GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services
Labor Standards Bureau

Office of Hearings and Adjudication
COMPENSATION REVIEW BOARD

(202) 671-1394-Voice
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CRB No. 05-04

WILLIAM ELEY,

Claimant – Respondent

v.

INTERPARK HOLDINGS AND FEDERAL INSURANCE COMPANY,

Employer/Carrier – Petitioner

Appeal from a Compensation Order of
Administrative Law Judge Jeffrey P. Russell
OHA No. 04-341, OWC No. 593820

Robert C. Baker, Jr., for the Petitioner

Ryan J. Foran, Esq., for the Respondent

Before SHARMAN J. MONROE and LINDA F. JORY, *Administrative Appeals Judges* and FLOYD LEWIS, *Acting Administrative Appeals Judge*.

SHARMAN J. MONROE, *Administrative Appeals Judge*, on behalf of the Review Panel:

DECISION AND ORDER

JURISDICTION

Jurisdiction is conferred upon the Compensation Review Board pursuant to D.C. Official Code §§ 32-1521.01 and 32-1522 (2004), 7 DCMR § 230, and the Department of Employment Services Director's Directive, Administrative Policy Issuance 05-01 (February 5, 2005).[1]

[1] Pursuant to Administrative Policy Issuance No. 05-01, dated February 5, 2005, the Director of the Department of Employment Services realigned the Office of Hearings and Adjudication to include, *inter alia*, establishment of the Compensation Review Board (CRB) in implementation of the District of Columbia Fiscal Year 2005 Budget Support Act of 2004, Title J, the D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, sec. 1102 (Oct. 1, 1994), *codified at* D.C. Code Ann. § 32-1521.01 (2005). In accordance with the Director's Policy Issuance, the CRB replaces the Office of the Director in providing administrative appellate review and disposition of workers' and disability compensation claims arising under the D.C. Workers' Compensation Act of 1979, as amended, D.C. Code Ann. §§ 32-1501 to 32-1545 (2005) and the D.C. Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Code Ann. §§ 1-623.1 to 1.643.7 (2005), including responsibility for

BACKGROUND

This appeal follows the issuance of a Compensation Order from the Administrative Hearings Division (AHD) of the Office of Hearings and Adjudication (OHA) in the District of Columbia Department of Employment Services (DOES). In that Compensation Order, which was filed on September 16, 2004, the Administrative Law Judge (ALJ) granted in part and denied in part the relief requested by the Claimant-Respondent. Specifically, the ALJ awarded temporary total disability benefits from December 2, 2003 through June 26, 2004, interest and reasonably related medical care. The ALJ denied the requested temporary partial disability benefits continuing from June 27, 2004. The Employer-Petitioner (Petitioner) now seeks review of that Compensation Order.

As grounds for this appeal, Petitioner alleges as error that the Compensation Order is not based upon substantial evidence in the record.

ANALYSIS

As an initial matter, the standard of review by the Compensation Review Board (CRB) and this Review Panel, as established by the Act and as contained in the governing regulations, is limited to making a determination as to whether the factual findings of the 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. D.C. Official Code § 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 Int'l. v. District of Columbia Department of Employment Services*, 834 A.2d 882 (D.C. App. 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 where the reviewing authority might have reached a contrary conclusion. *Marriott,* 834 A.2d at 885.

Turning to the case under review herein, Petitioner alleges that the ALJ's findings and conclusions that the surgery was reasonable and necessary and that the Respondent did not unreasonably refuse medical treatment did not take into consideration all the evidence in the record. With respect to the percutaneous surgical procedure, the Petitioner asserts that, the evidence demonstrates that the surgery is not reasonable and necessary. The Petitioner references the opinion of Dr. Steven Hughes, the independent medical examiner, that the Respondent's symptoms are not explainable on an organic basis, that the Respondent's symptoms are not related to the July 12, 2003 work injury and that the surgery is not necessary. Employer Exhibit No. 1. The Petitioner also indicates that the Respondent's objective tests revealed normal results. Finally, the Petitioner asserts that the opinion of Dr. Hampton Jackson,

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administrative appeals filed prior to October 1, 2004, the effective date of the D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004.

the treating physician, cannot be relied upon because Dr. Jackson received a State of Maryland Reprimand and Probation Order wherein he was cited for his unprofessional medical practices and procedures, and that Dr. Jackson's recommendation of surgery relies on a false and questionable diagnosis. With respect to the ALJ's finding that the Respondent did not unreasonably refuse medical treatment when he declined to participate in a detoxification program, the Petitioner argues that Dr. Hughes opined that the Respondent's continued use of Percocet was medically necessary. In addition, the Petitioner references the Respondent's history of drug abuse, Dr. Jackson's Reprimand and Probation Order and Dr. Jackson's statement that the Respondent may be developing a tolerance or habit to his pain medication as support for its position that the ALJ's finding is not supported by substantial evidence.

