

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA MARÍA MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 13-091

**LINDA RASH,
Claimant–Petitioner,**

v.

**D.C. DEPARTMENT OF CORRECTIONS,
Employer-Respondent.**

Appeal from a July 2, 2013 Compensation Order on Remand by
Administrative Law Judge Fred D. Carney, Jr.
AHD No. PBL11-040, DCP No. 30100939092-0001

Linda A. Rash, self-represented Petitioner
Frank McDougald, Esquire, for the Respondent

Before MELISSA LIN JONES, HEATHER C. LESLIE, and HENRY W. MCCOY, *Administrative Appeals Judges*.

MELISSA LIN JONES for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD, PROCEDURAL HISTORY, AND ANALYSIS¹

On September 15, 2010, Ms. Linda A. Rash injured her back while working as a legal documents examiner for the District of Columbia Department of Corrections. Initially, her claim was accepted, but on June 23, 2011, the Public Sector Workers' Compensation Program issued a Final Decision on Reconsideration terminating Ms. Rash's wage loss and medical benefits.

¹ The scope of review by the CRB is limited to making a determination as to whether the factual findings of the appealed Compensation Order on Remand 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 on Remand 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).

The parties proceeded to a formal hearing to determine if Ms. Rash has “any remaining disability as a result of the work injury and if so, what is the nature and extent thereof?”² In denying Ms. Rash’s request for benefits because her work injury resolved as of October 24, 2010, the administrative law judge (“ALJ”) essentially found there is no causal relationship between Ms. Rash’s current symptoms and her work-related injury.

Ms. Rash appealed the Compensation Order, and on February 28, 2013, the Compensation Review Board issued a Decision and Remand Order.³ The matter was returned to the ALJ for accurate and appropriate findings of fact leading to reasonable conclusions of law, and on remand, the ALJ denied Ms. Rash reinstatement of temporary total disability compensation benefits because her work-related injury has completely resolved and she is capable of returning to work.⁴

ANALYSIS⁵ AND CONCLUSION

To begin, in the February 23, 2013 Decision and Remand Order, the CRB stated

effective September 24, 2010, the “treating physician preference” that had been codified at §1-623.23(a-2)(4) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, D.C. Code §1-623.1 *et seq.* (“Act”) was deleted by the City Council. As a result, although prior cases had relied upon such a preference, it no longer is appropriate to do so. We, therefore, find no error in the ALJ’s failure to afford a treating physician preference.^{6]}

As the ALJ pointed out in the Compensation Order on Remand, the CRB has come to recognize that despite a statutory change, a treating physician preference remains in public sector cases;⁷ however, the preference is not absolute, and when there are specific reasons for rejecting the

² *Rash v. D.C. Department of Risk Management*, OHA No. PBL11-040, DCP No. 30100939092-0001 (August 22, 2012), p. 2.

³ *Rash v. D.C. Department of Risk Management*, CRB No. 12-149 OHA No. PBL11-040, DCP No. 30100939092-0001 (February 28, 2013).

⁴ *Rash v. D.C. Department of Risk Management*, OHA No. PBL11-040, DCP No. 30100939092-0001 (July 2, 2013).

⁵ 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).

⁶ *Rash v. D.C. Department of Risk Management*, CRB No. 12-149 OHA No. PBL11-040, DCP No. 30100939092-0001 (February 28, 2013), p. 2.

⁷ *Abbott v. D.C. Public Schools*, CRB No. 12-153, AHD No. PBL07-065B, DCP No. A984800 0667-0001 (June 4, 2013).

opinion of a treating physician, the opinion of another physician may be given greater weight.⁸ In this case, Dr. Naurang S. Gill did not provide any medical rationale to connect Ms. Rash's radiating back pain to her work-related accident so he is not entitled to a preference.⁹ Similarly, neither Dr. Charles J. Azzam nor Dr. Reza Golesorkhi offered a medical opinion as to how Ms. Rash's low back pain is related to her work-related accident,¹⁰ and although Dr. Golesorkhi continued to certify Ms. Rash as unable to work, he did so without citing new clinical support for that recommendation.¹¹

Reviewing the totality of Dr. Guy W. Gargour's medical reports, the ALJ concluded that while Ms. Rash may require palliative care, she is capable of returning to work. The ALJ found "no reason to reject the report of Dr. Gargour who treated [Ms. Rash from February 2011 until May 2011]."¹²

Having provided persuasive reasons for rejecting the opinions of Ms. Rash's treating physicians except for Dr. Gargour, when weighing the evidence, the ALJ gave greater weight to the opinions of Dr. Marc B. Danziger which are consistent with those of Dr. Gargour and ruled Ms. Rash's back strain has resolved:

Dr. Danziger [*sic*] opined that Claimant suffered a slight back strain at work which has completely resolved. His medical opinion was based on his review of Claimant's medical records, the results of objective tests such as straight leg raising, MRI and EKG examinations, his examination of Claimant and her medical records.

Dr. Danziger [*sic*] is the only medical report of record that provides any opinion of the etiology of Claimant's subjective complaints. Dr. Danziger's [*sic*] report is consistent with the results of the MRI examinations and the reports of Dr. Gargour which indicate that Claimant's x ray and MRI reports were normal and her degenerative disc disease is compatible with Claimant's age. Dr. Gargour like Dr. Danziger [*sic*] did not believe [*sic*] Claimant had a neurosurgical problem and as of April 6, 2011, and that she could return to work. Of the medical evidence of record I find the reports of Dr. Danziger [*sic*] the most cogent.^[13]

The CRB finds no fault with the ALJ's summary or analysis of the medical evidence which leads to the conclusion that

⁸ See *Butler v. Boatman & Magnani*, H&AS No. 84-348, OWC No. 044699 (Remand Order December 31, 1986) citing *Murray v. Heckler*, 624 F. Supp. 1156 (D.C. 1986).

⁹ *Rash v. D.C. Department of Risk Management*, OHA No. PBL11-040, DCP No. 30100939092-0001 (July 2, 2013), p. 3.

¹⁰ *Id.* at p. 4.

¹¹ *Id.* at p. 5.

¹² *Rash v. D.C. Department of Risk Management*, CRB No. 12-149 OHA No. PBL11-040, DCP No. 30100939092-0001 (February 28, 2013), p. 7.

¹³ *Rash v. D.C. Department of Risk Management*, OHA No. PBL11-040, DCP No. 30100939092-0001 (July 2, 2013), p. 9.

Employer has produced evidence that Claimant has pre-existing disc disease and nerve encroachment prior to the September 15, 2010 work incident. Claimant suffered a minor back strain which has resolved. Claimant's job is primarily sedentary and she can return to full duty. Therefore I find and conclude that Employer has shown be a preponderance of the evidence that Claimant's sustained a lumbar strain which has completely resolved and she is capable of returning to work immediately.^[14]

On appeal, Ms. Rash makes numerous requests that the CRB reweigh the evidence in her favor, but the CRB lacks authority to do so.¹⁵ In the end, there is no dispute that Ms. Rash suffered from degenerative disc disease and nerve encroachment prior to her September 15, 2010 accident at work, and although she may continue to experience some impairment, that impairment is not related to her compensable injury and does not prevent her from returning to work.

ORDER

The July 2, 2013 Compensation Order on Remand is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

MELISSA LIN JONES
Administrative Appeals Judge

September 9, 2013
DATE

¹⁴ *Id.*

¹⁵ *Marriott, supra.*