

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA M. MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 11-131

PATTIE L. CRAWFORD,
Claimant-Respondent,

v.

NATIONAL REHABILITATION HOSPITAL and SEDGWICK CMS,
Employer/Carrier-Petitioner.

Appeal from a Compensation Order on Remand by
The Honorable Anand K. Verma
AHD No. 10-380, OWC No. 625645

John C. Duncan, III, Esquire for the Petitioner
Eric M. May, Esquire for the Respondent

Before MELISSA LIN JONES, JEFFREY P. RUSSELL,¹ and HEATHER C. LESLIE,² *Administrative Appeals Judges.*

MELISSA LIN JONES, *Administrative Appeals Judge*, for the Compensation Review Board.

DECISION AND REMAND ORDER

JURISDICTION

Jurisdiction is conferred upon the Compensation Review Board (“CRB”) pursuant to §§32-1521.01 and 32-1522 of the District of Columbia Workers’ Compensation Act of 1979, D.C. Code, as amended, §32-1501 *et seq.*, (“Act”), 7 DCMR 250, *et seq.*, and the Department of Employment Services Director’s Administrative Policy Issuance 05-01 (February 5, 2005).

¹ Judge Russell has been appointed by the Director of the DOES as a temporary CRB member pursuant to DOES Administrative Policy Issuance No. 12-01 (June 20, 2012).

² Judge Leslie has been appointed by the Director of the DOES as a temporary CRB member pursuant to DOES Administrative Policy Issuance No. 12-02 (June 20, 2012).

FACTS OF RECORD AND PROCEDURAL HISTORY

On February 4, 2006, Ms. Pattie L. Crawford sustained multiple injuries when she fell in the parking lot at National Rehabilitation Hospital (“NRH”). After presenting for initial treatment at Washington Hospital Center, Ms. Crawford was referred to Dr. Hudson Drakes for ongoing right wrist pain; she later was referred to Dr. Ricardo O. Pyfrom who recommended surgical release of the right thumb.

An ALJ conducted a formal hearing on October 12, 2010. In a Compensation Order dated November 26, 2010, the ALJ concluded there was a medical causal relationship between Ms. Crawford’s right de Quervain’s tenosynovitis and trigger thumb and her on-the-job accident; the ALJ also determined surgeries on Ms. Crawford’s right wrist and thumb were reasonable and necessary. The ALJ granted authorization for surgery as recommended by Dr. Pyfrom.

The November 26, 2010 Compensation Order was appealed to the CRB. On April 12, 2011, the causal relationship ruling was affirmed, but the

conclusion that Respondent has made a *prima facie* showing of the reasonableness and necessity of the recommended surgeries but Petitioner has not rebutted that showing with substantial evidence is not in accordance with the law and is VACATED and REMANDED to the ALJ to apply the proper legal theory and analysis to the UR process as set forth in *Gonzalez [v. UNICCO Service Company]*, CRB No. 07-005, AHD No. 06-155, OWC No. 604331 (February 21, 2007)] and *Haregewoin*³*[v. Loews Washington Hotel]*, CRB No. 08-068, AHD No. 07-041A, OWC No. 603483 (February 19, 2008).⁴

In a Compensation Order on Remand dated June 29, 2011, the ALJ, again, granted Ms. Crawford’s claim for relief; however, on August 26, 2011, the Compensation Order on Remand was vacated:

The ALJ’s assertion that Dr. [Michael P.] Rubinstein’s opinion is premised upon causal relationship is clearly erroneous, as is the ALJ’s assertion that Dr. Rubinstein agrees that the thumb surgery is reasonable and necessary. What the UR report states is that (1) Dr. Rubinstein, like Dr. [Stephen F.] Gunther, does not believe that the claimant has de Quervain’s tenosynovitis, because of a negative Finkelstein’s sign, and therefore she should not have the wrist surgery, because the surgery is to treat de Quervain’s, a condition that is absent (in his opinion), (2) even if a patient does have de Quervain’s, the [Official disability Guidelines (“ODG”)] requirements of a specific course of conservative care prior to surgical intervention have not been met, and Dr. Rubinstein feels that in the absence of that care, surgery is not warranted, and (3) per ODG guidelines, Dr. Rubinstein believes that surgery on the thumb is not indicated until cortisone injections have been undertaken. He does

³ The Compensation Review Board’s Decision and Order transposes the claimant’s name; the claimant’s name is Haregewoin Desta, not Desta Haregewoin. *Desta v. Loew’s Washington Hotel*, AHD No. 07-041A, OWC No. 603483 (December 7, 2007).

