

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



ODIE DONALD II
ACTING DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 16-128

DORA WASHINGTON,
Claimant-Petitioner,

v.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY and
Self-Insured Employer-Respondent.

Appeal from an August 31, 2016 Compensation Order
by Administrative Law Judge Gregory P. Lambert
AHD No. 16-164 OWC No. 723339

(Decided February 16, 2017)

Matthew Peffer for Claimant
Mark H. Dho for Employer

Before GENNET PURCELL, JEFFREY P. RUSSELL and LINDA F. JORY, *Administrative Appeals*
Judges.

GENNET PURCELL for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

Dora Washington ("Claimant") has worked for the Washington Metropolitan Area Transit Authority ("Employer") as a bus operator since October of 2007. Claimant's duties included driving the bus and sitting for long periods of time. In 1988 Claimant was involved in a car accident during which she sustained a fracture to her cervical spine at C-2.

On December 16, 2014, Claimant was injured during a low-speed collision when the bus she was driving was hit by a car. Claimant's body did not make impact with the interior of the bus during the collision. However she claimed to have injured her neck, the area around her left shoulder blade, her spine and left knee.

On January 15, 2015, Claimant received treatment for her injuries from Dr. Shaheer Yousaf. Claimant was diagnosed with a strain and sprain of her thoracic, cervical and lumbar spines, as

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2017 FEB 16 PM 2 54

well as facet injury syndrome. X-rays taken on January 29, 2015, revealed evidence of a congenital fusion in her cervical spine and various indicators of age-related degradation.

Claimant underwent ten sessions of physical therapy and a series of epidural injections. Dr. Yousaf diagnosed Claimant with cervical radiculopathy and left shoulder subacromial impingement and restricted her from returning to work from January 15, 2015, to January 31, 2015, and again from February 15, 2015, to February 28, 2015. Claimant was again restricted from March 26, 2015, to April 31, 2015. On April 27, 2015, and again on June 1, 2015, Dr. Yousaf placed her on “disabled” status indefinitely.

On April 16, 2015, Claimant was examined by Dr. Stuart Gordon for an independent medical examination on Employer’s behalf. Dr. Gordon reported observing abnormal illness behavior and noted that although Claimant had degenerative disease throughout the spine, he found no intrinsic disorder to the lumbar spine or the left shoulder related to the December 16, 2014 injury. Dr. Gordon opined that Claimant could work return to work full time, full duty.

Employer made voluntary payments of benefits to Claimant from December 19, 2014, through August 24, 2015.

On August 24, 2015, Claimant returned to work and worked for approximately two months. On October 13, 2015, Claimant suffered symptoms of burning, discoloration and locking in her fingers while eating at a restaurant. Later that night, Claimant also experienced tingling and burning on the left side of her body. Claimant also sought follow up care at Charles Regional Medical Center where medical records reflect that her complaints and symptoms were not work-related.

Dr. Yousaf took Claimant off work as a result of the October 13, 2015 occurrence. On December 14, 2015, Dr. Yousaf changed Claimant’s work restriction to allow for light duty work, with no lifting, pulling, pushing, or carrying.

On December 17, 2015, Dr. Gordon opined that Claimant could return to full duty work without restrictions as her October 13, 2015 complaints were not medically-causally related to the December 16, 2014 workplace injury. Claimant attempted to return to work and passed an Employer return-to-work examination on December 30, 2015, but did not complete her work duties on that day due to recurring symptoms of pain.

Claimant returned to work on May 5, 2016, after again clearing an Employer return-to-work fitness examination.

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 (“TTD”) benefits from October 14, 2015, to May 5, 2016, the payment of outstanding medical bills and interest on accrued benefits. The issues as described by the ALJ to be decided at the hearing were:

1. Is there a medical causal relationship?

2. What is the nature and extent of Claimant's disability, if any?

CO at 2.

A Compensation Order ("CO") issued on August 31, 2016. In the CO, the ALJ found that Claimant had adduced sufficient evidence to invoke the statutory presumption of compensability, that Employer had adduced sufficient evidence to overcome that presumption, and concluded that Claimant failed to prove by a preponderance of the evidence that there was a medical-causal relationship between her claimed disabling condition and the workplace accident on December 16, 2014. Claimant's claim for TTD benefits from October 14, 2015, to May 5, 2016, and her request for the payment of outstanding medical bills and interest on accrued benefits were denied. *Washington v. WMATA*, AHD No. 16-164 (August 31, 2016).

