

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
DIRECTOR

CRB No. 15-011

**CONCHEETA A. WRIGHT,
Claimant-Respondent,**

v.

**PROVIDENCE HOSPITAL and
SEDGWICK CLAIMS MANAGEMENT SERVICES, INC.
Employer and Third-Party Administrator-Petitioners.**

Appeal from a January 8, 2015 Compensation Order by
Administrative Law Judge Linda F. Jory
AHD No. 13-215A, OWC No. 678378

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2015 MAY 18 PM 12:11

Rebekah A. Miller for the Claimant
Sarah M. Burton for the Employer

Before HEATHER C. LESLIE, MELISSA LIN JONES, and JEFFREY P. RUSSELL, *Administrative Appeals Judges.*

HEATHER C. LESLIE for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

Claimant worked as a Registered Nurse on the weekend for the Employer. During the week, Claimant worked as a Nurse Specialist II for the Department of Health. On September 12, 2010, Claimant injured her right knee, left hand and mouth when she fell face- forward onto the floor. Claimant sought treatment at Employer’s emergency room.

Claimant followed up first with Dr. Montague Blundon who recommended a conservative course of treatment including physical therapy and walking with a cane. Dr. Blundon recommended an MRI. On March 3, 2011, Claimant sought treatment with Dr. Marc E. Rankin. Dr. Rankin recommended right knee arthroscopy which Claimant underwent on March 28, 2011. Claimant subsequently had left knee surgery on March 20, 2012. On October 15, 2012, Dr. Rankin recommended further surgical intervention to the knees. Claimant declined.

Claimant subsequently began to complain to Dr. Rankin of pain in her lower back. Claimant began to receive epidural injections to her back from Dr. Ayasha Williams-Sharon. After an

MRI was performed, Dr. Williams-Sharon referred Claimant to Dr. Faheem Sandhu for surgical consultation. Dr. Sandhu recommended a cervical MRI which revealed a disc herniation at C6-7.

Employer sent Claimant for an independent medical evaluation (IME) with Dr. Gary W. London on October 7, 2013. Dr. London took a history of the injury, treatment to date, and performed a physical examination. Dr. London opined Claimant's neck and back conditions are not related to the work injury of September 12, 2010. Dr. London further did not feel surgery, further injections or any further treatment to the neck and back was necessary.

A full evidentiary hearing was held on November 5, 2013. Claimant sought an award of temporary partial disability from August 30, 2013 to the present and continuing and reimbursement of medical expenses related to the low back and neck. The issues to be adjudicated was whether there was a medical causal relationship between Claimant's low back and neck conditions and the work injury. A Compensation Order (CO) was issued on January 8, 2015 which granted, in part, Claimant's request. The CO concluded Claimant's neck complaints were not medically causally related to the work accident and denied any medical expenses related to treatment of the neck. The CO granted Claimant's request for temporary partial disability benefits from August 30, 2013 to the present and continuing and medical expenses related to the lower back.

Employer appealed the reimbursement of medical expenses to the lower back only, and did not appeal the award of temporary partial disability or the denial of Claimant's neck claim. Employer argues the CO's finding that the lower back condition is medically casually related to the work injury is not supported by the substantial evidence in the record or in accordance with the law. Claimant opposes the appeal arguing the CO is supported by the substantial evidence in the record and is in accordance with the law and should be affirmed in its entirety.

STANDARD OF REVIEW

The scope of review by the CRB is generally 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, *et seq.*, (the Act) at § 32-1521.01 (d)(2)(A), and *Marriott International v. DOES*, 834 A.2d 882 (D.C. 2003). Consistent with this standard of review, the CRB and this review panel must 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, and even where this panel might have reached a contrary conclusion. *Id.* at 885.

ANALYSIS

Employer argues that the "Claimant's back condition is not medically casually related to the work injury." Employer's argument at 3. In so arguing, Employer states several times that it had presented substantial evidence to rebut the presumption of compensability. *See* Employer's argument at 5 and 7. However, the ALJ did find that through the medical opinion of Dr. London

and Dr. Randall Lewis, Employer had rebutted the presumption of compensability. Having found the presumption rebutted, the ALJ weighed the evidence without benefit of the presumption to see if Claimant had proved, by a preponderance of the evidence, that Claimant's back condition is medically casually related to the work injury. *Parodi v. DOES*, 560 A.2d 524, 525-26 (D.C. 1989); *Ferreira v. DOES*, 531 A.2d 651, 655 (D.C. 1987). We therefore shall assume that the Employer is contesting this weighing of the evidence in its appeal.