⁴ *Crawford v. National Rehabilitation Hospital*, CRB No. 10-204, AHD No. 10-380, OWC No. 625645 (April 12, 2011), p. 6.

not state an opinion relating to causal relationship, [footnote omitted] and does not express the opinion that either of the proposed surgeries are reasonable and necessary.

Similarly, we note that nowhere in Dr. Gunther's IME report (EE 4) is it stated that the wrist complaints are unrelated to the work incident. While he questions the de Quervain's diagnosis as well as Ms. Crawford's veracity (e.g., "The sort of pains which Ms. Crawford claims simply do not remain unabated for three and one-half years. [. . .] I would point out that the fact that she alternately works 40 and 55-hour weeks and has been doing so for some time is not consistent with all these pains"), Dr. Gunther does not express a causation opinion regarding the wrist complaints. On this issue, both the ALJ and Dr. Rubinstein were in error.^[5]

As a result,

Where, as here, the fact finder so misapprehends the substance and meaning of a piece of evidence, and then relies upon that misapprehension as the principal basis of the ultimate decision, the decision can not be said to be supported by substantial evidence. NRH was and is entitled to a fair consideration of its evidence, and where, as here, that evidence is a UR report, if that evidence is rejected, there must be reasons enunciated and those reasons must be, at a minimum, actual. Here, the ALJ's reasons for rejecting the UR report are erroneous and based upon a clear misunderstanding of the UR report. For that reason, we reverse the award and remand for further consideration, taking into account the actual contents of the UR, IME and treating physician reports, as well as the entire record.

Lastly, because the ALJ will be reconsidering the matter anew, we do not rule upon Petitioner's arguments against, and Respondent's argument in support of, the ALJ's analysis to the effect that the ODG requirements for treatment of the de Quervain's tenosynovitis had been "substantially met" by treatment rendered by Dr. Tristan Shockley between July 6, 2009 and March 25, 2010 and the attendant prescription medications and application of voltaren gel. Compensation Order on Remand, page 7. We do advise, however, that on remand, if the ALJ seeks to rely upon that analysis, he should identify any record medical evidence that, as a medical matter, those treatment modalities are substantially equivalent to the ODG requirements.^[6]

In response, the ALJ issued the October 28, 2011 Compensation Order on Remand. After a review of the ODG guidelines in the context of Dr. Pyfrom's reports and Dr. Gunther's opinions, the ALJ granted Ms. Crawford's claim for relief.

⁵ *Crawford v. National Rehabilitation Hospital*, CRB No. 11-071, AHD No. 10-380, OWC No. 625645 (August 26, 2011), pp. 4-5. (Ellipsis in original.)

⁶ *Id.* at p. 6.

This time on appeal, NRH asserts the ALJ has not applied the proper legal analysis to the utilization review process. Specifically, NRH argues there is no medical evidence to confirm the ODG have been met and there is no analysis of the utilization review report. As a result, NRH requests the CRB reverse the October 28, 2011 Compensation Order on Remand.

In her opposition, focusing on the ODG, Ms. Crawford contends NRH merely has requested a reweighing of the evidence. Ms. Crawford requests we affirm the October 28, 2011 Compensation Order on Remand because it is supported by substantial evidence.

ISSUES ON APPEAL

1. Does substantial evidence in the record support that the ALJ properly considered the directives in the August 26, 2011 Decision and Remand Order?
2. Is the October 28, 2011 Compensation Order on Remand supported by substantial evidence and in accordance with the law?

