

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



ODIE DONALD II
ACTING DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 16-140

**DANEASHA STUBBS,
Claimant–Petitioner,**

v.

**ASCENSION HEALTH ALLIANCE/PROVIDENCE HOSPITAL and
SEDGWICK CMS,¹
Self-Insured Employer/Third Party Administrator-Respondent.**

Appeal from a September 22, 2016 Compensation Order
by Administrative Law Judge Gerald D. Roberson
AHD No. 16-211, OWC No. 728940

(Decided February 17, 2017)

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

Before GENNET PURCELL and HEATHER C. LESLIE, *Administrative Appeals Judges* and
LAWRENCE D. TARR, *Chief Administrative Appeals Judge*.

GENNET PURCELL for the Compensation Review Board.

DECISION AND ORDER

BACKGROUND

Daneasha T. Stubbs (“Claimant”) was injured while working for Carroll Manor Nursing and Rehabilitation (“Employer”) as a certified nursing assistant on May 25, 2015. The injury occurred when a patient became combative and pulled on Claimant’s right shoulder causing Claimant to twist her shoulder. She was initially cared for by Dr. Edward Rankin, who treated her conservatively.

¹ Employer’s Brief filed with the Compensation Review Board on November 7, 2017 notes “Claimant’s Application for Review erroneously identifies the Employer as Carroll Manor Nursing and Rehab. Ctr. The proper Employer is Ascension Health Alliance/Providence Hospital.” In this Decision and Order, the CRB has conformed the caption in this matter to that of Employer’s Brief.

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Claimant first treated with Dr. Edward Rankin, an orthopedic surgeon from June 4, 2015 until August 25, 2015. Dr. Rankin provided the assessment of right shoulder contusion and right acromioclavicle sprain secondary to injury, and recommended physical therapy and home exercises to avoid adhesive capsulitis. Claimant participated in physical therapy from June 2015 to August 2015. Dr. Rankin opined that Claimant suffered from a right shoulder sprain, and kept her on light duty and prescription pain relief.

Claimant next sought continuing treatment with Dr. Easton Manderson. On August 26, 2015, upon examining Claimant, Dr. Manderson treated Claimant's shoulder with an injection and also recommended surgical intervention followed by physical therapy.

On September 15, 2015, Claimant underwent an independent medical evaluation ("IME") conducted by Dr. Louis Levitt, an orthopedic surgeon. Dr. Levitt concluded that Claimant suffered from a simple separation restrained to her right shoulder and disagreed with Dr. Manderson's surgical recommendation. Dr. Levitt also opined that the injection by Dr. Manderson was "probably reasonable" but that the recommended surgical procedure was not reasonable and necessary, and that Claimant could return to her pre-injury job.

On October 5, 2015, Dr. Manderson performed an Arthrotomy and Mumford procedure on Claimant's right shoulder.

On April 11, 2016, Dr. Robert Riederman performed an IME on behalf of Employer. Dr. Riederman's opinion noted Claimant's treatment to date, complaints of right shoulder pain level 7/10, indicated her sensitivity to cold air, lifting and pain with movement, range of motion measurements of forward flexion of 160 degrees, abduction of 170 degrees, full external rotation in the neutral and internal positions. Dr. Riederman opined that Claimant reported pain with extremes of right shoulder motion but that the right shoulder musculature was satisfactory, X-rays showed postsurgical changes following distal clavicle resection and no evidence of fracture.

A dispute arose as to whether Claimant's right shoulder condition was causally related to the work injury that occurred on May 25, 2015. A full evidentiary hearing was held before an Administrative Law Judge ("ALJ") in the Administrative Hearings Division ("AHD") of the Department of Employment Services ("DOES"). Claimant sought temporary total disability benefits from September 26, 2015, to the present and continuing, authorization for medical treatment and causally related medical expenses and interest. The issues as described by the ALJ to be decided at the hearing were:

1. Does the evidence medically causally relate Claimant's right shoulder surgery to work injury?
2. What is the nature and extent of Claimant's disability, if any?
3. Does the medical evidence establish the Claimant's right shoulder surgery was reasonable and necessary?

CO at 2.

A Compensation Order (“CO”) issued on September 22, 2016, denying Claimant’s claim for relief. *Stubbs v. Carroll Manor Nursing and Rehab. Ctr.*, AHD No. 16-211 (September 22, 2016).

