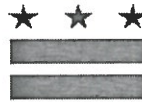


GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 16-102

FRANCISCA LETREN,
Claimant-Petitioner,

v.

DISTRICT OF COLUMBIA CHILD and FAMILY SERVICES,
Employer-Respondent.

Appeal from a July 7, 2016 Compensation Order on Remand
by Administrative Law Judge Fred D. Carney, Jr.
AHD No. PBL 09-089A, DCP No. 3009017177-0001

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2016 DEC 16 AM 10 20

(Decided December 16, 2016)

Frank McDougald for Employer
Matthew J. Peffer for Claimant

Before GENNET PURCELL, LINDA F. JORY and HEATHER C. LESLIE *Administrative Appeals Judges.*

GENNET PURCELL for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

This fifth request for review follows an extensive procedural, yet straightforward substantive case history. A summary of the facts of record and procedural processes to date are reiterated from the July 7, 2016 Compensation on Remand under review:

Claimant alleges that on September 10, 2009, she sustained an emotional injury when she was harassed and berated by her supervisor Mr. Jearl Ward. Claimant filed a claim for benefits under the Act. On November 25, 2009, the Office of Risk Management/Disability Compensation Program (DCP) issued a Notice of Determination denying her claim on the grounds that her injury did not arise in the performance of her duties for Employer. Claimant timely sought reconsideration of the decision to deny her benefits. On November 25, 2009, DCP

issued a Final Decision of Reconsideration (FDR) upholding the denial of Claimant's benefits. Claimant sought a formal hearing.

Pursuant to Claimant's application, three hearings were conducted. On February 9, 2011, Judge Belva D. Newsome issued a Compensation Order (hereinafter, "CO") granting Claimant's claim for relief, and awarding Ms. Letren temporary total disability benefits from September 11, 2009 to the present and continuing. Employer appealed the February 9, 2011 CO to the CRB.

On August 16, 2011, the CRB reversed and remanded the February 9, 2011 CO to the ALJ to make findings on Claimant's credibility based on the record of the July 13, 2010 and July 29, 2010 hearings in addition to the March 31, 2010 hearing, and to clarify whether only the September 11, 2009 event caused Claimant's psychological problems or if it was the result of cumulative workplace issues and Employers' actions.

On October 18, 2011, a CO on remand was issued in Claimant's favor for temporary total disability benefits based in part on the Claimant's credibility as a witness. Employer again appealed to the CRB. On March 28, 2012, the CRB issued a decision which vacated the October 18, 2011 CO on remand. The CRB remanded it to the ALJ again to explain whether Claimant's condition was a result of the single event on September 10, 2009 or of cumulative events and to make a credibility determination regarding Claimant's testimony.

On July 9, 2012, a second CO on remand was issued in favor of Ms. Letren. The Government appealed for a third time, and the CRB issued another remand order on July 25, 2013. In the July 25, 2013, remand order the CRB stated:

"Despite previous caution to avoid application of the private sector presumption of compensability, the ALJ determined in the instant matter, a review of the record determined that the events upon which Claimant bases her claim did occur. The *Ramey* test does not require Claimant to show unusually stressful conditions in order to establish a prima facie case. In addition, after evaluating Employer's testimonial and medical evidence, the ALJ determined Employer had not provided substantial, credible evidence to overcome Claimant's prima facie case."

On August 29, 2013, the third CO on remand was issued in Employers' favor by former ALJ Anand K. Verma. Ms. Letren appealed the August 29, 2013 decision, and the CRB issued a Decision and Remand Order on November 26, 2013 for the CO on remand to be vacated. The CRB stated that the matter was remanded because the ALJ found that Claimant failed to prove an unusually stressful work environment. By doing so the CRB stated that the ALJ had applied the test from *Dailey v. 3M Co. & Northwest Nat'l Ins. Co.*, H&AS No. 85-259, OWC No. 0066512 (May 19, 1988), which was overruled by the Court Appeals decision in

McCamey v. DOES, 947 A.2d 1191 (2008). On December 13, 2013, a fourth CO on remand was issued in the Government's favor. Claimant appealed and the decision was vacated and remanded by the CRB on April 29, 2014, due to issues surrounding the lack of qualifications of Mr. Verma to serve as an ALJ.

