

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

**VINCENT C. GRAY
MAYOR**



**LISA M. MALLORY
DIRECTOR**

COMPENSATION REVIEW BOARD

CRB No. 12-084

KWAKWEA STRIPLING,

Claimant–Petitioner,

v.

COASTAL INTERNATIONAL SECURITY AND CHARTIS INSURANCE,

Employer–Respondent.

Appeal from a Compensation Order of
Administrative Law Judge Joan E. Knight
AHD No. 10-340A, OWC No. 667757

Michael Kitzman, Esquire, for the Petitioner

Joel Ogden, Esquire, for the Respondent

Before JEFFREY P. RUSSELL,¹ HENRY W. MCCOY AND LAWRENCE D. TARR, *Administrative Appeals Judges.*

JEFFREY P. RUSSELL, for the Compensation Review Panel:

DECISION AND ORDER

OVERVIEW

This case is before the Compensation Review Board (CRB) on the request of Kwakwea Stripling for review of the May 4, 2012 Compensation Order issued by an Administrative Law Judge (ALJ) in the hearings section of the District of Columbia Department of Employment Services (DOES). In that Compensation Order, the ALJ determined that Ms. Stripling’s neck injury is not causally related to a stipulated work-related injury that she sustained on June 2, 2009, and thus denied her request for medical care for that injury. She appealed the Compensation Order, to which appeal Coastal International Security (“CIS”) filed an opposition. We affirm the Compensation Order.

BACKGROUND

¹ Judge Russell is appointed by the Director of DOES as a Board Member pursuant to DOES Administrative Policy Issuance No. 11-03 (October 5, 2011).

On June 2, 2009, Ms. Stripling was employed by CIS as a security guard. On that date she sustained an injury to her right shoulder which was caused by Ms. Stripling being required to repeatedly open and shut a heavy, bullet proof sliding glass door, the sliding mechanism of which was malfunctioning. After having Ms. Stripling seen and evaluated by independent medical examiner (IME) Dr. Louis Levitt on November 17, 2009, CIS accepted Ms. Stripling's claim for workers' compensation in connection with the right shoulder injury, and provided benefits, including right rotator cuff repair surgery performed by Dr. Uchenna Nwaneri on October 19, 2009.

On October 10, 2009, Ms. Stripling was involved in a non work-related motor vehicle accident. Following that accident an MRI was performed revealing that Ms. Stripling has degenerative disc disease at the C4-5, 5-6 and 6-7 levels. Ms. Stripling was evaluated on April 10, 2010 by Dr. Mustafa Hacque for continuing right shoulder pain, and she sought treatment for neck and left shoulder pain from Dr. Haddis Hagos, at the Washington Metro Pain Institute commencing sometime in February 2011.

In a formal hearing conducted by an ALJ in DOES on September 28, 2011, Ms. Stripling sought to obtain benefits in connection with her claim that her left shoulder injury was also causally related to the June 2, 2009 work injury. In a Compensation Order issued November 1, 2011, that ALJ denied the claim, finding that the left shoulder injury was the result not of the June 2, 2009 work injury, but rather was the result of the October 10, 2009 motor vehicle accident. That Compensation Order was appealed to the CRB, which affirmed the ALJ's decision on February 2, 2011. The CRB's affirmance is pending appeal before the District of Columbia Court of Appeals.

In a formal hearing conducted September 15, 2011, Ms. Stripling sought to obtain medical benefits in connection with an injury to her neck, claiming that it, too, is causally related to the June 2, 2009 work injury. The request was denied in the Compensation Order under review herein.

STANDARD OF REVIEW

The scope of review by the CRB, as established by the Act and as contained in the governing regulations, 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. Official Code § 32-1501, *et seq.*, at § 32-1521.01 (d)(2)(A), (the Act), 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 sole basis of this appeal is Ms. Stripling's contention that the ALJ erred in accepting the opinion of the IME physician that her cervical problems are unrelated to the work injury, and are causally related to her degenerative disc disease and to numerous traumatic neck injuries that are

not work-related, some of which pre-existed the June 2009 work injury, and another of which occurred following the June 2009 work injury.

It is noteworthy that Ms. Stripling does not characterize the alleged error as being an improper rejection of treating physician opinion. At least, nowhere in her memorandum does Ms. Stripling identify any record evidence to the effect that any of her treating physicians has expressed the opinion that her neck pain and limitations resulting therefrom, or medical care required to treat her neck, are causally related to the work injury at issue in this case. And our review of the medical records confirms what CIS points out in its opposition: there is no such opinion contained in this record.

While Ms. Stripling does direct our attention to the March 9, 2011 report of Dr. Nwaneri (CE 1), that report contains no expression of opinion concerning a causal relationship between her neck complaints and the work injury of June 2009. Rather, it contains an expression of opinion to the effect that Ms. Stripling's left shoulder complaints are so related, an issue which, as CIS also points out, was decided adversely to her in a prior Compensation Order which was affirmed by the CRB, and which is purportedly presently pending before the District of Columbia Court of Appeals.

Other than that report, Ms. Stripling does not direct our attention to any of her own medical evidence. Our review of the record confirms CIS's contention that there is no expression of opinion connecting the neck condition to the work injury to be found. Dr. Hacque's April 1, 2010 report (found in CE 2) contains no specific opinions concerning causation of any of her complaints, but references the work injury and a subsequent non-work related motor vehicle accident as matters of medical history without differentiating or assigning either incident as being causative of any specific current condition. And Dr. Hagos's perfunctory, four sentence note attributing "her shoulder and upper extremity pain as well as her neck pain to the injury she sustained" (also found in CE 2) doesn't say *which* of the numerous injuries documented in the record he is referring to.

It is a fair assessment of the medical evidence in this case to say that the only expression of medical opinion on the question of medical causation between the work injury and Ms. Stripling's alleged neck injury is that contained in the IME report of Dr. Levitt of July 19, 2011, found in EE 1. That report unequivocally rejects the existence of any such causal relationship.

In discussing Ms. Stripling's medical evidence, the ALJ characterized the opinions of her treating physicians as being vague, lacking in detail, and "void of a precise medical opinion relating to the Claimant's cervical condition to her employment". CO, page 8. Review of the record as discussed above leads to the conclusion that her finding in that regard is supported by substantial evidence. The opinions were not so much rejected as deemed irrelevant. The ALJ's determination that there is no such relationship is likewise supported by substantial evidence in the form of the IME.

CONCLUSION

The ALJ's finding that Ms. Stripling's neck injury is not causally related to the work injury of June 2, 2009 is supported by substantial evidence.

ORDER

The Compensation Order of May 4, 2012 is affirmed.

FOR THE COMPENSATION REVIEW BOARD:

/s/ Jeffrey P. Russell

JEFFREY P. RUSSELL
Administrative Appeals Judge

July 2, 2012

DATE