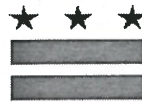


GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 16-108

**LINDA FULLER,
Claimant-Petitioner,**

v.

**DISTRICT OF COLUMBIA HOUSING AUTHORITY,
Employer-Respondent.**

Appeal from an August 18, 2016 Compensation Order
by Administrative Law Judge Gwenlynn D'Souza
AHD No. PBL 16-010, DCP No. 0468-WC-000133

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2016 DEC 15 PM 12 45

(Decided December 15, 2016)

Linda Fuller, *pro se* Claimant
Nada A. Paisant for Employer

Before JEFFREY P. RUSSELL, HEATHER C. LESLIE, and LINDA F. JORY, *Administrative Appeals Judges.*

JEFFREY P. RUSSELL for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

Linda Fuller ("Claimant") was employed as a security officer by the District of Columbia Housing Authority ("Employer") when, on September 7, 2014, she fell down steps at work, injuring her right ankle. She sought treatment the following day at a hospital emergency room, the records of which are not in the record before us. On September 14, 2014 Claimant notified her watch commander of the right ankle injury.

Claimant came under the care of Dr. Edward Rankin in October 2014 and her injury was diagnosed as a hairline fracture of the right ankle. Claimant was placed in a walking boot and then a brace for seven weeks.

In January 2015, Claimant consulted with Dr. Hamid Quarishi, an orthopedist, for continuing pain in the right ankle. His diagnosis was chronic strain of the right lateral ankle ligament.

Dr. Quarishi obtained an MRI scan of the right ankle on February 5, 2015. The results indicated a chronically sprained, torn, scarred and thickened talofibular ligament and moderate talonavicular joint osteoarthritis (these are all anatomic constituents of the right ankle and ankle joint).

On March 11, 2015 Claimant was evaluated at the request of the Office of Risk Management, the entity charged with administering the Public Sector Workers' Compensation Program ("Program") by Dr. Shelton McKenzie. Dr. McKenzie's impression was that Claimant suffered an anterior talofibular ligament injury and he diagnosed a right ankle sprain.

On March 16, 2015, the Program accepted Claimant's claim for a "right sprain" without identifying the accepted injury further.

Claimant was seen by Dr. Neufeld, again at the Program's request, on May 18, 2015. In a report dated June 2, 2015, Dr. Neufeld diagnosed claimant with two work-related conditions: an ankle sprain and "exacerbation" of talonavicular arthritis. X-rays taken by Dr. Neufeld on that date were read as revealing a degenerative joint space narrowing of the talonavicular joint, indicating a loss of cartilage, and osteophyte formation.

Dr. Neufeld opined that with respect to the work-related injuries Claimant had reached maximum medical improvement and that they were no longer disabling her from her pre-injury job. However, he opined further that due to the talonavicular arthritis, Claimant should continue to wear external support and avoid standing or walking for extended periods of time.

Claimant returned to treating physician Dr. McKenzie on July 1, 2015, who noted tenderness over the talofibular ligament and diagnosed a right ankle sprain and posterior tibial tendonitis. He saw Claimant again on August 12, 2015 and October 13, 2015, with similar observations.

On November 10, 2015 the Program issued a Notice of Determination ("NOD") terminating Claimant's benefits for the injury. Claimant requested reconsideration, and the program reinstated the benefits.

On November 16, 2015, the Program provided Dr. McKenzie with Dr. Neufeld's May 18, 2015 report. On December 2, 2015, Dr. McKenzie responded that he agreed with Dr. Neufeld's recommendations.

On December 2, 2015, Claimant was seen again by Dr. McKenzie, who noted tenderness of the talofibular and deltoid ligaments. His diagnosis was tendonitis, sprain of the right ankle ligament, and right foot arthritis. He referred Claimant for physical therapy and continued Claimant on meloxicam for pain.

On December 14, 2015, the Program again issued an NOD terminating Claimant's benefits.

