COMPENSATION REVIEW BOARD

CRB No. 11-135

ROOSEVELT RILLEY,[1]
Claimant–Respondent,

v.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY,
Employer-Petitioner.

Appeal from a Compensation Order by
The Honorable Belva D. Newsome
AHD No. 09-462A, OWC No. 649773

Donna Henderson, Esquire for the Petitioner
Matthew Peffer, Esquire for the Respondent

Before MELISSA LIN JONES, LAWRENCE D. TARR, and HENRY W. MCCOY *Administrative Appeals Judges*.

MELISSA LIN JONES, *Administrative Appeals Judge*, for the Compensation Review Board.

DECISION AND REMAND ORDER

JURISDICTION

Jurisdiction is conferred upon the Compensation Review Board ("CRB") pursuant to §§32-1521.01 and 32-1522 of the District of Columbia Workers' Compensation Act of 1979, D.C. Code, as amended, §32-1501 *et seq*., ("Act"), 7 DCMR § 250, *et seq*., and the Department of Employment Services Director's Administrative Policy Issuance 05-01 (February 5, 2005).

FACTS OF RECORD AND PROCEDURAL HISTORY

In September 1998, August 2001, and June 2003, Mr. Roosevelt Rilley was diagnosed with cluster headaches. While employed as a mechanic for Washington Metropolitan Area Transit Authority ("WMATA"), Mr. Rilley began suffering cluster headaches again in August 2009.

[1] In the caption of the Compensation Order, Respondent's last name is spelled "Riley"; however, the record reflects the correct spelling is Rilley.

The parties disagreed as to the compensability of Mr. Rilley's headaches, and following a formal hearing before an administrative law judge ("ALJ"), on February 2, 2011, a different ALJ issued a Proposed Compensation Order;[2] that same order was reissued on March 17, 2011.[3] An appeal was dismissed because the CRB lacked jurisdiction to review a proposed order that was not final.[4]

On November 9, 2011, the second ALJ issued a Compensation Order granting Mr. Rilley temporary total disability benefits from August 6, 2009 through October 5, 2009, causally related medical expenses, and interest.[5] WMATA appeals this Compensation Order alleging the ALJ failed to make findings of fact and conclusions of law on material evidence and defenses raised, failed to require Mr. Rilley to present competent medical evidence of causal relationship, and improperly applied the treating physician preference. WMATA argues the Compensation Order is not supported by substantial evidence and is not in accordance with the law.

Mr. Rilley asserts the Compensation Order is supported by substantial evidence. He argues that his treating physician found his headaches could have been caused by exposure to fumes, that the ALJ was not obligated to prove reasons for rejecting the opinion of the independent medical examination physician and that the air quality tests properly were rejected.

ISSUE ON APPEAL

1. Is the November 9, 2011 Compensation Order supported by substantial evidence and in accordance with the law?

ANALYSIS[6]

Preliminarily, WMATA complains the ALJ "did not certify that she was familiar with the entirety of the record in the case."[7] Previously, the ALJ had issued Proposed Compensation Orders because she had not presided over the formal hearing in this matter. WMATA was given an opportunity to file objections to the Proposed Compensation Orders, and after taking those objections into consideration, the ALJ issued the Compensation Order on appeal in this case. There is no

[2] *Riley v. Washington Metropolitan Area Transit Authority*, AHD No. 09-462A, OWC No. 649773 (February 2, 2011).

[3] *Riley v. Washington Metropolitan Area Transit Authority*, AHD No. 09-462A, OWC No. 649773 (March 17, 2011).

[4] *Rilley v. Washington Metropolitan Area Transit Authority*, CRB No. 11-017, AHD No. 09-462A, OWC No. 649773 (June 2, 2011).

[5] *Riley v. Washington Metropolitan Area Transit Authority*, AHD No. 09-462A, OWC No. 649773 (November 9, 2011).

[6] 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).

[7] WMATA's Memorandum In Support of Its Application for Review, p. 4.

requirement in the Act that the ALJ certify her familiarity with the record, and we find no error in her failure to do so.

Pursuant to §32-1521(1) of the Act, a claimant may be entitled to a presumption of compensability ("Presumption").[8] In order to benefit from the Presumption, the claimant initially must show some evidence of a disability and the existence of a work-related event, activity, or requirement which has the potential to cause or to contribute to the disability.[9] "[O]nce an employee offers evidence demonstrating that an injury was potentially caused or aggravated by work-related activity, a presumption arises that the injury is work-related and therefore compensable under the Act."[10]

Because the parties stipulated to an accidental injury on August 6, 2009 (exposure to fumes), the ALJ invoked the presumption of compensability. Neither party has appealed this ruling.

Once the Presumption was invoked, it was WMATA's burden to come forth with substantial evidence "specific and comprehensive enough to sever the potential connection between a particular injury and a job-related event."[11] Only upon a successful showing by WMATA would the burden return to Mr. Rilley to prove by a preponderance of the evidence, without the benefit of the Presumption, his headaches arose out of and in the course of employment.[12]

There is no dispute that the Presumption properly was rebutted. On appeal, WMATA disagrees that the preponderance of the evidence proves Mr. Rilley's headaches are compensable; WMATA raises specific issues which will be addressed in turn.

