GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR

ODIE DONALD II
ACTING DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 16-142

NIKEESHA WEBB,
Claimant–Respondent,

v.

DISTRICT OF COLUMBIA METROPOLITAN POLICE DEPARTMENT,
Employer-Petitioner.

Appeal from a September 26, 2016 Compensation Order
by Administrative Law Judge Gwenlynn D'Souza.
AHD No. PBL 16-019, DCP No. 0468-WC-15-0000742

(Decided March 1, 2017)

Harold L. Levi for Claimant
Nada A. Paisant for Employer

Before HEATHER C. LESLIE, LINDA F. JORY, and GENNET PURCELL, *Administrative Appeals Judges*.

HEATHER C. LESLIE for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

Claimant worked for the Employer as a Compliance Monitor. Claimant alleges that because of a water leak in her office (suite 5030) in December of 2014, Claimant suffered an injury to her immune and respiratory systems, including complaints of loss of voice, runny eyes and nose, congestion, wheezing and breathing distress.

Prior to December 2014, Claimant did suffer an allergic reaction for which she sought treatment in July 2014.

An indoor air quality ("IAQ") evaluation was performed on January 5, 2015 in suite 5030. The IAQ noted a history of multiple past water intrusions, and observed dirty filters, dust, and debris in various ventilators and floors in the suite. The IAQ concluded, in part:

> Mold spore sampling revealed concentrations were significantly below ambient concentrations. In the primary complaint area, Suite 5030, slightly elevated levels of *Penicillum and/or Aspergillus* and rusts were detected in the spore trap, indicating potential microbial growth occurring in Suite 5030. Furthermore, elevated levels of *Aspergillus/Penicillium* and *Basidiospores* were also surveyed in the non-complaint area and hallway, respectively.

Claimant's exhibits at 6.

Claimant relocated to a different suite, 6028, on January 13, 2015. Claimant continued to have breathing issues. On January 20, 2015, Claimant stopped working. Claimant attempted multiple times to return to work in different buildings, but experienced symptoms and difficulty breathing at each and was unable to work.

Claimant sought treatment, ultimately coming under the care of several physicians at Kaiser Permanente, including Dr. Maurice Wright, Dr. James A. Mutcherson and Dr. Adriano Salicru. Dr. Wright and Dr. Mutcherson opined that exposure to work conditions which included mold and water issues caused Claimant's airway dysfunction and allergic reaction.

A full evidentiary hearing occurred on July 18, 2016. Claimant sought an award of temporary total disability benefits and medically causally related medical expenses from December 17, 2014 to the present and continuing. The issues presented were whether Claimant timely notified Employer of her injury, whether Claimant's immune and respiratory conditions arose out of and in the course of employment and whether Claimant's disability is medically causally related to her work injury. A Compensation Order ("CO") issued on September 26, 2016 awarding the claim for relief including 4% interest from January 26, 2016 to the present and continuing.[1]

Employer appealed. Employer argues the following:

- The ALJ's legal conclusion that Claimant timely notified her supervisor is not supported by the substantial evidence and not otherwise in accordance with the law.
    - Substantial evidence does not exist to support the ALJ's findings that Claimant established a water leak occurred in December 2014.
    - Substantial evidence does not exist to support the ALJ's findings that the existence of the water leak was corroborated.

- The ALJ's finding that Claimant met her burden of establishing that her allergic condition arose out of and in the course of her employment is not supported by the substantial evidence.
    - Substantial evidence does not exist to support the ALJ's finding that Claimant was exposed to abnormal levels of allergens in her work environment.
    - Substantial evidence does not exist to support the ALJ's finding that Claimant sustained an allergic reaction.

[1] Employer does not appeal the award of interest.

- Substantial evidence does not exist to support the ALJ's findings that Claimant's symptoms and the existence of the water leak were corroborated.

- The ALJ's finding that Claimant met her burden of establishing that her allergic condition was medically casually related to her employment is not supported by substantial evidence and is not otherwise in accordance with the law.
  - Substantial evidence does not exist to support the ALJ's finding of medical causation.
  - Substantial evidence does not exist to support the ALJ's findings of exacerbation of Claimant's allergic condition.

Claimant opposes the appeal, arguing the CO is supported by the substantial evidence and must be affirmed.

ANALYSIS[2]

In arguing Claimant's notice to Employer was untimely pursuant to D.C. Code § 1-623.19, Employer argues first, substantial evidence does not exist to support the ALJ's findings that Claimant established a water leak occurred in December 2014, and secondly, the ALJ's reliance on the January 5, 2015 IAQ to support a water leak is not supported by the substantial evidence in the record. Thus, Employer argues as there was inadequate evidentiary support for a December water leak and in fact Claimant's allergies began on July 30, 2014, Claimant's notice in January was untimely. We disagree.

