GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR

LISA M. MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 12-189

CASSANDRA ROSS,

Claimant–Petitioner,

v.

DISTRICT OF COLUMBIA DEPARTMENT OF CORRECTIONS,

Employer – Respondent.

Appeal from a Compensation Order by
The Honorable Fred D. Carney, Jr.
AHD No. PBL 96-013C, DCP No. 76103200011999-0006

Cassandra Ross, Pro Se
Ross Buchholz, Esquire for the Respondent

Before HEATHER C. LESLIE,[1] LAWRENCE D. TARR and HENRY W. MCCOY *Administrative Appeals Judges* and LAWRENCE D. TARR, *Chief Administrative Appeals Judge.*

HEATHER C. LESLIE, *Administrative Appeals Judge*, for the Compensation Review Board.

DECISION AND ORDER

OVERVIEW

This case is before the Compensation Review Board (CRB) on the request for review filed by the Claimant - Petitioner (Claimant) of the November 8, 2012, Compensation Order (CO) issued by an Administrative Law Judge (ALJ) in the Office of Hearings and Adjudication of the District of Columbia Department of Employment Services (DOES). In that CO, the ALJ denied the Claimant's request for reinstatement of disability payments and medical benefits from 2001[2] to the present and continuing. We AFFIRM.

[1]Judge Heather C. Leslie is appointed by the Director of DOES as an interim Board member pursuant to DOES Administrative Policy Issuance No. 12-02 (June 20, 2012).

[2] We note that while the Claimant sought restoration of her full temporary total disability benefits from 2001 onwards, the Claimant received $409.08 per week in disability benefits pursuant to a August 20, 2002 Compensation

FACTS OF RECORD AND PROCEDURAL HISTORY

As outlined in the first CO[3], the Claimant was employed as a physician's assistant by the District of Columbia Department of Corrections. On June 7, 1994, while performing her usual duties at the D.C. Jail, Claimant slipped and fell after stepping into a puddle of water. On June 13, 1994, Claimant began to receive conservative medical treatment for her work-related injuries to her back, left knee, and right shoulder. The injuries to Claimant's shoulder and to her knee resolved after approximately two months of treatment, but Claimant continued to be symptomatic for the injury to her lower back. Claimant's treating physician determined Claimant had aggravated a preexisting back condition, including a herniated disc at the L4-5 level.

Claimant remained off from work for approximately two weeks, returned to duty for a brief period of time, and then stopped working when she could no longer perform the regular duties and responsibilities of a physician's assistant. Claimant was examined by numerous physicians and assorted treatment protocols were employed.

In 1998, the Claimant sustained an injury to her left knee while at home. According to claimant, her leg gave out, causing her to slip and fracture the leg. As a result, claimant filed another claim for her injury.[4]

Several hearings have been held in the above case. Pertinent to the appeal at hand, the Claimant's temporary total disability benefits were reduced pursuant to a Compensation Order on Remand dated August 20, 2002.[5]

On August 26, 2011, the Office of Risk Management issued a Notice of Intent to Terminate, indicating that based upon the additional medical examination (AME) performed by Dr. Mohammad Yamani, the Claimant's disability benefits would terminate as of September 25, 2011. The Claimant timely requested for reconsideration. A Final Order on Reconsideration was issued which upheld the Notice of Intent to Terminate. The Claimant timely appealed to the Office of Hearings and Adjudications.

A Formal Hearing was held on April 24, 2012. The Claimant sought restoration of temporary total disability benefits from 2001 to the present and continuing and medical benefits. Hearing transcript at 14. The issue presented was the nature and extent of the Claimant's disability, if

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Order on Remand which was not appealed. While the ALJ apparently overlooked this prior order, such error is rendered harmless as the claim for relief was ultimately denied.

[3] *Ross v. D.C. Dept of Corrections*, H&AS No. 96-13, ODC No. 357009 (January 2, 1998).

[4] *Ross v. D.C. Dept of Corrections*, Dir. Dkt. No. 16-01, OHA No. PBL 01-030, OBA No. 002824 (June 6, 2001).

