

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 14-039 (1)

RHONDA K. DAHLMAN
Claimant-Petitioner

v.

AMERICAN ASSOCIATION OF RETIRED PERSONS and
ZURICH NORTH AMERICA INSURANCE
Employer/Insurer-Respondent.

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2015 APR 11 AM 11 37

On Motions for Reconsideration of a Decision and Remand Order issued February 11, 2015
AHD No. 09-056C, OWC No. 647286

Rhonda K. Dahlman, *Pro Se*
D. Stephenson Schwinn for the Employer

Before JEFFREY P. RUSSELL, MELISSA LIN JONES, and HEATHER C. LESLIE, *Administrative Appeals Judges*.

JEFFREY P. RUSSELL for the Compensation Review Board.

ORDER ON RECONSIDERATION

FACTS OF RECORD AND PROCEDURAL HISTORY

The Claimant Rhonda K. Dahlman was employed as an attorney by the American Association of Retired Persons (AARP).

Claimant filed a claim for psychological injury arising from workplace stress, which was denied by Employer as being unrelated to her employment. She presented her claim for benefits to an Administrative Law Judge (ALJ) in the Department of Employment Services (DOES) at a formal hearing on September 27, 2012. The hearing was held before Administrative Law Judge David L. Boddie, at which hearing Claimant testified on her own behalf, and produced the testimony of a treating psychiatrist, Dr. Norman Wilson. Dr. Wilson testified that Claimant suffers from Post-

Traumatic Stress Disorder (PTSD) and Dissociative Identity Disorder (DID) which were aggravated by her perceptions of hostility in the work environment, resulting in a “shattering” event on November 8, 2005.

A Compensation Order was issued by the ALJ on March 21, 2014. The ALJ denied the claim, finding that Claimant sustained an accidental injury on November 8, 2005, but that the injury was not causally related to her employment. Claimant filed an appeal to the Compensation Review Board (CRB) which appeal Employer opposed.

Claimant claimed in her appeal that the ALJ made factual errors concerning matters involving her personal relationships and that those errors caused him to erroneously conclude that her condition resulted from those failed relationships, that he placed too much weight on an Independent Medical Evaluation (IME) performed by a Dr. Gold, and not enough on her own physician and the notes and reports of her counselors, that the ALJ erroneously found that her work had deteriorated prior to the “shattering” incident and that her supervisor had not been hostile or abusive in the workplace.

Employer argued that the ALJ properly considered the evidence and concluded, with record support, that Claimant’s psychological disability is unrelated to her employment at AARP.

Citing and relying upon *McCamey v. DOES*, 947 A.2d 1191 (D.C. 2008) and *Ramey v. DOES*, 997 A.2d 694 (D.C. 2010), the CRB issued a Decision and Remand Order (DRO) on February 11, 2015, in which it summarized its decision as follows:

Because the ALJ’s determination that Ms. Dahlman sustained an accidental injury on November 8, 2005 is supported by substantial evidence, we affirm that finding. Because the ALJ improperly applied the legal test of causation in psychological injury cases, we vacate the denial of the claim. Because it is undisputed that the events of November 8, 2005 (1) occurred and (2) the ALJ found that she sustained an accidental injury on that date, Ms. Dahlman was entitled to the presumption that her condition is causally related to her employment. Because the ALJ failed to properly analyze this claim in accordance with Ms. Dahlman’s entitlement to a presumption of causal relationship, we remand the matter for further consideration.

DRO, p. 3.

At the Conclusion of the DRO, the CRB wrote:

The ALJ also committed a fundamental analytic omission. He should have first determined whether Ms. Dahlman had adduced sufficient evidence to invoke the presumption, then considered whether AARP had adduced sufficient evidence to overcome, and if so, he should have proceeded to then weigh the entire record without reference to any presumption, and determine whether Ms. Dahlman's November 8, 2005 "shattering" was work related.

This error requires that we remand for further consideration of whether Ms. Dahlman's accidental injury as found to have been sustained on November 8, 2005 was work related. We point out that it is presumed to be so. Therefore, the next step is to determine whether AARP's evidence is sufficient to overcome that presumption. That process requires analysis under *Washington Post v. DOES*, 852 A.2d 909 (D.C. 2004).

Then, if it is found that AARP's evidence meets the standard, what remains is for the ALJ to re-weigh the evidence, without reference to the presumption, but bearing in mind that in this jurisdiction there is a preference for the opinion of a treating physician over that of an independent medical examiner, and any rejection of the opinion of Dr. Wilson needs to be explained, particularly in light of the ALJ's finding, which we affirm, that Ms. Dahlman sustained an accidental injury on the date claimed.

Lastly, because the ALJ denied the claim on compensability grounds, there were no findings or legal conclusions concerning the nature or extent of Ms. Dahlman's disability, whether the claim was filed timely, whether employer had notice of the injury under the Act, or whether the claim was timely controverted. Accordingly, if on remand the ALJ determines that Ms. Dahlman's November 8, 2005 accidental injury was caused or aggravated by a work related condition or event, the ALJ must make further findings of fact and conclusions of law concerning the remaining contested issues.