Letren v. District of Columbia Child & Family Services, AHD No. PBL 09-089A, DCP No. 2009017177-001 (July 7, 2016) ("COR 5") at 2-3.

On May 13, 2015, an ALJ issued an order granting Francisca Letren ("Claimant") a new formal hearing that convened on July 31, 2015. Claimant appeared, but declined to testify. In lieu of live testimony, Employer and Claimant were granted leave to submit proposed findings of fact and conclusions of law to the ALJ, for consideration, by October 2, 2015.

On July 7, 2016, the ALJ issued COR 5, concluding that Claimant failed to meet her burden by a preponderance of the evidence that she sustained a mental-mental injury in the performance of her duties.

Claimant timely appealed the COR 5 to the CRB by filing Claimant's Application for Review and Memorandum in Support of Application for Review ("Claimant's Brief"). Claimant argues that the ALJ's decision in the COR 5 is arbitrary, capricious, unsupported by substantial evidence in the record, and must be reversed. Claimant's Brief, page 1.

Employer opposed Claimant's appeal by filing an Opposition to Application for Review ("Employer's Brief"). In its opposition, Employer asserted the COR 5 is supported by substantial evidence and should be affirmed.

ISSUES ON APPEAL

The issues to be decided based on the parties' submission of their proposed findings of facts and conclusions of law were:

1. Whether Claimant's psychological injury September 10, 2009, was medically causally related to her Employment?¹
2. What is the nature and extent of Claimant's disability?

In considering whether Claimant's psychological injury was causally related to the September 10, 2009 incident, the ALJ concluded that Claimant failed to proffer competent medical evidence to support her claim and failed to meet her burden to produce a preponderance of evidence demonstrating she sustained a mental-mental injury in the performance of her duties. We affirm the COR 5.

ANALYSIS

Claimant argues on appeal that she submitted evidence sufficient to establish her entitlement to disability benefits under the District of Columbia Comprehensive Merit Personnel Act of 1978,

¹ Although, properly analyzed by the ALJ, the wording of this issue as written in the COR 5 reflects grammatical and typographical errors.

D.C. Code §§ 1-623.1 *et seq.*, as amended (“CMPA”) . Specifically, Claimant asserts the medical reports of both Dr. Jablonover and Dr. Cephas opine that her psychological injury was caused by the September 10, 2009 altercation at work.

Claimant argues:

[Claimant] provided the medical reports of Dr. Jablonover and Dr. Cephas, who specifically opined that her psychological injury was caused by the altercation at work. These medical opinions were accepted as credible and specific medical testimony by the [previously issued] CO and subsequent CORs. In COR [5] ALJ Carney required something beyond a medical explanation of how the work incident caused her problems, however, the science regarding depression does not allow for that level of proof. The ALJ does not identify any countervailing medical evidence that says that Ms. Letren’s psychological condition can not [sic] be related.

Claimant’s Brief at 8.

Claimant’s argument here is misguided however. In light of the rulings in *Sandoval v. DOES*, CRB 12-002 (November 4, 2014), the unique position of this case permits parties subject to compensation orders written by Mr. Verma, the ability to have their cases reheard, *de novo* at AHD. Further, the most recent April 29, 2014 Order Vacating Compensation Order on Remand and Remanding Case effectively vacated all previous ALJ’s findings, conclusions and credibility determinations related to this case. As such, the findings of the previous CO’s/COR’s related to this case are no longer the established law of this case. Accordingly, the ALJ in the case *sub judice* was authorized to make findings of fact and conclusions of law anew.

Claimant also argues that the basis of the ALJ’s error was his failure to identify “countervailing medical evidence” establishing that Claimant’s condition was unrelated to the work incident. This is both immaterial and incorrect.

