

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 15-172

EUGENE PETTIS,
Claimant–Petitioner,

v.

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

Appeal from an October 1, 2015 Compensation Order
by Administrative Law Judge Joan E. Knight¹
AHD No. 14-086, OWC No. 585487

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2016 APR 1 PM 12 29

(Decided April 1, 2016)

Justin M. Beall for Claimant
Sarah O. Rollman for Employer²

Before JEFFREY P. RUSSELL, LINDA F. JORY, and HEATHER C. LESLIE, *Administrative Appeals Judges*.

JEFFREY P. RUSSELL for the Compensation Review Board.

DECISION AND REMAND ORDER

BACKGROUND

Eugene Pettis (Claimant) was employed by the Washington Metropolitan Area Transit Authority (Employer) as a mechanic. Following a formal hearing conducted before an administrative law judge (ALJ), Claimant's claim for benefits under D.C. Code § 32-1501, *et seq.*, the District of

¹ The formal hearing occurred May 6, 2014 before Administrative Law Judge (ALJ) Leslie A. Meek. ALJ Meek left the Administrative Hearings Division (AHD) of the District of Columbia Department of Employment Services without issuing a compensation order. The matter was re-assigned by AHD to ALJ Joan E. Knight. On June 30, 2014, an Order to Show Cause (OSC) was issued advising the parties of the re-assignment and soliciting any objections to the matter being decided upon the record created at the formal hearing before ALJ Meek. Neither party opposed the OSC. ALJ Knight therefore issued the instant Compensation Order.

² Washington Metropolitan Area Transit Authority was represented by Donna J. Henderson at the formal hearing in this case

Columbia Workers' Compensation Act (the Act) for a back injury allegedly sustained on April 14, 2013 was denied in a Compensation Order issued October 1, 2015 (the CO).

In the CO, the ALJ found that Claimant had adduced sufficient evidence to invoke the presumption that Claimant had sustained a work-related injury to his low back on April 14, 2013, and that Employer's evidence was insufficient to rebut that presumption.

The ALJ nonetheless denied Claimant's claim, finding that Claimant's current low back condition is not causally related to the April 14, 2013 work-related injury.

The CO was appealed by Claimant filing an Application for Review and memorandum of points and authorities in support thereof (Claimant's Brief) with the Compensation Review Board (CRB). Employer's filed an Opposition to Claimant's Application for Review and memorandum of points and authorities in support thereof (Employer's Brief). In response, Claimant filed Claimant's Reply Brief (Claimant's Reply).

Because the ALJ failed to afford Claimant the statutory presumption that Claimant's present alleged disability is causally related to the work-related injury that the ALJ found was sustained by Claimant on April 14, 2013, the denial of Claimant's claim is vacated, and the matter is remanded to the Administrative Hearings Division (AHD) of DOES for further consideration of in light of that presumption, and of such further issues as may be required.

DISCUSSION AND ANALYSIS

We begin by noting that Employer has not appealed the findings that Claimant adduced sufficient evidence to invoke the statutory presumption that he sustained a work-related accidental injury to his low back on April 14, 2013, and that Employer failed to adduce evidence sufficient to overcome that presumption.

Although Claimant's first argument is titled "The ALJ Erred in Concluding That Employer Had Submitted "Substantial Evidence" As Required To Rebut The Presumption Of Compensability Favoring Claimant" (*see* Claimant's Brief, unnumbered page 5), that is technically not an accurate statement as to what the ALJ did in this case.

It is true that the ALJ found Claimant had adduced sufficient evidence to invoke the presumption that Claimant sustained a work-related injury on April 14, 2013, based on Claimant's testimony concerning the events of April 14, 2013, when he felt a sudden onset of severe radiating low back pain while bending and lifting an engine from a pump that he attempting to repair, coupled with medical records from Dr. Samuel DeShay written following his April 18, 2013 examination of Claimant, including review of an MRI scan.

The ALJ proceeded to review the September 27, 2013 independent medical evaluation (IME) report authored by Dr. Robert Riederman submitted by Employer and wrote:

The IME report indicates Dr. Riederman physically examined Claimant, reviewed pertinent medical records and provided an unambiguous opinion that based upon

the history that has been provided by Claimant, he sustained a soft tissue injury to the lumbar spine during the course of his employment on April 14, 2013. This evidence is not found to be specific and comprehensive enough to meet Employer's burden. With this evidence, Employer has not rebutted the presumption invoked by Claimant of an accidental injury arising out of and in the course of employment.

CO at 6.

However, the ALJ then immediately followed this with the following:

Having shown by a preponderance of the evidence that he suffered an accidental injury that arose out of and in the course of his employment, Claimant must show by a preponderance of the evidence that his condition or disability is medically causally related to his employment.

Id.

The ALJ then proceeded to weigh the competing medical evidence and rejected the opinions of Claimant's treating physicians, accepted the opinion of the IME physician, and concluded that "I am not persuaded that Claimant's current back condition is medically causally related to his employment." CO at 8.

The ALJ's analytic process is plain error. It has long been established that once invoked the statutory presumption not only includes the presumption that a claimant has sustained a work-related injury, but also that the claimant's alleged injury and disability are medically causally related to that presumed work injury. *Whittaker v. DOES*, 668 A.2d 844 (D.C. 1995). Here, the ALJ failed to accord Claimant the *Whittaker* presumption. To remind all concerned, *Whittaker* held:

Our decisions thus require the examiner to view the causal relation between a present disability and a job-related injury through the lens, as it were, of the statutory presumption, *unless* the employer has rebutted the presumption by "evidence 'specific and comprehensive enough to sever the potential connection'" between the two. *Parodi*, 560 A.2d at 526. (citation omitted), *Dunston v. District of Columbia Dep't of Employment Servs.*, 509 A.2d 109 (D.C. 1986), cited by the examiner, is not to the contrary, for the only issue in that case was whether the claimant had been totally and permanently disabled, and the court made it clear that the presumption "has no application to a determination of the *nature and extent* of petitioner's injury." *Id.* at 111 (emphasis added); *see also id.* ("Petitioner . . . is not entitled to a presumption that his injury has left him totally and permanently disabled"). As in *Baker [v. DOES]*, 611 A.2d 548 (D.C. 1992) and *Ferreira [v. DOES]*, 531 A.2d 651 (D.C. 1987), therefore, we must remand the case to DOES for correct application of the statutory presumption.

Whittaker at 847 (footnote omitted).

We have no choice therefore but to vacate the denial of the claim for relief and remand the matter for further consideration of the claim, in light of the presumption that Claimant's current low back condition is medically causally related to the work injury of April 14, 2013.

On remand, the ALJ is to determine first whether Employer has adduced sufficient evidence to overcome the *Whittaker* presumption, and if so, the ALJ is then to re-weigh the evidence without reference to the presumption and with Claimant bearing the burden of establishing a medical causal relationship by a preponderance of the evidence but in light of the treating physician preference also long recognized in this jurisdiction.

If the ALJ determines Employer's evidence is insufficient to overcome the presumption, or if after weighing the evidence it is determined that Claimant has met his burden of proof by a preponderance, the ALJ is to proceed to consider the remaining issue of the nature and extent of Claimant's disability, if any.

CONCLUSION AND ORDER

The failure to accord Claimant the benefit of the presumption that his current alleged low back injury and related disability if any is medically causally related to the work injury of April 14, 2013 is not in accordance with the law. The denial of the claim is vacated and the matter is remanded to AHD for further consideration of the claim in a manner consistent with the foregoing Decision and Remand Order.

So ordered.