

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**Department of Employment Services**

MURIEL BOWSER  
MAYOR



DEBORAH A. CARROLL  
DIRECTOR

COMPENSATION REVIEW BOARD

**CRB No. 15-021**

**LaLONDA REEDER,**  
**Claimant-Respondent,**

v.

**GEORGE WASHINGTON UNIVERSITY and**  
**YORK RISK SERVICES GROUP,**  
**Self-Insured Employer/Third-Party Administrator-Petitioner.**

Appeal from January 16, 2015 Compensation Order  
by Administrative Law Joan E. Knight  
AHD No. 13-490, OWC No. 697818

DEPT. OF EMPLOYMENT  
SERVICES  
COMPENSATION REVIEW  
BOARD  
2015 JUN 12 PM 1 09

Krista N. DeSmyter for the Claimant  
Sarah M. Burton for the Employer

Before MELISSA LIN JONES, LINDA F. JORY, and HEATHER C. LESLIE *Administrative Appeals Judges.*

MELISSA LIN JONES for the Compensation Review Board.

**DECISION AND REMAND ORDER**

**FACTS OF RECORD AND PROCEDURAL HISTORY**

On October 16, 2012 while working as a housekeeper for George Washington University ("GWU"), Ms. LaLonda Reeder fell and injured her low back and left hip. After treating with the George Washington University Emergency Room, Ms. Reeder was discharged with instructions to limit her work activities and to seek follow-up care.

Ms. Reeder sought follow-up care with her primary care physician, Suresh Kumar Mutath. Dr. Mutath cleared Ms. Reeder to return to work with no restrictions on February 13, 2013.

On March 7, 2013, Ms. Reeder began treating with Dr. David Dorin. Dr. Dorin placed Ms. Reeder on a 10 pound lifting restriction with no mopping or vacuuming. Dr. Dorin continued to impose physical limitations and restrictions during April, May, and June 2013.

On April 8, 2013, Dr. Marc Danziger examined Ms. Reeder at GWU's request. Dr. Danziger opined Ms. Reeder was at maximum medical improvement, needed no additional treatment, and could work full duty.

On October 21, 2013, Ms. Reeder was in a car accident. She injured her shoulder, neck, and back.

A dispute arose over Ms. Reeder's entitlement to temporary total disability benefits from April 13, 2013 to the date of the formal hearing and continuing, authorization for physical therapy and epidural steroid injections, payment of medical expenses, and interest. In a Compensation Order dated January 16, 2015, an administrative law judge ("ALJ") granted Ms. Reeder's claim for relief. The ALJ ruled Ms. Reeder's current condition and her current disability are medically causally related to her on-the-job injury. *Reeder v. George Washington University*, AHD No. 13-490, OWC No. 697818 (January 16, 2015).

On appeal, GWU asserts Ms. Reeder's ongoing need for treatment and her current disability are not causally related to her compensable injury. Specifically,

[t]he Employer/Carrier presented substantial evidence sufficient to rebut the treating physicians' recommendations. The uncontroverted medical evidence demonstrates that the Claimant sustained a new injury to her back in October 2013. It is clear that none of her treating physicians were aware of the new injury in providing their diagnoses and request for ongoing treatment. Further, Dr. Danziger has opined that Claimant's ongoing complaints of pain a year after the original work injury do not correlate with the MRI findings. As such, the Claimant's current complaints are not medically causally related and her claim for relief should be denied.

Employer/Carrier's Memorandum in Support of Their Application for Review, p. 6. GWU also asserts Ms. Reeder's current inability to work is not a result of a compensable injury. GWU requests the CRB vacate and reverse the Compensation Order.