Pursuant to the CMPA, the burden to prove the medical causal relationship of Claimant’s psychological injury to her work conditions falls squarely on Claimant. As it relates to the comprehensiveness of the ALJ’s overall analysis, COR 5 addressed Employer-proffered medical evidence negating any causal relationship between Claimant’s condition and the September 10, 2009 work incident. With regard to the ALJ’s analysis of a May 13, 2010, report authored by Employer’s additional medical examiner (“AME”) psychiatrist Dr. Samuel S. Smithpeter, the ALJ concluded:

Dr. Smithpeter opined that Claimant’s diagnosis was consistent with either occupational problems or relational problems, and her psychiatric treatment was directly due to conflicts she had with the supervisor and not related to the performance of her duties. [...] Dr. Smithpeter opined that Claimant [...] does not have and has not had any disability as a result of her employment.

COR 5 at 7.

Turning now to Claimant's claim for relief, Claimant has alleged that she suffered a psychological injury, proper analysis of her claim requires application of the *Ramey* test, as established in *McCamey*, *supra*, 947 A.2d at 1199 n.6 . The *Ramey* test provides:

[An] injured worker alleging a mental-mental claim invokes the statutory presumption of compensability by showing a psychological injury and actual workplace conditions or events which could have caused or aggravated the psychological injury. The injured worker's showing must be supported by competent medical evidence. The [administrative law judge], in determining whether the injured worker invoked the presumption, must make findings that the workplace conditions or events existed or occurred, and must make findings on credibility. If the presumption is invoked, the burden shifts to the employer to show, through substantial evidence, the psychological injury was not caused or aggravated by workplace conditions or events. If the employer succeeds, the statutory presumption drops out of the case entirely and the burden reverts to the injured worker to prove by a preponderance of the evidence that the workplace conditions or events caused or aggravated the psychological injury.

Ramey v. Potomac Electric Power Company, CRB No. 06-38(R), (July 24, 2008).

Of course, in public sector workers' compensation cases, there is no presumption of compensability, and where the claim has not been accepted, it remains the claimant's burden of proof to show by a preponderance of the evidence that the alleged disability was caused by a work-related injury. *McCamey*, *supra*.

In short, absent the presumption, to establish a compensable mental-mental claim, the *Ramey* test mandates the ALJ implement a multi-part analysis. To succeed, the claimant must successfully establish that: (1) a psychological injury and actual workplace conditions or events which could have caused or aggravated the psychological injury alleged exist; (2) support for the injury via competent medical evidence exists; and (3) he or she is a credible witness.

Our review of the COR 5 reveals that upon citing to the *Ramey* test, the ALJ correctly stated that absence of presumption for cases arising under the CMPA; and the burden of proof by a preponderance of the evidence Claimant was required to produce.

COR 5 reflects several findings of fact, establishing, that while Claimant's medical records support that she suffered from adjustment disorder/depression, Claimant did not meet her burden in showing that the work place incident that occurred on September 10, 2009 rose to the level required under *Ramey* to have caused her adjustment disorder/depression.

First, the ALJ found:

I find Claimant's claim is limited to her experiences on September 10, 2009, at work.

COR 5 at 5.

Citing to Dr. Jablonover's uncertainty, the ALJ summarized further:

Dr. Jablonover reported that Claimant's symptoms were consistent with the diagnoses of depression, and that the incident which Claimant claims is based *appears* to have been precipitated/caused by the September 10, 2009 incident [sic].

COR 5 at 6.

While this last summarization is unclear in its phrasing, we acknowledge the following clarifying findings with regard to Dr. Jablonover's medical opinion submitted on Claimant's behalf:

Dr. Jablonover added no clinical nexus between Claimant's September 10, 2009, experience at work and Claimant's diagnosed depression other than that it was noted in his on [sic] September 15, 2009 note. Dr. Jablonover restricted Claimant from working since September 15, 2009 due to her depression/anxiety, recent gynecologic surgery and radiation treatments. He noted that she was currently being treated for depression with a psychiatrist and psychotherapist.

On June 14, 2010, Dr. Jablonover stated in a letter to DCP that he agreed that most of Claimant's complaints do not arise out of her employment as a clerical assistant but rather due to interpersonal conflicts with her supervisor. Emphasis added.

* * *

Dr. Jablonover provided no articulable medical connection between Claimant's depression and the alleged work stressors. He merely stated that it appeared to be the aggravation or cause of Claimant's emotional symptoms.

COR 5 at 6-7.