In this case, the ALJ clearly was aware of Mr. Rilley's pre-existing condition as demonstrated by the findings of fact that Mr. Rilley was diagnosed with cluster headaches in September 1998, August 2001, and June 2003. Nonetheless, when weighing the evidence as a whole, the ALJ determined Mr. Rilley's current headaches were compensable.[13]

As for the air quality tests, the ALJ found

> I]n August 2009, when Claimant sought treatment for cluster headaches, the doors of the main garage were open to the outside. Employer conducted a direct exhaust exposure assessment on July 22, 2003. The day shift and night shift at Bladensburg were monitored. The assessment stated that Employer would be installing an exhaust extractor ventilation system on August 21, 2003. The report recommended that

[8] Section 32-1521(1) of the Act states, "In any proceeding for the enforcement of a claim for compensation under this chapter it shall be presumed, in the absence of evidence to the contrary: (1) That the claim comes within the provisions of this chapter."

[9] *Ferreira v. DOES,* 531 A.2d 651 (D.C. 1987).

[10] *Washington Hospital Center v. DOES,* 744 A.2d 992, 996 (D.C. 2000).

[11] *Waugh v. DOES,* 786 A.2d 595, 600 (D.C. 2001) (Citations omitted).

[12] See *Washington Hospital Center v. DOES,* 821 A.2d 898 (D.C. 2003).

[13] *Id*.

> Employer keep idling of buses to minimum, develop a complete chemical list, and use exhaust extractors.
>
> In January 2010, Employer conducted an individual hygiene sampling at Claimant's workplace by placing a monitor on Claimant during his tour of duty. The findings indicated that several components of diesel fuel were present in quantities below the EPA standards, and compressed natural gas was not flammable below 5%.[14]

Based upon these facts, the ALJ ruled

> [t]he monitoring reports relied upon by Employer did not reproduce the conditions of July and August of 2009. The monitoring reports of June and July 2003 are too distant in time. The January 2010 monitoring report was conducted in winter conditions that did not reveal the conditions in August 2009.[15]

Thus, WMATA's argument that the ALJ did not consider or discuss the air quality tests is without merit. In fact, although she was not required to inventory all the evidence in the record, the ALJ provided rational reasons for rejecting the air quality tests, particularly given that the air quality test results are too general and not comprehensive enough to prove that Mr. Rilley's work environment did not cause or contribute to his headaches.[16]

Turning to the issue of the application of the treating physician preference, the ALJ determined Dr. Seigel (and Dr. Shamin) opined a transfer from Mr. Rilley's work site was "necessary to avoid exhaust exposures."[17] Although one can read this statement as an opinion regarding causal relationship, it is just as easily read as an explanation of treatment needed to address Mr. Rilley's pre-existing condition. Furthermore, the ALJ's ruling that "Dr. Seigel's return to work certificate established that Claimant's cluster headaches were medically causally related to his work injury"[18] because "Dr. Siegel [*sic*] opined that Claimant suffered cluster headaches and that transfer to another position with Employer would avoid exhaust exposure"[19] highlights the underlying problem that an opinion regarding the nature and extent of a claimant's disability is not an opinion regarding the causal relationship between a claimant's injury and his employment; an assertion that Mr. Rilley transfer to another position to avoid exhaust exposure without more explanation is not an opinion that Mr. Rilley's cluster headaches are caused by exhaust exposure.

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[14] *Riley v. Washington Metropolitan Area Transit Authority*, AHD No. 09-462A, OWC No. 649773 (November 9, 2011), p. 4

[15] *Id*. at 6.

[16] See *WMATA v. DOES*, 992 A.2d 1276 (2010). The same can be said of Mr. Rilley's desire to change work locations.

[17] *Riley v. Washington Metropolitan Area Transit Authority*, AHD No. 09-462A, OWC No. 649773 (November 9, 2011), p. 6.

[18] *Id*.

[19] *Id*.

Given Mr. Rilley's pre-existing condition as well as other factors such as his smoking, the Compensation Order's lack of analysis including reference to an actual medical opinion stating or implying Mr. Rilley's headaches are work-related requires we remand this matter for further consideration; our ruling, however, does not require the ALJ make findings regarding the treating physician's failure to discuss air quality tests because we have affirmed the ALJ's rejection of those tests.

CONCLUSION AND ORDER

The conclusion that Mr. Rilley's headaches are causally related to his employment is VACATED. This matter is remanded to determine whether a preponderance of the medical evidence of record supports a conclusion that Mr. Rilley's headaches are caused by or aggravated by the conditions of his employment with WMATA. If the ALJ determines that Mr. Rilley's headaches are caused by or aggravated by the conditions of his employment, resolution of the issue of the nature and extent of Mr. Rilley's disability, if any, will be ripe for consideration.

FOR THE COMPENSATION REVIEW BOARD:

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MELISSA LIN JONES
Administrative Appeals Judge

September 13, 2012
DATE