

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

Department of Employment Services

VINCENT C. GRAY  
MAYOR



F. THOMAS LUPARELLO  
ACTING DIRECTOR

**COMPENSATION REVIEW BOARD**

**CRB 13-165**

**HELEN WHITE,**  
**Claimant-Petitioner,**

v.

**WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY  
and SEDGWICK CLAIMS MANAGEMENT SERVICE,  
Self-Insured Employer and Third Party Administrator-Respondent.**

Appeal from a November 19, 2013, Compensation Order  
By Administrative Law Judge Linda F. Jory  
AHD No.08-006B, OWC No. 671560

Krista N. DeSmyter for the Petitioner  
Donna J. Henderson for the Respondent

Before: LAWRENCE D. TARR, *Chief Administrative Appeals Judge*, HENRY W. MCCOY and  
JEFFREY P. RUSSELL, *Administrative Appeals Judges*.

LAWRENCE D. TARR for the Compensation Review Board.

**DECISION AND ORDER**

This case is before the Compensation Review Board (CRB) on the appeal filed by the claimant, Helen White, challenging the November 19, 2013 Compensation Order (CO) issued by an Administrative Law Judge (ALJ) in the Hearings and Adjudication Section of the District of Columbia Department of Employment Services (DOES). In the CO, the ALJ determined that certain proposed medical treatments were not reasonable and necessary and therefore not the employer's responsibility. We AFFIRM.

**BACKGROUND AND FACTS OF RECORD**

Claimant worked for Employer Washington Metropolitan Area Transit Authority (WMATA) as a bus operator. On June 26, 2006, the bus Claimant was driving struck another vehicle from behind.<sup>1</sup> As a result, Claimant injured her neck and lower back -- areas of her body that had been

<sup>1</sup> Although not material to this decision, we note that there are several documents that stated the accident happened when the claimant's bus was struck from behind. However, the Joint Pre-Hearing Statement and Claimant's hearing testimony confirm that that accident happened when Claimant's bus struck the rear of a car.

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injured in previous work-related accidents during her twenty-five year career working for WMATA. Claimant attempted to return to work after the accident but had to stop on August 1, 2005. She has not worked since.

Orthopedist and general medicine specialist, Dr. Eric G. Dawson, who had treated Claimant for her previous work-related injuries, treated her for the June 26, 2006 accident. Claimant also has been examined twice by orthopedic surgeon, Dr. Louis Levitt for employer-requested independent medical examinations (IME), once by Dr. Michael Franchetti for an IME that Claimant requested, and her medical records were reviewed for utilization review (UR) by Dr. Robert Holladay.

On June 2, 2008, the parties settled the indemnity portions of Claimant's several workers' compensation claims. The settlement provided that Employer remained liable for Claimant's reasonable, necessary, and causally related medical expenses. In 2012, Employer denied approval for additional treatment by Dr. Dawson. As a result, a formal hearing was held to resolve the dispute over Employer's responsibility for Dr. Dawson's medical care.

The ALJ denied the claim. Claimant timely appealed with Employer timely filing an Opposition.

#### DISCUSSION

On review, Claimant argues that the ALJ's decision is arbitrary, capricious, unsupported by substantial evidence in the record and not in accordance with the law. We disagree.

As the ALJ correctly stated in the CO, Claimant has the legal burden to prove that the contested medical treatment is reasonable and necessary, without the benefit of any presumption of compensability. The ALJ held Claimant had not met her burden:

In sum, it is concluded that claimant has not established that the requested Toradol and Depo Medrol injections as well as continued office visits with Dr. Dawson continue to be reasonable and necessary medical expenses and employer is not responsible for reimbursement of the medical expenses associated with these injections.

CO at 5.

To support her claim, Claimant primarily relied on the April 18, 2013 report from Dr. Dawson.<sup>2</sup> Dr. Dawson stated:

The patient is to stay with the basic medical regimen and the doctor [Dr. Levitt] also unfortunately was critical of my recommendation that the patient stay with an anti-inflammatory and the she get anti-inflammatories, steroidal and nonsteroidal,

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<sup>2</sup> Although submitted into evidence by Claimant, Dr. Franchetti's June 5, 2007 IME report apparently was not written for the present litigation. That report discussed Claimant's permanent partial disability impairment and did not address the reasonableness or necessity of Dr. Dawson's treatment.

injections when other means and methods were not satisfactory. He provided no alternative recommendations and rather just said that the patient should suffer. This is also reprehensible and is something that bares examination. In other words, it is easy to criticize but harder to be constructive. In point of fact, because we do not want the patient being a Morphine, opioid or narcotic addict, we have gone with the lesser measures, admittedly one that we would not like to take, but we are pressed by the patient's diagnosis, which has been fully and firmly established.

