# GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR

DEBORAH A. CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD



**CRB No. 16-081**

**GARY COX,**
**Claimant-Petitioner,**

**v.**

**WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY,**
**Employer-Respondent.**

Appeal from a May 19, 2016 Compensation Order
of Administrative Law Judge Mark W. Bertram
AHD No. 08-315D, OWC No. 631552

(Decided October 24, 2016)

Justin M. Beall for Claimant
Mark H. Dho for Employer

Before LINDA F. JORY, GENNET PURCELL, and JEFFREY P. RUSSELL, *Administrative Appeals Judges.*

LINDA F. JORY for the Compensation Review Board.

## DECISION AND ORDER

### FACTS OF RECORD AND PROCEDURAL HISTORY

Gary Cox ("Claimant") worked as a bus driver for Washington Metropolitan Area Transit Authority ("Employer"). On September 10, 2006, Claimant sustained injuries to his left shoulder, right elbow, left knee and back as a result of an altercation with a passenger. Claimant missed work and received medical treatment for his left shoulder and low back pain from September 10, 2006 through April 2007. He returned to work in April 2007.

Claimant was in an automobile accident in June 2007. In February 2008, a bus Claimant was driving was struck by a tow truck which led to Claimant having a right rotator cuff tear and surgical repair. Claimant was off work until October 2009.

A dispute arose as to whether current treatment for Claimant's left shoulder was causally related to the September 10, 2006 work incident. After a formal hearing, a Compensation Order ("CO") issued on January 13, 2012 which found Claimant's left shoulder condition and treatment was causally related to the work incident but denied Claimant's claim for temporary total disability ("TTD") benefits. *Cox v. WMATA*, AHD No. 08-315A, OWC No. 631552 (January 13, 2012).

On May 10, 2012, Claimant was referred for neurological consultation to Dr. Matthew Ammerman for a review of his cervical condition. Dr. Ammerman reviewed Magnetic Resonance Imaging ("MRI") of Claimant's back and neck which were taken on March 23, 2012. Dr. Ammerman advised Claimant to consider cervical decompression to treat his severe spinal cord stenosis.

At the request of Employer, Claimant underwent an Independent Medical Examination ("IME") performed by Dr. Louis Levitt, orthopedic surgeon on July 9, 2012. Dr. Levitt reviewed Claimant's medical history and opined that the 2006 work injury, while substantial in force, produced only contusions and strains that resolved in 3 to 4 months. Dr. Levitt further stated that medical treatment for Claimant's left shoulder, neck and back was due to normal age-related changes and not causally related to the 2006 work trauma.

Claimant underwent a neurological IME at the behest of Employer on June 9, 2012. Dr. Ronald Cohen examined the Claimant and reviewed his medical treatment records from 1996 through 2006 as well as the diagnostic tests pertaining to the September 2006 work injury. Dr. Cohen opined Claimant's lumbar spinal stenosis and radiculopathy at L4-5 level are entirely degenerative in nature and do not rise as a result of the injury of September 10, 2006.

A dispute arose as to whether surgical treatment recommended for Claimant's cervical spine was causally related to the 2006 work injury and reasonable and necessary. Following a formal hearing on January 16, 2013, a CO issued on May 10, 2013. *Cox v. WMATA*, AHD No. 08-315B, OWC No. 631552 (May 10, 2013) ("CO 2"). The CO 2 concluded Claimant's cervical spine condition and proposed medical treatment were not medically causally related to the work incident of September 10, 2016.

The parties attended another formal hearing at the Administrative Hearings Division ("AHD") on March 11, 2016. This time, Claimant sought authorization for surgery to his lumbar spine. The issues listed by the administrative law judge ("ALJ") were:

1. Is Claimant's lumbar spine condition/symptoms for which he seeks surgery medically causally related to the September 2006 work injury?

2. Whether surgical treatment recommended for Claimant's lumbar spine, is reasonable and necessary.

*Cox v. WMATA*, AHD No. 08-315D, OWC 631552 (May 19, 2016) ("CO 3") at 2 (footnote omitted)

The ALJ concluded Claimant did not establish by a preponderance of the evidence that his current back symptoms/condition are medically causally related to the September 10, 2006 work injury and denied Claimant's claim.

Claimant timely appealed CO 3 to the Compensation Review Board ("CRB") by filing Claimant's Application for Review and Memorandum of Points and Authorities in Support of Application for Review ("Claimant's Brief"). In his appeal, Claimant asserts that the CO's rejection of Dr. Ammerman's opinion in favor of the IME physician's opinion is not supported by substantial evidence and must be reversed.

Employer opposed the appeal by filing Employer's Opposition to Claimant's Application for Review ("Employer's Brief"). In its opposition, Employer requests an affirmation of the CO 3 and asserts that CO 3 is in accordance with prevailing law and is supported by substantial evidence.

## ANALYSIS

The scope of review by the CRB as established by the District of Columbia Workers' Compensation Act ("Act") and as contained in the governing regulations is limited to making a determination as to whether the factual findings of a Compensation Order on appeal are based upon substantial evidence in the record, and whether the legal conclusions drawn from those facts flow rationally from those facts and are otherwise in accordance with applicable law. D.C. Code §32-1521.01(d)(2)(A). "Substantial evidence" as defined by the District of Columbia Court of Appeals ("DCCA"), is such evidence as a reasonable person might accept to support a particular conclusion. *Marriott Int'l. v. DOES*, 834 A.2d 882 (D.C. 2003) (*"Marriott"*). Consistent with this scope of review, the CRB is also bound 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 members of the CRB review panel considering the appeal might have reached a contrary conclusion. *Marriott*, 834 A.2d at 885.