Claimant timely appealed the CO to the Compensation Review Board ("CRB") by filing Claimant's Application for Review and Memorandum of Points and Authorities in Support of Application for Review ("Claimant's Brief"). In her appeal Claimant asserts the CO's finding and conclusions are not based on substantial evidence and must be reversed. Claimant's Brief at 1-2.

Employer opposed the appeal by filing Employer's Opposition to Claimant's Application for Review ("Employer's Brief"). In its opposition, Employer asserts the CO in this matter is in accordance with prevailing law, supported by substantial evidence in the record and should be affirmed. Employer's Brief at 11.

ANALYSIS

Claimant first argues that the ALJ erred in finding that the Employer's evidence successfully rebutted the presumption of compensability and further, that the CO's rejection of Claimant's treating physician, Dr. Yousaf's, medical evidence in favor of Dr. Gordon's medical testimony was not based on substantial evidence and must be reversed.

Claimant asserts:

The Compensation Order relied upon a superficial statement from Dr. Gordon to find the presumption of compensation was rebutted, and the Compensation Order's analysis on Dr. Gordon's medical records discussion of causal relationship is likewise superficial. *See Baker [v. Aramark]*, CRB No. 10-094 (January 23, 2013), *supra*, at *9. The Compensation Order does not identify which one of Dr. Gordon's comments was firm and unambiguous in finding that Ms. Washington's disability from December 31, 2015 to May of 2015, which was caused by a flare-up of Ms. Washington's injury while she was driving the bus route when she attempted to return to work on that date. *See Jackson*, 955 A.2d at 732. There is a reason the Compensation Order does not make this identification: because Dr. Gordon never opined as to the causation of the flare-up kept Ms. Washington disabled. Dr. Gordon states in his December 17, 2015 Report that Ms. Washington's symptoms causally related to the work injury of December 16, 2014 had resolved, but he does not opine as to the cause of the flare-up that took place two weeks after he saw Ms. Washington and stated she could return to work

at full-duty. Thus, the substantial evidence in the record does not support the Compensation Order's finding that Dr. Gordon issued a firm and unambiguous causation statement regarding the December 30, 2015 flare-up when she tried to return to work after being release is required under D.C. Law. *See Reynolds*, 852 A.2d at 914. [*Washington Post v. DOES and Raymond Reynolds*, 852 A.2d 909 (D.C. 2004)].

Claimant's Brief at 9-10.

Claimant argues that the CO impermissibly relied upon a "superficial statement" from Dr. Gordon and does not identify which statement was "firm and unambiguous" in finding that the presumption was rebutted. We disagree.

First, despite asserting that Dr. Gordon's opinion fails to meet the *Reynolds* standard because it is insufficiently "firm and unambiguous", the only specific complaint raised in Claimant's Brief concerning the opinion was that it was rendered prior to what Claimant contends was a "flare up" of the work injury. Claimant posits that since Dr. Gordon saw her prior to her alleged "flare up", his opinion is insufficient to overcome the presumption.

However, as the ALJ summarized, Dr. Gordon expressed the unambiguous opinion that Claimant's work-related injury had resolved by the time of his April 16, 2015 IME. While the fact that Dr. Gordon did not re-examine Claimant after her alleged October 13, 2015 flare up may be a reason to give less weight to his IME opinion, it does not negate the fact that Dr. Gordon previously opined that Claimant's December 16, 2014 work-related injury had resolved. Moreover, it allows for the reasonable inference that even if Claimant's later arising complaints are genuine, they are causally unrelated to the work injury because pursuant to Dr. Gordon's IME, as of April 16, 2015, Claimant's work-injury had completely resolved.

We find no error in the ALJ's conclusion that Dr. Gordon's opinion was sufficient to overcome the presumption that any complaints arising after the IME are related to the work-injury.