The ALJ, in concluding notice was timely, stated:

> Claimant had worked in the building since October 2012 without any significant health incident other than the episode in July 2014. Around December 17, 2014, however, a water leak occurred over Claimant's desk. The leak in Claimant's workspace was noted in an air quality study. By January 5, 2015, Claimant e-mailed Lt. Regina Gamble and indicated that she believed her loss of voice was due to her work environment. Based on the January 5, 2015 air quality study, the undersigned infers that the symptoms she reported were coughing, hoarseness, and watery eyes. Accordingly, the undersigned finds that Claimant provided written notice of her alleged injury by January 5, 2015, which was within 30 days of when Claimant first could have become aware that the injury to her immune

[2] The scope of review by the Compensation Review Board ("CRB") and this Review Panel as established by the District of Columbia Comprehensive Merit Personnel Act of 1978, as amended D.C. Code § 1-623.01 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. Code § 1-623.28(a). "Substantial evidence", as defined by the District of Columbia Court of Appeals ("DCCA"), is such evidence as a reasonable person might accept to support a particular conclusion. *Marriott Int'l. v. DOES*, 834 A.2d 882 (D.C. 2003) ("*Marriott*"). Consistent with this scope of review, the CRB and this panel are bound 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, supra,* 834 A.2d at 885.

> and respiratory system was work-related. CE 3; EE 5; EE 7. Accordingly, the undersigned finds that Claimant provided timely notice of her claim of injury.

CO at 5.

First, Claimant testified that in December 2014 there was a water leak which occurred over her desk. Hearing transcript at 72. Claimant also testified to the presence of mold, dirty carpeting and further evidence of water damage at the Daly building, including pictures to support her claim and the results of the IAQ which noted past water intrusions in her office. In arguing Claimant's testimony was inconsistent, Employer argues it is "entirely unclear when exactly" the water leak occurred. Employer does not contest a leak did occur. It is clear the ALJ took into consideration the Claimant's testimony of a water leak, as well as the evidence presented, in concluding a water leak occurred as evidenced by the water damage shown in the pictures and outlined in the IAQ.

This brings us to Employer's second argument, that the IAQ does not support the finding that a water leak occurred on or around December 17, 2014. Employer argues the IAQ indicated no recent water leak had occurred as the mold species *stachybotrys* was not present. This argument is misleading. The IAQ did mention that "Suite 5030 had experienced multiple water intrusions over the past year due to storm water leakage from the building roof" with the "most recent water intrusion" occurring in a corner of the suite, resulting in ceiling tile damage that had to be replaced. Employer's exhibit at 6. The IAQ noted the area of the water leak was above Claimant's desk. While the report did not indicate exactly what it meant by the term "recent," the ALJ's conclusion that a water leak did occur on or around December 17, 2014 is supported by the substantial evidence when taking into consideration not only the IAQ, but also Claimant's testimony as well as the other evidence presented, including the pictures of the conditions of the Daly facility. The ALJ's determination that a water leak occurred on December 17, 2014 is supported by the substantial evidence in the record and Claimant's notice to her supervisor requesting an IAQ which was performed on January 5, 2015 is timely.

Employer's next argument is that the ALJ's finding that Claimant met her burden of establishing that her allergic condition arose out of and in the course of her employment is not supported by the substantial evidence. Specifically, Employer argues that substantial evidences does not exist to support the ALJ's finding that Claimant was exposed to abnormal levels of allergens in her work environment, that Claimant sustained an allergic reaction and that Claimant's symptoms and the existence of the water leak were corroborated.

Addressing Employer's first argument, Employer points to several points made in the IAQ, including damage from past water intrusions had resolved and mold samplings were well below ambient concentrations. While true, the IAQ also noted dirty ventilators, dusty carpet, damaged window blinds, a lack of air circulation and the occupants in the suite complaining of occasional "stuffy conditions." Claimant's exhibit at 6. The IAQ also noted "slightly elevated levels of *Penicillum and/or Aspergillus* and rusts were detected in the spore trap, indicating potential microbial growth occurring in Suite 5030." The ALJ also noted another air quality study, in another suite before damaged tiles were removed, showed "abnormally high levels of aspergillis." Thus, contrary to Employer's argument, the ALJ's reliance on the IAQ and

Claimant's testimony does provide substantial evidence to support the conclusion that Claimant's work environment caused an injury to her respiratory and immune system.

