

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services



MURIEL BOWSER
MAYOR

ODIE DONALD II
ACTING DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 14-158 (R)

JOSEPHINE REYES,
Claimant,

v.

DISTRICT OF COLUMBIA DEPARTMENT OF MENTAL HEALTH,
Employer.

On Remand from the District of Columbia Court of Appeals
No. 15-AA-648 (D.C. December 29, 2016)

Appeal from a May 13, 2015 Compensation Review Board Decision and Order
Vacating a November 26, 2014 Compensation Order
by Administrative Law Joan E. Knight
DCP No. 30110170199-001, AHD No. PBL 13-029

(Decided February 9, 2017)

Michael J. McAuliffe for the Claimant
Frank Mc Dougald and Andrea J. Comentale for the Employer

Before LAWRENCE D. TARR, *Chief Administrative Appeals Judge*, JEFFREY D. RUSSELL, and
LINDA F. JORY, *Administrative Appeals Judges*.

LAWRENCE D. TARR, for the Compensation Review Board.

DECISION AND ORDER ON REMAND

INTRODUCTION

This case is before the Compensation Review Board (“CRB”) on the December 29, 2016 opinion of the District of Columbia Court of Appeals (“DCCA”). That decision reversed and remanded the CRB’s May 13, 2015 Decision and Remand Order which had held that an administrative law judge (“ALJ”) in the Administrative Hearings Division (“AHD”) of the District of Columbia Department of Employment Services (“DOES”) did not have jurisdiction to consider Dr. Reyes’s claim relating to her right knee injury.

The DCCA remanded this case to the CRB with instructions “to address the merits of the ALJ’s determination that petitioner’s right knee condition was causally related to Dr. Reyes’s January 2011 workplace injury.”

BACKGROUND FACTS OF RECORD

On January 26, 2011, Dr. Josephine Reyes (“Claimant”) suffered multiple injuries when a patient attacked her while she was working as a psychiatrist at St. Elizabeths Hospital for the District of Columbia Department of Mental Health.¹ Employer accepted her workers’ compensation claim and paid benefits for the accepted injuries of “headache, cervical and lumbar sprain, rib contusion, and face contusion.”

Claimant remained off work from the date of the accident until August 1, 2011, when she returned to light-duty work. After her return to work, Claimant was advised on October 11, 2011 that her benefits were terminated.

Claimant reported that she was having problems with her right knee, a body part not mentioned in her claim or First Report. Employer sent Claimant for an Additional Medical Examination (“AME”) with orthopedic surgeon, Dr. Stanley Rothschild. Claimant also sought treatment for her right knee from her orthopedic surgeon, Dr. Tony Aram.

On October 5, 2012, Employer sent Claimant a Notice of Intent to Terminate Public Sector Workers’ Compensation Payments advising she no longer met the requirements for continued claims payments, based on Dr. Rothschild’s AME. The Notice also said “Dr. Rothschild does not believe your current complaints to your knee are related to the accident of January 26 2011.”

Claimant sought reconsideration concerning Employer’s decision that her right knee symptoms and related medical treatment were not related to her accident at work. On November 30, 2012 Employer issued a Final Decision on Reconsideration upholding its initial decision to terminate Claimant’s benefits. Claimant then sought a formal hearing. After Employer’s motion to dismiss Claimant’s hearing application was denied by the ALJ, a formal hearing took place on September 11, 2013.

At the formal hearing, Claimant sought "restoration of her disability claim to include payment for right knee treatment and surgeries, as well as, related medicals." *Reyes v. D.C. Department of Mental Health*, AHD No. PBL13-029, DCP 30110170199-0001 (November 26, 2014) at 2. In her CO, the ALJ ruled Dr. Reyes's right knee injury was a work-related aggravation of a prior condition and therefore was compensable.

¹ During all relevant times, the District of Columbia Department of Mental Health workers’ compensation claims were administered by the District of Columbia’s Office of Risk Management Public Sector Worker’s Compensation Program (“PSWCP”). In this decision, the term “Employer” shall refer to either the District of Columbia Department of Mental Health or the PSWCP.

On review at the CRB, Employer challenged the ALJ's decision on two grounds: (1) that AHD did not have jurisdiction to adjudicate any claim regarding Claimant's right knee and (2) the ALJ's decision was not supported by substantial evidence.

In the now-vacated May 13, 2015 Decision and Remand Order, the CRB held AHD did not have jurisdiction to hear the right knee claim. The CRB did not decide whether the ALJ's decision was supported by substantial evidence.

In accordance, with the DCCA's remand instructions, we only will discuss whether the ALJ's decision that Claimant's right knee condition was causally related to her January 26, 2011 accident at work is supported by substantial evidence.

The medical record was fully discussed in the ALJ's decision and we will not repeat all of it. With respect to Claimant's right knee, the two principal doctors involved are two orthopedic surgeons, Dr. Tony Aram and Dr. Stanley Rothschild. Medical reports from both doctors and Dr. Aram's deposition were admitted into evidence.

Dr. Aram testified that he started treating Claimant's right knee problems; pain consistent with mild early osteoarthritis, about a month or so before the accident at work. He next treated her on December 12, 2011, after Claimant complained of having increasing problems with her right knee. An MRI revealed osteoarthritis, deformity of the right knee, and a torn medial meniscus.

On December 19, 2011, Dr. Aram performed arthroscopic surgery and partial medial meniscectomy. Claimant's problems continued and she developed avascular necrosis of the medial femoral condyle. Dr. Armas performed a partial knee replacement on September 13, 2012.

