GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services

MURIEL BOWSER
MAYOR

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ACTING DIRECTOR

COMPENSATION REVIEW BOARD

DEPT. OF EMPLOYMENT SERVICES
COMPENSATION REVIEW BOARD
2015 MAR 25 PM 1 27

CRB No. 14-128

MILLARD MOODY, JR.,
Claimant–Respondent,

v.

PROVIDENCE HOSPITAL and
SEDGWICK CLAIMS MANAGEMENT SERVICES,
Employer/Third-Party Administrator-Petitioner.

Appeal from a October 17, 2014 Compensation Order by
Administrative Law Judge Amelia G. Govan
AHD No. 14-334, OWC No. 712010[1]

Michael D. Dobbs for the Claimant
Zachary I. Shapiro for the Employer

Before MELISSA LIN JONES, LINDA F. JORY, and HEATHER C. LESLIE, *Administrative Appeals Judges.*

MELISSA LIN JONES for the Compensation Review Board.

DECISION AND REMAND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

Mr. Millard Moody, Jr. has a history of neck and back problems, but he stopped treating for back problems in 2010. He was performing his full duties as an operation manager for Providence Hospital ("Providence") until January 17, 2013 when he re-injured his neck and back lifting bulk mail.

A dispute arose over Mr. Moody's entitlement to medical treatment (physical therapy, pain management, and surgery) as well as payment of outstanding medical bills. The parties proceeded to a formal hearing to determine if there is a causal relationship between Mr. Moody's post-April 8, 2014 back conditions and his work-related injury and if the requested medical treatment is reasonable and necessary.

[1] The Compensation Order lists OWC No. 699633 in the caption, but the parties agree that OWC No. 712010 is the correct case number.

In a Compensation Order dated October 17, 2014, an administrative law judge ("ALJ") ruled Mr. Moody's back symptoms are compensable. The ALJ also ruled the treatment requested is reasonable and necessary. *Moody v. Providence Hospital*, AHD No. 14-334, OWC No. 699633 (October 17, 2014).

On appeal, Providence argues the ALJ erred by crediting "the imperfect opinion of the treating physician, Dr. Yu, over the opinions of Dr. Cohen and Dr. Pateder." Employer and Carrier's Memorandum of Points and Authorities in Support of Their Application for Review, p. 9. Providence also argues Dr. Yu never explicitly relates any of Mr. Moody's symptoms to the January 17, 2013 accident.

In addition, Providence raises several arguments regarding the reasonableness and necessity of medical treatment. Specifically, Providence contends (1) The ALJ did not review Dr. Michael Goldman's utilization review report; (2) The ALJ misstated the evidence by finding that the utilization review does not address the request for surgery; (3) The ALJ improperly relied upon a treating physician preference to reject Dr. Donald Getz's utilization review report; and (4) The ALJ did not consider Dr. Getz's utilization review report in conjunction with the other medical evidence in the record.

Providence requests the CRB vacate the October 17, 2014 Compensation Order. On the other hand, Mr. Moody requests the CRB affirm that Compensation Order.

In response to Providence's appeal, Mr. Moody asserts that because the ALJ acknowledged Providence's exhibits 1-9 were admitted into evidence after being described by counsel at the formal hearing, the ALJ did not need to specifically address Dr. Goldman's utilization review report. Furthermore, Mr. Moody asserts Dr. Goldman's opinion exceeds the scope of utilization review by obliquely addressing the issue of causal relationship. Finally, Mr. Moody relies upon the treating physician preference to validate the Compensation Order.

ISSUES ON APPEAL

1. Is the ALJ's ruling that Mr. Moody's current symptoms are causally related to his compensable accident supported by substantial evidence and in accordance with the law?

2. Did the ALJ consider (or need to consider) Dr. Michael Goldman's utilization review report?

3. Did the ALJ misstate the evidence by finding Dr. Getz's utilization review report does not address the request for surgery?

4. Did the ALJ improperly rely upon a treating physician preference to reject Dr. Getz's utilization review report?

5. Did the ALJ consider Dr. Getz's utilization review report in conjunction with the other medical evidence in the record?

