

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services



MURIEL BOWSER
MAYOR

ODIE A. DONALD II
ACTING DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 16-130

**LARRY HOPSON,
Claimant-Petitioner,**

v.

**COASTAL INTERNATIONAL SECURITY and
GALLAGHER BASSETT SERVICES,
Employer/Third Party Administrator.**

Appeal from a September 2, 2016 Compensation Order
by Administrative Law Judge Joan E. Knight
AHD No. 16-177, OWC No. 703868

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2017 JAN 25 AM 10 54

(Decided January 25, 2017)

Eric S. Poplonski for Claimant
Joel E. Ogden for Employer

Before LINDA F. JORY, HEATHER C. LESLIE, and GENNET PURCELL *Administrative Appeals Judges.*

LINDA F. JORY for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

Larry Hopson (“Claimant”) worked as an armed security/office supervisor for Coastal International Security (“Employer”). Claimant was assigned to work at the Department of Homeland Security building with Federal Protective Police.

Claimant has underlying hypertension/high blood pressure and pre-existing cervical degenerative disc disease. In 2011, Claimant was evaluated for neck, shoulder and right arm pain. Radiological imaging showed multi-level cervical spinal stenosis and disc protrusions at C5-C6 and C6-C7, cervical myelomalacia at C4-C5 and cervical radiculopathy. Claimant was prescribed Lyrica (an anti-convulsant for nerve and muscle pain) and nerve block injections. Claimant performed his duties for Employer without any known limitations or medical restrictions.

On April 8, 2013, during a lobby walkthrough, Claimant collapsed and fell forward onto a marble floor. His right dominant hand/wrist hyperextended and his face and head struck the floor. Claimant received emergency treatment at Queen Anne's Emergency Center to his right arm, right hand and right cheek. He sought follow-up treatment with his primary care family physician, Dr. Eric Ciganek. Dr. Ciganek diagnosed Claimant with a right wrist hyperextension/sprain and post-concussion syndrome secondary to his fall. Dr. Ciganek managed Claimant's work injuries over a period of six weeks. On May 15, 2013 Dr. Ciganek noted Claimant's right hand injury "had nicely resolved" and referred Claimant to a hand specialist to address residual complaints of pain and tenderness.

Claimant was seen by orthopedic hand surgeon, Dr. Christopher Forthman on May 30, 2013 and June 23, 2013. Dr. Forthman noted Claimant's right hand was at least 90% improved and that Claimant could resume regular duties as tolerated. Claimant returned to work as a security/police officer without restriction on June 24, 2013.

On October 28, 2013, Claimant was evaluated by neurologist, Dr. Terry Detrick. Dr. Detrick's impression was progressive disorder, alteration of consciousness, facial weakness, and right hemiparesis of an unclear etiology. Dr. Detrick suspected Claimant's symptoms may stem from a neck issue and cervical imaging was ordered. The cervical and thoracic MRI's scan taken on October 30, 2013 showed the presence of severe spinal canal stenosis at C2-C3, C6-C7, and C7-T1, most prominent from C6-T1. Claimant was diagnosed with multi-level degenerative changes and cervical spondylosis, spinal cord changes, cervical myelopathy at C4-C5 and was referred to a neurosurgeon for immediate cervical fusion surgery which was performed on November 1, 2013 by Dr. Enslin Aldrich, spinal neurosurgeon. Dr. Aldrich performed a second surgical procedure, an anterior cervical discectomy and fusion at C5-C6.

A dispute arose as to whether current treatment for Claimant's cervical spine condition was causally related to the work injury that occurred on April 8, 2013. A formal hearing was held before an administrative law judge ("ALJ") in the Administrative Hearings Division ("AHD") of the Department of Employment Services ("DOES") on June 27, 2016. A Compensation Order ("CO") issued on September 2, 2016, which denied Claimant's claim for relief of temporary total disability and causally related medical expenses.

Claimant filed Claimant's Application for Review and Claimant's Memorandum of Points and Authorities in Support of Application for Review ("Claimant's Brief") asserting the CO is not supported by substantial evidence and not in accordance with the law. Employer filed Employer/Administrator's Opposition to Claimant's Application for Review ("Employer's Brief") arguing that the CO should be affirmed.

ISSUE ON APPEAL

Is the September 2, 2016 Compensation Order supported by substantial evidence and in accordance with the law?