In response, Ms. Reeder contends the Compensation Order is supported by substantial evidence. Regarding her car accident, Mr. Reeder admits she was involved in a car accident, but asserts Dr. Leonid Selya opines her current complaints are related to her on-the-job accident:

On October 21, 2013, Ms. Reeder was involved in a motor-vehicle accident where she was rear-ended by another driver. HT at 53. She noted that she had new/different injuries to her shoulders and neck, but no increase in her symptoms to her lower back. HT at 54-56. She was treated at Washington Hospital Center on that same day and also saw Dr. Muttath [*sic*] on November 7, 2013. Dr. Muttath [*sic*] diagnosed her with neck pain, shoulder pain, and back pain, bruise of the left knee, and whip lash injury of the spinal cord. EE at 29.

Since the date of the formal hearing in this matter, and since the date of her motor vehicle accident, Ms. Reeder has been seen by Dr. Selya on November 22, 2013 and January 31, 2014. *See* Employer's Exhibit (hereinafter "EE") #8; CE at 1A-1C. Although he does not address the intervening motor vehicle accident, Dr. Selya has opined that her conditions were due to the injury sustained at work,

as he has continued to opine throughout Ms. Reeder's entire course of treatment. CE at 1B; EE at 31.

Claimant's Opposition to the Application for Review, p. 5. Ms. Reeder requests the CRB affirm the Compensation Order.

#### ISSUES ON APPEAL

1. Is the ALJ's ruling that Ms. Reeder's current complaints are causally related to her on-the-job accident supported by substantial evidence and in accordance with the law?
2. Is Ms. Reeder's inability to return to work a result of a compensable injury?

#### ANALYSIS<sup>1</sup>

Pursuant to § 32-1521(1) of the Act, a claimant may be entitled to a presumption of compensability ("Presumption"). 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 which has the potential to cause or to contribute to the disability. *Ferreira v. DOES*, 531 A.2d 651 (D.C. 1987). "[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." *Washington Hospital Center v. DOES*, 744 A.2d 992, 996 (D.C. 2000). There is no dispute that Ms. Reeder invoked the Presumption.

Once the Presumption was invoked, it was GWU'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." *Waugh v. DOES*, 786 A.2d 595, 600 (D.C. 2001) (citations omitted). Only upon a successful showing by GWU would the burden return to Ms. Reeder to prove by a preponderance of the evidence, without the benefit of the Presumption, her conditions are causally related to her employment. *See Washington Hospital Center v. DOES*, 821 A.2d 898 (D.C. 2003). There is no dispute GWU rebutted the Presumption:

To rebut the presumption of compensability and in support of its claim, Employer relies on the April 8, 2013 IME report of Dr. Danziger. Dr. Danziger opined Claimant is at maximum medical improvement with regard to her work injury and is not in need of any additional medical treatment. He further opined Claimant's condition is not related to her work injury but rather related to degenerative changes that pre-existed the work accident. Employer has presented substantial evidence to rebut the presumption that has been invoked. *Washington Post, supra*.

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<sup>1</sup> 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 of 1979, as amended, D.C. Code § 32-1501 *et. seq* ("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).

The focus of GWU's argument is that Ms. Reeder's October 2013 automobile accident is an intervening cause severing the compensability of her work-related injury. When considering the role of Ms. Reeder's car accident, if any, on her current symptoms, the ALJ wrote

Employer also argued, Claimant's October 2013, motor vehicle accident where she injured her neck, left shoulder, low back and left knee severed any causal relationship to her work injury. Employer based its argument on Dr. Danziger's evaluation of Claimant on February 25, 2014 and review of the medical records from the motor vehicle accident. However, Dr. Danziger opined in his subsequent IME report that this motor vehicle accident exacerbated her work injury. There are no medical records to show this intervening accident severed any causal relationship that may exist between Claimant's lumbar derangement and sacroiliac joint and left hip pain and her October 2012, work injury in support of Employer's argument to further rebut the presumption.

