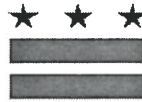


**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**Department of Employment Services**

MURIEL BOWSER  
MAYOR



DEBORAH A. CARROLL  
DIRECTOR

**COMPENSATION REVIEW BOARD**

**CRB No. 16-097**

**MAE TWYMAN,  
Claimant-Petitioner,**

**v.**

**IAP WORLDWIDE SERVICES, INC., and  
THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA,  
Employer/Insurer-Respondents.**

DEPT. OF EMPLOYMENT  
SERVICES  
COMPENSATION REVIEW  
BOARD  
2016 NOV 21 PM 2 21

Appeal from a June 28, 2016 Compensation Order on Remand  
by Administrative Law Judge Gerald D. Roberson  
AHD No. 13-521A, OWC No. 704614

(Issued November 21, 2016)

Bruce M. Bender for Claimant  
Joseph C. Tarpine, III and Julie D. Murray for Employer

Before HEATHER C. LESLIE, GENNET PURCELL, and JEFFREY P. RUSSELL, *Administrative Appeals Judges*.

HEATHER C. LESLIE for the Compensation Review Board.

**DECISION AND ORDER**

**FACTS OF RECORD AND PROCEDURAL HISTORY**

In a prior Decision and Order, the Compensation Review Board ("CRB") outlined Claimant's injury, treatment, and the procedural history of Claimant's claim as such:

This case is before the Compensation Review Board ("CRB") on the April 27, 2016 Memorandum Opinion and Order issued by the District of Columbia Court of Appeals ("DCCA") that remanded the CRB's March 31, 2015 Decision and Order. The CRB had affirmed an Administrative Law Judge's ("ALJ") Compensation Order denying Claimant's claim.

Claimant filed a claim for temporary total disability benefits from June 16, 2012 to September 4, 2012 and from November 24, 2012 and continuing. After a formal hearing, the ALJ denied the claim finding that Claimant's tremors, hand

numbness, visual problems, headaches, and other conditions were not causally related to her workplace stressors.

Claimant raised several arguments on review to the CRB: that Dr. Christianson's opinion and deposition testimony did not rebut the presumption of compensability; that the ALJ erred in finding that the treating doctor, Dr. Kenneth Kudelko, was not competent to render an opinion on workplace stressors, erred in not considering that doctor's deposition testimony; and that the ALJ erred in not giving treating-physician preference to Dr. Kudelko's decision.

The CRB affirmed the ALJ's CO denying the claim.

On appeal to the DCCA, Claimant raised the same issues as she did to the CRB and also raised a new issue that was not presented to the CRB -- which the ALJ failed to consider if workplace stressors aggravated Claimant's symptoms.

The DCCA remanded. The DCCA first held that the CO does not show the ALJ considered Dr. Kudelko's deposition testimony and therefore:

For that reason, our resolution of this matter is to order a remand so that the ALJ will have the opportunity to consider the deposition testimony and weigh it along with the other evidence in resolving each of those issues-in petitioner's words, so that 'Dr. Kudelko's reports and deposition testimony can [properly] be weighed against [those] of Dr. Christianson.

*Twyman v. DOES*, No. 15-AA-433, Mem. Op. & J. at 7 (D.C. April 27, 2016).

The DCCA further stressed that it is the ALJ's task, not the DCCA's nor the CRB's, to weigh the evidence and identified several examples of evidence the ALJ overlooked if he failed to consider Dr. Kudelko's deposition, which we will not repeat here.

The DCCA also:

- Rejected Claimant's argument that an independent medical examination (IME) doctor's opinion is not legally insufficient to rebut the presumption if the IME doctor did not perform a hands-on physical examination since the IME doctor's opinion was not offered as a counter-opinion to anything the treating doctor discerned through a physical examination;
- Held that an ALJ may consider a physician's specialty in determining how much weight to give that physician's medical opinion if the physician is giving an opinion about his area of specialization;

- Reiterated that while the court does not generally consider issues that were not raised at the agency level, it may consider such issues if the interests of justice require, such as where the compensation order contains plain error; and
- Held that even though the issue was not raised before the CRB, the ALJ on remand can consider whether there was evidence of aggravation in the workplace and if so, whether workplace stress aggravated Claimant's medical condition.

