GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR

LISA MARÍA MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 13-001

LARONDA HILL,
Claimant-Petitioner,

v.

WASHINGTON HOME HOSPICE and LIBERTY MUTUAL INSURANCE CO.,
Employer/Insurer-Respondent.

Appeal from a December 6, 2012 Compensation Order By
Administrative Law Judge Joan E. Knight
AHD No. 12-296, OWC No. 680482

Matthew Peffer, Esquire for the Petitioner
Christopher Costabile, Esquire for the Respondent

Before MELISSA LIN JONES, HENRY W. MCCOY, *Administrative Appeals Judges* and LAWRENCE D. TARR, *Chief Administrative Appeals Judge*.

MELISSA LIN JONES for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

On May 16, 2011, Ms. LaRonda Hill slipped and fell to the floor, landing on her right knee and elbow. She was working for Washington Home Hospice as a Certified Nursing Assistant at that time.

Washington Home Hospice voluntarily paid Ms. Hill indemnity benefits as of June 2, 2011, but it denied authorization for a diagnostic MRI and other medical treatment for Ms. Hill's back complaints. Following a formal hearing, an administrative law judge ("ALJ") issued a Compensation Order denying Ms. Hill's claim for relief because when weighing the evidence in the record as a whole, the ALJ concluded Ms. Hill's lumbar condition is not medically causally related to her work-related accident.[1]

[1] *Hill v. Washington Home Hospice*, AHD No. 12-296, OWC No. 680482 (December 6, 2012).

On appeal, Ms. Hill argues, "The ALJ's decision to not find Mr. Tiongson's [*sic*] right upper extremity [*sic*] medically causally related to the work accident of September 30, 2008, [*sic*] her conclusion, and the manner she apparently went about making the conclusion is clearly erroneous and inconsistent with the plain language of the statute such that it must be vacated and reversed."[2] The true focus of Ms. Hill's appeal is her assertion that the ALJ substituted her judgment for the medical evidence by rejecting the medical opinion of the treating physician when weighing the evidence in the record. In the alternative, Ms. Hill asserts Dr. Robert F. Draper's opinion is not sufficient to rebut the presumption of compensability because contrary to Dr. Draper's statement, Ms. Hill first complained of low back pain on May 25, 2011, not June 16, 2011. In either case, Ms. Hill requests the CRB reverse the Compensation Order and grant her claim for relief.

In response, Washington Home Hospice argues the ALJ properly weighed the evidence. Washington Home Hospice requests the CRB affirm the Compensation Order.

ISSUES ON APPEAL

1. Is Dr. Draper's opinion based upon actual facts such that it is specific and comprehensive enough to sever the potential connection between Ms. Hill's back injury and her May 16, 2011 event?

2. On the issue of causation, did the ALJ apply the treating physician preference correctly?

3. Did the ALJ substitute her judgment for the medical evidence by rejecting the opinion of the treating physician when weighing the evidence in the record?

4. Is the December 6, 2012 Compensation Order supported by substantial evidence in the record and in accordance with applicable law?

ANALYSIS[3]

Pursuant to §32-1521(1) of the Act, a claimant is entitled to a presumption of compensability ("Presumption").[4] In order to benefit from the Presumption, the claimant initially must show some evidence of a disability and the existence of a work-related event, activity, or requirement

[2] Claimant's Application for Review, p. 8. Claimant's Counsel misidentifies the injured worker, the injury, and the date of accident.

[3] The scope of review by the CRB is limited to making a determination as to whether the factual findings of the appealed 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. Section 32-1521.01(d)(2)(A) of the District of Columbia Workers' Compensation Act, as amended, D.C. Code §32-1501 to 32-1545, ("Act"). Consistent with this standard of review, the CRB is constrained to uphold a Compensation Order that is supported by substantial evidence, even if there also is contained within the record under review substantial evidence to support a contrary conclusion and even if the CRB might have reached a contrary conclusion. *Marriott International v. DOES*, 834 A.2d 882, 885 (D.C. 2003).

[4] Section 32-1521(1) of the Act states, "In any proceeding for the enforcement of a claim for compensation under this chapter it shall be presumed, in the absence of evidence to the contrary: (1) That the claim comes within the provisions of this chapter."

which has the potential to cause or to contribute to the disability.[5] "[O]nce an employee offers evidence demonstrating that an injury was potentially caused or aggravated by work-related activity, a presumption arises that the injury is work-related and therefore compensable under the Act."[6] There is no dispute the ALJ appropriately ruled the Presumption properly had been invoked.

Once the Presumption was invoked, it was Washington Home Hospice's burden to come forth with substantial evidence "specific and comprehensive enough to sever the potential connection between a particular injury and a job-related event."[7] To rebut the Presumption, Washington Home Hospice relied upon Dr. Draper's opinion.

