

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

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



**LISA MARÍA MALLORY**  
**DIRECTOR**

**COMPENSATION REVIEW BOARD**

**CRB No. 13-024**

**PHYLLIS SINCLAIR,**  
**Claimant–Petitioner,**

**v.**

**HOWARD UNIVERSITY HOSPITAL,**  
**Self-Insured Employer–Respondent.**

An Appeal from a February 7, 2013 Compensation Order on Remand of  
Administrative Law Judge Anand K. Verma  
AHD No. 07-353B, OWC No. 604720

Benjamin T. Boscolo, Esquire, for the Petitioner/Cross-Respondents  
William H. Schladt, Esquire, for the Respondent/Cross-Petitioners

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

HEATHER C. LESLIE, for the Compensation Review Board.

**DECISION AND REMAND ORDER**

**OVERVIEW**

This case is before the Compensation Review Board (CRB) on the request for review filed by the Claimant - Petitioner (Claimant) of the February 7, 2013, Compensation Order on Remand (COR) 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 COR, the ALJ granted the Claimant's request for medical expenses related to her right wrist and right knee. We AFFIRM in part and VACATE in part.

**FACTS OF RECORD AND PROCEDURAL HISTORY**

On January 8, 2004, the Claimant, a registered nurse, sustained injuries to her low back at work and that injury was found to be compensable in a Compensation Order issued by an ALJ on May 10, 2010.

In August 2010, the Claimant alleged that she fell when a shooting pain from her low back into her right leg caused her knee to buckle, resulting in a fall in which she injured her right wrist. A dispute

arose over the Claimant's entitlement to disability payments and to medical care for her right hand and wrist. A Formal Hearing was conducted on November 10, 2011, wherein the Claimant sought reinstatement of her disability benefits and provision of medical care for past and ongoing treatment to her right hand and wrist. The Employer raised the issues of the Claimant's entitlement to ongoing disability benefits, arguing that, based upon the independent medical evaluations (IME) of Dr. Louis Levitt, the knee problem causing the fall in which the wrist injury was sustained was unrelated to the 2004 back injury. The Employer also asserted that (1) the Claimant was capable of returning to suitable alternative employment, but that (a) she declined to accept one position that was offered in the office of a Dr. Nolte for personal reasons unrelated to her injury and (b) the Labor Market Survey (LMS) established that there were numerous suitable alternative jobs in the relevant market within the Claimant's physical and professional capacity, and (2) the Claimant had unreasonably failed to cooperate with the Employer's vocational rehabilitation (VR) efforts.

The Claimant denied that she had been uncooperative, and contended that the fall resulted from her work injury.

On February 21, 2012, the ALJ issued a Compensation Order (the CO) in which he found that (1) the right wrist and hand injuries were causally related to the work injury, (2) citing *Logan v. DOES*, 805 A.2d 237 (D.C. 2002) and D.C. Code § 32-1508(5), the Claimant had "voluntarily limited her income" during the period claimed, and (3) the Claimant had not failed to cooperate with VR. He awarded her causally related medical care and denied her claim for disability benefits.

The Claimant appealed the denial of disability benefits to the CRB. The Employer did not appeal the findings concerning the causal relationship of the right wrist and hand injuries to the work injury or that she had not failed to cooperate with VR.

A Decision and Remand Order (DRO) was issued on November 21, 2012. The CRB affirmed the CO's determinations with respect to the LMS, nature and extent of disability, and vocational rehabilitation, but vacated the award of medical care and remanded the matter for further consideration of the issue of medical causal relationship of the right knee injury to the work injury, by applying the proper legal standard governing the burden of proof.

A COR was issued on February 7, 2013. In that COR the ALJ awarded the Claimant's claim for medical expenses related to the right knee and right wrist.

The Claimant timely appealed with the Employer filing an opposition and cross appeal. The Claimant argues on appeal the denial of temporary total disability payments is not supported by the substantial evidence in the record or in accord with the law. The Employer argues in opposition that the prior DRO issued by the CRB is determinative on the issue of disability benefits and cannot be reconsidered.

In its cross-appeal, the Employer argues the ALJ went beyond the scope of his authority in awarding causally related medical expenses to the right knee as it was not sought by the Claimant. The Employer also argues the award of medical expenses related to the right wrist is not supported by the substantial evidence in the record and must be reversed.

## STANDARD OF REVIEW

The scope of review by the CRB is generally limited to making a determination as to whether the factual findings of the 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. *See*, D.C. Workers' Compensation Act of 1979, as amended, D.C. Code § 32-1501, *et seq.*, (the Act) at § 32-1521.01 (d)(2)(A), and *Marriott International v. DOES*, 834 A.2d 882 (D.C. 2003). Consistent with this standard of review, the CRB and this review panel must affirm a Compensation Order that is supported by substantial evidence, even if there is also contained within the record under review substantial evidence to support a contrary conclusion, and even where this panel might have reached a contrary conclusion. *Id.*, at 885.