*Id.* at 11-12.

Therefore, this matter is REMANDED to the Administrative Hearings Division for further proceedings that are consistent with the DCCA's April 27, 2016 Memorandum Opinion and Judgment.

*So ordered*

*Twyman v. IAP Worldwide Services, Inc.*, CRB No. 14-146(R) (June 3, 2016).<sup>1</sup>

A Compensation Order on Remand ("COR") was issued on June 28, 2016. After further consideration of the evidence, including the deposition testimony of both Dr. Kudelko and Dr. Christiansen and analyzing whether Claimant's medical condition was aggravated by workplace stress, the ALJ denied Claimant's claim for relief.

Claimant appealed. Claimant first argues the ALJ erred in determining Employer provided specific and comprehensive evidence to rebut the presumption of compensability. Second, Claimant argues the ALJ erred in determining Claimant failed in proving her case, by a preponderance of the evidence, that her condition is medically causally related to the work place stress.

Employer opposes the appeal, arguing the COR is supported by the substantial evidence in the record and in accordance with the law.

## ANALYSIS<sup>2</sup>

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<sup>1</sup> The Order on Remand erroneously refers to a Dr. Christianson. It is Dr. Todd Christiansen.

<sup>2</sup> The scope of review by the CRB is generally limited to making a determination as to whether the factual findings of the 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 § 32-1501, *et seq.*, (the Act) at § 32-1521.01 (d)(2)(A), and *Marriott International v. DOES*, 834 A.2d 882 (D.C. 2003). Consistent with this standard of review, the CRB and this review panel must affirm 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 this panel might have reached a contrary conclusion. *Id.*, at 885.

Employer argues the ALJ erred by concluding Dr. Christiansen's report was specific and comprehensive evidence to rebut the presumption of compensability as he was not competent to render such an opinion. In support, Employer first argues that Dr. Christiansen provided no medical support for his conclusion that Claimant's condition was due to an unknown biologic condition and, second, that because Dr. Christiansen's specialty is psychiatry, he is not competent to give an opinion on causation outside his field of expertise.

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).

Once the Presumption was invoked, it was Employer'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 Employer would the burden return to Claimant 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).

After affording Claimant the presumption of compensability, a conclusion not appealed, the ALJ then turned to Employer's evidence, stating:

In this case, Employer relied on the medical evidence from Dr. Christiansen to rebut the presumption. At his deposition of November 11, 2013, Dr. Christiansen indicated he compiled his medical history from a combination of collateral records, reports and direct interview with Claimant that involves asking questions, eliciting feedback and appropriate follow-up questions. EE 3, Depo at 10-11. Dr. Christiansen testified his medical history covered Claimant's education, employment and work history with Employer, but he reported the medical history was incomplete because Claimant was not forthcoming about more specific issues or circumstances with her husband or her children. EE 3, Depo at 11-13. Dr. Christiansen stated he reviewed the relevant medical reports and diagnostic evidence, and noted during his testimony that the treating physicians diagnosed hypertension and essential tremors for which there are no known causes of the condition in a person. EE 3, Depo at 17. Dr. Christiansen explained there are no known causes of the condition in a person, adding the term "essential" refers to basically just an underlying way the body was wired or functioning. He stated "with a tremor, there is a whole multitude of neurologic issues, other health conditions that can cause tremors, and when people have a tremor that doesn't seem to be identifiable with any known cause, if it's an electrolyte imbalance, if it's a neurologic condition, other disease, then it's known as an essential tremor."

EE 3, Depo at 17-18. Dr. Christiansen testified "essential tremor is fairly common in the general population and it means basically that there is no identifiable cause, causative factor for it." EE 3, Depo at 19. In terms of causal relationship, Dr. Christiansen testified Claimant's nosebleeds, sleep disturbance, hypertension and tremors, depression and visual disturbances were not related to the June 15, 2013 incident. EE 3, Depo at 19-20. In his medical report of July 15, 2013, Dr. Christiansen stated "Ms. Twyman's essential hypertension and essential tremor are biological conditions and not caused by work stress or the alleged incident on 6-15-2012." EE 1, p. 7. Dr. Christiansen indicated any episodes of pain attacks or elevated clinically significant anxiety would not be causally related to the June 15, 2012 incident. EE 1, p. 7. Dr. Christiansen acknowledged stress could have possibly caused Claimant's underlying symptoms, but he concluded Claimant's symptoms are not causally related to work or the June 15, 2012 incident. EE 1, p. 8. With the medical evidence from Dr. Christiansen, Employer has rebutted the presumption of compensability regarding causal relationship of Claimant's medical conditions.