Citing again to *Ramey*, the ALJ noted that the medical reports "offer no explanation of how the alleged factors of conditions of her employment caused Claimant's injury based on a medical determination." COR 5 at 8. The ALJ concluded that Claimant failed to proffer competent medical evidence to support a compensable psychological claim under the Act. We agree.

Claimant's final argument is regarding the ALJ's crediting of Employer's testimony over that of Claimant. Claimant asserts that in the original CO there was a finding of fact that Claimant's testimony was credible. Further, that in the CO, the COR 1 and the COR 2 the ALJ's relied upon Claimant's description of the facts of the case and found her to be credible. We reiterate here, our discussion regarding the *de novo* posture of this case and reject Claimant's argument on this point.

Generally, credibility determinations, even implicit ones, are well within the purview of the presiding factfinder and are entitled to great weight. *Dell v. DOES*, 499 A.2d 102, 106 (D.C. 1985) (citing *In re Dwyer*, 399 A.2d 1, 12 (D.C. 1979)). Neither the District of Columbia Court

of Appeals (“DCCA”), nor the CRB, may not substitute its credibility finding for that of the trier of fact who heard, received and weighed the evidence. *King, supra*, 560 A.2d at 1072 (citing *Porter v. DOES*, 518 A.2d 1020, 1022 (D.C. 1986)). Credibility findings are within the sound discretion of the ALJ, and in general, the factual findings of an ALJ are “entitled to great deference if supported by substantial evidence.” *See Georgetown Univ. v. DOES*, 862 A.2d 387, 391 (D.C. 2004).

In accordance with the *Ramey* test, credibility determination is also necessary to verify whether the workplace conditions or events alleged to have caused the injury were actual or real. *Ramey* at 699. Although the DCCA has rejected the use of an objective standard for evaluating an individual's reaction to workplace conditions in mental-mental claims, they have not eliminated the requirement that the workplace conditions that a petitioner asserts has caused the injury must exist in reality. *See McCamey, supra* 947 A.2d at 1214. The DCCA has made it clear that in mental-mental cases a test for the existence of actual workplace stressors must be one “verifying the factual reality of stressors in the workplace environment, rather than one requiring the claimant to prove that a hypothetical average or healthy person would have suffered a similar psychological injury” *Id.*

In the case *sub judice*, in determining that Claimant did not meet her burden to show that the alleged workplace conditions or events existed or occurred, and the ALJ concluded that Claimant’s testimony regarding the incidents that support her claim were “hyperbolic, and out of proportion with the medical and other documents of record.” We accept the ALJ’s language here as a factual finding that Claimant was not a credible witness.

The ALJ concluded:

Claimant also confronted non-work related stress factors during her claim period. It is noted that Claimant underwent laparoscopic total hysterectomy in November 2009. On January 8, 2010, Dr. Jablonover noted that Claimant was experiencing “stress secondary to recent hysterectomy, shoulder pain and depression.” In addition to her alleged work related stress, Dr. Jablonover noted Claimant [sic] other medical stress factors. In his February 16, 2010 report Dr. Jablonover stated that Claimant was seen for pre-operative evaluation for a hysterectomy and possible bilateral oophorectomy on November 11, 2009. He reported that in additional [sic] Claimant was seen by a neurologist for sensation of being pulled to the left when walking, likely due to [sic] post-traumatic vestibular problem, and she was seen by a gynecologist for postmenopausal bleeding s/p EMB glandular atypia. Claimant was recommended to undergo laparoscopic hysterectomy, BSO, possible lymph node dissection.

COR 5 at 6.

As further support for his credibility determination, the ALJ also concluded that the testimony between Claimant and Employer’s witnesses was contradictory and that Employer’s recitation thereof, was most persuasive. With Employer having no obligation under *Ramey* to rebut the unsupported claim for benefits, Claimant’s claim was appropriately denied. We find no error

with these findings and conclusions. The ALJ's analysis of the facts is supported by and consistent with the medical evidence in the record and supported by the law governing claims for psychological injury in this case.

CONCLUSION AND ORDER

The conclusion that Claimant failed to meet her burden to show by a preponderance of evidence that she suffered a compensable mental-mental injury is AFFIRMED. The July 7, 2016 Compensation Order on Remand is AFFIRMED.

So ordered.