Employer further argues the ALJ erred in determining Claimant sustained an allergic reaction. In so arguing, Employer relies on Dr. Salicru's report. In the findings of fact, the ALJ noted:

> On April 2, 2015, Dr. James A. Mutcherson, an allergist, determined Claimant was allergic to house dust and indoor molds, among other allergens. He found that Claimant's immune and respiratory systems were affected. Dr. Mutcherson determined that Claimant's systems were "greatly exacerbated upon exposure to her work environment as evidence by marked congestion" and marked symptom relief by a change in location. He recommended that Claimant should avoid a work setting with noxious fumes, excessive dust, or mold. He also recommended that she avoid an open work setting, and possibly use a clean air machine. He recommended a medical regimen for nasal congestion, immunotherapy, and speech therapy. CE 5.

CO at 4. (Footnote omitted.)

In analyzing whether Claimant sustained an allergic reaction, the ALJ relied upon the report of Dr. Mutcherson over that of Dr. Salicru. Specifically,

> In assessing whether Claimant's injury arose out of and in the course of employment, the undersigned notes, however, that the injury occurred on December 17, 2014, and indoor air quality study was conducted on January 7, 2015, after the removal of wet ceiling tiles. An air quality study performed at a different location before the removal of ceiling tiles found abnormally high levels of *aspergillis*. CE 6.
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> The studies of Dr. Salicru and Dr. Mutcherson differ to the extent that Dr. Salicru found a reaction, but not an allergic reaction. The undersigned relies on Dr. Mutcherson's finding that Claimant was allergic to *aspergillis*. Although this finding conflicts with the finding of Dr. Salicru, the undersigned notes that there are many species of *aspergillis*, and perhaps Dr. Salicru's *aspergillis* mix was different than the mix Dr. Mutcherson used.
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> Employer contends that the medical evidence directly contradicts the onset of Claimant's alleged allergic reaction. The undersigned finds that although Claimant's initial diagnosis was hoarseness on January 8, 2015, rather than allergic rhinitis, the medical evidence does not contradict the onset of an allergic reaction. To the extent, Claimant was treated for allergic nasal symptoms around April or July 2014, the medical evidence does not contradict Dr. Mutcherson's finding of an exacerbation of a respiratory condition. The undersigned rejects the proposition that EE 3 at 9 reflects that Claimant was diagnosed with allergic rhinitis on September 1, 2005, because the column area next to that particular diagnosis is empty.

> Other evidence supports Claimant's allegations about the onset of any allergic reaction. Dr. Mutcherson's finding of exacerbation is corroborated by Claimant's good health prior to working in a wet area and Claimant's initial reports of coughing, hoarseness, and watery eyes, which were reflected in the air quality study. Claimant's testimony about her objectively verifiable symptoms was not contradicted by any witness, particularly any coworkers within her office. Claimant's testimony about the condition of the offices she was later placed was not contradicted by any witness. Claimant's testimony about a water leak in her work area was supported by the findings in the air quality study dated February 24, 2015. Based on this record, the undersigned finds that Claimant sustained an injury to her respiratory and immune systems in the performance of work on December 17, 2014. CE 4; CE 5.

CO at 7.

In arguing the ALJ was incorrect in relying upon Dr. Salicru, Employer is in essence requesting this panel to reweigh the evidence in its favor, finding more persuasive the opinion of Dr. Salicru over that of Dr. Mutcherson. This is a task we cannot do. The ALJ's reliance on the opinion of Dr. Mutcherson is supported by the substantial evidence in the record and in accordance with the law.

Employer's next argument is that the ALJ mischaracterized the evidence and that Claimant did not produce evidence to substantiate her diagnosis of allergic rhinitis or that a water leak occurred. As to Employer's argument regarding the water leak on December 17, 2014, we simply direct Employer to our discussion above wherein we affirmed the ALJ's conclusion that a water leak did occur.

As to Employer's contention that Claimant failed to produce any medical documentation to substantiate her diagnosis of allergic rhinitis, we direct Employer to Dr. Wright's May 21, 2015 verification of treatment form outlining his treatment and diagnosis, including "continued allergic reaction symptoms which manifested as rhinitis" Claimant's exhibit at 4. Employer's argument is rejected.

Next, Employer argues that the ALJ's finding that Claimant met her burden of establishing that her allergic condition was medically casually related to her employment is not supported by substantial evidence and is not otherwise in accordance with the law. In so arguing, Employer posits that substantial evidence does not exist to support the ALJ's finding of medical causation and substantial evidence does not exist to support the ALJ's findings of exacerbation of Claimant's allergic condition. We disagree.

