

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



F. THOMAS LUPARELLO
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 14-097

DANA HALLMON,¹
Claimant-Petitioner,

v.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY,
Employer/Insurer-Respondent.

Appeal from a July 16, 2014 Compensation Order by
Administrative Law Judge Karen R. Calmeise
AHD No. 09-028, OWC No. 644460 & 635146

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2014 DEC 4 PM 10 22

Michael J. Kitzman for the Petitioner
Donna J. Henderson for the Respondent

Before LAWRENCE D. TARR, *Chief Administrative Appeals Judge* and MELISSA LIN JONES and
JEFFREY P. RUSSELL, *Administrative Appeals Judges*.

MELISSA LIN JONES for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

On March 31, 2002, Ms. Dana Hallmon slipped and fell at the circus. Ms. Hallmon injured her low back and left shoulder. In January 2003, Ms. Hallmon was released to modified duty with no lifting weights greater than 10-15 pounds, no repetitive lifting, and no prolonged standing or walking; however, she did not return to work until October 2006. When she did return to work it was to full duty.

The next month, on November 29, 2006, Ms. Hallmon was driving a bus for Washington Metropolitan Area Transit Authority ("WMATA"). That bus was side-swiped by another

¹ The caption of the July 16, 2014 Compensation Order on Remand spells the claimant-petitioner's name "Hollmon," but the evidence in the record and other filings in this matter spell the claimant-petitioner's name "Hallmon."

passenger bus. Ms. Hallmon reported injuries to her low back and right arm. She stayed off of work until April 3, 2007.

In late April 2007, Ms. Hallmon complained of right-sided back pain after pressing the brakes on a bus. After a week of driving her scheduled route, she left work because of pain.

As a result of her work-related accidents, Ms. Hallmon claimed entitlement to temporary total disability benefits from August 15, 2007 and causally-related medical expenses. The parties proceeded to a formal hearing to resolve the following issues:

1. Whether Claimant sustained an accidental injury arising out of and in the course of her employment on April 30, 2007.
2. Whether a medical causal relationship exists between Claimant's alleged mid back and right buttock pain and the November 29, 2006 work injury or the alleged April 30, 2007 work injury.
3. Whether Claimant gave Employer timely notice that she sustained an injury on April 30, 2007 pursuant to D.C. Code, as amended, §32-1513?
4. What is the nature and extent of Claimant's disability, if any?^[2]

In a Compensation Order dated July 31, 2009, an administrative law judge ("ALJ") ruled Ms. Hallmon had failed to prove she had injured herself on April 30, 2007. In addition, the ALJ ruled that although Ms. Hallmon had injured herself on November 29, 2006, she had not proven her entitlement to temporary total disability benefits.³

Both parties appealed the July 31, 2009 Compensation Order. Regarding the April 2007 injury, the Compensation Review Board ("CRB") reversed the ruling that Ms. Hallmon had not sustained an accidental injury on that date; on remand, the CRB directed the ALJ to properly apply the presumption of compensability. Regarding the November 2006 injury, the CRB reversed the ruling that WMATA had failed to overcome the presumption that Ms. Hallmon's disability is causally related because Dr. Johnson's independent medical examination report satisfied the *Reynolds* requirements.⁴ Nonetheless, the CRB affirmed the ruling that Ms. Hallmon is not entitled to temporary total disability because Ms. Hallmon's claim for wage loss benefits was premised upon testimony and medical reports tainted by a lack of credibility.⁵

² *Hollmon v. Washington Metropolitan Area Transit Authority*, AHD No. 09-028, OWC Nos. 644460 & 635146 (July 31, 2009), p. 2.

³ *Id.*

⁴ *Washington Post v. DOES*, 852 A.2d 909 (D.C. 2004).

⁵ *Hallmon v. Washington Metropolitan Area Transit Authority*, CRB No. 09-134, AHD No. 09-028, OWC Nos. 644460 & 635146 (October 12, 2011).