Dr. Draper performed a physical examination of Ms. Hill, reviewed the relevant medical records, and stated an unambiguous opinion contrary to the Presumption. The ALJ held

> [o]n March 2, 2012, Dr. Draper physically examined Claimant and reviewed the medical history made available. [Footnote omitted.] He opined that if Claimant sustained an "injury to her back on May 16, 2011, she would have developed symptoms within a week of the accident, therefore she did not injure her low back" in the work accident. EE1. Given the findings and medical opinion of Dr. Draper, the record contains sufficient evidence to rebut the presumption showing Claimant's lumbar condition is not causally related to the May 16, 2011 work accident.[8]

Dr. Draper's opinion is sufficient to rebut the Presumption.

Ms. Hill takes great exception to Dr. Draper's "falsely indicat[ing] that 'The first documentation of low back complaints in the medical records submitted to me is dated June 16, 2011 with the medical history showing low back pain.'"[9] While it is true that a similar notation appears in Dr. Marc E. Rankin's May 25, 2011 report,[10] that notation is in the medical history section of the report, not part of the subjective history surrounding the May 16, 2011 event. In fact, contrary to Ms. Hill's argument and contrary to some indications in the Compensation Order, it is not until August 1, 2011 that Ms. Hill's back pain is moved from the "Medical History" portion of Dr. Rankin's report to the History of Present Injury or "HPI" section of his report; even then, Ms. Hill denied "Fall," "Direct Trauma," or "Previous Injury."[11]

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[5] *Ferreira v. DOES,* 531 A.2d 651 (D.C. 1987).

[6] *Washington Hospital Center v. DOES,* 744 A.2d 992, 996 (D.C. 2000).

[7] *Waugh v. DOES,* 786 A.2d 595, 600 (D.C. 2001) (citations omitted).

[8] *Hill*, *supra*, p. 6.

[9] Claimant's Application for Review, p. 6.

[10] Dr. Rankin is Ms. Hill's treating physician.

[11] Claimant's Exhibit 1, p. 19.

Moreover, Dr. Draper's opinion is not based "exclusively on his careless or flawed reading of the medical records."[12] In addition to the lack of documented low back complaints in Dr. Rankin's early reports, another basis for Dr. Draper's opinion is Ms. Hill's lack of low back pain complaints in the emergency room on May 16, 2011.[13] Furthermore, as the ALJ pointed out,

> Dr. Draper, an orthopedic, reviewed the relevant medical history and examined Claimant for the purpose of an independent medical evaluation. On March 2, 2012, Dr. Draper opined Claimant's low back pain syndrome disc space narrowing and bulging lumbar degenerative disc disease with right lateral recess is not related to the May 16, 2011 work injury. Subsequent to his evaluation. Dr. Draper reviewed the records from Providence Hospital and issued an addendum on March 22, 2012. Dr. Draper opined that the mechanics of the work accident, his review of the lumbar MRI results and his physical examination he found no evidence that Claimant injured her low back on May 16, 2011. Dr. Draper concluded that he was unable to medically relate Claimant's pre-existing low back syndrome to the work accident.[14]

As such, Dr. Draper's error is not sufficient to rise to the level of error that requires the matter be remanded to the ALJ for further consideration.

When assessing the weight of competing medical testimony in workers' compensation cases an attending physician ordinarily is preferred as a witness over a doctor who has been retained to examine the claimant solely for purposes of litigation;[15] the medical opinions of a claimant's treating physician can be rejected, however, if there are specific reasons for doing so.[16] When weighing the evidence as a whole, the ALJ recognized the treating physician preference, but for reasons that are substantiated by the medical evidence, the ALJ abandoned the preference because:

- Dr. Rankin's medical reports fail to causally related Ms. Hill's spinal stenosis to her work injury;[17]

- When Dr. Rankin did relate Ms. Hill's lumbar complaints to her work-related incident, he did so in response to a letter from Ms. Hill's attorney; as the ALJ noted

> [t]he medical records presented by Claimant clearly establish she was treated by Dr. Rankin over a period of time after her work injury. Dr. Rankin, is

[12] Claimant's Application for Review, p. 11.

[13] Although Ms. Hill testified that she did make such complaints at that time, the ALJ specifically found that testimony unworthy of belief, *Hill*, *supra*, p. 4, and an ALJ's credibility determinations are entitled to deference. Dell v. DOES, 499 A.2d 102, 106 (D.C. 1985).

[14] *Hill*, *supra*, p. 7.

[15] *Kralick v. DOES,* 842 A.2d 705, 712 (D.C. 2004).

[16] See *Butler v. Boatman & Magnani,* H&AS No. 84-348, OWC No. 044699 (Remand Order December 31, 1986).

