs, reiterated by Claimant for "purposes of preservation on appeal, of the March 16, 2015 Compensation Order on Remand's determination and the July 31, 2015 affirmation of that determination..." Claimant's memorandum at 6. We need not go into detail again and incorporate our analysis and conclusions in the DROs by reference herein.

CONCLUSION AND ORDER

The March 4, 2016 Third Compensation Order on Remand is AFFIRMED.

So ordered.

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[1] The scope of review by the Compensation Review Board (CRB) and this Review Panel as established by 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 § 32-1521.01(d)(2)(A). "Substantial evidence", as defined by the District of Columbia Court of Appeals, 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). 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.