In a Compensation Order on Remand dated June 21, 2013, the ALJ denied Ms. Hallmon's claim for relief. The ALJ ruled that Ms. Hallmon had sustained an accidental injury to her back while driving a bus in April 2007 and that Ms. Hallmon had given timely notice of that accidental injury; however, the ALJ ruled neither the 2006 nor the 2007 work-related accidents are medically causally related to Ms. Hallmon's claimed injury because the medical opinions are not based on a complete factual medical background, and as such, they did not invoke the presumption of compensability.⁶

Another appeal ensued, and the CRB remanded the matter. Regarding the November 29, 2006 injury, because the opinion of WMATA's independent medical examination physician is sufficient to rebut the presumption of compensability, the CRB directed the ALJ to weigh the evidence to determine whether or not Ms. Hallmon has proven a causal relationship. Neither party appealed the rulings that Ms. Hallmon suffered an accidental work injury on April 30, 2007 and that she gave timely notice of that injury; the CRB directed the ALJ to apply the presumption of compensability to this injury to assess causal relationship.⁷

In response, the ALJ issued the July 16, 2014 Compensation Order on Remand. The ALJ denied Ms. Hallmon's request for benefits.⁸

On appeal, Ms. Hallmon argues the ALJ erred in finding that Ms. Hallmon failed to invoke the presumption of compensability. Ms. Hallmon also contends neither WMATA's evidence nor her 2002 injury is sufficient to rebut the presumption of compensability. Finally, Ms. Hallmon asserts she is entitled to wage loss benefits because she is restricted from returning to her pre-injury position and WMATA has not offered her alternative employment. For these reasons, Ms. Hallmon requests the CRB reverse the July 16, 2014 Compensation Order on Remand.

In opposition, WMATA asserts the July 16, 2014 Compensation Order on Remand is supported by substantial evidence in no small part because when weighing the evidence, "[n]othing can save Ms. Hallmon from her failure to accurately disclose her past medical history and her misleading statements to the physicians who examined her."⁹ WMATA requests the CRB affirm the July 16, 2014 Compensation Order on Remand.

⁶ *Hollmon v. Washington Metropolitan Area Transit Authority*, AHD No. 09-028, OWC Nos. 644460 & 635146 (June 21, 2013).

⁷ *Hallmon v. Washington Metropolitan Area Transit Authority*, CRB No. 13-088, AHD No. 09-028, OWC Nos. 644460 & 635146 (October 18, 2014).

⁸ *Hollmon v. Washington Metropolitan Area Transit Authority*, AHD No. 09-028, OWC Nos. 644460 & 635146 (July 16, 2014).

⁹ WMATA's Opposition to Application for Review of the Compensation Order on Remand, unnumbered p. 1.

ISSUES ON APPEAL

1. Did the ALJ comply with the directives in the October 18, 2013 Decision and Remand Order?
2. Is the July 16, 2014 Compensation Order on Remand supported by substantial evidence and in accordance with the law?

ANALYSIS¹⁰

NOVEMBER 29, 2006 CAUSAL RELATIONSHIP

Pursuant to the October 18, 2013 Decision and Remand Order,

Insofar as the presumption was deemed invoked as to a causal relationship between the November 29, 2006 work injury and the claimed current disability, the issue was returned because the CRB determined that Employer's independent medical evaluation (IME) by Dr. Johnson was sufficient to rebut the presumption as it met the test enunciated by the DCCA in *Reynolds*. [Footnote omitted.] As the record evidence has not changed, the determination that the presumption has been rebutted becomes the law of the case [footnote omitted] and on remand the ALJ need only weigh the evidence for this accident.^[11]

Rather than just weigh the evidence to assess whether there is a causal relationship between the November 29, 2006 injury and Ms. Hallmon's disability, the ALJ addressed whether WMATA had rebutted the presumption of compensability:

As rebuttal evidence the the [*sic*] Employer submits the IME evaluation report of Dr. David Johnson, orthopedic surgeon, dated December 3, 2007. Dr. Johnson examined the Claimant, documented her subjective complaints, MRI test results, and narrative of her medical history. In the report Dr. Johnson opined that the Claimant's neck, shoulder and low back pain was not related to the November 2006 injury. Dr. Johnson reviewed the August 2007 MRI and opined that the 2006 injury had resolved due to the fact that she had returned to work full duty.