Therefore, Claimant loses the benefit of the statutory presumption, and the record medical evidence must be weighed without further reference thereto.

COR at 5-6.

The Presumption is rebutted when the record demonstrates a physician has performed a personal examination of the injured worker, has reviewed the relevant medical records, and has stated an unambiguous opinion contrary to the causal relationship presumption. *Washington Post v. DOES and Raymond Reynolds*, 852 A.2d 909 (D.C. 2004). Dr. Christiansen examined Claimant, interviewed her, reviewed her medical records, and based upon that interview, those records, and his medical expertise, he offered an unambiguous opinion that her symptoms and conditions were not work related. The ALJ took into consideration the evidence presented, including the deposition testimony, in coming to the conclusion that Employer had rebutted the presumption of compensability.<sup>3</sup> We can find no error in the above analysis and affirm the ALJ's conclusion that Dr. Christiansen's opinion suffices to rebut the Presumption.

Claimant next argues the ALJ erred in not affording Dr. Kudelko the treating physician preference, outlining several reasons in argument. We note, in addition to adopting the findings of fact in the prior Compensation Order, the ALJ made additional findings of fact specific to the qualifications of Dr. Christiansen and Dr. Kudelko:

At this time, the record establishes Dr. Kudelko is a board certified neurologist, and received board certification with the American Board of Psychiatry and

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<sup>3</sup> As the DCCA noted, "Dr. Christiansen was asked to opine on whether petitioner's symptoms were a psychological reaction to workplace stress, and he provided his opinion by conducting an in-person interview of petitioner, questioning her about her symptoms, her medical and social history, and her use of medication; by observing her tremors; and by reviewing her medical records." *Twyman v. DOES*, No. 15-AA-433, Mem. Op. & J. at 10 (D.C. April 27, 2016).

Neurology. While Dr. Kudelko's board certification examination included testing "on about a third of psychiatry," he does not specialize in psychiatry, and he is not an expert in psychiatry. The record does not include any evidence Dr. Kudelko provides psychiatric treatment to patients. Dr. Kudelko referred Claimant to a psychiatrist to assess Claimant's anxiety and to restore her sleep. CE 15, Depo at 22. Additionally, Dr. Christiansen is a board certified psychiatrist in child, adolescent psychiatry and adult psychiatry. Dr. Christensen received board certification with the American Board of Psychiatry and Neurology, and his examination included testing two-thirds of psychiatry. Dr. Christiansen performs psychiatric examinations routinely as a part of a full time clinical practice with at least 40 hours a week of clinical work.

COR at 3.

The ALJ further expounded on the above findings, stating:

During his deposition, Dr. Kudelko eliminated several different factors as a possible source of Claimant's tremors, which itself does not establish that the workplace stressors are responsible for Claimant's condition. This process of elimination demonstrates Dr. Kudelko ruled out several neurological factors as the source of Claimant's tremors. Based on his medical specialty as a neurologist, Dr. Kudelko concluded neurological factors did not cause Claimant's tremors, and generally attributed the tremors to stress and anxiety, which goes beyond the scope of his expertise. In essence, Dr. Kudelko does not identify any neurological component responsible for Claimant's tremors. During his deposition, Dr. Kudelko stated he was not going to be really able to objectively test to determine the cause of the tremors. CE 15, pp. 36-37. While Dr. Kudelko testified his board certification examination included 1/3 of course work in psychiatry, the record reveals a psychiatrist sitting for the same examination would complete 2/3 of his course work in psychiatry. As part of laying the foundation for Dr. Kudelko as an expert witness in neurology during the deposition, Dr. Kudelko does not disclose he provides any active treatment in the field of psychiatry. During his deposition, Dr. Kudelko recalled stating Claimant may need a psychiatric referral if her condition does not improve, which would suggest he does not provide psychiatric care. CE 15, p. 44. Dr. Kudelko expressly stated psychiatry is not his specialty. CE 15, p. 61. Therefore, given the record establishes Dr. Christiansen is a psychiatrist with an extensive practice treating patients with mental issues, his opinion carries greater weight when assessing whether workplace factors were responsible for Claimant's alleged mental conditions.

