

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

Department of Employment Services

MURIEL BOWSER  
MAYOR



DEBORAH A. CARROLL  
DIRECTOR

**COMPENSATION REVIEW BOARD**

**CRB No. 15-096**

**CHINOLA FOWLER,  
Claimant–Respondent,**

v.

**CHILDREN’S NATIONAL MEDICAL CENTER  
and YORK RISK SERVICES GROUP,  
Employer/Carrier–Petitioners.**

Appeal from a May 19, 2015 Compensation Order  
by Administrative Law Judge Joan E. Knight  
AHD No. 14-533, OWC No. 714802

DEPT. OF EMPLOYMENT  
SERVICES  
COMPENSATION REVIEW  
BOARD  
2015 OCT 23 AM 8 49

Kasey K. Murray for the Claimant  
Lisa A. Zelenak for the Employer

Before HEATHER C. LESLIE, JEFFREY P. RUSSELL, *Administrative Appeals Judges* and LAWRENCE D. TARR, *Chief Administrative Appeals Judge*.

HEATHER C. LESLIE for the Compensation Review Board.

**DECISION AND ORDER**

**FACTS OF RECORD AND PROCEDURAL HISTORY**

Claimant worked for Employer as a Registered Nurse with duties that included assessing and monitoring students’ health. Claimant’s duties are primarily sedentary.

On March 5, 2014, Claimant was injured when a chair she was attempting to sit in moved out from under her. Claimant fell on her right side, injuring her low back, right hip, right shoulder and wrist pain. Employer authorized medical treatment for Claimant’s low back and right hip injury.

Claimant sought medical treatment and ultimately came under the care of Dr. Jeffrey Sabloff. Dr. Sabloff began treatment to Claimant’s neck, recommending an MRI.

Employer sent Claimant for an Independent Medical Evaluation (IME) on May 20, 2014 with Dr. Marc Danzinger. Dr. Danzinger took a history of Claimant's injury, medical treatment and performed a physical examination. Dr. Danzinger opined Claimant sustained a right shoulder contusion, a lumbar strain and a mild contusion of her hip from the work accident. Dr. Danzinger opined Claimant could return to work without restrictions.

Employer also sent Claimant's medical records to H.H.C. Group for a utilization review (UR). After reviewing the medical documentation provided, the UR determined the care and treatment rendered to date as well as the current treatment was reasonable and necessary. The UR did determine, however, that an MRI was not indicated or necessary.

Claimant eventually returned to work.

A full evidentiary hearing occurred on December 10, 2014. Claimant sought an award of temporary total disability from May 30, 2014 to June 24, 2014, authorization for medical treatment, and payment of causally related medical expenses. The issues to be adjudicated were whether Claimant's cervical condition was causally related to her work injury, whether the MRI was reasonable and necessary, and the nature and extent of Claimant's disability, if any. A Compensation Order (CO) issued on May 19, 2015 which granted Claimant's claim for relief.

Employer timely appealed. Employer argues the ALJ's finding that the cervical condition is casually related to the work injury is not supported by the substantial evidence in the record, and the conclusion of the CO does not flow rationally from the facts.

Claimant opposes the appeal, arguing the CO is supported by the substantial evidence in the record and in accordance with the law.

#### **STANDARD OF REVIEW**

The scope of review by the CRB, 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. *See* D.C. Workers' Compensation Act of 1979, as amended, D.C. Code §§ 32-1501 to 32-1545 (2005) (the Act), at § 32-1521.01(d)(2)(A). Consistent with this standard of review, the CRB and this Review Panel are constrained to uphold a Compensation Order (CO) 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**

In analyzing whether Claimant's cervical condition was medically casually related to the work accident, the ALJ correctly noted that there is a presumption, in the absence of evidence to the contrary, that the claim comes within the provisions of D.C. Code § 32-1521(1) and is compensable. CO at 5. Once the presumption is triggered, the burden is upon the employer to present 'substantial evidence' showing that a disability did not arise out of and in the course of

employment." *Ferreira v. D.C. Department of Employment Services*, 531 A.2d 651, 655 (D.C. 1987). The ALJ determined Claimant had invoked the presumption of compensability, a finding Employer does not appeal.

