

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 14-146 (R)

MAE TWYMAN,
Claimant,

v.

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

On Remand from the from the District of Columbia Court of Appeals
No. 15-AA-433 (April 27, 2016)

Appeal from a March 31, 2015 Decision and Order
Affirming a November 10, 2014 Compensation Order
by Administrative Law Judge Gerald D. Roberson
AHD No. 13-521A, OWC No. 704614

(Issued June 3, 2016)

Bruce M. Bender for Claimant
Joseph C. Tarpine, III for Employer

LAWRENCE D. TARR, *Chief Administrative Appeals Judge*, for the Compensation Review Board.

ORDER ON REMAND

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

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2016 JUN 3 PM 11 22

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.