

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services
Labor Standards Bureau

Office of Hearings and Adjudication
COMPENSATION REVIEW BOARD



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CRB No. 07-75

NEGASI TEKLU,

Claimant – Petitioner

v.

D.C. DEPARTMENT OF CORRECTIONS,

Employer – Respondent.

Appeal from a Compensation Order of
Administrative Law Judge Teri Thompson Mallett.
AHD No. PBL 01-055A; DCP No. 011715

Matthew Peffer, Esquire for the Petitioner

Pamela Smith, Esquire for the Respondent

Before: E. COOPER BROWN, *Chief Administrative Appeals Judge*, FLOYD LEWIS and SHARMAN J. MONROE *Administrative Appeals Judges*.

FLOYD LEWIS, *Administrative Appeals Judge*, on behalf of the Review Panel:

DECISION AND ORDER

JURISDICTION

Jurisdiction is conferred upon the Compensation Review Board pursuant to D.C. Official Code § 1-623.28, § 32-1521.01, 7 DCMR § 118, and DOES Director's Directive Administrative Policy Issuance No. 05-01 (Feb. 5, 2005).¹

¹ Pursuant to Administrative Policy Issuance No. 05-01, dated February 5, 2005, the Director of the Department of Employment Services realigned the Office of Hearings and Adjudication to include, *inter alia*, establishment of the Compensation Review Board (CRB) in implementation of the D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, D.C. Official Code § 32-1521.01. In accordance with the Director's Directive, the CRB replaces the Office of the Director in providing administrative appellate review and disposition of workers' and disability compensation claims arising under the D.C. Workers' Compensation Act of 1979, as amended, D.C. Official Code § 32-1501 *et seq.*, and the D.C. Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Official Code § 1-623.1 *et seq.*, including responsibility for administrative appeals filed prior to October 1, 2004, the effective date of the D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004.

BACKGROUND

This appeal follows the issuance of a Compensation Order from the Administrative Hearings Division (AHD) of the Office of Hearings and Adjudication (OHA) in the District of Columbia Department of Employment Services (DOES). In that Compensation Order, which was filed on March 16, 2007, the Administrative Law Judge (ALJ) denied the claim for relief by Claimant-Petitioner (Petitioner), concluding that Petitioner's current disabling condition is the result of the natural progression of his pre-existing condition and is not causally related to his employment. Petitioner now seeks review of that Compensation Order.

As grounds for this appeal, Petitioner alleges as that the ALJ's decision is not based upon substantial evidence and is not in accordance with the law.

ANALYSIS

As an initial matter, the scope of review by the Compensation Review Board (CRB) and this Review Panel, as established by the Act and as contained in the governing regulations, is 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. D.C. Official Code § 1-623.28(a). "Substantial evidence," as defined by the District of Columbia Court of Appeals, is such evidence as a reasonable person might accept to support a particular conclusion. *Marriott Int'l. v. Dist of Columbia Dep't. of Employment Servs.*, 834 A.2d 882 (D.C. App. 2003). Consistent with this scope of review, the CRB and this Review Panel are constrained to 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, and even where the reviewing authority might have reached a contrary conclusion. *Marriott*, 834 A.2d at 885.

Turning to the case under review herein, Petitioner alleges that the Compensation Order is erroneous and should be reversed. Petitioner asserts that the ALJ erred in relying on the medical reports of Dr. Robert Gordon, submitted by Employer-Respondent (Respondent), while rejecting the opinions of Petitioner's treating physicians. Respondent counters that the ALJ's findings are supported by substantial evidence and should be affirmed.

On August 3, 2000, Petitioner, a corrections officer, injured his knees when his shoe heel became stuck on a step and Petitioner's claim for benefits was accepted by the Disability Compensation Program (DCP). On September 26, 2006, Petitioner was issued a Notice of Intent to Terminate Disability based upon Dr. Gordon's report of September 5, 2006 that indicated that Petitioner had fully recovered from the work injury of August 3, 2000 and had no restrictions from the injury.

In analyzing this case, the ALJ properly noted that in this jurisdiction, it has been consistently held that once a claim has been accepted and disability benefits paid, the burden of proof rests with the employer to present substantial and recent medical evidence to justify a modification or termination of those benefits. *See Toomer v. D.C. Dep't. of Corrections*, CRB No. 05-202, OHA No. PBL. No. 98-048A, DCP No. LT5-DOC001603 (May 2, 2005); *Jones v. D.C. Dep't. of*

Corrections, Dir. Dkt. No. 07-99, OHA No. PBL No. 97-14, ODC No. 312082 (December 19, 2000); *Robinson v. D.C. General Hospital*, ECAB No. 95-8, ODCVC No. 303585 (July 8, 1997).

The ALJ found that Respondent's evidence of Dr. Gordon's opinion that there is no causal relationship between Petitioner's current bilateral knee condition and his August 2000 work injury, and that Petitioner has no permanent impairment related to such injury, was sufficient to meet Respondent's initial burden and shift the burden of production to Petitioner. To rebut Respondent's evidence, Petitioner relied on his testimony and the medical reports of Drs. Todd Swanson, John Klimkiewicz, John Albrigo and Bruce Ballard.