After having found the presumption invoked, the ALJ then looked to see if the Employer rebutted this presumption. If the presumption is rebutted, then the evidence is weighed without benefit of the presumption and it is Claimant's burden to prove, by a preponderance of the evidence, that her cervical condition is medically causally related to the work injury. The ALJ, after reviewing Employer's evidence, determined Employer had not rebutted the presumption. Specifically,

As rebuttal, Employer relies upon Dr. Danziger's IME opinion. In support of its position Employer offers *inter alia*, the IME report of Dr. Danziger dated May 20, 2014. In his report, Dr. Danziger opined that Claimant was treated thoroughly and adequately for the injuries she sustained at work on March 5, 2014. It is found that upon his examination of Claimant, Dr. Danziger noted she displayed right parascapular tenderness and full motion of the shoulders with 170 degree forward elevation, 80 degree external rotation and 90 degree abduction. Dr. Danziger rendered an opinion that Claimant sustained a right shoulder contusion and lumbar strain as a result of her March 5, 2014 and he did not assess or render a medical opinion regarding Claimant's cervical spine.

Based upon this record Dr. Danziger did not address Claimant's cervical condition or render a medical opinion as to whether said condition is causally related to her March 5, 2014 work injury. It is determined the independent medical evaluation adduced by Employer is not substantial, specific and comprehensive evidence to rebut the presumption that has been invoked. Therefore, the presumption that Claimant's cervical condition is causally related to her work accident stands. The presumption invoked also extends to the medical causal relationship between any current disability and her work injury.

CO at 7.

Employer, in arguing the CO's finding that the cervical condition is medically causally related to the work accident is not supported by the evidence, "asserts that there is a significantly harmful finding of unsupported fact in this matter: that Dr. Danzinger's IME report 'does not include an examination, assessment or a medical opinion regarding the cervical spine.'" Employer's argument at 5. Employer argues that in fact Dr. Danzinger did examine Claimant's neck.

While we agree that the CO's finding that Dr. Danzinger did not examine the neck is in error, we hold such error harmless. Even after a physical examination which included the neck, Dr. Danzinger did not render a medical opinion as to the causal relationship between the work injury and the neck condition, as Employer concedes in argument. Employer's argument at 6. The ALJ, after correctly noting Dr. Danzinger did not render an opinion on Claimant's cervical condition, found his opinion not to be substantial, specific or comprehensive evidence sufficient to rebut the presumption. We cannot agree with Employer that a lack of any opinion regarding

the cervical neck condition by Dr. Danzinger, equating this as proof nothing is wrong with Claimant's neck, is enough to satisfy its burden to rebut the presumption, especially as the medical causality of the Claimant's neck condition was at issue. Dr. Danzinger's opinion did not render an unambiguous opinion that the work injury did not contribute to the cervical condition. *Washington Post v. D.C. Department of Employment Services and Raymond Reynolds, Intervenor*, 852 A.2d 909 (D.C. 2004). We affirm the ALJ's conclusion that Employer failed to rebut the presumption.

The Employer next argues that the ALJ's credibility finding is contradictory, and thus the ALJ's determination that the neck condition is medically casually related does not flow rationally from the facts. Employer urges that since Claimant's testimony is unreliable, any findings must be made based on the record evidence.

The ALJ found

As an initial matter, Claimant's testimony regarding her work accident and subsequent symptoms is credible. Claimant's testimony on cross-examination regarding her recollection of prior injuries and treatment to her neck, back, and knees was confusing, unclear and is not reliable. (Footnote omitted.)

CO at 2.

Thus, as to the current injury and subsequent injuries, Claimant's testimony was deemed to be credible. As to past injuries, we do not find the determination that , Claimant's recollection is confusing, unclear and unreliable renders the CO's finding the cervical condition is medically casually related to the work injury as not being supported by the substantial evidence and not in accordance with the law. More importantly, as discussed above, Employer failed to rebut the presumption through the IME of Dr. Danzinger. As the presumption was not rebutted, the ALJ did not have to weigh the evidence further, where such findings may have played a more critical role. Employer's argument is rejected.

What Employer is asking this panel to do is to reweigh the evidence in its favor. As stated above, the CRB and this Review Panel are constrained 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.

#### CONCLUSION AND ORDER

The May 19, 2015 Compensation Order is supported by the substantial evidence in the record and is in accordance with the law. It is AFFIRMED.

*So ordered.*