Claimant timely appealed the CO to the CRB by filing Claimant’s Application for Review and Memorandum in Support of the Application for Review (“Claimant’s Brief”). In her appeal Claimant asserts that the ALJ’s conclusion that Claimant’s right shoulder injury was not medically causally related to the work injury of May 25, 2015, was not based on substantial evidence and must be reversed. Claimant’s Brief at 3.

Employer opposed the appeal by filing Employer/Carrier’s Memorandum in Opposition to Claimant’s Application for Review (“Employer’s Brief”). In its opposition, Employer asserts the ALJ properly evaluated and rejected the treating physicians’ preference, properly determined the surgery Claimant underwent was not medically causally related to her work injury, and appropriately concluded that she is not entitled to temporary total disability benefits. Employer’s Brief at 6.

ANALYSIS

Claimant argues that the ALJ “improperly confused the issues of nature and extent with causal relationship” and thus, impermissibly used Employer’s IME opinions challenging the reasonableness and necessity of Ms. Stubbs’ surgery as evidence that the surgery was not causally related to her work injury. Claimant’s Brief at 7. Claimant argues further that the CO erroneously found that the Employer severed the presumption of causation through Dr. Riederman’s medical opinion, and thus misapplied the analysis of the presumption of compensability. We disagree.

Claimant argues:

... [T]he findings that the Employer severed the presumption of causation are not supported by substantial evidence, since Dr. Riederman failed to explain the anatomic basis behind his causation opinion. Dr. Levitt did not actually opine as to the causal relationship of Ms. Stubbs’ surgery to her work injury. Since the finding that Dr. Riederman’s opinion severed the presumption of causation is based upon conclusory statements, it is a mere scintilla of evidence. *See Con. Ed.*, 305 U.S. at 229.

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While Dr. Riederman did say that the surgery Ms. Stubbs had was not causally related to the work injury, Dr. Riederman did not explain why the surgery was not related. *See Baker, [v. Aramark, CRB No. 10-094 (January 23, 2012)] supra*, at *9. Dr. Riederman agreed that Ms. Stubbs suffered an injury to her AC Joint. EE at 27. Dr. Riederman thought Ms. Stubbs did not required the surgery because of a laek of “objective condition of the acromioclavicular joint...was identified”, without going on to explain what an objective condition was in light of the MRI’s demonstration of damage to that joint.

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[. . .] Dr. Riederman did not issue a specific and comprehensive report severing the presumption of compensability because his report did not explain how the need for surgery was not related to the injury to the right shoulder. *See Jackson*, 955 A.2d at 732. Furthermore, the Compensation Order's reliance on Dr. Levitt's reasonableness and necessity opinion was likewise clear error, since Dr. Levitt failed to render a firm and unambiguous opinion that Ms. Stubbs' request for right shoulder surgery was unrelated to the work injury, and thus reliance upon that opinion was erroneous. *See Reynolds*, 852 A.2d at 914.

Claimant's Brief at 8, 10.

Claimant argues that the ALJ erred in finding that Employer severed the presumption of compensability regarding causation through Dr. Riederman's opinion. Claimant argues that although Dr. Riederman did say that the Claimant's Mumford procedure was not casually related to the work injury, he failed to explain why the surgery was not related.

Citing to *Jackson v. DOES*, 955 A.2d 728, Claimant asserts:

. . . Dr. Riederman thought Ms. Stubbs did not require the surgery because of a lack of "objective condition of the acromioclavicular joint . . . was identified," without going on to explain what an objective condition was in light of the MRI's demonstration of damage to that joint. Dr. Riederman did agree that she was getting treatment to the shoulder, however, because of her subjective complaints of pain which he did not dispute as related to the work injury of May 25, 2015. Therefore, Dr. Riederman did not issue a specific and comprehensive report severing the presumption of compensability because his report did not explain how the need for surgery was not related to the injury to the right shoulder.

Claimant's Brief at 10.

Employer's argues in opposition:

The Employer produced substantial evidence to rebut the presumption of compensability. Dr. Rankin, Dr. Levitt and Dr. Riederman all felt after reviewing the Claimant's MRI's that she was not a surgical candidate. Furthermore, both Dr. Levitt and Dr. Riederman indicated that the Mumford procedure Claimant underwent was not medically causally related to the work injury.

Without the presumption of compensability, the Claimant failed to meet her burden that the surgery she underwent was medically causally related to her work injury.

Employer's Brief at 5.

Claimant's arguments are misplaced. The law is clear that to rebut the presumption of compensability, the employer must proffer 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. *Washington Post v. DOES and Raymond Reynolds*, 852 A.2d 909 (D.C. 2004) ("*Reynolds*").