In arguing Claimant did not meet her burden of establishing her allergic condition was medically casually related to her employment, Employer attacks the opinions of her physicians, Dr. Mutcherson and Dr. Wright for not reviewing the IAQ when coming to their diagnosis. While this may be true, reviewing or not reviewing an IAQ would go to the weight of the physician's opinion. The ALJ reviewed the medical evidence and found the opinions of Dr. Wright and Dr.

Mutcherson, in tandem with the IAQ and Claimant's testimony to be persuasive. We can find no fault in the ALJ's analysis and affirm the conclusion that Claimant's respiratory and immune condition is medically causally related to her work.

Finally, Employer argues that substantial evidence does not support the conclusion that her work environment exacerbated her prior respiratory and immune condition. Employer takes issue with the finding that Claimant had a July 2014 allergic reaction, and that the ALJ found the December 2014 work place exposure exacerbated her condition. Employer argues this conclusion is inconsistent and does not explain what the prior pre-existing condition is.

We note in the findings of fact the ALJ noted:

> Between July 14, 2014 and August 22, 2014, Claimant took 112 hours of sick leave. On July 30, 2014, Claimant consulted Dr. Maurice A. Wright, an internist, who had treated Claimant as a primary physician during the previous eight years. Dr. Wright started Claimant on a prescription of Fluticasone for an allergic reaction and nasal congestion. He noted the prescription was not workers compensation related. CE 4 at 32-33; EE5.
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> Between September 7, 2014 and October 18, 2014, Claimant took 32 hours of sick leave. EE5. In late December 2014, a water leak occurred over Claimant's desk. She began having problems breathing at work. Claimant experienced wheezing, coughing, sneezing, runny eyes, headaches, and throwing up. On or about December 17, 2014, Claimant lost her voice and took sick leave until December 22, 2014. CE 1; CE 3; CE 8; EE 4 at 41; EE 5 at 44-47; EE 6 at 49; EE 7; HT 33, 72.

CO at 2-3.

In analyzing whether Claimant's condition is medically casually related to the December 17, 2014 work incident, the ALJ stated,

> In public sector cases, the burden is on a claimant to prove by a preponderance of the evidence that an accident caused or contributed to an injury. *McCamey*, 947 A.2d at 1214; *Ross v. District of Columbia Department of Corrections*, CRB No. 12-189 (January 30, 2013). "[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." *McCamey*, 947 A.2d at 1209. In a case of an allergen, "responsibility only arises where the condition itself was caused by the work place exposure, or was made worse by it such that the claimant's employment capacity has been compromised by the exposure itself, due to being made worse." *Anamaleche-Oladokun*, CRB (Dir. Dkt.) No. 09-04 (March 14, 2006). An administrative law judge may not draw inferences which amount to medical conjecture as to the cause of a medical condition. *McNeal v. District of Columbia Department of Employment Servs.*, 917 A.2d 652, 657 (D.C. 2007); *Daly v. R.J. Reynolds*, CRB No. 12-023 (April 3, 2012).

> In assessing medical causation, the undersigned relies of the allergy study of Dr. Mutcherson and Dr. Wright's explanation about the onset of symptoms. Dr. Mutcherson's finding of exacerbation is corroborated by Dr. Wright's verification of treatment that he had treated Claimant for about ten years and that prior to exposure, she was in good health. Dr. Wright determined that 'The timing and [] good health before the exposure can lead to no other conclusion. Removal of the cause of the problem does not necessarily mean that the problem will go away . . ." The undersigned also relies on statements of the Employer's expert, Global Consulting, Inc., who performed several indoor air quality studies related to *aspergillis* and its effects.
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> Relying on the allergy study of Dr. Mutcherson, the indoor air quality study, the verification of treatment by Dr. Wright, and Claimant's credible testimony about her work conditions, the undersigned finds Claimant's respiratory and immune condition was made worse by the work place exposure and, therefore, is medically causally related to the December 17, 2014 work injury.

CO at 7-8.

In arguing the above analysis is wrong, Employer points this panel to Claimant's testimony, stating Claimant maintained she did not have allergies prior to December 2014. Claimant testified she did not have allergic rhinitis prior to this date. Claimant did not testify she had never had allergies in general. Claimant did testify to suffering from a cough and losing her voice however while working in the Daly building.

We do not find the ALJ's analysis to be inconsistent as Employer argues. The ALJ acknowledged the prior medical care of July 2014, took into consideration the testimony of the Claimant, the IAQ, as well as the opinions of several physicians in determining Claimant's was made worse by the work place conditions of December 17, 2014.

CONCLUSION AND ORDER

The September 26, 2016 Compensation Order is AFFIRMED.

So ordered.