¹⁰ 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 District of Columbia Workers' Compensation Act, as amended, D.C. Code §32-1501 to 32-1545. 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).

¹¹ *Hallmon v. Washington Metropolitan Area Transit Authority*, CRB No. 13-088, AHD No. 09-028, OWC Nos. 644460 & 635146 (October 18, 2014), p. 5.

Dr. Johnson also opined that the 2007 work injury was an aggravation of the pre-existing degenerative disc disease.^[12]

Then, relying upon Dr. Johnson's opinion and Dr. Rosenthal's opinion that Ms. Hallmon's symptoms are not related to any work-related event or activity, the ALJ determined WMATA had rebutted the presumption of compensability. This step was not required on remand, but its inclusion in the Compensation Order is harmless error.

APRIL 30, 2007 CAUSAL RELATIONSHIP

Rather than assess both injuries collectively, pursuant to the October 18, 2013 Decision and Remand Order, the CRB directed the ALJ to apply the presumption of compensability to each injury separately:

While it was pertinent for the ALJ to highlight the impact the deficiencies in Claimant's medical history as related to her treating physicians and their resulting diagnoses, it [] also requires an analysis of the impact of those medical opinions that essentially found that preexisting conditions had resolved. Claimant has asserted that her current disability is medically causally related to either the 2006 or 2007 work injury. The medical evidence treats the injuries separately, with the earlier incident possibly having resolved by the time second injury. The ALJ needs to apply the presumption of compensability separately as to each in order to reach a proper resolution in this matter. We return this matter to the ALJ in order to do so.^[13]

If the ALJ determined that the April 2007 injury is compensable, an analysis of the nature and extent of Ms. Hallmon's disability as a result of that injury was required.

When evaluating the April 30, 2007 injury, the ALJ determined Ms. Hallmon's testimony that "she felt low back pain while driving a bus after she pressed the brake pedals on the bus [and] the medical reports of Dr. John Byrne [opining] that she had right sided back pain as a result of pressing hard on the bus brakes"¹⁴ sufficed to invoke the presumption of compensability. Thus, contrary to Ms. Hallmon's argument that the ALJ ruled the presumption of compensability had not been invoked, the ALJ actually ruled it had, and there is no error in this ruling.

The ALJ then ruled that Dr. Rosenthal's opinion "that Claimant's current symptoms were not caused by her driving the bus but that her condition is due to the degenerative disease of the

¹² *Hollmon v. Washington Metropolitan Area Transit Authority*, AHD No. 09-028, OWC Nos. 644460 & 635146 (July 16, 2014), p. 6.

¹³ *Hallmon v. Washington Metropolitan Area Transit Authority*, CRB No. 13-088, AHD No. 09-028, OWC Nos. 644460 & 635146 (October 18, 2014), p. 5.

¹⁴ *Hollmon v. Washington Metropolitan Area Transit Authority*, AHD No. 09-028, OWC Nos. 644460 & 635146 (July 16, 2014), p. 6.

lumbar spine”¹⁵ rebutted the presumption of compensability. Pursuant to the requirements in *Reynolds* that a physician’s opinion can rebut the presumption of compensability if the physician has performed a personal examination of the injured worker, has reviewed the relevant medical records, and has stated an unambiguous opinion contrary to the causal relationship presumption,¹⁶ the CRB agrees with the ALJ that this evidence is sufficient to rebut the presumption of compensability.

WEIGHING THE EVIDENCE

Contrary to Ms. Hallmon’s argument that the ALJ relied upon the severity of Ms. Hallmon’s 2002 injury to deny her claim for wage loss benefits, when weighing the evidence, the ALJ found the same problems for both dates of injury, namely Ms. Hallmon is not credible and the medical evidence based upon her subjective complaints and incomplete medical history also is not credible:

In another example of revised history, the medical records show that Claimant remained off work following the November 2006 bus collision incident on the recommendation of Dr. Phillips for over five months through to April 3, 2007. However, at an Employer scheduled, Independent Medical Examination, dated August 8, 2007, when asked about the November 2006 claimed injury, Claimant denied back problems and reported that she never had any problems in November of 2006. (EE 4, IME report of Dr. Mark Rosenthal)