As Employer was contesting the medical causal relationship of Claimant's request for recommended low back surgery, the ALJ properly provided Claimant the presumption of compensability afforded him pursuant to § 32-1521 of the Act. Claimant does not assert the ALJ erred in finding Employer rebutted the presumption. Claimant asserts the ALJ erred in weighing the evidence by failing to give adequate weight to the medical opinion of Claimant's treating neurosurgeon, Dr. Matthew Ammerman, whom we note is the physician requesting authorization for the spinal surgery. Claimant asserts:

> Dr. Ammerman opined unambiguously, and on multiple occasions, that Claimant's current lumbar symptoms—and his current need for lumbar surgery – are causally related to the September 2006 workplace injury. As Claimant's treating neurosurgeon, Dr. Ammerman's causal opinion is entitled to deference, unless there are persuasive reasons to reject it.
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> In the May 19, 2016, Compensation Order, the ALJ rejected Dr. Ammerman's medical opinion. The ALJ's basis for doing so was that Dr. Ammerman failed to explain why Claimant's post-2006 accidents are not the cause of his current lumbar symptoms/condition. However, because Dr. Ammerman did in fact address Claimant's subsequent injuries, the ALJ's basis for rejecting Dr. Ammerman's medical opinion is inadequate as a matter of law. Therefore, the CO is not supported by substantial evidence in the record.

> In his September 2, 2015 letter, which was offered into evidence over Employer's objection, Dr. Ammerman attributed Claimant's current lumbar symptoms to the September 2006 workplace injury, reasoning that the symptoms, which were non-existent prior to the September 2006 incident, had continued consistently since the incident. Dr. Ammerman did not render this opinion out of thin air. Rather, as his letter makes clear, he had taken the time to review Claimant's post 2006 medical records (i.e., records from Dr. Raymond Drapkin at Maryland Orthopedics P.A. and Dr. Tracy Gutierrez at Kaiser Permanente). Yet in the May 19, 2016 Compensation Order, the ALJ does not even mention Dr. Ammerman's review of these records.
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> Not only is Dr. Ammerman's reasoning based on his thorough review of Claimant's post-2006 medical records, it is also supported by other record evidence.

Claimant's Brief at 12, 13. (citations omitted)

With regard to the ALJ's treatment of Dr. Ammerman's reports, Employer responds:

> The [C]laimant's admission that he suffered three subsequent automobile accidents since 2006, including injuries which he admits aggravated his back, is a significant fact which was clearly not addressed or considered by Dr. Ammerman.

Employer's Brief at 6.

We disagree with Claimant's characterization of Dr. Ammerman's opinion and agree with Employer that Dr. Ammerman did not adequately address the three subsequent injuries to Claimant's back. Specifically, we note there is no indication by Dr. Ammerman in his September 2, 2015 letter to Claimant's counsel that he reviewed any *post* 2006 medical records. Dr. Ammerman merely stated in the letter that he had a chance to review Claimant's *old* records which given the references to an injury in 1985 can only mean that Dr. Ammerman reviewed records that *preceded* the 2006 injury. In fact Dr. Ammerman wrote:

> Upon reviewing those records, it is apparently clear that he previously had back surgery, neck surgery and knee problems, but was quiescent for many years until this injury at work in 2006.

We conclude the ALJ sufficiently elaborated the bases for rejecting the opinion of the treating physician, Dr. Ammerman consistent with the law of this jurisdiction. *See Short v. DOES*, 723 A.2d 845 (D.C. 1998); *Stewart v. DOES*, 606 A.2d 1350, 1353 n.5 (D.C. 1992).

The ALJ instead found Dr. Levitt's opinion persuasive and we find it appropriate to repeat the portion of Dr. Levitt's opinion the ALJ found persuasive over the opinion of Dr. Ammerman. The ALJ stated:

Dr. Levitt's assessment of an IME conducted on June 13, 2011, is telling with regards to the connection of Claimant's 2006 accident and his low back symptoms.

> At almost 5 years after his 9/06 assault, he returns to his original doctor of record who treated him for the assault injuries and claims he has had total recurrence of the intense pain about the neck, lower back and left shoulder without provocation as it relates to the assault and 2006 [sic]. As I have reviewed this case, what impresses me is the lack of mechanism of injury that would support the patient's clinical complaints. There are [sic] a certain amount of force is applied to the body that is required to produce injury. The forces apply to Mr. Cox's body in the assault was somewhat substantial in 2006, but a [sic] produced only soft-tissue contusion and strains. Within 3 to 4 month [sic] period of time, contusions and strain resolved. There was no evidence of any structural insufficiency surrounding injuries to the spine and extremities in 2006 and the patient had a rather profound past medical history of spinal and extremity distress documented in the records. He did respond to treatment and ultimately returned to work. He was able to work reasonably uneventfully until an intervening motor vehicle accident occurred in 2008. He claims a recurrence of neck and back pain and left shoulder pain exclusively [sic] the results of the 9/06 work trauma. Quite frankly, I do not see a causal relationship to injuries that occurred in 2006, i.e. simple contusions and strains and soft-tissue trauma in 2006 and his current complaints as he presents to his treating physician in 2011. This patient has a history of degenerative arthropathy with prior surgery to the neck and low back, multiple trauma and prior injury was [sic] surgery to the left knee that results on [sic] ultimately in a knee replacement. He has ample reason to have mechanical problems not only now in [sic]the future and these are involutional or age related problems that are not work related as it is [sic] specific to an injury that occurred in 9/06.

CO at 7, 8.

## CONCLUSION AND ORDER

The ALJ's conclusion that Claimant's current lumbar spine condition is not medically causally related to the work accident of September 10, 2006 is supported by substantial evidence and in accordance with the law and is therefore AFFIRMED.

*So ordered.*