In deciding that the percutaneous surgical procedure was reasonable and necessary, the ALJ relied upon the results of the Respondent's discogram and the opinion of Dr. Jackson. The evidence demonstrates that the Respondent's September 8, 2003 discogram, performed at the request of Dr. Jackson, revealed abnormalities at the L5-S1 level of the back. A posterior tear with epidural contrast spillage was seen. The overall results of the discogram were compelling for "a major underlying diskopathic pain" accounting for the Respondent's ongoing back complaint. Claimant Exhibit No. 9. The evidence also demonstrates that Dr. Jackson treated the Respondent for the July 12, 2003 work injury since July 23, 2003. Dr. Jackson treated the Respondent's lumbar injury with medication and physical therapy. When the Respondent's complaints of back and leg pain did not abate, Dr. Jackson ordered an MRI and a discogram. After both objective tests showed disc abnormality at the L5-S1 level, Dr. Jackson recommended the surgery. While it is true that Dr. Hughes opined that the surgery was not necessary, as the ALJ indicated, Dr. Hughes did not explain his opinion given that the results of discogram which Dr. Hughes quoted in his report. On balance, the ALJ accepted the opinion of Dr. Jackson and the Panel detects no reason to disturb this action.[2]

With respect to the ALJ's finding that the Respondent did not unreasonably refuse medical treatment, the evidence shows that the Respondent had a history of drug abuse and that Dr. Jackson received a Reprimand and Probation Order. As the ALJ stated, the Petitioner did not show that the Respondent is, in fact, addicted to his medications or otherwise abusing them at this time or not in need of them pending surgery. While Dr. Hughes opined that neither the medication nor the surgery was necessary, the ALJ rejected Dr. Hughes' opinion for the reasons stated above. Further, although Dr. Jackson noted that the Respondent "may be developing a tolerance or habituation" to his pain medication (Percocet), his note was a mere concern, not a declaration of fact, and after Dr. Jackson changed the medication to Vicodin ES, there is no further mention of such a concern. Claimant Exhibit No. 4. After a review of the totality of the evidence, the Panel cannot rule that the ALJ's finding is not supported by substantial evidence.

With regard to both of the Petitioner's challenges on appeal, much emphasis is placed on the Reprimand and Probation Order that Dr. Jackson received and asserts that it is a basis for rejecting Dr. Jackson's opinion in favor of the opinion of Dr. Hughes. On a review of the

[2] Although the ALJ did not specifically state, there is a preference in this jurisdiction for the opinion of the treating physician over the opinion of a physician retained for litigation purposes. *See Stewart v. District of Columbia Department of Employment Services*, 606 A.2d 1350 (D.C., 1992). When the treating physician preference is utilized, there is no need to explain the rejection of other physicians.

Compensation Order, it is evident that the ALJ considered the Reprimand.[3] *See* Compensation Order at p. 5, n. 2. It is also evident, given his decision in favor of the Respondent, that the ALJ did not accord much weight to the Reprimand. An ALJ is entitled to draw reasonable inferences from the evidence presented, *George Hyman Construction Co. v. District of Columbia Department of Employment Services*, 498 A.2d 563, 566 (D.C., 1985) and the Panel discerns no reason to disturb the ALJ's decision with respect to the Reprimand.

CONCLUSION

The Compensation Order of September 16, 2004 is supported by substantial evidence in the record and is in accordance with the law.

ORDER

The Compensation Order of September 16, 2004 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

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SHARMAN J. MONROE
Administrative Appeals Judge

____June 29, 2005_____
DATE

[3] In this jurisdiction, an ALJ is not required to inventory the evidence and explain in detail why a particular part of it is accepted or rejected. *Sturgis v. District of Columbia Department of Employment Services*, 629 A.2d 547, 554 (D.C., 1993).