Although Claimant testified she provided information to Dr. Byrne that she had a prior back injury that caused her to be unable to work for several years, Dr. Byrne’s medical records are notably absent of any reference to Claimant’s 2002 slip and fall injury. (HT 59) Dr. Byrne’s initial report dated December 12, 2006, notes that the Claimant “currently has a history of some heart disease”. (CE 2) He also notes that she was “otherwise healthy”. (CE 2)

In a deposition dated January 2009, Dr. Meyers opined that Claimant’s restrictions from work and current lumbar disc symptoms were related to the November 2006 “motor vehicle accident”. (CE 5) However in deposition, Dr. Meyers confirmed that he did not review any direct medical reports that pre-dated the 2006 incident. (CE 5, pg 45) Furthermore, in the initial orthopedic consultation report Dr. Meyer noted that Claimant’s “Past medical history and review of systems is otherwise noncontributory for serious injuries, illnesses, or surgery.” (CE 1, pg 26)

Conversely, when she underwent an Independent Medical Examination by Dr. Mark Rosenthal, orthopedist, on August 8, 2007, Claimant admitted she had a

¹⁵ *Id.* at p. 7.

¹⁶ *Washington Post, supra.*

slip and fall on stairs at the Circus but she minimized the accident and informed him that she had no back injury from the November 2006 incident. (EE 4, EE 6, pg 8)

The 2002, 2006, and 2007 incidents involve Claimant's complaints of injury to the same relative body area, her back and torso. Claimant's 2002 injury was to her back and lumbar spine. (EE 15 A) The medical treatment following the 2006 work incident was for complaints to Claimant's lumbar spine, neck, mid and low back. (CE 2) Claimant also underwent medical treatment for complaints of neck and low back pain and stiffness following her report of having difficulty with the bus brakes in April 2007. (CE 1) The Claimant's supporting medical evidence is dependent on her subjective narration of the 2006 and 2007 work incidents. Due to the Claimant's selective narration or reports of her medical history to the treating and evaluating physicians, the medical opinions expressed in the reports are not based on a complete factual medical background.

In general, Claimant's testimony at the Formal Hearing was confusing when responding to questions regarding her medical history and treatment for the 2002 non-work related accidental injury and the 2006, and the 2007 work related incidents, however, the discrepancies and omissions in the medical records are most telling. I find Claimant did not truthfully provide her complete medical history to the treating and reviewing physicians.

Contrary to Claimant's testimony at the Formal Hearing, I find the medical opinions submitted in support of Claimant's claim do not show that the physicians had the benefit of full review of Claimant's 2002 through 2006 medical records. Claimant provided incomplete and incorrect information about her medical and physical condition thus their opinions, as to the causality of Claimant's current complaints and disability are not based on a full history of her medical treatment. Employer's medical evidence, on the other hand, indicated persuasively, Claimant's current low back condition and symptoms are not medically causally related to the claimed work incidents.^[17]

Credibility determinations, like all other findings of fact, must be supported by substantial evidence in the record when reviewed as a whole.¹⁸ When assessing credibility in this case, the ALJ thoroughly documented the reasons the evidence is not credible, and because the ALJ's assessment flows both from the evidence in the record, there is no reason to depart from the deference afforded such findings¹⁹ or the conclusions which naturally flow from those findings.

¹⁷ *Hollmon v. Washington Metropolitan Area Transit Authority*, AHD No. 09-028, OWC Nos. 644460 & 635146 (July 16, 2014), pp. 8-10.

¹⁸ *See Davis v. Western Union Telegraph*, Dir. Dkt. 88-84, H&AS No. 87-751, OWC No. 098216 (March 4, 1992).

¹⁹ *Dell v. DOES*, 499 A.2d 102, 106 (D.C. 1985).

CONCLUSION AND ORDER

The ALJ complied with the directives in the October 18, 2013 Decision and Remand Order, and the July 16, 2014 Compensation Order on Remand is supported by substantial evidence and is in accordance with the law. The July 16, 2014 Compensation Order on Remand is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

/s/ Melissa Lin Jones

MELISSA LIN JONES

Administrative Appeals Judge

December 4, 2014

DATE