On April 4, 2016, Claimant consulted with Dr. Burton Katzen, a foot surgeon, reporting that her pain increases and decreases proportionally to the amount of walking she does in her work-day. The doctor reviewed the earlier MRI and commented that it revealed “possible fragments” on the inside of the right ankle. His diagnosis was chronic ankle pain due to ligament strain.

At a formal hearing that commenced on May 5, 2016 and concluded on May 24, 2016, before an administrative law judge (“ALJ”) in the Administrative Hearings Division (“AHD”) of the Office of Hearings and Adjudication (“OHA”) in the Department of Employment Services (“DOES”) Claimant sought reinstatement of her benefits, including benefits for a back injury that she reported to the Program in 2014 but for which no NOD has been issued.

On August 18, 2016 the ALJ issued a Compensation Order (“CO”) in which the ALJ concluded that AHD lacked jurisdiction over the back claim and any claims to the right ankle related to the degenerative arthritis, that Employer properly terminated Claimant’s wage loss benefits for the ankle strain or sprain, but remained liable for “causally related medical expenses”.

Claimant filed a “Letter of Appeal”, which we will deem Claimant’s Application for Review (“AFR”) with the Compensation Review Board (“CRB”) seeking reversal of the denial of benefits.

Employer filed an Opposition to Claimant’s Application for Review and a memorandum of points and authorities in support thereof (“Employer’s Brief”), seeking to have the CO affirmed. Employer did not contest the award of medical care.

Because the ALJ’s determination that termination of Claimant’s disability was proper, and that AHD lacked jurisdiction to consider the back injury claim was in accordance with the law, they are affirmed. Because the award of ongoing “causally related medical care” does not identify what medical care is subject to that award, and because the inconsistency between the determination that Claimant’s work-related injuries have resolved is in unexplained conflict with such an award, we vacate it.

ANALYSIS

Claimant’s arguments on appeal are described in her AFR in five parts: Grievance; Objection 2; Objection 3; Objection 4; and Objection 5.

Grievance

Claimant objects in this portion of her appeal that Employer would not allow her to wear or use her medical equipment while at work, nor would Employer provide her with light duty. Further, she complains that there was a delay in her commanding officer’s filing her “paper work”.

None of these issues appear to have been relevant to Claimant’s claims at the formal hearing, that is, that the program wrongfully terminated her benefits. We have nothing to consider with regard to these matters.

Objection 2

This complaint concerns an alleged delay by the Program beyond the statutory 30 days to respond to her claim for benefits. Claimant asks for no specific relief for this complaint, and as with the previous issue, it does not appear to have any relevance to any issue presented for resolution at the formal hearing, nor does it appear to have any impact upon the outcome of the CO. We have nothing to consider with regard to this matter.

Objection 3

Claimant complains in this objection that she was not told “at that time”, apparently referring to September 7, 2014 when she injured her ankle, that she “needed to file a separate form for my back”. Then, ambiguously, she concludes “my accident was not until Nov. 2014”.

We are unable to discern the nature of this complaint or how it describes error by the ALJ or in the CO. The basis of the ALJ’s denial of any claim in connection with Claimant’s back was that, as of now, there has been no NOD in connection with a claimed back injury, and thus DOES has yet to obtain jurisdiction over said claim.

We discern no cognizable complaint concerning the CO in Objection 3, and note that the ALJ correctly declined to consider any claim for a back injury, of whatever date, because no NOD has been issued.

Objection 4

This complaint concerns another issue relating to when Claimant’s supervisor filed her claim, and states that the CO erroneously says it was filed February 8, 2015 when it was in fact filed December 29, 2014.

As with the other issues relating to when Claimant’s supervisor filed paperwork in connection with the September 7, 2014 injury (the only date of injury addressed in the CO) nothing in this complaint is relevant to the matters decided by the ALJ in the CO. None of the claims were denied based upon when a claim was filed. There is nothing for us to consider on this issue.