The ALJ explained why she was not persuaded by Dr. Dawson's opinion:

Instead of explaining why the injections are reasonable and necessary to the care of claimant's back pain or why it is notable that there is a positive study showing nerve impingement of the L5 and why the injections are reasonable treatment for nerve impingement symptoms, Dr. Dawson devoted the majority of his narrative report providing his opinion of Dr. Levitt and his IME practice.

CO at 3-4, 3.

The ALJ further identified other reasons why she did not accept Dr. Dawson's treatment plan and why she found claimant did not meet her burden of proof:

Noting again that Dr. Dawson did not provide any rationale for continuing with the Toradol injections other than his theory that the injections are a lesser evil than Morphine, opioids, or narcotics and it is further noted that Dr. Dawson's assertion that claimant has nerve impingement of the L5 nerve is not supported by any of the record evidence. Thus, of the medical evidence presented with regard to the reasonableness and necessity of Toradol and Depo Medrol injections, and in light of the "equal footing" of the UI physician now mandated in this jurisdiction it is the evidence of the employer that is more persuasive. As this is the only treatment offered by Dr. Dawson, the undersigned cannot ascertain any justification for ongoing treatment with Dr. Dawson as requested.

CO at 5.

Additionally, neither Dr. Holladay nor Dr. Levitt's medical opinions establish the proposed treatments are reasonable and necessary. In his February 18, 2013 UR report, Dr. Holladay was asked whether the proposed request for ongoing treatment is reasonable and necessary, Dr. Holladay said:

Based on the records provided, the treating physician's plan is continued office visits on a monthly basis and apparently Toradol injections, which are not supported per current treatment guidelines. The long term use of an NSAID is not

indicated per ODG. [Official Disability Guidelines, Treatment Index, 8<sup>th</sup> Edition (web), 2012].<sup>3</sup>

Dr. Levitt's IME reports and his deposition also do not establish the proposed treatment is reasonable and necessary. As the ALJ stated:

Although not as detailed as Dr. Levitt's opinion, the UR conclusion does not contradict Dr. Levitt's well-reasoned explanation with regard to continued use of Toradol and Depo Medrol injections.

Dr. Levitt explained:

The question in this case is whether this patient sustained injuries (sic) in 6/06 that would require additional treatment at the present time. I will note for the last decade Dr. Dawson has continued to provide this patient with Toradol and Depo Medrol intramuscular injections. I know of no literature in the orthopedic realm of knowledge that would substantiate any benefit from monthly injections of Toradol and monthly injections of Depo Medrol. Injection therapies serve one purpose and that is to injure the local tissue every time an injection is received. I can identify no active musculoskeletal process that is linked to the accident of 6/23/06. There is no active musculoskeletal process that would warrant treatment. There is no clinical basis whatsoever for injections of Toradol and Depo Medrol. With respect to the accident of 6/23/06 she reached maximum medical improvement within a 6-8 week period following the accident and there would have been no justification for continuation of care beyond that as a byproduct of 6/23/06 accident.

CO at 4.

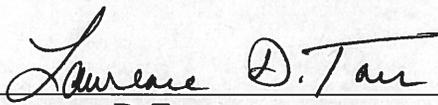
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<sup>3</sup> Petitioner's argument that the UR report conflates causal relationship with reasonableness and necessity is not without merit, given what might be termed ambiguous language in the report. However, the UR report makes clear that the Toradol injections are not within the ODG because they have been tried for a lengthy period and failed, and this view is not limited to whether the complaints stem from an old or new injury

**CONCLUSION AND ORDER**

The ALJ's determination that Claimant failed to meet her burden of proof to establish that the injections and other treatments were reasonable and necessary is supported by substantial evidence and is in accordance with the law. The November 19, 2013 Compensation Order is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

  
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LAWRENCE D. TARR  
*Chief Administrative Appeals Judge*

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May 30, 2014  
DATE