In rejecting Petitioner's claim for relief, the ALJ correctly noted that the opinions of treating physicians are ordinarily preferred over those doctors who have been retained to examine an employee solely for purposes of litigation. *Kralick v. Dist. of Columbia Dep't. of Employment Servs.*, 842 A.2d 705, 712 (D.C. 2004). Notwithstanding this preference for the opinion of a treating physician over that of a physician hired to evaluate a workers' compensation claim, an administrative law judge may reject the opinion of the treating physician and credit the opinion of another physician when there is conflicting evidence. In doing so, the fact-finder must give reasons for rejecting the opinion of the treating physician. *Canlas v. District of Columbia Department of Employment Services*, 723 A.2d 1210, 1211-12 (D.C. 1995).

The ALJ found that Dr. Gordon's report was well reasoned and credited his opinion that Petitioner's bilateral knee condition was related to a pre-existing condition and not his work injury. In choosing to credit the Respondent's medical evidence over Petitioner's treating physician, the ALJ noted that many of Dr. Klimkiewicz's prescription slips fail to relate Petitioner's inability to work to his work injury. In addition, the ALJ specifically noted a medical report, dated May 8, 2001, by Dr. Klimkiewicz:

[Claimant] has been out of work and has been unable to find a position for himself that might be commensurate with his abilities at this point. I have told him that I would be able to keep him out of work for probably one additional month, but he is going to need to find others means of work.

Compensation Order at 5.

After referring to Dr. Klimkiewicz's report of December 2006, the ALJ further comments on the reasons for rejecting Petitioner's claim:

In the December 27, 2006 medical report, Dr. Klimkiewicz . . . equivocates on his ability to render a decision regarding Claimant's restriction because of the significant passage of time. Other than reciting that Claimant had twisted his knees in August 2000 while working as a corrections officer, Dr. Klimkiewica did not provide any information to relate Claimant's bilateral knee condition to his work-related incident. Accordingly, although greater weight is given to the treating physician's opinion, I find that the record evidence, including the reports of the treating physicians, insufficient to conclude that Claimant's

current bilateral knee condition is a result of the August 200 work incident. Thus, Claimant's disabling condition is not causally related to his employment.

Id.

It should be noted that while Petitioner protests that the ALJ did not refer to the independent medical examination (IME) report by Dr. Bruce Ballard, stating Petitioner's work injury did have some role in his symptoms, it must be noted that this report by Dr. Ballard was dated April 29, 2003, over three years before the Petitioner's September 26, 2006 Notice of Termination, which relied on Dr. Gordon's recent report of September 5, 2006. Moreover, it must be noted that an ALJ "is not required to inventory the evidence and explain in detail why a particular part of it is accepted or rejected." *Landesberg v. Dist. of Columbia Dep't. of Employment Servs.*, 794 A.2d 607, 616. n.7 (D.C. 2002) quoting *Sturgis v. Dist. of Columbia Dep't. of Employment Servs.*, 629 A.2d 547, 555 (D.C.1993).

This Panel also emphasizes that as to the ALJ's rejection of the opinions of Petitioner's treating physicians, the only two recent medical evaluations are those by Respondent's physician, Dr. Gordon, upon which the ALJ relied and that of Dr. Klimkiewicz, who although Petitioner argues this doctor to be a treating physician, he had not seen Petitioner in almost five years before the evaluation in December of 2006. As such, one can hardly put Dr. Klimkiewicz's December 27, 2006 opinion on the same preference level as a treating physician that has seen an employee regularly. Even Dr. Klimkiewicz mentions this and further, as the ALJ notes, the doctor equivocates.

Finally, in support of his position in this matter, Petitioner relies heavily on the reversal by the Court of Appeals in *Kralick, supra*. However, this Panel must emphasize that in *Kralick*, the ALJ and the Director had rejected the opinion of the treating physician as "stale" and relied on the IME, when in fact, the treating physician's opinion was not stale. The circumstances surrounding the instant matter are far different from the situation in *Kralick*. In this case, if anything, the treating physician reports, upon which Petitioner relies (with the exception of the December 27, 2006 report by Dr. Klimkiewicz discussed above) are stale.

After reviewing, the record as a whole, this Panel concludes that there is more than ample evidence in the record to support Dr. Gordon's September 2006 opinion that Petitioner's work injury had resolved. The ALJ clearly explained the reasons for relying on Dr. Gordon and rejecting Petitioner's medical evidence. Accordingly, the ALJ's conclusion that Petitioner no longer has any remaining disability as a result of his work injury is supported by substantial evidence, is in accordance with the law and should not be disturbed.

CONCLUSION

The Compensation Order of March 16, 2007 is supported by substantial evidence in the record and is in accordance with the law.

ORDER

The Compensation Order of March 16, 2007 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

FLOYD LEWIS
Administrative Appeals Judge

June 27, 2007
DATE