ANALYSIS[2]

CAUSAL RELATIONSHIP

Pursuant to D.C. Code § 32-1521(1), 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). There is no dispute the Presumption was invoked.

Once the Presumption was invoked, it was Providence'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 Providence would the burden return to Mr. Moody to prove by a preponderance of the evidence, without the benefit of the Presumption, his current neck and back conditions are causally related to his compensable accident. See *Washington Hospital Center v. DOES,* 821 A.2d 898 (D.C. 2003). There is no dispute the Presumption was rebutted.

Providence's objection to the weight the ALJ afforded the evidence in the record is that the ALJ should have rejected the treating physician's opinion:

> In the case at issue, the opinion of Dr. Cohen should be credited over the treating physician of Dr. Yu. Namely, Dr. Cohen provides the most substantive report and reaches the conclusion that the Claimant had a temporary exacerbation and does not require any additional causally related treatment. EE 1, p. 1-15. Dr. Cohen took a comprehensive history and comments on the Claimant's prior radiographic studies as well as prior surgeries in making his determination that the Claimant's injuries pre-date the work accident. Additionally, Dr. Cohen provides a more reliable opinion considering he is board certified in neurological surgery, whereas Dr. Yu, the treating physician, is an orthopedic surgeon. Clearly Dr. Cohen's certifications, comprehensive history, and review of the record makes [*sic*] his opinion more credible than the opinion of Dr. Yu.
>
> The Employer and Carrier also contend that the opinion of Dr. Pateder is more credible than the opinion of the treating physician. EE 2, p. 16-20. Dr. Pateder took a full history of the Claimant and reviewed the records from the Claimant's 2008 work accident. This included the surgical report from the cervical spine, MRI reports, and documentation from the Claimant's primary care physician in 2008 noting chronic low back pain. Dr. Pateder also examined the

[2] The scope of review by the CRB is limited to making a determination as to whether the factual findings of the appealed 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. Section 32-1521.01(d)(2)(A) of the Act. Consistent with this standard of review, the CRB is constrained to uphold a Compensation Order that is supported by substantial evidence, even if there also is contained within the record under review substantial evidence to support a contrary conclusion and even if the CRB might have reached a contrary conclusion. *Marriott International v. DOES,* 834 A.2d 882, 885 (D.C. 2003).

> Claimant and noted the Claimant did not have any acute injuries relating to the subject accident. Accordingly the Claimant had reached maximum medical improvement and could return to work without restriction.

Employer and Carrier's Memorandum of Points and Authorities in Support of Their Application for Review, pp. 11-12.

Contrary to Providence's assertion that "Dr. Yu cannot be credited as he hasn't definitively causally related the Claimant's injuries to the subject accident," *Id.* at p. 13, on March 21, 2013 at Mr. Moody's first visit, Dr. Yu took a history of "increasing neck, upper thoracic pain and radiating pain to the ulnar side of the right hand and the radial and ulnar side of his left hand" as of "this January." Claimant's Exhibit 5. This medical evidence in conjunction with Mr. Moody's credible testimony may suffice to support the ALJ's determination that

> [t]he record medical reports support the existence of a medical causal connection between Claimant's current spinal symptoms, which include radiculopathy radiating into her [*sic*] lower extremities, and his most recent work injury. In this case, there is no reason to reject Claimant's credible testimony, combined with the medical conclusions of Claimant's treating physicians, regarding his lumbar symptoms and their causal connection with the 2013 work accident.

Moody, supra, p. 5; however, although an ALJ is not required to "inventory the evidence and explain in detail why a particular part of it was accepted or rejected," *Washington Hospital Center v. DOES*, 983 A.2d 961 (D.C. 2009), "when evidence is contradictory, the contradiction must be addressed." *Braxton v. Marty's Restaurant,* CRB No. 09-032, AHD No. 06-092, OWC No. 618296 (January 29, 2009). On April 23, 2013, Dr. Yu opined "[b]oth [Mr. Moody's] cervical and lumbar injuries date back to his work related injury in January of 2008," Employer Exhibit 5, but Dr. Yu also opined Mr. Moody's cervical and lumbar injuries date back to his 2013 work accident, Claimant Exhibit 5; therefore, without addressing Dr. Yu's contradictory opinions, the CRB cannot find that the Compensation Order is supported by substantial evidence.

