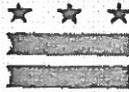


GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA M. MALLORY
ACTING DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 04-038

LINDA RULKA,
Claimant-Respondent,

v.

PARALYZED VETERANS OF AMERICA AND CHUBB INSURANCE COMPANIES,
Employer and Insurer-Petitioners

Appeal from a Compensation Order of
Administrative Law Judge Jeffrey P. Russell
AHD No. 99-116C, OWC No. 522826

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2011 JUN 13 AM 10 11

Mark L. Schaffer, Esquire, for Claimant
Robert C. Baker, Esquire for Employer and Insurer

Before: Lawrence D. Tarr, Henry W. McCoy, and Melissa Lin Jones, *Administrative Appeals Judges*.

Lawrence D. Tarr, *Administrative Appeals Judge*, for the Compensation Review Panel.

DECISION AND ORDER

OVERVIEW

This case is before the Compensation Review Board (CRB) on the request for review filed by the employer and insurer (employer) challenging the March 31, 2004,¹ Compensation Order (CO) issued by an Administrative Law Judge (ALJ) in the Administrative Hearings Division Department of Employment Services (DOES).² In that CO, the ALJ awarded Linda Rulka (claimant) temporary total disability benefits and found the employer liable for 2003 right-sided total hip replacement surgery.

BACKGROUND FACTS OF RECORD

The claimant worked for this employer as an executive administrative assistant, a position that was primarily sedentary. There is no dispute that the claimant sustained a work related injury on December 15, 1997, when she tried to sit in a chair that was broken. The chair gave way; the claimant was thrown to the floor, striking her head, neck, right shoulder, right arm, right hip, and

¹ The Compensation Order contained a typographical error that listed the date it was issued as March 31, 2003.

² As of February 2011, this unit is called Hearings and Adjudication.

right buttock. There also is no dispute that the claimant had a pre-existing osteoarthritis condition that affected her right hip.

After the accident, the claimant received treatment from the George Washington Hospital's emergency room that day and was diagnosed with a back contusion. At a follow-up appointment at that hospital four days later, she received a diagnosis of cervical and lumbosacral strains and a right wrist contusion.

The claimant received extensive medical treatment after the accident. After the accident at work, in addition to neck and shoulder treatment, the claimant received treatment for her right hip. She underwent cervical disc surgery in November 1998 and right shoulder surgery in 2001. Several doctors have examined the claimant for IMEs at the employer's request: Dr. Louis Levitt (1998), Dr. Melissa Neiman (1998), Dr. Robert Collins (2001), and Dr. Ross Myerson (2004).

Dr. Kathleen Fink, a physiatrist, treated the claimant in 2000 and 2001. After the claimant relocated to Indiana in June or August 2001, she came under the care of Dr. Mark Zolman, a physiatrist and orthopedist. Dr. Zolman performed the contested right hip replacement surgery on October 13, 2003. The parties do not dispute that Dr. Fink and Dr. Zolman are considered the claimant's treating doctors.

In the CO, the ALJ, having found the claimant was entitled to the presumption and that the employer presented sufficient evidence to rebut the presumption, analyzed the evidence without the presumption and held

On this record, therefore, I find Claimant's right hip osteoarthritis to have been aggravated by the fall at work, ultimately necessitating the claimed medical care and causing the claimed disability.

CO at 4.

The employer timely appealed the ALJ's decision.

THE STANDARD OF REVIEW

The CRB is limited to making a determination as to whether the factual findings of a 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. See D.C. Workers' Compensation Act of 1979, as amended, D.C. Code Ann. §§ 32-1501 to 32-1545 (2005), at § 32-1521.01(d) (2) (A).

Consistent with this standard, the CRB must 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. *Marriot International v. DOES*, 834 A.2d 882,885 (D.C. 2003). The CRB cannot affirm a Compensation Order that reflects a misconception of the relevant law or a faulty application of the law. *WMATA v. DOES and Payne, Intervenor*, 992 A.2d 1276, 1280 (D.C. 2010).

In reaching his decision, the ALJ relied, in part, on the claimant's testimony. The claimant testified that she injured her hip during the 1997 work accident and that her hip problems continued and got worse after the accident.

The ALJ found the claimant's testimony credible and supported by the medical records:

Claimant testified credibly and without contradiction that she injured the hip in the fall at the time of the accident, and that she has consistently and routinely experienced pain and functional limitations due to hip pain, in increasing severity and duration, ever since. In addition, she has produced a large volume of medical records and reports from the many health care providers from whom she has received treatment since the fall in which her testimony about the hip problems is corroborated.

CO at 3.

The ALJ, having seen and heard the claimant testify was in the best position to determine credibility. The CRB only will reverse a credibility determination if it is clearly wrong. *Dell v. DOES*, 499 A.2d 102, 106 (D.C. 1985). The ALJ's analysis of the claimant's testimony is accurate and the record supports his credibility finding.

The ALJ also accepted Dr. Zolman's opinion that the accident aggravated the claimant's pre-existing condition.³

The employer argues that treating Dr. Fink's opinion supports its position that the hip surgery was necessitated by the claimant's pre-existing degenerative osteoarthritis. The employer's reliance on Dr. Fink's opinion is misplaced. As the ALJ correctly noted, Dr. Fink stated the claimant's osteoarthritis was not caused by the work injury. Dr. Fink did not opine as to whether the work injury aggravated the claimant's condition.

The employer essentially asks the CRB to reweigh the evidence, ignore the claimant's credible testimony and the evidentiary preference given the opinion of treating Dr. Zolman, and favor the opinions of the IME physicians. Such an action is beyond the authority of the CRB. *Marriott, supra*.

CONCLUSION AND ORDER

The March 31, 2004, Compensation Order is supported by substantial evidence and is in accordance with the law. It is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:



Lawrence D. Tarr
Administrative Appeals Judge

June 13, 2011

Date

³ Dr. Zolman wrote on June 6, 2003:

I do believe that the preexisting injury has resulted in the need for surgery in the right hip. As you are aware, some of this degenerative condition would have developed regardless of the injury, however, I do believe that the injury aggravated and exacerbated the degenerative arthritis.

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