In our review of the CO we find no error in the ALJ's conclusion that Dr. Manderson's opinion was sufficient to invoke the presumption of compensability on Claimant's behalf. Once triggered, the burden is upon the employer to rebut the presumption by bringing forth substantial evidence supporting that the disability in question did not arise out of and in the course of employment; the ALJ concluded that Employer severed the presumption of causation with Dr. Riederman's opinion.

After so concluding, the ALJ proceeded to weigh the evidence without reference to any presumption, and with the burden of proof by a preponderance of the evidence being placed upon Claimant. The ALJ summarized:

Employer relied on evidence from Dr. Rankin and the IME reports of Dr. Levitt and Dr. Riederman to rebut the presumption. Dr. Rankin indicated the MRI studies showed no surgical lesion and very little explanation for this protracted course of recovery. CE 2, p. 68. On September 15, 2015, Dr. Levitt disagreed with Dr. Manderson's surgical recommendation, stating "A 26 year old female who has grade 1 AC separation is not managed by excisional arthroplasty or Mumford procedure as Dr. Manderson is recommending." EE 6, p. 30. *Dr. Levitt stated Claimant's simple strain has resolved for the most part, and he found little pathology linked to the original injury. EE 6, p. 30. He attributed Claimant's clinical complaints to symptom exaggeration, stating Claimant has a very large functional overlay that contributes to improvement, and stated no further treatment was required.* Dr. Levitt disagreed with Dr. Manderson's treatment recommendation, stating there is no role clinically based whatsoever for considering a Mumford procedure (excisional arthroplasty) for a grade 1 AC separation in a 26 year old female. Dr. Levitt remarked the surgery was doomed to fail and permanently maim the patient and disable her for the rest of her career. *Dr. Levitt found no evidence of active musculoskeletal disease that requires treatment much less the basis for surgical consideration. Dr. Levitt stated Claimant has recovered fully from any injury that occurred at work on May 25, 2015. EE 6, p. 30.*

Similarly, Dr. Riederman stated Claimant suffered a soft tissue injury during the course of her employment on May 25, 2015, and he was in agreement with Dr. Rankin and Dr. Levitt that Claimant was not a surgical candidate. Dr. Riederman stated it was very unusual to treat a patient of Claimant's age with this surgical procedure. *Dr. Riederman stated "I do not believe any objective condition of the acromioclavicular joint of the right shoulder was identified that would be causally related to the injury of May 25, 2015." EE 5, p. 27. Dr. Riederman*

attributed Claimant's treatment to subjective complaints, which he described as excessive in view of the objective findings. Dr. Riederman placed Claimant at maximum medical improvement, stating she does not require additional medical care. EE 5, p. 2.] With the medical evidence from Dr. Levitt and Dr. Riederman, Employer has rebutted the presumption of compensability regarding medical causal relationship. Therefore, Claimant loses the benefit of the statutory presumption, and the record medical evidence must be weighed without further reference thereto.

CO at 6-7, (Emphasis added).

While we agree that the ALJ's discussion of Employer's medical evidence included a robust summary of Drs. Levin, Rankin and Riederman's opinion regarding the reasonableness and necessity of Claimant's Mumford procedure, we conclude that their IME opinions meet the standard set forth by the District of Columbia Court of Appeals in *Reynolds, supra*. It is undisputed that Drs. Levin, Rankin and Riederman are qualified medical experts who examined Claimant, reviewed Claimant's relevant medical records. Moreover, as mandated in *Reynolds*, the ALJ summarized the doctor's unambiguous statements in support of the conclusion that Claimant's work injury did not contribute to the alleged disabling condition, and that notwithstanding Claimant's MRIs, she was not surgical candidate.

We reject Claimant's assertion that the ALJ impermissibly relied upon a nature and extent analysis in concluding that Claimant did not meet her burden of proof regarding medical causation; our review of the CO did not reveal any analysis supporting this assertion. We conclude that the evidence relied upon by the ALJ to find that the presumption of compensability has been rebutted was sufficient to do so, and the ALJ's conclusion in that regard is affirmed.

CONCLUSION AND ORDER

The Administrative Law Judge's conclusion that Employer met its burden of severing the existing relationship between Claimants' alleged disability and the work-related accident is supported by substantial evidence in the record and is in accordance with the law. The September 22, 2016 Compensation Order is AFFIRMED.

So ordered.