

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA M. MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 11-027

EFRAIN LOPEZ,

Claimant-Petitioner,

v.

C.J. COAKLEY CO., INC. AND ZURICH AMERICAN INSURANCE COMPANY,

Employer/Carrier-Respondent.

Appeal from a Compensation Order by
Administrative Law Judge Belva D. Newsome
AHD No. 01-149C, OWC No. 564522

Michael J. Kitzman, Esquire, for the Petitioner
Charles J. O'Hara, Esquire, for the Respondent

Before: HENRY W. MCCOY, MELISSA LIN JONES, and LAWRENCE D. TARR, *Administrative Appeals Judges*.

HENRY W. MCCOY, *Administrative Appeals Judge*, for the Compensation Review Panel.

DECISION AND REMAND ORDER

JURISDICTION

Jurisdiction is conferred upon the Compensation Review Board (CRB) pursuant to D.C. Official Code §§ 32-1521.01 and 32-1522 (2004), 7 DCMR § 230, et seq., and the Department of Employment Services Director's Directive, Administrative Policy Issuance 05-01 (February 5, 2005).

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OVERVIEW

On October 13, 2000, Claimant-Petitioner (Petitioner) sustained an injury to his back and right knee while lifting and moving a box at work. After receiving initial treatment, Petitioner ultimately came under the care of Dr. Robert Layfield who treated him for his right knee condition and Dr. Theresa Carlini who treated him primarily with regard to his complaints of low back pain.

Under Dr. Carlini's care, Petitioner was treated with muscle relaxants, physical therapy, sacroiliac joint steroid injections, and, lumbar facet block injections with varying degrees of relief in his low back pain. Dr. Carlini has now recommended a lumbar steroid epidural block, for which Employer-Respondent (Respondent) has denied approval.

After a hearing where Petitioner sought authorization for the denied treatment, the presiding Administrative Law Judge (ALJ) denied the claim for relief whereby she determined that his lumbar pain was not medically causally related to the work injury and thereby concluded that the requested epidural steroid injections were not reasonable or necessary. *Lopez v. C.J. Coakley Co., Inc.*, AHD No. 01-149C, OWC No. 564522 (March 11, 2011) (CO). Petitioner filed a timely appeal, with Respondent filing an opposition.

On appeal, Petitioner argues the ALJ committed errors by improperly rejecting the opinion of his treating physician and finding no medical causal relationship and in finding the recommended treatment was not reasonable or necessary. In opposition, Respondent counters that the ALJ's determination of no causal relationship is supported by substantial evidence and should be affirmed.

ANALYSIS

The scope of review by the CRB is limited to making a determination as to whether the factual findings of the appealed Compensation Order are based upon substantial evidence in the record and whether the legal conclusions drawn from those facts are in accordance with applicable law. *See* D.C. Workers' Compensation Act of 1979, as amended, § 32-1501 *et seq.*, at § 32-1521.01 (d)(2)(A). "Substantial evidence", as defined by the District of Columbia Court of Appeals, is such evidence as a reasonable person might accept to support a particular conclusion. *Marriott International v. D.C. Dept. of Employment Services*, 834 A.2d 882 (D.C. 2003). Consistent with this standard of review, the CRB and this Review Panel are constrained to uphold a Compensation Order that is supported by substantial evidence even if there is also 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*, 834 A.2d at 885.

Turning to the case under review, Petitioner initially argues that the ALJ committed error by improperly rejecting the opinion of his treating physician. Claimant's Memorandum of Points and Authority, unnumbered p. 4. Specifically, Petitioner argues that the ALJ's reasoning that Dr. Carlini's treatment focused only on the L4-5 portion of the spine opinion has no evidentiary basis in the record. *Id.* at unnumbered p. 5. And, after improperly rejecting the treating physician's opinion, Petitioner asserts the ALJ committed further error in finding that no medical causal relationship existed. *Id.* at unnumbered p. 7.

At the formal hearing below, the initial issue for resolution was whether Petitioner's current ongoing "lumbar spine pain" was medically causally related to his work injury. According to Petitioner the statutory presumption of compensability, the ALJ determined that he presented testimony and medical reports to invoke the presumption and that Respondent presented evidence sufficient to rebut the presumption. The ALJ then proceeded to review the evidence without the benefit of the presumption with Petitioner having the burden of showing by a preponderance of the evidence that his disabling pain was medically causally related to his work injury.

The ALJ acknowledged that in this jurisdiction when weighing competing medical testimony, the opinions of a treating physician are given preference over the opinions by physicians who examine the claimant solely for purposes of litigation.¹ This preference is in no way absolute as the ALJ may reject the opinion of the treating physician provided an explanation is given.²

In weighing the medical evidence, the ALJ reasoned that the opinion of Respondent's independent medical evaluator (IME), Dr. Marc Danziger, was more persuasive, stating

Dr. Carlini's treatment of Claimant has been at L4-5 without any objective support that Claimant suffers from degenerative disc disease or bulging in that area. Claimant's subjective complaints have served as the basis for the physical therapy and injections that Dr. Carlini has prescribed and administered. Dr. Carlini's opinion that the lumbar steroid epidural injections at L4-5 would relieve the inflammation that has caused Claimant's pain is not supported by the objective evidence and Claimant's failure to obtain relief from any of the medical treatment that he has received. The objective evidence does not support a finding of inflammation at L4-5 since the degeneration and bulging disc are at L3-4. The objective evidence does not support a medical causal relationship to Claimant's injury. Dr. Carlini's opinion is rejected as to the reasonableness and necessity of lumbar steroid epidural injections at L4-5. Dr. Danziger's opinion that Claimant does not require this treatment is accepted.