In support of its argument, Employer selectively summarizes the medical treatment rendered by Dr. Blundon, Dr. Rankin, Dr. Williams-Sharon, and Dr. Sandhu. Employer then takes issue with the ALJ's conclusion that,

The undersigned has found nothing in the record to raise questions about the credentialing of either Dr. Rankin or Dr. Williams-Sharron, nor has either report been found to be ambiguous, imprecise or vague. Thus, with the benefit of the treating physician preference it is concluded claimant has met her burden of establishing by a preponderance of evidence that her lower back problems are causally related to the work injury of September 12, 2010.

CO at 6.

Employer argues that "there is no case law to support the contention that a treating physician's credentials must be challenged in order for an ALJ to reject the treating physician preference." Employer's argument at 6. Employer is right in this regard. However, a fair reading of the CO shows the ALJ was merely indicating that there is no reason to reject the treating physician's opinion. As the ALJ noted:

Despite the fact that the evidence is to be weighed to determine if claimant has established a causal relationship by a preponderance of the evidence, claimant is entitled to this jurisdiction's "treating physician's preference". See, *Butler v. Boatman & Magnani*, OWC No. 044699, H&AS No. 84-348 (December 31, 1986), *Short v. District of Columbia Department of Employment Services*, 723 A.2d 845 (D.C. 1998), and *Stewart v. District of Columbia Department of Employment Services*, 606 A.2d 1350 (D.C. 1992). The rule is not absolute, and where there are persuasive reasons to do so, an IME opinion can be accepted over that of treating doctor's opinion, with sketchiness, vagueness, and imprecision in the treating physician's reports having been cited as legitimate grounds for their rejection, and personal examination by the IME physician, as well as review of pertinent medical records and diagnostic studies, and superior relevant professional credentialing as reasons to support acceptance of IME opinion instead of treating physician opinion. See *Bastian v. D.C. WASA*, CRB No. 07-098, AHD No. 03-406, OWC No. 579709 (December 2008).

CO at 6.

The ALJ found no reason to reject the opinions of the treating physician's opinions, finding the opinions of Dr. Rankin and Dr. Williams-Sharon unambiguous, precise and not vague. We affirm this finding.

Employer attacks the treating physician opinions by noting earlier medical records do not mention back complaints. After weighing all the evidence, including the medical reports relied upon in argument by the Employer, the ALJ stated:

Claimant relies on the opinions of her treating physicians Drs. Rankin and Williams-Sharron. Dr. Rankin opined on February 13, 2013:

It is my professional opinion that Ms. Wright's knee pain and radiculopathy are the result of her workplace injury sustained on September 10, 2010. I state this is because while she has some signs of underlying lumbosacral spondylosis and moderate arthrosis of the right knee, she was asymptomatic prior to her September 10, 2011 workplace injury.

CE 7 at 3.

Dr. Williams-Sharron wrote two letters to two attorneys, apparently at their request. Both letters are similar and the most recent letter dated April 15, 2013, to claimant's present counsel of record, states:

I have followed Ms. Wright for management of her chronic pain from November 7, 2011 at Advanced Pain Management Specialists; to the present date at "Personalized Spine & Pain Care". She suffers from chronic back and leg pain related to a work injury sustained [on] 9/12/10. She had no symptoms prior to this date. I do believe within a reasonable degree of certainty, Ms. Wright[']s symptoms of chronic back and leg pain are causally related to her injury sustained [on] 9/12/10. Her chronic symptoms have prevented her from working as a clinical nurse.

CE 3 at 6.

CO at 5-6.

The ALJ determined the medical opinions outlined above satisfied Claimant's burden of proving the back condition was work related. We find no error in this. What the Employer is asking us to do is to reweigh the evidence in its favor, a task we are not authorized nor inclined to do. As stated above, the CRB and this review panel must 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, and even where this panel might have reached a contrary conclusion. *Marriott*, supra at 885.

CONCLUSION AND ORDER

The January 8, 2015 Compensation Order is supported by the substantial evidence in the record and in accordance with the law. It is **AFFIRMED**.

FOR THE COMPENSATION REVIEW BOARD:

A handwritten signature in black ink, appearing to read 'H. Leslie', written over a horizontal line.

HEATHER C. LESLIE
Administrative Appeals Judge

May 18, 2015

DATE