

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Department of Employment Services**

**VINCENT C. GRAY**  
**MAYOR**



**LISA M. MALLORY**  
**DIRECTOR**

**COMPENSATION REVIEW BOARD**

**CRB No. 12-077**

**AUDREY SAMPSON,**  
**Claimant–Petitioner,**

**v.**

**EXTREME STEEL, INC. and AIG CLAIM SERVICES, INC.,**  
**Employer/Carrier-Respondent.**

Appeal from a Compensation Order on Remand by  
The Honorable David L. Boddie  
AHD No. 05-225B, OWC No. 603958

Michael J. Kitzman, Esquire for the Petitioner  
Howard P. Miller, Esquire for the Respondent

Before MELISSA LIN JONES, LAWRENCE D. TARR, and JEFFREY P. RUSSELL,<sup>1</sup> *Administrative Appeals Judges.*

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

**DECISION AND 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**

Ms. Audrey Sampson worked for Extreme Steel, Inc. as an ironworker. On August 17, 2004, she was injured at work when a sledgehammer fell two floors and struck her hard hat.

---

<sup>1</sup> Judge Russell has been appointed by the Director of the DOES as a temporary CRB member pursuant to DOES Administrative Policy Issuance No. 12-01 (June 20, 2012).

Ms. Sampson treated with Dr. Jeffrey D. Sabloff for years. She also treated with Dr. Joshua Ammerman and Dr. Sheldon Margulies.

On May 15, 2009, Dr. Clifford Hinkes examined Ms. Sampson at Extreme Steel, Inc.'s request. Three months later, Dr. Kenneth Eckmann also examined Ms. Sampson at Extreme Steel, Inc.'s request.

In a Compensation Order dated January 11, 2010, an administrative law judge ("ALJ") concluded Ms. Sampson's medical condition had improved such that she was able to return to her pre-injury duties and her temporary total disability benefits should be terminated.<sup>2</sup> In addition, the ALJ ruled treatment recommended by Dr. Sabloff no longer was reasonable and necessary for Ms. Sampson's orthopedic conditions, but she still was entitled to neurological treatment for her headaches. This Compensation Order was affirmed by the CRB on May 21, 2010.

Beginning in February 2010, Ms. Sampson began treating with Dr. Baljeet Sethi for her headache complaints. At a formal hearing held on June 28, 2011, Ms. Sampson relied on the reports of Dr. Sethi to assert she had experienced a change of condition since the issuance of the January 11, 2010 Compensation Order.

Another Compensation Order issued on April 30, 2012. Ms. Sampson's claim for relief was denied because she had not proven a change of condition justifying modification of the prior Compensation Order.

On appeal, Ms. Sampson argues the ALJ erred by granting greater weight to the opinion of Dr. Eckmann than to the opinion of Dr. Sethi because Dr. Sethi's lack of knowledge regarding Ms. Sampson's prior medical history, complaints, symptoms, and treatment is insufficient reason for rejecting Dr. Sethi's opinion. In addition, Ms. Sampson argues the April 30, 2012 Compensation Order fails to address the impact of the effects of her medications (nausea, dizziness, and drowsiness) on her ability to return to work. For these reasons, Ms. Sampson requests we vacate and reverse that Compensation Order.

In response, Extreme Steel, Inc. asserts the ALJ appropriately weighed the medical opinions in the record. Because the findings of fact and conclusions of law in the April 30, 2012 Compensation Order are supported by substantial evidence, Extreme Steel, Inc. requests we affirm that Compensation Order.

#### ISSUES ON APPEAL

1. Was the treating physician preference properly applied?

---

<sup>2</sup> Prior to the issuance of the January 11, 2010 Compensation Order, a different ALJ had issued a Compensation Order ruling that Ms. Sampson's neck, back, left arm, and left shoulder injuries arose out of and in the course of her employment and that she was entitled to ongoing temporary total disability benefits as well as causally related medical treatment. *Sampson v. Extreme Steel, Inc.*, OHA No. 05-225, OWC No. 603958 (October 15, 2007).