Objection 5

Claimant asserts the ALJ erred in deciding AHD “do[es] not have jurisdiction because of exacerbation in part and back injury.”

We have already addressed the back injury and AHD’s lack of jurisdiction in Objection 3, *ante*.

Further, the ALJ is correct that the Program has not issued an NOD concerning any claim for aggravation of a pre-existing degenerative arthritic condition. Rather, the NOD is specifically limited to an ankle sprain.

Further, nothing we have seen in the record supports a conclusion that the September 7, 2014 ankle injury aggravated or advanced the progression of the pre-existing arthritic problems in Claimant's right ankle. As the CO notes, Dr. Neufeld explicitly rejected any such theory, and Dr. McKenzie, when given the opportunity to comment upon Dr. Neufeld's findings, did not dispute any part of Dr. Neufeld's report. CO at 7, 8.

While we agree that the ALJ erred in stating there was no jurisdiction to consider whether the ankle sprain claim, over which AHD clearly had jurisdiction, could include a claim that the sprain brought about a worsening or aggravation of Claimant's pre-existing arthritic condition, nothing that Claimant points us to in the record or that we can find ourselves supports such a theory.

Unlike private sector claims arising under D.C. Code § 32-1501 *et seq.*, claimants under the Comprehensive Merit Personal Act, D.C. Code § 1-623.1, *et seq.*, are not entitled to any presumption that the complained of disabling condition is causally related to the compensable work injury. There is no evidence of any such causal connection in this record, thus the erroneous jurisdictional ruling was harmless.

We turn now to matters not raised directly by Claimant in this appeal, but which we deem appropriate to address in order to avoid any confusion or uncertainty in connection with any further proceedings that may follow in this case.

The ALJ applied the three step paradigm established in *Mahoney v. D.C. Public Schools*, CRB No. 14-067 (November 12, 2014) in considering whether in this case, where Claimant's claim has been accepted and benefits paid, those benefits should nonetheless be terminated based upon a change of conditions.

Applying *Mahoney* to this case was the correct legal approach, and in applying the first stage, the ALJ's conclusion that Dr. Neufeld's report sufficed to establish Employer's initial burden is legally correct.

The ALJ then proceeded to consider whether Claimant had adduced sufficient evidence to shift the burden back to Employer to establish that benefits were no longer appropriate, which is the second step under *Mahoney*.

The ALJ relied upon the report of Dr. Katzen to find that Claimant had met this second prong. We must disagree.

Dr. Neufeld's opinion is that Claimant's work-related sprain has resolved, and that Claimant's residual impairment, which he acknowledges prevents Claimant from returning to her pre-injury job, is not related to the sprain, but rather to the advancement of the pre-existing arthritic condition in the ankle. It is upon that opinion that the Program terminated Claimant's benefits, and it was on that opinion the ALJ found Employer had satisfied step one of *Mahoney*.

When considering Employer's burden to produce evidence sufficient to warrant termination of benefits, the ALJ's reliance upon Dr. Katzen's report is misplaced. Nowhere in that report does

Dr. Katzen discuss the causal relationship between Claimant's inability to perform her pre-injury job and the September 7, 2014 ankle injury.

At that step, the ALJ should have determined Claimant had failed to meet her step two burden, and considered the matter no further. However, given the ultimate determination, the error is harmless.

Finally, the ALJ ordered that certain unspecified medical care continue to be provided. No explanation for that ruling, or how it is consistent with the determination that Claimant's work-related injury has resolved, is to be found.

Thus, we vacate that part of the CO as being insufficiently specific as to the relief awarded or the basis for the award.

CONCLUSIONS AND ORDER

The Compensation Order denying Claimant's claim for reinstatement of disability compensation is supported by substantial evidence, is in accordance with the law, and is **AFFIRMED**. The award of continuing medical benefits is insufficiently specific and inexplicably in conflict with the findings that Claimant's work-related ankle injury has resolved, is not supported by substantial evidence, and is **VACATED**.

So ordered.