REASONABLENESS AND NECESSITY OF MEDICAL TREATMENT

When the issue for resolution is reasonableness and necessity of medical treatment, the utilization review process is mandatory. See *Gonzalez v. UNICCO Service Company*, CRB No. 07-005, AHD No. 06-155, OWC No. 604331 (February 21, 2007). Once a utilization review report has been submitted into evidence, that report is not dispositive but is entitled to equal footing with an opinion rendered by a treating physician. See *Children's National Medical Center v. DOES*, 992 A.2d 403 (D.C. 2010). The ALJ

> is free to consider the medical evidence as a whole on the question, and is not bound by the outcome of the UR report. The issue should be decided based upon the ALJ's weighing of the competing medical evidence and [the ALJ] is free to accept either the opinion of [the] treating physician who recommends the treatment, or the opinion of the UR report, without the need to apply a treating physician preference.

Green v. Washington Hospital Center, CRB No. 08-208, AHD No. 07-130, OWC No. 628552 (June 17, 2009). Regardless of which opinion the ALJ gives greater weight, it is incumbent upon the ALJ to explain why one opinion is chosen over the other. *Haregewoin v. Loews Washington Hotel*, CRB No. 08-068, AHD No. 07-041A, OWC No. 603483 (February 19, 2008).[3]

In this case, the ALJ rejected "the" utilization review report because "[i]t does not address the request for surgery, and it does not outweigh the opinion of Dr. Yu." *Moody*, *supra*, at p. 6. The ALJ does not reference an exhibit when making this comment, and in this case the lack of reference to the record is important because two utilization review reports were submitted into evidence. The ALJ is correct that Dr. Getz did not address the reasonableness and necessity of surgery in his May 1, 2013 utilization review report (Employer Exhibit 3); however, in Dr. Michael Goldman's August 1, 2014 utilization review report, he asserts "[f]or discussing the compensable injury of 1/16/13, the claimant is not a candidate for any treatment whatsoever" and "[Mr. Moody] certainly is not a candidate for any further surgical intervention particularly in relationship to his industrial injury of 1/16/13." Employer's Exhibit 9. Consequently, the CRB agrees with Providence that the ALJ did not consider Dr. Michael Goldman's utilization review report when analyzing the issue of the reasonableness and necessity of medical treatment and that the ALJ misstated the evidence by finding that "the" utilization review does not address the request for surgery. These errors require the CRB remand this matter for further consideration within the legal framework for assessing reasonableness and necessity of treatment as set forth above. Pending such reconsideration, the CRB declines to consider whether the ALJ improperly relied upon a treating physician preference to reject the utilization review report or whether the ALJ did not consider the utilization review report in conjunction with the other medical evidence in the record.

CONCLUSION AND ORDER

Because the ALJ failed to address Dr. Yu's contradictory opinions regarding causal relationship, the ALJ's ruling that Mr. Moody's current symptoms are causally related to his compensable accident is not supported by substantial evidence. In addition, because the ALJ did not consider Dr. Michael Goldman's utilization review report when analyzing the issue of the reasonableness and necessity of medical treatment, the ALJ's ruling that Mr. Moody is entitled to his claim for relief is not supported by substantial evidence. The October 17, 2014 Compensation Order is not

[3] The CRB's Decision and Order transposes the claimant's name; the claimant's name is Haregewoin Desta, not Desta Haregewoin. *Desta v. Loew's Washington Hotel*, AHD No. 07-041A, OWC No. 603483 (December 7, 2007).

in accordance with the law and is VACATED. This matter is remanded for further consideration consistent with this Decision and Remand Order.

FOR THE COMPENSATION REVIEW BOARD:

MELISSA LIN JONES
Administrative Appeals Judge

March 25, 2015
DATE