

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA MARÍA MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 13-106

**PAUL RIGGINS,
Claimant–Petitioner,**

v.

**DISTRICT OF COLUMBIA DEPARTMENT OF CORRECTIONS,
Self-Insured Employer-Respondent**

Appeal from an August 8, 2013 Compensation Order
issued by Administrative Law Judge Joan E. Knight
AHD No. PBL 12-033, DCP No. 7610032-0001-1999-0020

William J. Howard, Esquire, for the Petitioner
Frank Mc Dougald, Esquire, for the Respondent

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

HENRY W. MCCOY, *Administrative Appeals Judge*, for the Compensation Review Board.

DECISION AND ORDER

BACKGROUND AND FACTS OF RECORD

This appeal follows the issuance on August 8, 2013 of a Compensation Order (CO) from the Hearings and Adjudication Section in the District of Columbia Department of Employment Services (DOES). In that CO, the Administrative Law Judge (ALJ) denied Claimant reinstatement of temporary total disability benefits from June 10, 2012 to the present and continuing.¹

Claimant slipped and fell while working as a correctional officer on June 24, 1977 injuring his head, neck, back, shoulders and cervical region. The injury was accepted by the Office of Risk Management (ORM) and temporary total disability benefits along with related

¹ *Riggins v. D.C. Department of Corrections*, AHD No. PBL 12-033, DCP No. 7610032-0001-1999-0020(August 8, 2013).

medical expenses were paid. Claimant was released to full duty in 1979 and resumed his pre-injury duties as a correctional officer.

On October 29, 1979, Claimant reinjured his back while in the process of assisting an over-weight inmate onto an ambulance stretcher. Claimant was placed off work and ORM reinstated temporary total disability benefits. Claimant returned to orthopedic surgeons Drs. Arthur Wein and Shelton Manual, for treatment, with Dr. Wein ultimately releasing him to return to work with a lifting restriction of 30 pounds.²

Employer had Claimant examined by several doctors who performed additional medical evaluations (AME). Dr. A. Jerry Friedman, a neurologist, performed the first IME on February 3, 2004 and Dr. Robert Collins, an orthopedic surgeon, performed the second on April 3, 2004. Both doctors opined that Claimant had reached maximum medical improvement (MMI) and could return to full duty work without restrictions.

A third AME was performed by Dr. M.H. Zamani, an orthopedic surgeon, on February 21, 2012. Dr. Zamani opined that Claimant had reached MMI and could return to full duty work without restrictions. Employer used this AME report on May 10, 2012 to issue Claimant a Notice of Intent to Terminate Public Sector Workers' Compensation payments effective June 10, 2012. Employer terminated Claimant's benefits on June 10, 2012 and Claimant filed for a formal hearing which was held on November 15, 2012.³

In a CO issued on August 8, 2013, the presiding ALJ determined that Claimant's medical evidence did not outweigh Dr. Zamani's more persuasive AME opinion and therefore denied reinstatement of the terminated disability benefits. Claimant timely appealed with Employer filing in opposition.

On appeal, Claimant argues that the ALJ erred in relying solely on the medical evidence without considering whether his injury prevents him from performing the only type of gainful employment for which he is qualified. Employer counters that the case law Claimant relies upon is inapposite as it applies to cases where permanent partial disability is the issue as opposed to temporary total disability in the instant case and the record evidence shows that he has reached MMI and can work without restrictions. We affirm.

ANALYSIS

The scope of review by the Compensation Review Board (CRB) is limited to making a determination as to whether the factual findings of the Order are based upon substantial evidence in the record and whether the legal conclusions drawn from those facts are in accordance with

² The reference to Claimant's treating physicians are findings made by the Administrative Law Judge (ALJ). No date was given for when Claimant was released to return to work and the exhibits accompanying the record on appeal do not contain any medical reports from Drs. Wein and Mandel.

³ Neither the notice of intent to terminate benefits nor the final notice of termination was introduced as an exhibit into the evidentiary record. The ALJ made findings as to contents of each notice and those findings have not been contested by either party.

the applicable law.⁴ Section 1-623.28(a) of the District of Columbia Government Merit Personnel Act of 1978, as amended, D.C. Code § 1-623.1 *et seq.* (“Act”). Consistent with this standard of review, the CRB must uphold a Compensation Order that is supported by substantial evidence, even if there is substantial evidence in the record to support a contrary conclusion, and even where the CRB might have reached a contrary conclusion. *Marriott*, 834 A.2d at 885.

When the issue for resolution in a public sector case is the nature and extent of disability, it is well-settled in this jurisdiction that once the Public Sector Workers’ Compensation Program (PSWCP) accepts an injured worker’s claim as compensable and pays benefits, it bears the initial burden to produce current and probative evidence of a change in the injured worker’s medical condition to warrant a modification or termination of the worker’s disability benefits. If the PSWCP fails to meet this burden, the injured worker prevails outright. However, if the PSWCP meets its burden, then the burden shifts to the injured worker to show by a preponderance of the evidence that his physical condition has not changed and that benefits should continue.⁵

In the case under review, the ALJ started by placing the initial burden of production on Employer to show a change in Claimant’s condition to warrant its termination of disability benefits. In reviewing Employer’s evidence, the ALJ stated:

To meet its initial burden, Employer submitted the medical report and independent opinion of Dr. Zamani, an orthopedic surgeon, to support its position that 1) Claimant has reached MMI and 2) and Claimant’s current medical condition is not causally related to the 1977 work injury. In his AME report Dr. Zamani noted he reviewed Claimant’s extensive medical history and performed a physical examination. Among the medical records Dr. Zamani referenced were the treatment notes of Dr. Wein [fn. omitted] and the IME reports of Drs. Collins and Levitt who opined Claimant had reached MMI and could resume employment. Dr. Zamani noted Claimant’s orthopedic examination is “absolutely normal” and concurred with Drs. Collins and Levitt that Claimant had reached MMI and is capable of working and performing normal activities without any restriction. [Dr. Zamani] wrote:

The current complaint is causally not related to the June 24, 1977 or subsequent injury that he reported later on. Today’s physical examination produced no positive objective findings. This is just subjective complaints and he has excellent mobility of the neck, back and upper and lower extremities. Neurological is normal.

The examine [Claimant] is capable of working and doing activity as usual, without any restriction. I am at a total loss as to why this gentleman has continually been off of work

⁴ “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 International v. DOES*, 834 A.2d 882 (D.C. 2003).

⁵ See *McCamey v. DOES*, 947 A.2d 1191, 1199 (D.C. 2008) (citing *Washington Hospital Center v. DOES*, 744 A.2d 992, 998 (D.C. 2000)).

with such a simple fall, and repeat examinations that reported he has reached maximum medical improvement. EE5.

Dr. Zamani's AME report is sufficient to show a change in condition such that the disabling condition is no longer causally related to Claimant's employment. As the Employer has produced evidence that supports a reasonable basis for terminating the Claimant's benefits, the burden shifts to Claimant to show that he is entitled to payments of temporary total disability benefits after June 10, 2012, due to the work injuries he sustained on June 24, 1977 and October 29, 1979.⁶

Claimant found no fault in the ALJ's determination that Employer met its initial burden of showing a change in condition. We therefore move to the assessment of Claimant's evidence when the ALJ shifted the burden and where Claimant takes issue with the ultimate decision rendered.

In reviewing Claimant's medical evidence, the ALJ stated:

In support of his position that temporary total disability benefits should be reinstated, Claimant produced a medical report from Sarah Kureshi, M.D. The report dated October 23, 2012, indicated Claimant was seen for a "lab follow-up" subsequent to a routine physical examination. Dr. Kureshi's report mainly referenced other medical conditions and treatment modalities not related to his work injury. [fn. omitted] Her assessment included a mere reference to "back pain" and a refill prescription for Percocet. Dr. Kureshi provided no detail regarding the etiology of Claimant's back pain or medical opinion relating the condition or treatment to his work injuries. In addition, there is no credible evidence Dr. Kureshi is an authorized treating physician or treated Claimant for work injuries sustained in 1977 or 1979. Claimant's evidence is paltry at best. CE 1-3; HT pp. 67-68, 72-74, 100-101.⁷

After detailing the deficiencies in Claimant's medical evidence, the ALJ concluded:

Claimant has failed to meet his burden of production in showing the condition stemming from his work injury has not changed or lessened. Claimant has failed to produce evidence corroborative of a continuing disability causally related to his work injury. Had Claimant met his burden of production, the medical evidence adduced does not outweigh the persuasive opinions of Dr. Zamani who concluded Claimant has long reached MMI from his 1977 and 1979 back and neck injuries. Herein, Employer has met its burden of showing Claimant's condition has

⁶ CO, p. 5-6.

⁷ *Id.*, p. 6.

changed to support a reasonable basis for terminating payment of temporary total disability benefits.⁸

In arguing that the ALJ has not properly evaluated the evidence regarding his continuing disability, Claimant's references the March 28, 1980 report of treating physician Charles Adam, submitted into evidence by Employer, stating he was still unable to perform his work duties and the single report of Dr. Kureshi that mentions that he is still suffering from back pain. Claimant also faults the ALJ for failing to take into consideration whether his current condition prevents him from performing the only type of employment for which he is qualified. We find no merit in these arguments.

While Claimant states that his medical records span a period of 32 years, he elected to only submit one medical report, which the ALJ found deficient in meeting his burden that he had not sustained a change in condition and upon reviewing the document, we find that determination constitutes a reasonable interpretation and will not be disturbed. While Dr. Kureshi does mention Claimant back pain and refills a prescription for pain medication, the physical examination makes no reference to back pain and the assessment of back pain gives no explanation of the cause for this pain or reference to either work injury.

Claimant's claim that his physical condition alone should not be the determinative factor here but that consideration should also be given to his age, work history, and the availability of the type of work he can do, is misplaced. Upon Employer having met its burden that he had undergone a change in condition and could return to work, it was his burden to show, by a preponderance of the evidence, that his condition had not changed and that he remained temporarily and totally disabled. This he failed to do. The ALJ properly evaluated the medical evidence Claimant submitted which failed to show that any existing back pain remained causally related to the work injuries. The ALJ's determination is supported by substantial evidence in the record and to change that determination would require a reweighing of the evidence, which we are constrained from doing.

CONCLUSION AND ORDER

The August 8, 2013 Compensation Order is supported by substantial evidence in the record and is in accordance with the law and therefore is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

HENRY W. MCCOY
Administrative Appeals Judge

November 5, 2013
DATE

⁸ *Id.*