CO at 5.

While the ALJ may reject the opinion of the treating physician provided specific reasons are given, this Review Panel will not disturb that ruling provided it is supported by substantial evidence in the record. After reviewing the ALJ's reasons for rejecting the treating physician's opinion, we find merit in Petitioner's argument that those opinions were improperly rejected.

¹ *Kralick v. D.C. Dept. of Employment Services*, 842 A.2d 705 (D.C. App. 2004); *Stewart v. D.C. Dept. of Employment Services*, 606 A.2d 1350 (D.C. 1992).

² *Lincoln Hockey v. D.C. Dept. of Employment Services*, 831 A.2d 913, 919 (D.C. App. 2003).

In the ALJ's concluding passage cited above, the ALJ erroneously faults Dr. Carlini for treating the L4-5 region of the lumbar spine for degenerative disc disease and bulging while acknowledging later on that it is the L3-4 area that suffers from this condition. The ALJ next misstates the evidence in the record when she held that it is Dr. Carlini's opinion that the recommended lumbar steroid injections at L4-5 would relieve the inflammation that has caused Claimant's pain. As Petitioner noted in his arguments, Dr. Carlini testified at her deposition that the injections were to reduce the inflammation at L3-4. *See* CE-5, p. 107. The evidence in the record is such that it is Dr. Carlini's intention to administer the recommended epidural block to the area with the bulging disc, L3-4. *Id.* The ALJ is mistaken in this regard by identifying L4-5 as the site of the injection and as such her conclusion is not supported by substantial evidence in the record.

On the issue of medical causal relationship, Dr. Carlini in her deposition attributes Petitioner's chronic pain to premature degenerative disc disease and bulging at L3-4, as found by MRI, and possible nerve root impingement at L5, not found by MRI; all caused, contributed to, or aggravated by the work injury. *See* CE-5, pp. 107-110. As the ALJ focused only on the L4-5 area as not being the site of degeneration and bulging disc to support her finding there was no causal relationship to the work injury, the finding is without substantial support in the record because it is L3-4 that is the site of the inflammation where the steroid block is intended to be administered and the ALJ has omitted any analysis of this area as being causally related. On remand, the ALJ will correct this omission.

The ALJ focused on L4-5 as the source of disabling pain and treatment to the exclusion of the rest of the lumbar spine. Consequently, the ALJ, while correct in her statement of there being no objective evidence to support a finding of inflammation at L4-5 and therefore there is no "objective evidence" to support a medical causal relationship, bases her conclusion on the issue of causal relationship on a premise not advanced by Petitioner or his treating physician. By focusing on the treatment to L4-5 and evidence in the record to support that treatment, without first determining whether Petitioner's ongoing low back pain is causally related, the ALJ has conflated the issues of causal relationship and the reasonableness and necessity of recommended treatment. On remand, the issue of causal relationship must be addressed first without being filtered through the recommended treatment.

While it is possible to read the ALJ's decision as stating there is no causal relationship and therefore the recommended treatment is not warranted, we will not endorse such an interpretation given her own confusing statements. Although she finds the evidence does not support a medical causal relationship to the work injury, the ALJ states "Dr. Carlini's opinion is rejected as to the reasonableness and necessity of lumbar steroid epidural injections at L4-5." As noted above, Dr. Carlini intends to administer the injections at L3-4.

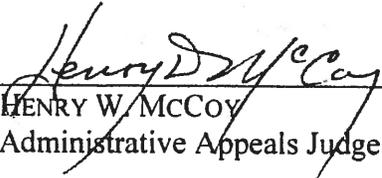
The ALJ further compounds her error by concluding as a matter of law that the requested injections at L4-5 are not reasonable or necessary in the absence of utilization review. It is now accepted that when the issue is the reasonableness and necessity of medical treatment, utilization review undertaken pursuant to D.C. Official Code § 32-1507(b)(6) is mandatory in order to resolve the issue. *See Gonzalez v. UNNICO Service Company*, CRB No. 07-005, AHD No. 06-155, OWC No. 604331 (February 21, 2007).

On remand, the ALJ must first determine whether the disabling chronic low back pain, whether emanating for L3-4, L4-5 or both, is causally related to the work injury. If it is found to be, the ALJ can proceed to the issue of the reasonableness and necessity³ of the recommended treatment, which would require sending the matter to utilization review. If the disabling symptoms are not found to be causally related, the inquiry ends as the determination would be dispositive as to the claim for relief; rendering a decision on the requested treatment moot.

CONCLUSION AND ORDER

The Compensation Order of March 11, 2011 is not supported by substantial evidence in the record and is VACATED AND REMAND for further consideration consistent with this decision.

FOR THE COMPENSATION REVIEW BOARD:


HENRY W. MCCOY
Administrative Appeals Judge

August 3, 2011

DATE

³ If it is determined that it is appropriate to address the issue of the reasonableness and necessity of the recommended treatment, the ALJ shall also determine if that defense was waived. See *Gonzalez v. Clark Construction Group*, CRB No. 09-071, AHD No. 06-423A, OWC No. 601762 (August 4, 2009); *Turner v. Restaurant Associates*, CRB No. 09-009, AHD No. 08-244, OWC No. 623657 (March 6, 2008).