

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA M. MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 11-032

**YVONNE GOODWIN
Claimant-Respondent,**

v.

STARBUCKS COFFEE COMPANY,

and

**GALLAGHER BASSETT SERVICES,
Employer/Insurer - Petitioners.**

Appeal from a Compensation Order on Remand by
The Honorable Belva D. Newsome
AHD No. 08-163, OWC No. 643564

Joseph Tarpine,¹ Esquire for the Petitioner
William Kohler, Esquire for the Respondent

Before HEATHER C. LESLIE,² MELISSA JONES, and JEFFREY P. RUSSELL,³ *Administrative Appeals Judges.*

HEATHER C. LESLIE, *Administrative Appeals Judge*, for the Compensation Review Board.

DECISION AND ORDER

OVERVIEW

This case is before the Compensation Review Board (CRB) on the request for review filed by the Employer - Petitioner (Employer) of the Compensation Order on Remand (COR2) issued on

¹ The appeal was filed by Rebecca L. Dannenberg for the Employer. Subsequently, Ms. Dannenberg withdrew her appearance. Mr. Joseph Tarpine entered his appearance for the Employer.

² Judge Heather C. Leslie is appointed by the Director of DOES as an interim Board member pursuant to DOES Administrative Policy Issuance No. 12-02 (June 20, 2012).

³ Judge Russell is appointed by the Director of the DOES as an interim CRB member pursuant to DOES Administrative Policy Issuance No. 12-01 (June 20, 2012).

March 15, 2011 by an Administrative Law Judge (ALJ) in the Office of Hearings and Adjudication of the District of Columbia Department of Employment Services (DOES). In that CO, the ALJ granted the Claimant's request for ongoing disability benefits and casually related medical treatments. WE AFFIRM.

FACTS OF RECORD AND PROCEDURAL HISTORY

On March 30, 2006, the Claimant slipped and fell at work. In a Compensation Order issued on July 25, 2008, the Administrative Law Judge ("ALJ") awarded the Claimant temporary total disability benefits from March 30, 2006 to the date of the formal hearing and continuing, causally related medical expenses, and back pay with interest for retaliatory discharge; the ALJ also fined the Employer for retaliatory discharge.

An appeal ensued, and on December 11, 2008, the CRB affirmed in part and reversed and remanded in part the July 25, 2008 Compensation Order. The finding that the Claimant had invoked the presumption of compensability was affirmed; the finding of retaliatory discharge was reversed and vacated; the exclusion of the Employer's exhibits and the award of temporary total disability benefits were reversed and remanded.

In response to the Decision and Remand Order, the ALJ issued the September 30, 2009 Compensation Order on Remand (COR1). The COR1 awarded the Claimant temporary total disability benefits from March 30, 2006 to the date of the formal hearing and continuing subject to a credit for wages earned, causally related medical expenses, and accrued interest.

Another appeal ensued. On July 7, 2010, the CRB reversed and remanded again for the ALJ to consider all the evidence, including Employer's exhibit J, which had been erroneously excluded from the prior considerations. The CRB ordered the ALJ to accept Exhibit J into "evidence and consideration of that exhibit in regard to the issues of casual relationship/arising out of and in the course of employment and the nature and extend of the Claimant's disability, if any.

On March 15, 2011, a Compensation Order on Remand was issued (COR2). In that COR2, the ALJ took into consideration the Employer's exhibit J, the IME report of Dr. Robert Gordon. After reviewing the report and taking into consideration Dr. Gordon's opinion, the ALJ awarded the Claimant temporary total disability benefits from March 30, 2006 to the date of the formal hearing and continuing subject to a credit for wages earned, causally related medical expenses, and accrued interest.

The Employer appealed. The Employer argues in the present appeal that it was error for the ALJ to find the Claimant's thoracic back injury causally related the injury and that the COR2 should be reversed because the COR2 did not address the "Claimant's pre-existing and subsequent medical problems, diagnoses, and treatment." Employer's argument at 10.

The Claimant opposed, arguing the COR2 is supported by the substantial evidence in the record and should be affirmed. The Claimant also simultaneously filed a Motion to Strike the Employer/Carrier's Application for Review, arguing the Employer is "now seeking another review of an issue that has been thoroughly reviewed." Claimant's Motion at 1.

THE STANDARD OF REVIEW

The scope of review by the CRB 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. See District of Columbia Workers' Compensation Act of 1979, D.C. Code, as amended, §32-1501 *et seq.* (the "Act") at §32-1521.01(d) (2) (A) and *Marriott International v. DOES*, 834 A.2d 882 (D.C. 2003).

Consistent with this standard of review, the CRB must uphold a Compensation Order that is supported by substantial evidence, even if there is substantial evidence in the record to support a contrary conclusion, and even where the CRB might have reached a contrary conclusion. *Id.* at 885.