CONCLUSION AND ORDER

The ALJ's determination that Ms. Dahlman sustained an accidental injury on November 8, 2005 is supported by substantial evidence, and is affirmed. The conclusion that the accidental injury was not caused or aggravated by a work related condition or event was reached without adequate or proper analysis under the *Ramey* doctrine, the presumption of compensability or in light of the treating physician preference, and is vacated. The matter is remanded for further

consideration of the claim in a manner consistent with the foregoing Decision and Remand Order.

DRO, pp. 11 – 12.

Employer filed “Employer’s Motion for Reconsideration”, to which Claimant filed an opposition which, as is discussed below, contained requests that the CRB deemed to constitute “Claimant’s Motion for Reconsideration”.

DISCUSSION

As a preliminary matter, we shall first address the status of Claimant’s request that our DRO remove the issue of whether Claimant’s claim for compensation was timely filed from the matters to be further considered on remand to AHD.

For the reasons set forth below, we shall consider Claimant’s Motion for reconsideration, but deny it.

The following are the dates of the documents, Orders and pleadings filed that are relevant to this issue:

1. March 21, 2014: The Compensation Order was issued by ALJ. In the “Statement of the Case”, ALJ Boddie stated, among the procedural facts, that Claimant had filed a timely claim. In the “Issues” listing, one of the contested issues was “Whether the claim was timely filed”. The Compensation Order contained no findings of fact regarding when the claim was filed, and the “Conclusions of Law” contained no reference to the issue.
2. April 9, 2014: A letter from Mary Macfarlane, on behalf of Claimant, seeking review of the Compensation Order denying Claimant’s claim and requesting an extension of time within which to file a memorandum in support of the review.
3. May 6, 2014: A letter from the Chief ALJ of the CRB extending the extension to June 16, 2014.
4. June 18, 2014: A letter from the Chief ALJ of the CRB extending the extension to September 1, 2014.
5. September 8, 2014: An Order by the Chief ALJ of the CRB granting a further extension to October 1, 2014.
6. October 6, 2014: An Order issued by the Chief ALJ of the CRB granting a further extension to October 8, 2014.

7. October 14, 2014: Claimant files "Supplemental Application for Review" with memorandum in support thereof. The Certificate of Service was dated October 7, 2014.
8. October 20, 2014: Employer's counsel files a "Consent Motion for Extension of Time to File Memorandum of Points and Authorities in Opposition" to Claimant's Application for Review.
9. October 22, 2014: An Order by the Chief ALJ of the CRB granting Employer's request for extension to November 10, 2014.
10. November 7, 2014: Employer files a "Memorandum of Points and Authorities in Opposition to Claimant's Petition For Review". It contains no reference to the issue of timely filing of the claim.
11. February 11, 2015: The CRB issues a Decision and Remand Order, affirming the ALJ's finding that Claimant sustained an accidental injury on November 8, 2005, vacating the conclusion reached by the ALJ that the injury was not causally related to her employment, and remanding the matter for further consideration of that issue, as well as the issue of timely notice, timely filing, and timely Controversion, none of which the Compensation Order address in its Findings of Fact, although, as stated above, the "Statement of the Case" recited that the claim had been timely filed.
12. February 23, 2015: Employer files "Employer and Carrier's Motion for Reconsideration", with a Memorandum of Points and Authorities and an "attachment" consisting of a copy of what purports to be a post-hearing brief submitted by Employer to ALJ Boddie. Nothing in the Motion or Memorandum addressed the timely filing of claim issue. The attachment contained a separate argument supporting its contention that the claim is time barred.
13. March 4, 2015: The CRB accepted via email from Mary Macfarlane a request for an extension of time within which to respond to the Motion for Reconsideration.
14. March 4, 2015: The Panel Chair issued an "Order Granting Extension of Time", extending until April 6, 2015 the time for Claimant "to file any response she may have to Employer's Motion".
15. March 9, 2015: The CRB received an letter dated March 2, 2015 from Mary Macfarlane advising that Claimant requests an additional three weeks within which to file her response to the Motion for Reconsideration", and averring that it was "her understanding" that Employer's counsel does not oppose the request.

16. March 30, 2015: Claimant files “Claimant-Petitioner’s Response to Employer-Respondent’s Motion for Reconsideration”. In that response, among other things, Claimant stated that she “is confused with the Remand part of the Order directing the ALJ to make findings regarding whether the Claim was filed timely. Judge Boddie, in his Statement of the Case, already concluded the ‘[t]he claim was timely filed pursuant to section 32-1514 of the Act.’ The Employer never filed for a review of that determination. It is not fair that the employer gets a second kick at the can regarding this issue when it did not file for a review.”
17. April 21, 2015: The Panel Chair issued an order in which the CRB deemed this portion of Claimant’s response to be a Motion for Reconsideration, and granted Employer 15 days within which to respond to “Claimant’s request that the Decision and Remand Order be modified to foreclose further consideration of th[e] issue” of the timeliness of the filing of the claim.
18. April 30, 2015: Employer filed a “Response to Claimant’s Request for Reconsideration”, arguing that the request for modification to foreclose the issue was untimely, in addition to addressing the merits of the request by asserting that the inclusion of the phrase in the Statement of the Case was “an obvious, harmless mistake”, particularly considering that the issue was identified in the listing of disputed issues and given that the absence of any findings on the issue resulted in there being “nothing for the CRB to review”.