## DISCUSSION AND ANALYSIS

The Claimant argues the ALJ erred in denying the Claimant's request for temporary total disability benefits. The Claimant argues several points, all of which were addressed at length in the prior DRO and we reaffirm that decision now. We direct the Claimant to our prior decision and order for further explanation.

On cross appeal, the Employer first argues that the ALJ was in error in awarding medical expenses for her right knee as that was not a claim for relief pursued by the Claimant. The Employer argues that only medical care and expenses for her right wrist were presented by the Claimant.

A review of the hearing transcript reveals the Claimant, through counsel, pursued "payment of medical expenses related to the right wrist surgery." Hearing transcript at 8. Indeed, the claim for relief outlined in the COR only indicates that medical expenses for the right wrist surgery was being pursued. COR at 2. At no time did the Claimant identify any medical expenses related to the right knee.

We recognize that our prior DRO instructed the ALJ to reconsider, under the preponderance of the evidence standard, whether or not the Claimant's right knee condition was related to her work injury as the Claimant was arguing the back injury and ensuing symptoms caused her knees to buckle. It was this buckling which led the Claimant to fall and injury her right wrist which required surgery. However, at no time did the Claimant seek any medical treatment specifically related to the right knee, and as such, it was not a contested issue before the ALJ to consider. Thus, we must agree with the Employer that the award of medical expenses related to the right knee is in error. We vacate that portion of the award.

Regarding the award of medical expenses related to the right wrist surgery, the Employer argues that the COR is not supported by the substantial evidence in the record as the ALJ fails to mention or discuss the medical opinion of Dr. Levitt and this failure renders the COR "arbitrary, capricious, and unsupported by the substantial evidence." Employer's argument at 9. We reject this argument.

A review of the prior CO shows the ALJ did discuss the opinion of Dr. Levitt. The ALJ, in the prior CO's findings of facts, which were adopted in the COR, summarizes the medical care and treatment

of the Claimant, including the IME of Dr. Levitt. Moreover, the prior CO shows the ALJ did find that Dr. Levitt's opinion was sufficient enough to rebut the presumption of compensability that the right knee injury was causally related to the injury. As the presumption was rebutted, the ALJ then evaluated the evidence to determine whether or not the Claimant proved, by a preponderance of the evidence, that her knee condition was related to her injury. The ALJ, in concluding that the Claimant had satisfied this burden, analyzed the opinions of the Claimant's treating physicians when determining that the Claimant's right knee condition was casually related to the original work injury. It is clear the ALJ found the opinion of the treating physicians persuasive over that of the IME of Dr. Levitt. As the District of Columbia Court of Appeals has stated, it is only with respect to the opinions of treating physicians that reasons for rejecting their opinions must be explicitly stated.<sup>1</sup>

While it may have been preferable for the ALJ to mention why the opinion of Dr. Levitt was not accepted for purposes of clarity, it does not rise to the level of reversible error as it is clear the ALJ did review the opinion based upon earlier analysis and based upon the statement of facts. As we have stated before, ALJ's are not required to inventory all the evidence in a decision.<sup>2</sup>

**ORDER**

The denial of the claim for temporary total disability benefits is affirmed. The award of medical care to the right knee is VACATED. The award of medical expenses related to the right wrist injury is supported by the substantial evidence in the record and is in accordance with the law and is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

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HEATHER C. LESLIE  
*Administrative Appeals Judge*

April 23, 2013  
DATE

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<sup>1</sup> Our case law recognizes a preference for the opinion of the treating physician. *See Short v. DOES*, 723 A.2d 845, 851 (D.C.1998) ("Under the law of the District of Columbia, there is a preference for the testimony of treating physicians over doctors retained for litigation purposes."). She also argues that because the employer did not present any competing evidence from a medical expert, the ALJ's decision rejecting Dr. Ammerman's opinion is not supported by substantial evidence. Notwithstanding the preference, however, "the hearing examiner [now the ALJ] . . . acts as the judge of credibility," *Harris v DOES* 716 A.2d 297, 302 (D.C. 2000) and "remains free to reject the testimony of a treating physician, [although] he cannot do so without explicitly addressing that testimony and explaining why it is being rejected." *Kralick v. DOES*, 842 A.2d 705, 711 (D.C. 2004) (internal citation and quotation marks omitted). If he or she decides to discount the treating physician's opinion, the ALJ must "set [] forth specific and legitimate reasons for doing so." *Olson v. DOES*, 736 A.2d 1032, 1041 (D.C. 1999).

<sup>2</sup> See *Sturgis v. DOES*, 629 A.2d 547, 554 (D.C. 1993).