ANALYSIS

The scope of review by the CRB as established by the District of Columbia Workers' Compensation Act ("the Act") and as contained in the governing regulations is limited to making a determination whether the factual findings of a Compensation Order on appeal are based upon substantial evidence in the record, and whether the legal conclusions flow rationally from those facts and are otherwise in accordance with applicable law. D.C. Code § 32-1521.01(d)(2)(A). "Substantial evidence" as defined by the District of Columbia Court of Appeals (DCCA), is such evidence as a reasonable person might accept to support a particular conclusion. *Marriott Int'l. v. DOES* 834 A.2d 882 (D.C. 2003) (*Marriott*). Consistent with this scope of review, the CRB is bound to uphold a Compensation Order that is supported by substantial evidence, even if there is also contained within the record under review substantial evidence to support a contrary conclusion, and even where the members of the CRB review panel considering the appeal might have reached a contrary conclusion. *Marriott*, 834 A.2d at 885.

Claimant asserts the ALJ improperly found that Claimant's presumption was rebutted due to a lack of substantial evidence and alternatively, proper weight was not given to the opinions of Claimant's treating physicians.

With regard to the rebuttal evidence presented by Employer, Claimant asserts:

The critical determination in this instance is whether the evidence present [sic] by the Employer was substantial, specific, and comprehensive enough to sever the connection? A review of the Compensation Order, the testimony and the Employer's exhibits clearly shows that it is not and the ruling in the Compensation Order was a mistake of law.

The Compensation Order purports to address the rebuttable presumption determination in a single paragraph. It states that the medical opinion of Dr. Cohen, the Employer's IME physician, is alone sufficient to rebut the presumption.

Dr. Cohen's report, dated February 11, 2016, comes almost a full 3 years after the work-related injury. On page 2 of his report Dr. Cohen provides a list of all the medical records he examined to form his opinion. However, none of these records are from providers that saw the claimant prior to the date of injury, April 8, 2013. All the medical record [sic] reviewed by Dr. Cohen occurred after this date of injury. Accordingly, it is unclear what Dr. Cohen bases his opinion of pre-existing injuries on. Furthermore even if Dr. Cohen pointed to old diagnostic or medical reports, the existence of degenerative symptoms is not alone sufficient to rebut the presumption and preclude a finding of causal relationship. That is a question of potential apportionment, which is outside the scope of the hearing.

Dr. Cohen states, "it is my opinion that his complaints were due to the natural progression of severe degenerative cervical disc disease at multiple levels . . .

[and] there was no evidence of any disruption or altercation”. This is the extent of Dr. Cohen’s analysis as to the Claimant’s pre-existing injuries and cannot be considered substantial nor specific. If Dr. Cohen had pointed to the cervical MRI performed on 8/10/11 or Dr. Alkaitis’s reports, as provided in the Employer’s Exhibits, then an argument could be made that Dr. Cohen based his opinion on specific evidence. However, it is clear from his report that he did not have those records available in his review.

* * *

Dr. Cohen’s report is contained within 5 pages and only 1 page is dedicated to a discussion of causal relationship and pre-existing issues. A finding that this alone is substantial, specific, and comprehensive evidence to sever the rebuttable presumption is contrary to the purpose of the statute to hold evidence in a light most favorable to the Claimant. Since the Compensation Order only utilizes this evidence as the basis to rebut the presumption, this finding must be reversed or remanded for more sufficient clarification consistent with the law.

Claimant’s Brief at un-numbered pages 4-6 (citations omitted).

Employer objects to Claimant’s characterization of Dr. Cohen’s IME report:

. . . Dr. Cohen reviewed the Claimant’s extensive medical history, performed a physical examination, and concluded that he had an unrelated and pre-existing multilevel degenerative spondylosis that was completely unrelated to the fall. Judge Knight properly found that Dr. Cohen’s opinion provided substantial evidence to sever the connection and rebut the presumption. Although Claimant complains that Dr. Cohen did not have knowledge of the Claimant’s preexisting diagnostics, the opposite is true. Only Dr. Cohen had knowledge of the prior diagnostic studies, and he referenced them in a post-hearing addendum which was permitted by Judge Knight when the Claimant’s counsel presented causal relationship opinions for the first time the morning of the hearing.

Employer’s Brief at 7 (emphasis included).

While we agree that the ALJ’s summary of Dr. Cohen’s IME report as rebuttal evidence is brief, we conclude further that Dr. Cohen’s IME meets the standard set forth by the District of Columbia Court of Appeals (“DCCA”) in *Washington Post v. DOES and Raymond Reynolds*, 852 A.2d 909 (D.C. 2004)(*Reynolds*)¹. That is, it is undisputed that Dr. Cohen is a qualified medical expert who examined Claimant, reviewed Claimant’s relevant medical records, and rendered an unambiguous opinion that the work injury did not contribute to the alleged disability. We further note that in addition to the medical evidence, the ALJ made it clear that

¹ The law is clear that to rebut the presumption the employer must proffer the opinion of a qualified independent medical expert who, having examined the employee and reviewed the employee’s medical records, renders an unambiguous opinion that the work injury did not contribute to the disability. *Reynolds, supra*.

she found Claimant's testimony with regard to his pre-existing cervical condition was not credible, which we note Claimant did not challenge on appeal.