COR at 7, 8.

In argument, Claimant points to evidence in her favor and in essence asks this panel to reweigh the evidence in her favor, a task we cannot do. As the DCCA stated:

We offer no opinion on which (if either) specialty is more relevant, but we do agree that whether the physician offering an opinion on causation is a specialist giving an opinion about his area of specialty is a factor that the ALJ may consider in determining how much weight to give to a medical opinion. At the same time, we note that Dr. Kudelko testified during his deposition that his board certification examination included testing “on about a third of psychiatry,” evidence that the ALJ may take into consideration in determining how much weight to give to his conclusion that workplace stress caused petitioner’s physical symptoms.

*Twyman v. DOES*, No. 15-AA-433, Mem. Op. & J. at 11 (D.C. April 27, 2016). (Footnotes omitted.)

This the ALJ did. The ALJ took into consideration the evidence presented, including the depositions, and found Dr. Kudelko’s opinion lacking as he does not specialize in psychiatry, is not an expert in psychiatry and does not provide psychiatric treatment to patients. Thus, the ALJ outlined cogent reasons why he was rejecting Dr. Kudelko’s opinion. In comparison, the ALJ found Dr. Christiansen’s opinion more persuasive as he is a board certified psychiatrist in child psychiatry, adolescent psychiatry and adult psychiatry and has an extensive practice treating patients with mental issues. We find no error in rejecting the opinion of the treating physician in favor of Dr. Christiansen’s opinion.

Claimant’s next argument is that Dr. Kudelko’s reports and Dr. Thomas Green’s reports satisfy Claimant’s burden of proof, and that Dr. Christiansen’s opinions do not provide substantial evidence to the contrary. As to Claimant’s arguments regarding Dr. Christiansen, we point to our discussion above. The ALJ found his opinion more persuasive, and that conclusion is affirmed.<sup>4</sup> Moreover, we reject Claimant’s argument that the ALJ failed “to infer” the true meaning of Dr. Kudelko’s opinion – that he believed Claimant’s diagnosed conditions were casually related to the work injury. The ALJ rejected Dr. Kudelko’s opinion, a rejection we affirm.

Regarding Dr. Green, we note in the original Compensation Order, the ALJ stated:

On February 24, 2014, Dr. Thomas Green, a psychiatrist, performed a consultation. The Mental State Exam was remarkable for severe agitation, continuous tremors of head and arms, dismayed affect consistent with Claimant's complaint of depressed and anxious mood. Claimant denied ideas of suicide or delusional thought. Claimant expressed conviction that she had been targeted for unfair treatment at her workplace. Claimant described how she had suffered due to the maltreatment at her former workplace, compulsively returning to detailed recitation of the events and dates of the traumatizing experiences with which she had been preoccupied and tormented for the past almost two years. Her cognitive function appeared grossly intact, and her insight and judgment appeared unimpaired. Dr. Green diagnosed posttraumatic stress disorder, and major

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<sup>4</sup> Claimant makes the same argument in a short paragraph on page 27 of its brief. We again point the Claimant to our previous discussion.

depressive disorder, severe, with anxious distress. Dr. Green recommended Claimant attend scheduled appointments with her neurologist and primary care physician, and continue medication as prescribed by them. He stated Claimant would continue psychotherapy appointments, and return in two weeks. CE 5. Dr. Green, however, does not offer an opinion regarding whether the workplace stressors caused the diagnosed conditions.

*Twyman v. IAP Worldwide Services, Inc.*, AHD No. 13-521A, OWC No. 704614, 10 (November 10, 2014).