Dr. Aram testified that a torn meniscus usually comes from trauma and that he believes Claimant's right knee problems were caused by the accident because of the relatively short period from when he diagnosed arthritis to when Claimant had osteonecrosis:

I think that within a reasonable degree of medical certainty that her final operation was due to the injury that she sustained.

* * *

And that opinion is arrived at because of the severity of the injury that she described to me, the etiology of the torn meniscus as well as the etiology of the osteonecrosis of the bone, which is really her diagnosis that led to the partial knee replacement. The etiology of these two things are usually trauma-related.

* * *

I'm aware that she had, you know, early arthritis in the knee because I've seen her before for that and I had documentation for that, as well as x-rays, but the rapid progression from her diagnosis for the point where her bone collapsed under the

medial femoral condyle indicates that something major happened between that time period. It's not just a degenerative process.

* * *

Again, you know, the time period going from her degenerative arthritis to osteonecrosis is quite brief, it's less than two years. And if one attributed strictly to degenerative changes, you expect this to go over a span of 10 to 15 years.

Employer's Exhibit 13 at 12, 13, 14-15.

Dr. Stanley Rothschild examined Claimant and reviewed her medical reports at Employer's request. Dr. Rothschild did his AME on July 7, 2012, an authored one report and two addenda.

Dr. Rothschild does not believe there is a medical causal connection between Claimant's accident at work and her right knee problems. In his July 7 2012, report, Dr. Rothschild attributed all of Claimant's knee problems to degenerative causes:

By patient's own words, her current complaints are [centered] about her knees, most specifically her right knee which is bothering her a great deal, especially since she had her knee surgery. It should be noted that she had very minimal complaints referable to her knee during the first several months after her episode. ... In December of 2011, almost a year later, she began to complain of buckling, locking of her right knee and walked into Dr. Aram's office using a walker. Most of her previous examinations, which were plentiful, did not describe any significant difficulties with either knee, although at different points the left knee was mentioned and then the right knee was mentioned.

Within a reasonable degree of medical certainty, I do not believe that her current knee issues are related to the accident or the assault that she sustained on January 26, 2011. With regard to that accident, I do believe she has reached maximum medical improvement for the body parts as it relates to the injury of that date. . . . Clearly, the problem with regard to her right knee and her left knee, which she states is her main focus of complaint now, are related to degenerative causes.

Employer's Exhibit 5.

Dr. Rothschild's addenda reports show he has reviewed all the reports from Dr. Aram. Dr. Rothschild still does not think Claimant's knee problems were caused by the work accident.

The ALJ issued her Compensation Order on November 26, 2014 and awarded the claim. The ALJ accepted the opinion of Dr. Aram and discounted that of Dr. Rothschild:

The testimony and reports of Dr. Aram support Claimant's assertion that her right knee was aggravated and injured in January 2011, thus is found to be causally related. The record evidence demonstrates that Claimant's meniscus tear is the

direct and natural result of her compensable primary injury accepted by ORM/DCP.

* * *

Throughout Dr. Rothschild's AME report and Addendum Reports he repeatedly refers to Claimant's "knees", "knee issues" and "right knee osteoarthritis" which he uses interchangeably in his reports, rendering his medial opinions on causal relationship of the right knee, sketchy, confusing and vague. In short, Dr. Rothschild's opinions do not reflect the type of detail essential to draw the necessary conclusions needed to support Employer's argument.

Upon review of the medical opinions presented both by Claimant and Employer, Dr. Aram's assessment and opinions are found more reliable and persuasive. Dr. Aram's deposition testimony and treatment notes are more comprehensive and indicating reasons for his medical conclusion that Claimant suffered a meniscus left knee tear that is causally related to her January 26, 2011 employment injury.

CO at 7.

On review, Employer asserts the ALJ's decision is not supported by substantial evidence. Employer criticizes the ALJ's decision because she "failed to consider the undisputed fact that Claimant had pre-existing arthritis in her right knee for which condition she had been treating with Dr. Aram." Moreover, Employer states the ALJ improperly rejected Dr. Rothschild's opinion and improperly characterized his opinion as "sketchy, confusing and vague." Employer's Application for Review at 6. Employer argues:

The record clearly shows that Claimant had a pre-existing condition and that her right knee problems occurred approximately ten months after the January 2011 incident. Dr. Rothschild's opinions, combined with Claimant's lack of complaints about the right knee for several months following the incident, demonstrate that Claimant did not injure or aggravate her pre-existing right knee condition in the January 26, 2011 incident. Accordingly, the November 26, 2011 CO should be vacated and a decision made on behalf of the Employer.

Employer's Brief at 7.

It is important to remember that the CRB does not review decisions de novo; rather our authority is limited to determine whether the ALJ's decision is supported by substantial evidence and in accordance with the law. It is not a reason to reverse an ALJ's decision merely because there is evidence in the record that would have supported a contrary decision or because the CRB would have reached a different decision on the record before us.

The ALJ accepted the medical opinion of orthopedic surgeon Dr. Aram over that of orthopedic surgeon, Dr. Rothschild. Dr. Aram stated a reasonable explanation as to why he believed there was a causal connection between the right knee problems and the work accident, and also

explained why the ten-month gap between the incident and the significant manifestation of the problem did not alter his view.

Dr. Rothschild also offered a reasonable explanation for his opinion. While we agree that his opinion was not sketchy, confusing or vague, that improper characterization does not amount to reversible error. The ALJ was under no obligation to accept Dr. Rothschild's opinion.

The ALJ's task was to determine which opinion she found more convincing and so long as that medical opinion was not based on erroneous facts, the CRB should accept it.

CONCLUSION AND ORDER

The ALJ's November 26, 2014 Compensation Order is supported by substantial evidence and is in accordance with the law. It is **AFFIRMED**.