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. 06-12

TAMMY GILBERT,

Claimant – Petitioner,

v.

RITE AID CORPORATION AND TRAVELERS INSURANCE,

Employer/Carrier – Respondent.

Appeal from a Compensation Order of
Administrative Law Judge David L. Boddie
OHA No. 04-308A, OWC No. 590805

Ryan Richie, Esquire, for the Petitioner

Thomas G. Hagerty, Esquire, for the Respondent

Before: E. COOPER BROWN, *Chief Administrative Appeals Judge*, FLOYD LEWIS and SHARMAN J. MONROE, *Administrative Appeals Judges*.

FLOYD LEWIS, *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, 32-1522 (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 administrative

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 October 21, 2005, the Administrative Law Judge (ALJ) denied the request for temporary total disability benefits and medical care by Claimant-Petitioner (Petitioner), concluding that Petitioner had no ongoing disability from her August 3, 2003 work injury with Employer-Respondent (Respondent). Petitioner now seeks review of that Compensation Order.

As grounds for this appeal, Petitioner alleges as error that the Compensation Order is not supported by substantial evidence and in not in accordance with the law.

ANALYSIS

As an initial matter, the scope 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 §32-1522(d)(2). "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. 2003). Consistent with this scope 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 decision must be reversed because it has inconsistent findings of facts and conclusions of law and lacks explanation for the conclusions and opinions relied on by the ALJ. Respondent counters by contending that the factual findings contained in the Compensation Order were based upon substantial evidence and the legal conclusions drawn from those facts by the ALJ were in accordance with the law.

The ALJ denied Petitioner's claim for temporary total disability benefits from April 14, 2004 to the present and continuing Petitioner's alleged disability stems from an August 3, 2003 work injury for which Respondent made voluntary payments of compensation from September 2, 2003 through November 2, 2003 and from February 11, 2004 through April 13, 2004. In concluding that Petitioner failed to carry the burden of proof in establishing that she remained disabled after April 14, 2003, the ALJ decided to credit the testimony of Respondent's independent medical examiners,

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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.

Drs. Louis Levitt and Steven Hughes, over the opinion of Petitioner's treating physician, Dr. William Dorn.

In evaluating the medical evidence of record, the testimony of a treating physician is ordinarily preferred over that of a physician retained solely for litigation purposes. *Harris v. Dep't. of Employment Servs.,* 746 A.2d 297, 302 (D.C. 2000); *Stewart v. Dep't. of Employment Servs.,* 606 A.2d 1350, 1353 (D.C. 1992). Notwithstanding this preference for the testimony of a treating physician over that of a physician hired to evaluate a workers' compensation claim, an administrative law judge may reject the testimony of the treating physician and credit the opinion of another physician when there is conflicting evidence. In doing so, the fact-finder must give reasons for rejecting the testimony of the treating physician. *Canlas v. Dep't. of Employment Servs.,* 723 A.2d 1210, 1211-12 (D.C. 1995).

The ALJ stressed that Dr. Levitt, Employer's physician, testified that after reviewing all of Petitioner's medical reports and examining her on two occasions, he was not able to find any evidence of a neurological abnormality to support her subjective complaints and he concluded that "it was his medical opinion that there was no basis for additional testing or treatment as clinical correlation was necessary to support any testing and diagnosis." Compensation Order at 9.

In rejecting the opinion of Petitioner's treating physician, Dr. Dorn, the ALJ noted that the treatment notes of Dr. Dorn, beginning with the March 16, 2000 report though the concluding report of June 15, 2005,S were brief and summary in manner, as the ALJ found that Dr. Dorn's Reports did not provide great insight into Petitioner's condition, symptoms or treatment. Moreover, the ALJ emphasized that even though there was some medical evidence of abnormalities, the evidence indicated that this was a pre-existing medical condition which had become symptomatic and was aggravated by the August 2003 work injury, but had improved and was resolved within two or three months after the work accident.

The ALJ then discussed, in great detail, other reasons for rejecting Petitioner's request for benefits:

> The medical evidence in the record further reflects that the claimant received conservative treatment for her injuries consisting primarily of physical therapy and medications, but that her level of participation, despite according to her testimony, continuing to experience persistent complaints of pain, was sporadic with gaps of treatment lasting several months at time, and her return for treatment following the last gap appearing to be motivated at least by a pending workers' compensation hearing . . . In addition, I find . . . there is no evidence of a herniated disc, nerve impingement, cord encroachment, or that the claimant's diagnostic findings have been clinically correlated on physical examination, or are disabling.

Compensation Order at 10,

The ALJ then concluded, by stating:

> I therefore reject the opinions of the treating physicians and find based upon the evidence in the record that the medical opinions of Dr. Levitt and the employer's medical evidence are the most persuasive and consistent with the evidence of record and the claimant had reached maximum medical improvement from her August 2, 2003 work injury as of the December 4, 2003 IME of the employer's physician, Dr. Hughes, was no longer capable of returning to work in her usual occupation without restrictions.

Id.

The CRB, in great detail, has reiterated how it is quite proper to reject the opinion of the treating physician if persuasive reasons are given to accept a conflicting medical opinion submitted by an employer. *Taylor v. Verizon Communications, Inc.*, CRB No. 05-232, OHA No. 03-216B, OWC No. 571165 (June 16, 2005). After reviewing the record, it is clear that the ALJ detailed the reasons for rejecting the views of Petitioner's treating physician, Dr. Dorn, in favor of the opinions of Drs. Hughes and Levitt. As a result, there is no reason to disturb the ALJ's determination on this issue and this Panel must reject Petitioner's argument that the ALJ did not adequately explain the conclusions and opinions relied on to deny Petitioner's request for benefits.

Accordingly, the ALJ's conclusion that Petitioner had no ongoing disability from her August 5, 2003 work injury is supported by substantial evidence and is in accordance with the law.

CONCLUSION

The Compensation Order of October 21, 2005, is supported by substantial evidence in the record and is in accordance with the law.

ORDER

The Compensation Order of October 21, 2005 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

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FLOYD LEWIS
Administrative Appeals Judge

March 3,.2006
DATE