The ALJ concluded Dr. Green did not offer an opinion regarding whether the workplace stressors caused the diagnosed conditions. Claimant argues “the only inference from Dr. Green’s diagnosis of post-traumatic stress disorder is that he is referring to the traumatic events at her workplace as being the stressor that has caused this disorder and the tremors.” Claimant’s argument at 27. The ALJ, after reviewing the evidence and Dr. Green’s report, did not infer what Claimant urges. Again, it is the Claimant’s burden to prove by a preponderance of the evidence that her medical condition is work related. Urging an ALJ or the CRB to “infer” the opinion of a physician does not carry this burden.

Claimant’s last argument is that the ALJ erred in concluding Claimant’s condition was not aggravated by the workplace events. Claimant relies upon the opinion of Dr. Christiansen in support, arguing even though “Dr. Christiansen refused to testify that to a reasonable degree of medical certainty, the workplace stressors aggravated her tremors and other symptoms, he admitted that the workplace stressors could have and it was possible.” Claimant’s argument at 28, 29.

The ALJ, in addressing whether Claimant’s condition was aggravated by the workplace events noted:

Regarding the question of whether employment factors exacerbated Claimant's tremors, a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury. Cf. *Jones v. Director, Office of Workers' Compensation Programs*, 977 F.2d 1106 (U.S. Ct. App. 1992). *Forrest D. Pulliam v. Potomac Personnel Services*, H&AS No. 86-558, OWC No. 88281 (12/18/87); *Joseph B. Ryan v. Dodd Electric Company*, H&AS No. 87-815, OWC No. 87786 (June 7, 1998); *Vaughn v. Hadley Memorial Hospital*, H&AS No. 86-204, OWC No. 48011 (July 28, 1986).

Dr. Christiansen addressed this issue in his deposition. In response to the question did the work-related stress exacerbate Claimant's symptoms, Dr. Christiansen provided the following statement:

A. It is a difficult question to answer. Potentially, yes, it did. On the other hand, there is the information of the way that Ms.



Twyman was using her medication and the way she was not well-regulated.

So sleep deprivation, intermittent withdrawal from at least the benzodiazepine and sleep aids could also exacerbate, you know, underlying tremors and stress. How long that was going on is unclear.

One of the struggles was that Ms. Twyman, in my opinion, was not a very accurate historian or reporter and that makes it very challenging about causation.

EE 3, Depo at 53.

When Claimant's attorney sought clarification whether within a degree of medical certainty that her tremors were not exacerbated by her stress at work, Dr. Christiansen stated:

"In my opinion, within a reasonable degree of medical certainty, they're not, but it's possible that they could have."

EE 3, Depo at 54.

His statement about a possible exacerbation/aggravation is ambiguous, and the undersigned does not find the record contains sufficient medical rationale to support any conclusion that the workplace factors exacerbated Claimant's tremors. Dr. Christiansen clearly stated within a degree of medical certainty they're not. The record includes evidence from Dr. Kudelko and Dr. Christiansen describing generally how the use of medication could cause Claimant's tremors. At his deposition, Dr. Kudelko acknowledged you can have a worsening of underlying symptoms with the withdrawal of Clonazepam. He stated the anxiety and the tremors could get worse. CE 15, Depo at 64. Dr. Christiansen has indicated Claimant's failure to provide relevant medical history and the lack of documentation regarding her use of medication were factors he considered in rendering his opinion regarding causation. As the record establishes, these are important factors to consider when assessing Claimant's mental state, and Dr. Kudelko was not aware of Claimant's noncompliance with the use of medication, and given his limited medical history, he did not explore and rule out factors outside the employment setting as possible alternative causes of Claimant's condition.

| COR at 8,-9.

As we previously stated, the ALJ took into consideration all of the evidence, weighed the evidence, and concluded the Claimant failed to prove her condition was aggravated by the workplace event. In pointing out select evidence, what Claimant is asking this panel to do is to

reweigh the evidence, a task we cannot do. As stated above, the CRB and this review panel must affirm 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 this panel might have reached a contrary conclusion. *Marriot, supra* at 885.

#### **CONCLUSION AND ORDER**

The June 28, 2016 Compensation Order on Remand supported by the substantial evidence in the record and is in accordance with the law. It is **AFFIRMED**.

*So ordered.*