*Reeder, supra*, at p. 6. Despite the possible reference to the contrary, GWU already had rebutted the Presumption with Dr. Danziger's independent medical evaluation report; therefore, consideration of Ms. Reeder's car accident should have taken place when weighing the evidence as a whole to determine if Ms. Reeder had proven the compensability of her current complaints by a preponderance of the evidence. Instead, when weighing the evidence, the ALJ afforded Drs. Selya and Dorin the treating physician preference and ruled that Ms. Reeder had proven causal relationship:

Upon consideration and review of the evidence, the testimony elicited provides a reliable indication of Claimant's current condition whereby she is currently unable to perform her work duties at her pre-injury status. The medical opinions of the treating physician in the record are accepted and given greater weight than the IME report of Dr. Danziger. Drs. Selya and Dorin provided orthopedic treatment to Claimant following her work accident are still treating her for the work injuries that occurred on October 16, 2012, and therefore in a better position to provide reliable medical opinions addressing Claimant's condition. Based upon the forgoing, the evidence supports a finding that the treating physician's reports are more persuasive than the IME reports of Dr. Danziger. Moreover, the medical reports of Drs. Selya and Dorin are more consistent with the objective medical evidence of record than the IME reports of Dr. Danziger. Based upon the treatment records and medical opinions of the treating physicians, Claimant has shown by a preponderance of the evidence that her current condition remains medically causally related to her work-related injury of October 16, 2012.

*Id.* at pp. 6-7. The ALJ seems to aver Dr. Dorin's medical records recognize Ms. Reeder's car accident:

On October 21, 2013, Claimant was involved in a non-work related automobile accident where she sustained soft tissue injuries to her shoulder, neck and back and suffered an aggravation whiplash injury of the spinal cord. Progress reports by Claimant's treating physicians through January 31, 2014, indicate Claimant's work injuries have not resolved. CE 2; EE 6, EE 7.

*Id.* at p. 4. Review of Claimant's Exhibit 2 reveals no such reporting regarding the car accident. In fact, the reports, disability slips, and prescriptions in Claimant's Exhibit 2 are dated June 4, 2013, May 14, 2013, April 30, 2013, April 9, 2013, March 19, 2013, and March 7, 2013. Given that Ms. Reeder's car accident did not happen until October 21, 2013, Claimant's Exhibit 2 cannot support the position that Dr. Dorin was aware of that intervening event.

A review of Dr. Selya's medical reports at Claimant's Exhibit 1 reveals a similar problem. None of Dr. Selya's medical reports post-date the car accident.

Although an ALJ is not required to inventory all the evidence in the record, *Washington Hospital Center v. DOES*, 983 A.2d 961 (D.C. 2009), a physician's opinion (whether an opinion by an independent medical examination physician or by a treating physician) should not be based upon a mischaracterization of the facts. *Nelson v. Georgetown University Hospital*, CRB No. 14-062, AHD No. 13-455, OWC No. 640321 (July 22, 2014). In this case, given the ALJ's inaccurate reference to Claimant's Exhibit 2 to support the proposition that Ms. Reeder's treating physicians were aware of her October 2013 car accident when opining about the causal relationship between Ms. Reeder's current complaints and her on-the-job injury, the law requires we remand this matter for further analysis of that issue.

#### CONCLUSION AND ORDER

Because the ALJ's ruling on causal relationship is not supported by substantial evidence and is not in accordance with the law, the remaining issues on appeal are MOOT. The ALJ's rulings that the Presumption has been invoked and has been rebutted are AFFIRMED, but this matter is REMANDED for further weighing of the evidence in the record as a whole to assess the causal relationship between Ms. Reeder's current complaints and her on-the-job injury; the ALJ must address the impact, if any, Ms. Reeder's October 21, 2013 car accident has on the medical opinions relied on to conclude both causal relationship and the nature and extent of Ms. Reeder's work-related disability, if any.

FOR THE COMPENSATION REVIEW BOARD:

/s/ Melissa Lin Jones

MELISSA LIN JONES

*Administrative Appeals Judge*

June 12, 2015

DATE