

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA M. MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 11-139

JUDY C. HOLTON,
Claimant–Petitioner,

v.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
and CAMBRIDGE NORTH AMERICA,
Employer/Insurer–Respondent

Appeal from a Compensation Order on Remand by
The Honorable Nata K. Brown
AHD No. 09-171, OWC No. 602804

David J. Kapson, Esquire for the Petitioner
Sarah O. Rollman , Esquire, for the Respondent

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

MELISSA LIN JONES, *Administrative Appeals Judge*, for the Compensation Review Board.

DECISION AND ORDER

JURISDICTION

Jurisdiction is conferred upon the Compensation Review Board (“CRB”) pursuant to §§32-1521.01 and 32-1522 of the District of Columbia Workers’ Compensation Act of 1979, D.C. Code, as amended, §32-1501 *et seq.*, (“Act”), 7 DCMR §250, *et seq.*, and the Department of Employment Services Director’s Administrative Policy Issuance 05-01 (February 5, 2005).

FACTS OF RECORD AND PROCEDURAL HISTORY

On May 9, 2004, Ms. Judy C. Holton was working as a station manager for the Washington Metropolitan Area Transit Authority (“WMATA”). On that day, she exited her kiosk, tripped over an extension cord, and fell.

Ms. Holton initially treated at George Washington University Hospital. She followed-up with Kaiser Permanente Urgent Care, her family doctor, and multiple orthopedic surgeons. Dr. Rinelda Horton eventually became Ms. Holton’s treating physician.

At a formal hearing, Ms. Holton requested an award of permanent partial disability to her left arm. The issues to be resolved in order to determine entitlement to those benefits were (1) the causal relationship between Ms. Holton's May 9, 2004 accident and her left carpal tunnel syndrome and her finger triggering and (2) the nature and extent of Ms. Holton's disability, if any.

Ms. Holton's request for relief was denied in a Compensation Order dated October 26, 2009. An administrative law judge ("ALJ") determined Ms. Holton had failed to prove her disability is causally related to her May 9, 2004 industrial accident.

The October 26, 2009 Compensation Order was appealed to the CRB. On September 9, 2011, the CRB remanded the matter for the ALJ to weigh the totality of the evidence on the issue of causal relationship.

A Compensation Order on Remand issued on November 8, 2011. After reviewing the evidence, including Dr. Jeffrey H. Phillips' opinion regarding causal relationship, the ALJ denied Ms. Holton's claim for relief.

Ms. Holton has filed another appeal with the CRB. In this appeal, Ms. Holton argues the ALJ erred in rejecting the opinions of Dr. Phillips in favor of those of Dr. David Dorin. Ms. Holton also argues she is entitled to permanent partial disability benefits for disability to her left arm. She requests we reverse the Compensation on Remand.

On the other hand, WMATA's position is that the only issue for consideration in this appeal is the weighing of the evidence regarding causal relationship because the issues of invoking the presumption of compensability and rebutting that presumption already have been addressed in the September 9, 2011 Decision and Remand Order. Furthermore, WMATA asserts the ALJ did weigh the evidence of record (including Dr. Phillips' opinion) and the conclusion reached is supported by substantial evidence. WMATA requests we affirm the Compensation Order on Remand.

ISSUES ON APPEAL

1. Does substantial evidence in the record support that the ALJ properly considered the directives in the September 9, 2011 Decision and Remand Order?
2. Is the November 8, 2011 Compensation Order on Remand supported by substantial evidence and in accordance with the law?

ANALYSIS¹

Pursuant to the September 9, 2011 Decision and Remand Order, it is the law of the case that the presumption of compensability properly had been invoked and rebutted in this matter. The matter was remanded for the ALJ “to weigh the totality of the evidence on the issue of causal relationship, including the opinions of Dr. Phillips.”²

On remand, when weighing the evidence, the ALJ rejected Dr. Phillips’ opinion regarding causal relationship:

Dr. Phillips opined that direct trauma from Claimant’s fall on the left outstretched hand caused inflammation in the flexor sheath and the carpal canal, which caused the carpal tunnel syndrome and the triggering; however, in his March 30, 2009, report he also acknowledges that Claimant’s EMG and nerve conduction studies [footnote omitted] showed that she had bilateral carpal tunnel syndrome -- both on the left and right upper extremities (CE 3). He offers a full explanation of how Claimant’s left arm condition developed as the result of a fall, but offers no explanation regarding how the same condition exists in the right arm. Claimant, in fact, when examined by Dr. [Vestinia] Bridges on May 17, 2004 (EE 4), had already had trigger finger releases on her right hand.^[3]

Dr. Phillips was not Ms. Holton’s treating physician so his opinion is not entitled to any preference.⁴ In the end, all that was required on remand was for the ALJ to consider Dr. Phillips’ opinion; Dr. Phillips’ opinion was considered and was rejected:

The treating physician, Dr. [Renelada] Horton, refused to opine that there is a medical causal relationship between Claimant’s work injury and the triggering/carpal tunnel syndrome. Dr. Dorin expressly opined that there was no medical causal relationship between the triggering/carpal tunnel syndrome and the work injury. In addition, the reports of Dr. Bridges, Dr. Dorin, and Dr. Phillips refer to the EMG/Nerve Conduction Studies, which, in their totality, show that there was evidence that Claimant had bilateral carpal tunnel syndrome prior to her fall. The

¹ The scope of review by the CRB is limited to making a determination as to whether the factual findings of the appealed Compensation Order on Remand 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 Act. Consistent with this standard of review, the CRB is constrained to uphold a Compensation Order on Remand 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).

² *Holton v. Washington Metropolitan Area Transit Authority*, CRB No. 10-027, AHD No. 09-171, OWC No. 602804 (September 9, 2011), p. 5.

³ *Holton v. Washington Metropolitan Area Transit Authority*, AHD No. 09-171, OWC No. 602804 (November 8, 2011), unnumbered p. 6.

⁴ *Kralick v. DOES*, 842 A.2d 705, 712 (D.C. 2004) (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.)

preponderance of the evidence shows that Claimant has failed to meet her burden to show a medical causal relationship between her fall at work and the carpal tunnel condition in her left arm.^[5]

Thus, there is substantial evidence in the record to support the denial of Ms. Holton's request for permanent partial disability benefits for left arm disability because her carpal tunnel syndrome is not causally related to her on-the-job accident, and the CRB lacks authority to reweigh the evidence in Ms. Holton's favor.⁶

CONCLUSION AND ORDER

Substantial evidence in the record supports that the ALJ properly considered the directives in the September 9, 2011 Decision and Remand Order. The November 8, 2011 Compensation Order on Remand is supported by substantial evidence, is in accordance with the law, and is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

MELISSA LIN JONES
Administrative Appeals Judge

July 23, 2012
DATE

⁵ *Holton v. Washington Metropolitan Area Transit Authority*, AHD No. 09-171, OWC No. 602804 (November 8, 2011), unnumbered p. 6.

⁶ *Marriott, supra*.