2. Does the April 30, 2012 Compensation Order address all issues raised at the formal hearing?

ANALYSIS<sup>3</sup>

In reaching the conclusion that Ms. Sampson has not had a change of condition that requires a modification of the prior Compensation Order, the ALJ discounted the opinion of Dr. Sethi:

While recognizing that in workers' compensation cases under the Act in the District in assessing the weight of competing medical testimony and opinions, attending or treating physicians are ordinarily preferred as witnesses to doctors retained to examine claimant solely for the purposes of litigation, *Stewart v. DOES*, 606 A.2d 1350, 1353 (D.C. 1992); notwithstanding that preference, the testimony or medical opinions may be rejected in favor of a non-treating physician as long as reasons are given for doing so, *Canlas v. DOES*, 723 A.2d 1210, 1212 (D.C. 1999). In this case I reject the medical opinions of the treating physician that the Claimant is disabled as a result of her headaches, as not supported by the evidence in the record, because he acknowledges that he is not aware of what the Claimant's symptoms were prior to his commencement of treatment in addition to not knowing that most of her symptoms and complaints are the same or similar to what she has previously stated she has experienced since the date of injury.<sup>[4]</sup>

When assessing the weight of competing medical testimony in workers' compensation cases, an attending physician ordinarily is preferred as a witness over a doctor who has been retained to examine the claimant solely for purposes of litigation;<sup>5</sup> however, the preference for the opinions of a treating physician is just that, a preference. The preference is not absolute, and when there are specific reasons for rejecting the opinion of the treating physician, the opinion of another physician may be given greater weight.<sup>6</sup>

Importantly, this matter was before the ALJ after the issuances of two prior Compensation Orders. The initial issue for resolution was whether or not Ms. Sampson's condition had changed such that she was entitled to modification of an existing Compensation Order, not the nature and extent of her disability *per se*, and when the first issue for resolution is whether or not a change has taken place, the ALJ properly determined that before affording greater weight to the opinion of a treating

---

<sup>3</sup> The scope of review by the CRB is limited to making a determination as to whether the factual findings of the appealed Compensation Order on Remand 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).

<sup>4</sup> *Sampson v. Extreme Steel, Inc.*, AHD No. 05-225B, OWC No. 603958 (April 30, 2012), p. 7.

<sup>5</sup> *Kralick v. DOES*, 842 A.2d 705, 712 (D.C. 2004).

<sup>6</sup> See *Butler v. Boatman & Magnani*, H&AS No. 84-348, OWC No. 044699 (Remand Order December 31, 1986) citing *Murray v. Heckler*, 624 F. Supp. 1156 (D.C. 1986).

physician, that treating physician should have a comprehensive understanding of his patient's medical history, complaints, symptoms, and treatment. The lack of knowledge concerning Ms. Sampson's condition as it existed at the time the prior Compensation Order issued is a reasonable basis for rejecting the treating physician's opinion, particularly when the operative question is whether there has been a change in condition since that time.

Turning to Ms. Sampson's remaining argument that the April 30, 2012 Compensation Order fails to address the impact of her medications on her ability to return to work, we have undertaken a close review of the hearing transcript and the parties' written closing arguments. Although Ms. Sampson did assert

[1] the conditions of her headaches since 2009 have gotten progressively worse, a worsening that has continued since the incident occurred in 2004 and that beginning in 2010, with her treatment from Dr. [Sethi], he placed her out of work, stating that she was unable to perform her duties as an iron worker as a result of the headaches that she continued to suffer from.

\* \* \*

[T]he headaches that she continues to suffer from have gotten progressively worse, both in severity and have become more numerous and more long-lasting than they were at the time of the 2009 formal hearing. And as a result of that progressive worsening of her condition, she is unable to perform her duties as an iron worker and is entitled to temporary total disability benefits from February of 2010 to the present and continuing.<sup>17]</sup>

(2) the "increase in regularity [of headaches] is indicative of a change in the condition... which would render Ms. Sampson unable to work in her previous occupation at [sic] an ironworker,"<sup>8</sup>

(3) her symptoms are effected by her medication, and

(4) her symptoms are "likely are to be exacerbated by the environment of a construction site,"<sup>9</sup>

at no time during the formal hearing process did Ms. Sampson assert that the side-effects of her medications (nausea, dizziness, and drowsiness) prohibited her from returning to work. Having failed to raise this issue before the ALJ, the CRB cannot review the issue for the first time on appeal.<sup>10</sup>

---

<sup>7</sup> Hearing Transcript, pp. 14-15.

<sup>8</sup> Claimant's Closing Argument at unnumbered p. 3.

<sup>9</sup> *Id.* at 4.

<sup>10</sup> *Woodland v. AFSCME*, Dir. Dkt. No. 99-99 H&AS No. 98-270 OWC No. unknown (June 19, 2000); *Frick v. Cirque du Soleil*, Dir. Dkt. No. 95-00, H&AS No. 92-731A, OWC No. 224235 (November 9, 1995).

CONCLUSION AND ORDER

The ALJ properly applied the treating physician preference and addressed all issues raised at the formal hearing. The April 30, 2012 Compensation Order is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

---

MELISSA LIN JONES  
*Administrative Appeals Judge*

---

September 17, 2012  
DATE