Employer argues that the portion of Claimant’s objection to further consideration of the timeliness claim is untimely, citing 7 DCMR § 268.1, which states that a party has 10 days within which to file a Motion for Reconsideration. While this is true, that period may be extended on motion. Review of the history of the requests for extensions as outlined above demonstrates that extensions were granted numerous times. The first time that Employer made any reference to the issue of timeliness in this appeal was in its attachment referred to in item 12 above. At no point before the date of filing for item 12, February 23, 2015, was Claimant on notice that Judge Boddie’s statement that the claim had been filed timely was a matter to be considered in this appeal.

The issue having first been raised by Employer’s attachment, and Claimant having been granted an extension to respond to that attachment, item 16, her response of March 30, 2015 is the filing in which she voiced her objection to Employer’s position that the Compensation Order had found in Employer’s favor on that issue. There being no objection to the timeliness of item 16, we reject Employer’s argument that 7 DCMR § 268.1 precludes consideration of her claim that the original remand order should not have included timeliness of the claim as an issue that remained to be decided on remand. We will therefore consider the question.

It is undisputed that the Statement of the Case includes an assertion that the claim was timely filed.

However, the body of the Compensation Order contains no specific findings of fact bearing upon the date a claim was filed, or assessing the various arguments as to when the one year limitations period began to run, or whether Employer is estopped from raising the defense due to the actions or statements of its employees that were made to Claimant concerning whether a claim had been filed by Employer on Claimant's behalf.

The CRB has previously held that "[t]he Background section of a compensation order merely sets the stage for a matter before an ALJ for adjudication. It does not contain information governing the merits of a matter." *Hensley v. Cheechi & Co.*, CRB (Dir. Dkt.) No. 04-097, OHA No. 92-359G, OWC No. 115568 (April 26, 2007). While it is unfortunate that the ALJ included that language in the "Statement of the Case", given the lack of anything further in substantive portions of the Compensation Order, we do not view the inclusion of that phrase in what is a descriptive rather than substantive section of the Compensation Order to be of any legal effect. Accordingly, we deny Claimant's Motion for Reconsideration.

Turning to Employer's Motion for Reconsideration, Employer asserts that the CRB erred when it stated that Claimant's decision to take a leave of absence was related in part to perceptions of workplace hostility. It asserts that "Actually, Claimant decided to quit AARP before the alleged abuse and hostility began." Employer's Motion, p. 3.

Without agreeing with Employer's contention that the CRB was wrong in this instance, Employer doesn't explain how this alleged error has any impact on the CRB's determination that the November 8 "shattering" ought to be considered as possibly resulting from the work-related interaction concerning Employer's requirement that Claimant come to work and fill out a time card in order to be paid, or its direction that the matter be considered further under the requirements of *Ramey* and *McCamey*. In other words, Employer has not adequately explained how the alleged error adversely affected the outcome.

The remainder of Employer's arguments are, in one form or another, variations on the theme that the CRB misunderstands *Ramey* and *McCamey*, and applied them in a manner inconsistent with the intention of the District of Columbia Court of Appeals, and that because of that misunderstanding, the CRB should have determined that Claimant's evidence is legally inadequate to trigger the presumption that Claimant's present complaints are causally related to her employment.

None of these arguments are new, and were considered by the CRB prior to issuing the Decision and Remand Order. And, to the extent that an argument maybe be new in the sense that it was not raised previously, a Motion for Reconsideration is generally reserved for instances in which an obvious error or mistake has been made in a Decision which needs to be addressed. It is not a

vehicle for repeating old arguments or raising new ones. Accordingly, we deny Employer's Motion for Reconsideration.

Employer has also requested that the matter be set in for oral argument. We see no reason to further delay this matter or subject the parties to the additional cost and inconvenience attendant to having oral argument proceedings. Employer has made its position clearly in its Brief, and we have an adequate record at this time proceed.

Lastly, we address the requests made by Claimant concerning her desire not to return to the District of Columbia for any further proceedings that may arise in this case in the future.

The CRB has no authority or jurisdiction over the procedures employed by AHD in advance of any action being taken by AHD in the course of carrying out its responsibilities to adjudicate claims in the first instance. Any objection a party may have to the procedures employed in furtherance of its duties must be raised with and resolved by AHD before the CRB has any potential authority to consider the matter.

CONCLUSION

Claimant's Motion for Reconsideration and Employer's Request for Reconsideration are denied.

FOR THE COMPENSATION REVIEW BOARD:

/s/ Jeffrey P. Russell

JEFFREY P. RUSSELL

Administrative Appeals Judge

May 11, 2015

Date