ANALYSIS⁷

In the October 28, 2011 Compensation Order on Remand, the ALJ opens the analysis by stating:

The CRB essentially alleges that the ALJ misapprehended the UR report and erroneously rejected it. The CRB instructs that on remand, the ALJ should identify the medical records which support that the ODG requirements for the treatment of de Quervain's tenosynovitis have been met.^[8]

The ALJ then goes on to examine the medical records only insofar as they purportedly support the ODG. Pertinently, the ALJ, again, determines

[a]lthough, the proffered evidence does not show claimant received any steroid injection in the distressed wrist, the ODG's optional guideline before the de Quervain's tenosynovitis surgery has been substantially met when claimant has clearly established a failed conservative care for far more than the ODG recommended three months to alleviate the right wrist infirmity.^[9]

⁷ The scope of review by the CRB is limited to making a determination as to whether the factual findings of the appealed Compensation Order on Remand are based upon substantial evidence in the record and whether the legal conclusions drawn from those facts are in accordance with applicable law. Section 32-1521.01(d)(2)(A) of the Act. Consistent with this standard of review, the CRB is constrained to uphold a Compensation Order on Remand 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 International v. DOES*, 834 A.2d 882, 885 (D.C. 2003).

⁸ *Crawford v. National Rehabilitation Hospital*, AHD No. 10-380, OWC No. 625645 (October 28, 2011), p. 2. (Emphasis added.)

⁹ *Id.* at p. 3. (Emphasis added.)

Although an ALJ may draw inferences from the evidence,¹⁰ the ability to draw an inference is not license to substitute a legal opinion for a medical opinion.¹¹ Here, the ALJ's assessment that the ODG guidelines have been "substantially met" is not based upon substantial evidence and is vacated.

Moreover, a review of the medical records to assess whether the ODG had been met was only part of the ALJ's job on remand. For a third time, when the issue for resolution is reasonableness and necessity of medical treatment, the utilization review process is mandatory.¹² Once a utilization review report has been submitted into evidence, that report is not dispositive but is entitled to equal footing with an opinion rendered by a treating physician.¹³ The ALJ

is free to consider the medical evidence as a whole on the question, and is not bound by the outcome of the UR report. The issue should be decided based upon the ALJ's weighing of the competing medical evidence and [the ALJ] is free to accept either the opinion of treating physician who recommends the treatment, or the opinion of the UR report, without the need to apply a treating physician preference.¹⁴

Regardless of which opinion the ALJ gives greater weight, it is incumbent upon the ALJ to explain why one opinion is chosen over the other.¹⁵

Other than consideration of the ODG, the utilization review report is almost wholly ignored in this Compensation Order on Remand. The ALJ offers no explanation of what medical opinion is relied upon and no analysis of why the law requires the outcome reached. Consequently, the law requires we remand this matter for the ALJ to appropriately address and assess the entirety of the utilization review report in the context of the medical evidence of record.

CONCLUSION AND ORDER

The ALJ erred by not appropriately addressing and assessing the entirety of the utilization review report in the context of the medical evidence of record. The law requires we vacate the October 28,

¹⁰ See *George Hyman Construction Co. v. DOES*, 498 A.2d 563, 566 (D.C. 1985).

¹¹ See *Seals v. The Bank Fund Staff Federal Credit Union*, CRB No. 09-131, AHD No. 144, OWC No. 653446 (May 20, 2010).

¹² See *Gonzalez v. UNICCO Service Company*, CRB No. 07-005, AHD No. 06-155, OWC No. 604331 (February 21, 2007).

¹³ See *Children's National Medical Center v. DOES*, 992 A.2d 403 (D.C. 2010).

¹⁴ *Green v. Washington Hospital Center*, CRB No. 08-208, AHD No. 07-130, OWC No. 628552 (June 17, 2009).

¹⁵ *Haregewoin, supra*.

2011 Compensation Order on Remand and remand this matter for further proceedings consistent with this Decision and Remand Order as well as the August 26, 2011 Decision and Remand Order.

FOR THE COMPENSATION REVIEW BOARD:

MELISSA LIN JONES
Administrative Appeals Judge

June 29, 2012

DATE