

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**Department of Employment Services**

**MURIEL BOWSER**  
MAYOR



**DEBORAH A. CARROLL**  
DIRECTOR

**COMPENSATION REVIEW BOARD**

**CRB No. 15-048**

**RENEA ALLEN,**  
**Claimant-Petitioner,**

**v.**

**COASTAL INTERNATIONAL SECURITY and**  
**GALLAGHER BASSET SERVICES,**  
**Employer/Insurer-Respondent.**

Appeal from a February 27, 2015 Compensation Order by  
Administrative Law Judge Gregory P. Lambert  
AHD No. 14-544, OWC No. 704613

DEPT. OF EMPLOYMENT  
SERVICES  
COMPENSATION REVIEW  
BOARD  
2015 JUL 14 PM 12 23

(Decided July 14, 2015)

Jose Estrada for Claimant  
Zachary Erwin for Employer

Before JEFFREY P. RUSSELL, and Heather C. Leslie, *Administrative Appeals Judges*, and  
LAWRENCE D. TARR, *Chief Administrative Appeals Judge*.

JEFFREY P. RUSSELL, for the Compensation Review Board.

**DECISION AND ORDER**

**FACTS OF RECORD AND PROCEDURAL HISTORY**

Claimant Renea Allen (Claimant) was injured on May 17, 2013 when she tripped and fell over a cement block while at work for Coastal International Security (Employer). It is undisputed that she injured her right knee, hand and foot in the incident, and that Employer voluntarily provided temporary total disability benefits from May 18, 2013 through May 18, 2014, and provided medical care for these injuries.

A dispute arose concerning Claimant's assertion that she also sustained injuries to her hip and low back in the incident. An Informal Conference was held in the Office of Workers' Compensation (OWC) on March 13, 2014 to resolve this dispute. Following the Informal Conference, OWC issued a Memorandum of Informal Conference recommending a finding that

Claimant did, in fact, sustain “back/hip” injuries in the incident. Neither party rejected the Memorandum, and it was reduced to a Final Order on July 29, 2014.

Claimant presented a claim for temporary total disability benefits from May 19, 2014 to the present and continuing, and for causally related medical care, at a Formal Hearing before an Administrative Law Judge (ALJ) in the Administrative Hearings Division (AHD) of the Department of Employment Services (DOES) on January 26, 2015. Following the Formal Hearing, the ALJ issued a Compensation Order denying the claim on three grounds: first, that the low back and hip complaints that Claimant alleged caused or contributed to her alleged inability to work were not causally related to the stipulated work injury; second, that Claimant had failed to satisfy her burden of demonstrating an inability to perform her pre-injury job; and third, Claimant had voluntarily limited her income by failing or refusing to accept employment within her physical capacity that was made available to her by Employer.

Claimant filed an Application for Review and Memorandum of Points and Authorities in support thereof (Claimant’s Brief) with the Compensation Review Board (CRB), to which Employer filed an Opposition and Memorandum of Points and Authorities in support thereof (Employer’s Brief).

Claimant argues in this appeal that the Compensation Order improperly denied the claim on grounds that were beyond the jurisdiction of AHD due to the existence of the OWC Final Order, that the Final Order renders the ALJ’s rejection of the treating physician’s opinion, and the acceptance of the opinion of an independent medical evaluator (IME) improper, and that the ALJ erred in finding Claimant had failed to adduce sufficient evidence to return to her pre-injury employment because such a finding is unsupported by substantial evidence, and by according too much weight to the IME report and not enough to the treating physicians.

Employer argues that the issue of causal relationship was properly before the ALJ and the denial based on a lack thereof was supported by substantial evidence and should be affirmed, and that even if it was error to consider the issue of causal relationship, the ALJ’s denial of benefits on the two remaining grounds is supported by substantial evidence and should be affirmed.

For the reasons set forth below, we vacate the findings related to causal relationship but affirm the denial of the claim.

#### ANALYSIS

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. *See* D.C. Code § 32-1521.01 (d)(1)(A). 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 different conclusion. *Marriott International v. DOES*, 834 A.2d 882, 885 (D.C. 2003).

We first address Claimant's argument that the Compensation Order and ALJ erred in considering the question of whether Claimant's back and hip conditions are causally related to the stipulated work injury of May 17, 2013. Without using the phrases "res judicata" or "collateral estoppel", Claimant argues essentially that the issue was precluded as a result of a Final Order entered by OWC on July 29, 2014 which specifically adopted a Memorandum of Informal Conference issued March 24, 2014 "recommending that: 'the claimant's back/hip problems are causally related to the work injury which occurred on 5/17/13 and therefore is she is entitled to seek additional medical treatment'". *Allen v. Coastal International Security*, Final Order, OWC No. 704613 (July 29, 2014).<sup>1</sup>

It is undisputed that such a Final Order was entered. However, Employer argues that we should not give it effect because: (1) it was not made part of the record created at the formal hearing; (2) Employer specifically advised the ALJ and Claimant in preliminary remarks at the formal hearing that causal relationship was an issue in dispute (HT 6, lines 6 – 8, 12 – 13; HT 7, lines 13 – 17); (3) Claimant acknowledged Employer's raising the issue yet made no objection (HT 7, lines 18 – 21) and; (4) Claimant made but a one sentence reference to the existence of the Final Order, that being in Claimant's counsel's opening statement (HT 19, lines 19 – 22).

