

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Department of Employment Services

VINCENT C. GRAY  
MAYOR



LISA M. MALLORY  
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 12-088

DONNA Y. EARLY,  
Claimant-Petitioner,

v.

SPECIALTY HOSPITALS OF AMERICA and CHARTIS INSURANCE,  
Employer/Carrier-Respondent.

Appeal from a Compensation Order by  
The Honorable Gerald D. Roberson  
AHD No. 12-096, OWC No. 673088

DEPT. OF EMPLOYMENT  
SERVICES  
COMPENSATION REVIEW  
BOARD  
2012 OCT 24 PM 1 31

Matthew J. Peffer, Esquire for the Petitioner  
Joel E. Ogden, Esquire for the Respondent

Before MELISSA LIN JONES, LAWRENCE D. TARR, and HEATHER C. LESLIE,<sup>1</sup> *Administrative Appeals Judges*.

MELISSA LIN JONES, *Administrative Appeals Judge*, for the Compensation Review Board.<sup>2</sup>

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

On August 3, 2003 while working as a patient care technician for Specialty Hospitals of America, Ms. Donna Y. Early injured her back. Initially, she sought treatment from her primary care physician, Dr. Gabriel Jaffe.

<sup>1</sup> 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).

<sup>2</sup> Jurisdiction is conferred upon the CRB pursuant to D.C. Code §§32-1521.01 and 32-1522 (2004), 7 DCMR §250, *et seq.*, and the Department of Employment Services Director's Directive, Administrative Policy Issuance 05-01 (February 5, 2005).

Physical therapy prescribed by Dr. Jaffe did not help, and Ms. Early was referred to a pain management specialist, Dr. Sepideh Haghpanah. On November 9, 2010, Dr. Haghpanah performed an epidural injection which provided Ms. Early with relief for 3 days. Dr. Haghpanah found Ms. Early did not respond to physical therapy, medication, or the epidural injection, but Dr. Haghpanah continued to provide follow-up care.

Ms. Early also obtained treatment from Dr. Andrew Siekanowicz and Dr. Reza Ghorbani. Dr. Ghorbani recommended a series of lumbar epidural steroid injections.

Specialty Hospitals of America denied authorization for the epidural injections, and the parties proceeded to a formal hearing. On May 7, 2012, an administrative law judge (“ALJ”) denied Ms. Early’s request for authorization for this medical treatment because it is not reasonable and necessary.<sup>3</sup>

On appeal, Ms. Early asserts the ALJ’s reasons for rejecting her treating physician’s opinion in favor of the opinion in the utilization review report is not supported by substantial evidence because the utilization review report does not adequately explain why epidural injections are not reasonable and necessary. As a result, Ms. Early requests we reverse the May 7, 2012 Compensation Order.

In response, Specialty Hospitals of America argues Ms. Early merely has offered her own interpretation of the medical evidence as grounds for reversal. Specialty Hospitals of America requests we affirm the Compensation Order.

#### ISSUE ON APPEAL

1. Did the ALJ properly consider the utilization review report such that the May 7, 2012 Compensation Order is supported by substantial evidence and is in accordance with the law?

#### ANALYSIS<sup>4</sup>

When the issue for resolution is reasonableness and necessity of medical treatment, the utilization review process is mandatory.<sup>5</sup> 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.<sup>6</sup> The ALJ

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<sup>3</sup> *Early v. Specialty Hospitals of America*, AHD No. 12-096, OWC No. 673088 (May 7, 2012).

<sup>4</sup> 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 of 1979, D.C. Code, as amended, §32-1501 *et seq.* 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).

<sup>5</sup> See *Gonzalez v. UNICCO Service Company*, CRB No. 07-005, AHD No. 06-155, OWC No. 604331 (February 21, 2007).

<sup>6</sup> See *Children’s National Medical Center v. DOES*, 992 A.2d 403 (D.C. 2010).

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.<sup>[7]</sup>

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.<sup>8</sup>

In Ms. Early's case, the ALJ thoroughly reviewed the medical evidence and credited the opinion that Ms. Early's clinical findings do not support the medical necessity of epidural injections:

On October 4, 2011, Dr. Trenton Gause, an orthopedic surgeon, performed the peer review to address the request for transforaminal epidural steroid injections (ESI) L3-4, L4-5 and L5-S1. He reviewed a number of records which provided history related to mechanism of the injury and subsequent medical treatment. He noted Claimant described low back pain traveling to her legs on September 19, 2011 in connection with lifting a nursing home patient on August 3, 2010. Claimant reported benefiting from one ESI on April 26, 2011, and sought another injection. According to Dr. Gause, the evidence revealed Claimant had painful bilateral straight leg raising, but strength, sensation and reflexes were normal for the lower extremities, and her diagnosis included unspecified nerve root and plexus disorder, lumbago, spinal stenosis of the lumbar region, sciatic [*sic*], nerve root compression lumbar, lumbar disc replacement with herniation, and lumbosacral spondylosis without myelopathy. Dr. Gause indicated the criteria used to authorize epidural injections required objective evidence of radiculopathy documented on physical examination. The criteria also states no more than two nerve root levels should be injected using transforaminal blocks, and the patient should demonstrate 50-70% pain relief for six to eight weeks before repeated blocks. Dr. Gause stated the purpose of ESI is to reduce pain and inflammation, thereby facilitating progress in more active treatment programs, reduction of medication use and avoiding surgery, but this treatment alone offers no significant long-term functional benefit. Dr. Gause found the treatment to be unreasonable and unnecessary stating the clinical findings do not appear to support the medical necessity of the treatment.<sup>[9]</sup>

After reviewing additional medical evidence from Dr. Siekanowicz and Dr. Ghorbani, the ALJ determined

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<sup>7</sup> *Green v. Washington Hospital Center*, CRB No. 08-208, AHD No. 07-130, OWC No. 628552 (June 17, 2009).

<sup>8</sup> *Haregewoin v. Loews Washington Hotel*, CRB No. 08-068, AHD No. 07-041A, OWC No. 603483 (February 19, 2008). The Compensation Review Board's Decision and Order transposes the claimant's name; the claimant's name is Haregewoin Desta not Desta Haregewoin. See *Desta v. Loew's Washington Hotel*, AHD No. 07-041A, OWC No. 603483 (December 7, 2007).

<sup>9</sup> *Early, supra*, at p. 6.

Based on the utilization review report and the recent diagnostic testing, the medical evidence does not support the reasonableness and necessity of the proposed epidural injections. The treating physicians have largely recommended the treatment based on the finding of lumbar radiculopathy. Claimant underwent diagnostic testing twice to address her radicular complaints. Claimant underwent an EMG study on May 11, 2011 due to persistent lower limb pain and to rule out lumbar radiculopathy. The test provided evidence of a possible resolved/resolving bilateral lumbar radiculopathy involving the anterior root rami at the L5. EE 7, p. 23. The recent testing of April 25, 2012 revealed Claimant had normal electrodiagnostic findings, and there was no evidence of lumbar radiculopathy. EE 9, p. 3. These diagnostic findings appear to provide sufficient medical rationale to support the conclusions of the utilization review report. Dr. Gause noted the criteria used to authorize the injections required objective documentation of radiculopathy. The recent EMG/NCS report clearly states Claimant does not have any evidence of radiculopathy. Similarly, the MRI report does not offer any corroborative evidence to support Claimant's radicular complaints because the radiologist found no evidence of nerve root compromise. Claimant had a MRI of the lumbar spine on October 26, 2010, and the radiologist found no significant compromise of the spinal canal. EE 8, p. 24.

The fact Claimant did not previously respond to an epidural injection only reinforces the conclusions of the peer reviewer. On November 9, 2010, Dr. Haghpanah performed left L4 transforaminal epidural injection under fluoroscopic guidance. EE 5, p. 14. Following this injection, Dr. Haghpanah reported Claimant received relief for 3 days after the injection before returning to her baseline pain. Dr. Haghpanah refused to provide additional injections, stating "No ESI recommended since she is back to baseline pain after 3 days." EE 4, p. 12. Dr. Siekanowicz and Dr. Ghorbani failed to offer an explanation why they disagreed with the assessment of Dr. Haghpanah. Similarly they did not offer an opinion regarding the utilization review report. Their treatment records do not reveal whether they had an opinion regarding the reasonable and necessity [*sic*] of the proposed epidural injections. The record does not contain evidence which would discredit the findings of the utilization review report. As such, the medical evidence supports the opinion of Dr. Gause which establishes the proposed epidural injections are not reasonable and necessary to treat Claimant's condition.<sup>[10]</sup>

We find no error or inadequacy in the ALJ's application of the law to Ms. Early's case. In essence, Ms. Early requests we re-weigh the evidence in her favor; however, such a request is beyond the authority of this tribunal.<sup>11</sup>

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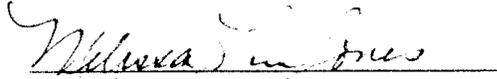
<sup>10</sup> *Id.* At pp. 7-8.

<sup>11</sup> *Marriott, supra.*

CONCLUSION AND ORDER

The ALJ properly considered the utilization review report in the context of Ms. Early's request for authorization for epidural injections. The May 7, 2012 Compensation Order is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:



MELISSA LIN JONES  
Administrative Appeals Judge

October 24, 2012

DATE