We conclude the ALJ's determination that Employer met its burden of severing the existing relationship between Claimant's alleged disability and the work-related accident is supported by substantial evidence and is in accordance with the law. Thus, we reject Claimant's assertion that the ALJ improperly found that Claimant's presumption was rebutted due to a lack of substantial evidence and affirm the determination that Employer rebutted the existing presumption.

Claimant argues alternatively, that if Claimant's presumption is rebutted, proper weight was not given to the Claimant's treating physician, citing *Canlas v. DOES*, 723 A.2d 1210 (D.C. 1999):

The Compensation Order reflects that the treating physician in this claim is Amil Patel, PA, the pain management specialist who has been comprehensively treating the Claimant for over 15 months and continues to see the Claimant on a monthly basis.

Yet the Compensation Order dismisses her extensive medical records and causation letter in favor of Dr. Cohen's brief report stating that her opinion "is vague and lacks specificity as to what treatment [s]he is referring to".

* * *

The Claimant would further [contend] that the Compensation [Order] improperly found that Dr. Sansur, the Director of Spinal Surgery at the University of Maryland, does not also enjoy the treating physician status as Amil Patel does. Dr. Sansur is a world-renowned surgeon who provided a causal relationship opinion stating, in part, that the Claimant, "suffered a spinal cord injury resulting in cervical myelopathy".

As established by testimony, Dr. Sansur has been overseeing Dr. Aldrich, the surgeon who actually performed all three of the Claimant's cervical fusions, since 2013. It was established at the hearing that the Dr. Sansur has had multiple visits with the Claimant since 2013 and has carefully overviewed Dr. Aldrich's work.

Claimant's Brief unnumbered at 6-8.

Contrary to Claimant's allegations, after thorough review of the Hearing Transcript we have not detected any testimony from the Claimant that establishes that Dr. Sansur had multiple visits or any visits with Claimant or that any relationship had been established between Claimant and Dr. Sansur. We conclude the ALJ properly described the treating physician preference, properly did not afford the preference to Dr. Sansur and sufficiently discussed her reasons for not relying on the opinion of Dr. Sansur.

With regard to the opinion of Dr. Patel who the ALJ properly found was Claimant's treating physician, the ALJ ultimately reasoned:

I also credit Dr. Cohen's IME report and opinion over PA Patel's. PA Patel's causal relationship opinion, "Mr. Hopson was working until his injury on April 8, 2013, hence I do believe to a medical certainty that the medical treatment rendered from the injury date is causally related to that injury" is rejected. The reason being is because his opinion is vague and lacks specificity as to what treatment he is referring to as the record indicates since Claimant's April 8, 2013 fall at work, he was treated for a face contusion, right-wrist injury, possible stroke and cervical myelopathy. Also PA Patel bases his causal relation opinion on the fact that Claimant was working until his injury and he does not provide detail of his understanding of the injury Claimant sustained or offer a medical rationale for Claimant's cervical complains[sic] and how they are related to the work accident. Furthermore, it is unclear as to whether PA Patel's opinions was contemporaneous with a medical evaluation also whether he was aware of Claimant's pre-injury cervical diagnosis of cervical degenerative disc disease, multi-level cervical spinal stenosis and disc protrusions, cervical myelomalacia and cervical radiculopathy.

CO at 9, 10.

We find no error in the ALJ's determination analysis that Dr. Cohen's medical causal opinion is more persuasive and his recitation of Claimant's history is most consistent with the record evidence. Further, the ALJ found, and we agree, Dr. Cohen's opinion was contemporaneous with a physical evaluation of Claimant's cervical region and his report provides a clearer explanation and rationale on the medical causal relationship of Claimant's cervical condition. Inasmuch as we are precluded from re-weighing the evidence, the ALJ's ultimate conclusion that Claimant's cervical condition is not medically causally related to the work incident of April 8, 2013 is **AFFIRMED**.

CONCLUSION AND ORDER

The September 2, 2016 Compensation Order which denied Claimant's claim for relief is supported by substantial evidence and in accordance with the law and is accordingly **AFFIRMED**.

So ordered.