[17] *Hill*, *supra*, p. 7.

therefore, potentially in a better position to understand fully Claimant's condition. Medical records show Dr. Rankin diagnosed Claimant with lumbar strain, spinal stenosis of the lumbar region, and radiculopathy in August 2011. Throughout this period, the treating notes indicate that Claimant complained of acute right knee pain and pain in her lower back region. On September 21, 2011, upon examination of Claimant's lumbar region, Dr. Rankin noted the presence of moderate paraspinal spasms tender to palpitation and positive straight leg test bilaterally. Dr. Rankin's impression of Claimant's MRI was small disc bulges at L1-L2, no significant disc or facet abnormalities at L2-L3, L3-L4; and mild facet hypertrophy at L4-L5 and L5-S1 with disc space narrowing. He confirmed his diagnosis of spinal stenosis, and offered a course of treatment. Throughout Dr. Rankin's medical reports dated May 25, 2011 through February 27, 2012, he does not relate Claimant's spinal stenosis to her work injury. Claimant presented into evidence a document that was drafted by her attorney, on July 11, 2011, and filled out and signed by Dr. Rankin on August 16, 2011. In it, Dr. Rankin gives diagnosis of "1) right knee contusion, 2) medial PLICA; 3) lumbar radiculopathy, 4) lumbar strain and completes the documents as follows:

> "Is the condition you have diagnosed caused, contributed to or aggravated, even in part, by the above-referenced incident?
> Yes: X"
>
> "Explanation: She slipped at work on May 16, 2011 sustaining injury to her right knee and lumbar spine." CE 1 p. 32.[18]

and

- "[T]he treatment records, relied upon by Claimant, do not reflect the type of details essential to draw the necessary conclusions needed on the issue of causation, and are rejected. On this record, Dr. Rankin's notes are void of detailed medical findings relating Claimant's lumbar condition to her work injury, and to do so would be purely speculative. Applying the standard set out in *Stewart* and *Mexicano* [citations omitted], the medical treatment notes are sketchy, vague, and lack necessary detail and specificity to make a determination of causation under the Act."[19]

Contrary to Ms. Hill's assertion that Dr. Rankin's August 16, 2011 letter "is perfectly clear, self-evident, and explained, and is further supported by Dr. Rankin's multiple examinations and objective tests,"[20] the ALJ's characterization of the letter prepared for litigation purposes is accurate in that the letter "is unsupported by any record or testimony concerning a contemporaneous examination; it lacks any explanation for its contents or rationale for its conclusions; [and] it is couched in terms, the meanings of which are not self-evident and are not explained."[21]

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[18] *Id.* at pp. 6-7.

[19] *Id.* at p. 8.

[20] Claimant's Application for Review, p. 13.

[21] *Hill*, *supra*, p. 8.

In the end, Dr. Rankin's medical records do not attribute Ms. Hill's low back condition to her work-related injury; Dr. Rankin's only causation opinion is in a fill-in-the-blank letter that is unsupported by other evidence. Thus, we cannot accept Ms. Hill's assertion that "[t]here was no basis for the ALJ to reject the opinion of the treating physician, Dr. Rankin [because] Dr. Rankin provided a clear diagnosis of Ms. Hill's low back condition, and causally related it to her work-related accident of May 16, 2011 in his letter dated August 16, 2011."[22] The ALJ was justified in rejecting the opinion of causation set forth in the August 16, 2011 letter.

Finally, assuming Ms. Hill raised the theory of aggravation of a pre-existing condition at the formal hearing, the ALJ considered the possibility of a compensable aggravation:

> Like the presumption rule, it is well settled in this jurisdiction that an aggravation of a pre-existing condition by work related conditions constitutes a compensable injury under the Act. The fact that other non-employment related factors may also have contributed to, or additionally aggravated malady, does not affect [the] right to compensation under the 'aggravation rule'. *King v. District of Columbia Dep't of Employment Servs.*, 742 A.2d 460 (D.C. 1999), and *Harris v. District of Columbia Dep't of Employment Servs.*, 660 A.2d 404 (D.C. App. 1995). Therefore, once a causal connection is shown between the disability and the work-related event, the claimant is entitled to a continuing presumption that ongoing manifestation of such disability remains the result of the prior job-related injury until rebutted by the employer.[23]

As detailed above, the reasons the ALJ treated the medical evidence as she did in regards to a discrete accidental injury apply equally to Ms. Hill's aggravation theory.

CONCLUSION AND ORDER

Dr. Draper's opinion qualifies to sever the presumption of compensability, and when weighing the evidence in the record, the ALJ relied upon the medical evidence to reject the opinion of the treating physician. The December 6, 2012 Compensation Order is supported by substantial evidence in the record, is in accordance with applicable law, and is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

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MELISSA LIN JONES
Administrative Appeals Judge

April 19, 2013
DATE

[22] Claimant's Application for Review, p. 15.

[23] *Hill*, *supra*, p. 5.