

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

Department of Employment Services

MURIEL BOWSER  
MAYOR



DEBORAH A. CARROLL  
DIRECTOR

**COMPENSATION REVIEW BOARD**

**CRB No. 15-199**

**FRANCES LEE,  
Claimant–Respondent,**

v.

**MARRIOTT CORPORATION,  
Self-Insured Employer–Petitioner.**

Appeal from a December 2, 2015 Compensation Order  
by Administrative Law Judge Nata K. Brown  
AHD No. 10-318A, OWC Nos. 668844

DEPT. OF EMPLOYMENT  
SERVICES  
COMPENSATION REVIEW  
BOARD  
2016 MAY 17 PM 1 21

(Decided May 17, 2016)

David J. Kapson for Claimant  
Todd S. Sapiro for Employer<sup>1</sup>

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**

**FACTS OF RECORD AND PROCEDURAL HISTORY**

Frances Lee (Claimant) alleges that she sustained a work-related injury to her neck and back on January 2, 2012. She had previously sustained multiple injuries in other incidents.

A formal hearing was requested and ultimately held on March 20, 2014 before an Administrative Law Judge (ALJ) in the Administrative Hearings Division (AHD) of District of Columbia Department of Employment Services. Preparatory to the formal hearing, the parties, as required by the governing regulations and the scheduling order issued by AHD, filed a Joint Prehearing Statement and Stipulation Form (JPHS), which is unsigned by the ALJ.

<sup>1</sup> Zachary I. Shapiro appeared on behalf of Employer in proceedings before the Administrative Hearings Division.

In the JPHS, at unnumbered page 1-2, the following appears that describes the issues raised by Marriott (Employer) in defense of the claim:

\* \* \*

C. Statement of the facts as claimed by the parties

\* \* \*

2. Employer/Carrier:

The requested medical treatment is not causally related to the subject alleged incident of January 2, 2012 and the Claimant is at maximum medical improvement additionally the Employer/Carrier is entitled to a credit for the missed independent medical evaluation with Dr. Danziger on November 5, 2013.

\* \* \*

E. Contested issue of fact and law

\* \* \*

Employer/Carrier:

1. Whether Employer/Carrier is entitled to a credit for the missed IME with Dr. Danziger on November 5, 2013..
2. What is the nature and extent of claimant's disability if any.
3. Whether the requested medical treatment is causally related to the accidental injury.

At the time of the formal hearing Employer explicitly explained and reiterated that it was contesting the causal relationship of the requested medical care to the work injury being litigated in that proceeding. Counsel also explained that the entry on the Stipulation Form stipulating to causal relationship was merely intended to indicate that Employer did not contest that Claimant had sustained a work-related injury on the date in question, but that it was contesting that the medical care being sought in the hearing was causally related to that injury. HT 32 – 33.

Seventeen months later, the ALJ issued a Compensation Order (the CO) granting Claimant's request for authorization for the requested medical care. In it the ALJ identified the sole issue as "Is the requested medical treatment reasonable and necessary to the course of recovery from the January 2, 2012. [sic] medical treatment that Claimant seeks reasonable and necessary?"

The ALJ addressed no other issues in the CO; specifically, the ALJ failed to address Employer's explicitly raised defense of lack of medical causal relationship. The ALJ erroneously stated in

the CO that “The parties have already stipulated that there is a medical causal relationship between the accident that occurred on January 2, 2012. That is the law of the case.” CO at 5.

Because the CO fails to address one of the central issues raised by the parties, it is not supported by substantial evidence and is vacated. We remand for a new Compensation Order addressing all disputed issues identified by the parties in the JPMS and the hearing transcript.

#### ANALYSIS

The record provides no reason why the ALJ failed to address the issue raised by Employer concerning medical causal relationship between the stipulated work injury and the sought after medical care. We will not recount the details of the basis of that defense other than to say that Employer raises numerous factual questions in its evidence concerning other possible causes of the current condition yet it is apparent that the ALJ failed, perhaps due to the lengthy passage of time between the formal hearing and the issuance of the CO to consider or address them.

In Claimant’s Opposition to Employer’s Application for Review, some reference is made to the ALJ considering a post-hearing utilization review (UR) report that the ALJ had originally indicated she would decline to consider. However, the ALJ did in fact consider it, and although she rejected it because she found it to be unsigned, Claimant raises no objections in this appeal to its post-hearing acceptance and admission into the record. Accordingly we deem the UR report to be admitted. Further, Claimant’s opposition is entirely silent on the issue raised by Employer in this appeal.

A failure to address and resolve all material issues renders an agency decision unsupported by substantial evidence. *See Perkins v. DOES*, 482 A.2d 401, 402 (D.C. 1984); *Committee of 100 on the Federal City v. D.C. Dep’t of Consumer and Regulatory Affairs*, 571 A.2d 195 (D.C. 1990). This is obviously such a case.

While we arguably could return the matter for further consideration of this one issue, we deem the error to be so fundamental that the CO issued is fatally defective, and fairness and caution have persuaded us that the CO should be vacated in its entirety and all contested issues are to be considered anew, based upon the entire record.

#### CONCLUSION AND ORDER

The Compensation Order of November 30, 2015 is unsupported by substantial evidence and is vacated. The matter is remanded for further complete consideration of all contested issues raised by the parties.

*So ordered.*