After so concluding, the ALJ proceeded to re-weigh the evidence without reference to any presumption, and with the burden of proof by a preponderance of the evidence being placed upon Claimant. Although Claimant acknowledges that this is the proper course to take once the presumption has been overcome she argues that the ALJ impermissibly accepted Dr. Gordon's opinion over that of the treating physician in derogation of the treating physician preference. Claimant argues further, that the reasons given for accepting Dr. Gordon's opinion and rejecting Dr. Yousaf's are not supported by substantial evidence.

In weighing the evidence by the preponderance standard to determine whether there was sufficient support to establish a medical-causal relationship between Claimant's complaints and the December 2014 accidental injury, the ALJ concluded there was not. The CO reasoned:

To the extent that [Claimant's] claim rests upon an injury to her left knee or lower back, the supporting arguments are rejected. The left knee complaints resolved before the claimed period of disability. HT at 62, 67-68; CE 2; *see also* EE 1 at 3

(‘denies any issue with her left knee’) similarly, her back complaints resolved before the event at the restaurant, which marks the beginning of the claimed period of disability. HT at 67-68.

Evidence from a treating physician may be rejected only after an explanation is provided addressing why it is rejected. *See generally Jackson*, 979 A.2d 43. Although Dr. Yousaf’s opinion initially appears reliable, review of the evidence reveals inconsistencies and omissions that support its rejection.

CO at 5.

After citing this jurisdiction’s preference for treating physician opinions over those of non-treating physicians as discussed in *Jackson v. DOES*, 979 A.2d 43 (D.C. 2009), the ALJ identified several reasons for rejecting Dr. Yousaf’s opinion. The ALJ noted that Dr. Yousaf’s opinion was based on incomplete information, and that it did not account for the October 13, 2015 restaurant-related incident. Moreover, the ALJ noted that Dr. Yousaf’s opinion did not indicate that he was aware of Claimant’s emergency room visit on that day, and contained additional notation inaccuracies relating to basic medical information that indicated a lack of attentiveness on the part of Dr. Yousaf, and an overall lack of medical specificity throughout his IME, as a whole.

In rejecting Dr. Yousaf’s opinion the ALJ instead relied on the opinion of Dr. Gordon and in comparing and crediting his opinion over Dr. Yousef’s opinion the ALJ stated:

In comparison, Dr. Gordon’s IME reports are reliable. After a physical examination of [Claimant] and review of her records, Dr. Gordon opined in December 2015 that [Claimant’s] complaints were degenerative or otherwise unrelated to her workplace injury. *See* EE 1. In April 2015, her complaints of cervical spinal pain were “in a nonanatomic fashion.” EE 1 at 9. Her thoracic and lumbar spinal pain was “diffuse [and] in a nonanatomic fashion.” EE 1 at 9. She showed “volitional restriction” upon examination; upon thoracolumbar examination, she “tolerate[d] full range of motion when distracted.” EE 1 at 9. Similarly, she volitionally restricted herself and “pull[ed] away and grimace[d] with specific testing” during his examination of her shoulder. EE 1 at 9. “I do not,” wrote Gordon, “relate her current complaints to the date of injury. In my opinion, her current complaints are related to abnormal illness behavior and degenerative disease.” EE 1 at 10. Dr. Gordon’s IME reports, which do not carry significant indicia of unreliability and present clear medical opinions, are more reliable than Dr. Yousaf’s.

CO at 6.

The ALJ’s rejection of the treating physician’s opinion is supported by substantial evidence in the record. As referenced above, Dr. Gordon notes his opinion and diagnosis of Claimant as exhibiting abnormal illness behavior and degenerative disease. While not strategically located in the paragraph of the CO referencing Employer’s rebuttal evidence, the ALJ sufficiently details

his findings crediting the Dr. Gordon's opinion throughout the CO; the ALJ's analysis meets the standard of set forth in *Reynolds*.

We affirm the CO's conclusion that Employer's medical evidence was sufficient to rebut presumption of causation and find that the ALJ's determination that Claimant failed to prove by the preponderance of the evidence that there was a medical causal relationship between her complaints during the claimed period and the workplace accident on December 16, 2014, is supported by substantial evidence. We affirm the CO.

CONCLUSION AND ORDER

The August 31, 2016 Compensation Order is **AFFIRMED**.

So ordered.