DISCUSSION AND ANALYSIS

Preliminarily, we must first address the Claimant's Motion to Strike the Employer's Application for Review. The Claimant argues that the application for review represents "another bite at the apple" and the issue of causal connection regarding the thoracic spine has been "properly reviewed and settled." Claimant's argument at 3, 5. We disagree with this characterization.

This case has involved multiple remands by the CRB with various instructions, including the instruction for the ALJ to consider all of the Employer's evidence. It was not until the last COR2, when the ALJ considered Employer's exhibit J and the conclusions were drawn from a complete review of all the evidence. Thus, it is only since the issuance of the COR2, that it can be argued the ALJ took into consideration all of the evidence. This by no means is "another bite of the apple." The Claimant's Motion to Strike is denied.

The Employer first argues that the ALJ failed to consider all the evidence and to explain the basis for finding a causal relationship between the Claimant's thoracic condition and the work related injury. Specifically, the Employer argues that "there is no indication in the Compensation Order on Remand that the ALJ considered the Employer's defense that any injury to the back was unrelated to the work accident of March 30, 2006" and "the Claimant's pre-existing and subsequent medical problems, diagnoses, and treatment are material to the claim and defenses." Employer's argument at 10. We disagree.

A review of the Compensation Order on Remand shows the ALJ took into consideration the Employer's Exhibit J, the IME of Dr. Robert Gordon, as instructed by the CRB in the prior orders. Taken together with the ALJ's consideration of the Employer's other exhibits, it is clear the ALJ considered all of the medical evidence presented by the Employer, including the medical records that pre-dated the injury. As the CRB stated in the prior decision and order,

While Petitioner may appreciate more detail or a different treatment of the exhibits, the ALJ has reviewed the exhibits, and she is not required to inventory all the reasons she weighed them as she did. *Sturgis v. DOES*, 629 A.2d 547, 554 (D.C. 1993). Moreover, the CRB is not permitted to reweigh the evidence so long as there is substantial evidence in the record to support the findings and conclusions. *Marriott, supra*.

Goodwin v. Starbucks Coffee Company, CRB No. 10-015, AHD No. 08-163, OWC No. 643564 (July 7, 2010), at 3.

The COR2 conclusion that the Claimant's current condition is causally related to the work injury is supported by the substantial evidence in the record and is affirmed.

The Employer next argues that the ALJ committed error in finding the Claimant was entitled to temporary total disability benefits from March 30, 2006 to the present and continuing, with a credit to the Employer for the periods the Claimant actually worked. The Employer relies heavily on a return to work slip authored by Dr. Fraser Henderson, wherein the doctor released the Claimant to work on October 1, 2007. A review of the COR2 reveals the following discussion when addressing the nature and extent of the Claimant's disability:

The IME does challenge the nature and extent of Claimant's disability in that Dr. Gordon opined Claimant could return to work light duty. The record reflects that Employer did not offer Claimant light duty after the April 29, 2008 IME. Employer terminated Claimant on August 6, 2007. Employer did not rebut the Claimant's *prima facie* case of total disability since Employer did not offer Claimant light duty employment or demonstrate the availability of other jobs which Claimant could perform after the period of April 10, 2007 to October 7, 2007 when Claimant worked for Barnes and Noble.

COR2 at 5.

We find no error in the above analysis. The ALJ took into consideration the IME of Dr. Gordon as instructed by the CRB.

The Employer also argues in its supplemental brief that the treating physician released the Claimant to full duty on October 1, 2007, thus it was in error to award her temporary total disability benefits. A review of the return to work slip reveals that while there is a return to work slip, it can be described as fairly vague and non-specific, and despite the lack of any specific restrictions, it doesn't explicitly authorize a return to the heavy work that was the pre-injury job. That being said, the ALJ has taken into consideration the treating physicians opinion. Specifically,

Claimant's treating physician did not release Claimant to return to work until October 8, 2007. (CE 2). Employer had terminated on August 9, 2007, for the stated reason that Dr. Henderson was unable to indicate a date on which Claimant could return to work. (CE 9). When Claimant sought reemployment with Employer, she was required to go into a drug rehabilitation program. Dr. Henderson wrote in an October 1, 2007 report that Claimant had never abused drugs despite the severity of the pain she had suffered and the procedures he had performed on her back. (CE 1).

Goodwin v. Starbucks Coffee Company, AHD No. 08-163, OWC No. 643564 (July 25, 2008) at 8-9.

It is clear that the ALJ has taken into consideration all of the record evidence when coming to her ultimate determination. The award of disability benefits is supported by the substantial evidence in the record. Again, as with the first assignment of error, we cannot re weigh the evidence in the Employer's favor if there is substantial evidence in the record to support the ALJ's conclusion. The Employer's physician opines the Claimant can return to work light duty. The Employer failed to show any offer of light duty to the Claimant. As the COR2 is supported by the substantial evidence in the record, we affirm.

CONCLUSION AND ORDER

The Compensation Order on Remand of March 15, 2011 is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

HEATHER C. LESLIE
Administrative Appeals Judge

September 11, 2012 _____
DATE