[5] *Ross v. D.C. Dept of Corrections*, Dir. Dkt. No. 16-01, OHA No. PBL 01-030, OBA No. 002824 (August 30, 2002). In that order, the ALJ found the Claimant could return to work in some capacity and adjusted her weekly benefits from $1,010.71 to $409.08.

any. A Compensation Order was issued on November 8, 2012 denying the Claimant's request for relief, finding that the Claimant's injuries had fully resolved.

The Claimant timely appealed. On appeal the Claimant argues that the ALJ erred in not according the treating physician preference to Dr. Hampton Jackson and his associates. The Claimant also argues the ALJ erred in not giving her the benefit of the statutory presumption.

The Employer in opposing the Claimant's application for review argues the CO is in accordance with the law and is supported by the substantial evidence in the record.

THE STANDARD OF REVIEW

The scope of review by the 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 the applicable law.[6] 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.

DISCUSSION AND ANALYSIS

The Claimant first argues that the ALJ failed to give the Claimant the "presumption of compensation." Claimant's argument at 1. We disagree.

Quite simply, unlike the D.C. Workers' Compensation Act which governs "private sector" claims, there is no such presumption under the "public sector" statute governing workers' compensation claims brought under the Public Sector Act. The basis of the presumption under private sector claims is the existence of a statutory provision creating such a presumption**,** found at D.C. Code § 32-1521 (1) and it is that provision which the Court of Appeals discussed in *Ferreira v. DOES* 531 A.2d 651 (D.C. 1985). No such provision is found in the Public Sector Act which governs this claim. The Claimant's argument is rejected.

The Claimant next argues that the ALJ erred in not according the Claimant's physicians, Dr. Hampton Jackson and Dr. Rida Azer, the treating physician preference. A review of the CO reveals the following discussion regarding the treating physician preference,

> The Council of the District of Columbia recently removed the treating physician preference from the Act. As the CRB has noted in prior decisions, the Act did formerly include a requirement that treating physician opinions be given an evidentiary preference where there is a conflict between the opinions of treating and AME physicians, however that mandatory treating physician preference rule has been repealed in public sector cases. See, *Fiscal Year 2011 Budget Support Act of 2010*, D.C. Law 18-233, § 1062 (b), 57 D.C. Reg. 6242, deleting the

[6] "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).

> sentence "In all medical opinions used under this section, the diagnosis or medical opinion of the employee's treating physician shall be accorded great weight over other opinions, absent compelling reasons to the contrary "from D.C. Code § 1-623.23 (a-2)(4). That legislative deletion did away with the mandatory application of a treating physician preference rule in public sector cases. Now the ALJ can accept or reject the treating physician's report without regard to the preference formally reserved for the treating physician.

CO at 6-7.

We agree with the ALJ's analysis regarding the recent change in the law. As the CRB has noted in prior decisions, that legislative deletion did away with the mandatory application of a treating physician preference rule in public sector cases.[7] The Claimant's argument is rejected.

A review of the CO reveals that the ALJ did analyze the medical opinions presented, including Dr. Jackson and his colleagues, as well as the AME of Dr. Yamani. The ALJ concluded,

> In this matter, I found the report of Dr. Yamani the most cogent of the medical reports of record. His report raised questions about why Claimant's medical history was sketchy and the lack of any objective finding of a totally disabling impairment. Neither Dr. Jackson, nor Dr. Azeri mentioned TNF in any medical report from 1998 until 2011 when Claimant was seen by Dr. Yamani for an IME. Prior to that time Dr. Jackson's stated diagnosis for Claimant was chronic degeneration, low back pain syndrome and lumbar disc syndrome. Therefore, in reaching a conclusion herein I accorded Dr. Yamani's opinion the greatest weight.

CO at 7.

The ALJ gave cogent reasons why Dr. Jackson and Dr. Azer's opinions were rejected in favor of Dr. Yamani which we will not disturb on appeal. In essence, what the Claimant is asking us to do is reweigh the evidence in her favor. This is a task we cannot do.

CONCLUSION AND ORDER

The findings of fact and conclusions of law contained in the November 8, 2012 Compensation Order is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

HEATHER C. LESLIE
Administrative Appeals Judge

January 30, 2013
DATE

[7] *Smith-Johnson v. D.C. Dept. of Corrections*, CRB No. 12-058, AHD PBL No. 10-009C (July 25, 2012).