Although the issue is not listed as a contested matter on the Joint Pre Hearing Statement and Stipulation Form (JPHS), it is listed as the first issue in the Compensation Order.

We reject Employer's arguments on this issue. The Final Order is a binding, non-appealable order establishing the causal relationship between the "hip/back" injuries and the work incident. There is no legal basis upon which it can be ignored.

Accordingly, we have no choice but to vacate the finding that Claimant's hip and back injuries are not causally related to the stipulated work injury.

Employer argues further that, even if the issue was erroneously considered, the error is harmless in the context of this case, inasmuch as the two other conclusions contained in the Compensation Order, that Claimant failed to establish that she is disabled as claimed, and that she voluntarily limited her income by not accepting light duty work that was offered by Employer, are supported by factual findings which are themselves based upon substantial evidence. Hence, the denial of the claim should be upheld.

We agree with Employer in this regard.

In the two remaining issues, credibility is central to the findings concerning non-cooperation and lack of a disability. That error in the causal relationship determination doesn't taint his other decisions. Causal relationship is independent of nature and extent and voluntary limitation of income. The ALJ's well-reasoned decisions, which are all sourced in the Compensation Order by

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<sup>1</sup> We take administrative notice of the Final Order, being contained within the official records of the DOES. See *Renard v. DOES*, 673 A.2d 1274 (D.C. 1996).

reference to transcripts and documentary exhibits which are accurately described by the ALJ, are not undone if one adds back causal relationship findings. The ALJ fully discussed the issues and his reasoning is supported by the evidence. He didn't accept the treating physician's opinion and he found Claimant not credible. He did not accept as reliable Claimant's version of the one-day attempt to return to work, and he accepted Employer's witness's testimony that Employer was at all times ready, willing and able to make virtually any physical accommodation required to keep Claimant employed.

Although the ALJ erred by not finding the hip and back to be medically causally related to the stipulated injury, the ALJ analyzed Claimant's treating physicians' opinions, that of Dr. Hung and Dr. Carlini, regarding disability to her back and hip and found that their opinions were not persuasive. The ALJ gave cogent reasons, cited the applicable evidence, and came to a rational conclusion based on those findings.

For example, Employer complains that the ALJ did not accord Dr. Hung treating physician status. Although the Compensation Orders language technically makes a misstatement in that regard ("Dr. Hung's medical opinions are less reliable than Dr. Levitt's and do not merit treating physician preference"; Compensation Order, p. 4), review of the relevant paragraph as a whole demonstrates that the ALJ had record-based, rational reasons for rejecting Dr. Hung's opinions and accepting Dr. Levitt's. It is not improper for the ALJ to take cognizance of the fact that "Patient's lawyer needed a statement that the knee and the low back were related to her work injury" (Compensation Order, p. 5, quoting CE 1, p. 3). Most importantly, though, is that it is entirely reasonable to devalue this doctor's expressions on causal relationship because "Dr. Hung's opinions are based on Ms. Allen's unreliable and rejected<sup>2</sup> complaints of pain." That is what the preference requires: enunciation of rational, record based reasons for rejecting a treating physician's opinions. And, the ALJ specifically included in his analysis of nature and extent the statement that even "setting aside" the doctor's opinion on causal relationship, he cited the fact that Claimant's off-work status was the result of a different physician placing her in that status, and was not a determination he made on his own, and was the result of Claimant's vocalized complaints, which the ALJ discredited. (Compensation Order, p. 7).

Regarding Dr. Carlini, the ALJ similarly gave cogent reasons for finding his opinions insufficient to support the claim. Among them were that the surgical procedure yielded no evidence of "significant acute pathology" and that she was "able to perform [a] full [rehab] exercise program for her knee". Compensation Order, p. 7, citing EE 1. And he found persuasive the fact that Dr. Levitt's examinations yielded no evidence of atrophy from disuse, or any other "measurable pathology". Compensation Order, p. 7, citing EE 1.

And, in the case of the voluntary limitation of income, the ALJ accepted as credible Employer's witness's testimony to the effect that Employer has a rather broad based return to work program

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<sup>2</sup> Rejected, that is, by the ALJ in a detailed, separate discussion devoted solely to Claimant's credibility. Compensation Order, p. 4

for its injured workers, and that Claimant's one day return to work was remarkable inasmuch as she never complained about an allegedly "broken" stool or that anything else about the modified job was beyond her capacity.

These are simple credibility matters, in which Claimant is entitled to no presumptions. The findings that Claimant failed to demonstrate her disability by a preponderance of the evidence, or overcome Employer's credible evidence of voluntary limitation of income, are supported by the record, and will not be re-assessed by us.

#### CONCLUSION AND ORDER

Because the issue of causal relationship was not properly before AHD and is at variance with a binding prior Final Order, the finding that Claimant's hip and low back injuries are not causally related to the stipulated work injury is vacated. Because the finding that Claimant had failed to adduce sufficient evidence to meet her burden of proof on the issue of nature and extent of disability, and the findings that Employer's evidence satisfied the preponderance of evidence standard required to establish a voluntary limitation of income by declining to accept suitable alternative employment, are supported by substantial evidence, the denial of the claim is affirmed.

*So Ordered.*