

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA M. MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 12-097

CLAUDETTE V. WALLACE,

Claimant- Petitioner,

v.

WASHINGTON METROPOLITAN TRANSIT AUTHORITY,

Self Insured Employer - Respondent.

Appeal from a Compensation Order of
Administrative Law Judge Karen R. Calmeise
AHD No. 12-114, OWC No. 662648 ¹

David Kapson, Esquire, for the Claimant
Mark H. Dho, Esquire, for the Employer

Before HEATHER C. LESLIE,² MELISSA LIN JONES, and HENRY W. MCCOY, *Administrative Appeals Judges*.

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 May 29, 2012, Compensation Order (CO) issued by an Administrative Law Judge (ALJ) in the Office of Hearings and Adjudication Section of the District of Columbia Department of Employment Services (DOES). In that CO, the ALJ denied the Claimant's request for temporary total disability benefits from July 1, 2011 to the present and continuing, interest, payment of medical expenses, and authorization for medical treatment. We AFFIRM.

¹ The Compensation Order misidentifies the AHD No. at 11-001 and the OWC No. as 12345 on the first page. It is clear by the certificate of service and the parties' arguments, that the AHD No. is 12-114 and the OWC No. is 662648

² Judge Heather C. Leslie is appointed by the Director of DOES as an interim member of the Compensation Review Board pursuant to DOES Administrative Policy Issuance No. 12-02 (June 20, 2012).

BACKGROUND AND FACTS OF RECORD

On August 14, 2009, the Claimant injured her neck, low back and left hip while driving a bus.³ The Claimant was out of work for a period of time and was paid disability benefits by the Employer. The Claimant returned to work full duty in the fall of 2009 with no restrictions.

The Claimant subsequently suffered two other work injuries. On February 26, 2010, the Claimant was injured when the bus she was driving hit a pothole. On March 4, 2010, the Claimant was injured when she drove a bus around a bumpy bus lot.

The Claimant filed a new claim in Maryland. The Employer and Claimant agreed that the March 4, 2010 injury was a temporary exacerbation of her neck, back and hip injuries and the Claimant dropped her Maryland workers' compensation claim. The Employer paid the Claimant disability benefits for a period of time.

The Claimant sought treatment for her injuries with the medical providers at Phillips and Green. The Claimant underwent conservative care, including home exercises and pain management and objective testing. The Claimant was diagnosed with an acute cervical sprain, an acute lumbar sprain and left hip pain. Ultimately, the Claimant was released to light duty. The Claimant's physicians opined that the Claimant is unable to return to work as a bus driver and recommended aquatic therapy. The Employer has not approved the request for aquatic therapy.

The Employer sent the Claimant for an Independent Medical Evaluation (IME) with Dr. Marc Danzinger on June 1, 2010, March 29, 2011 and September 13, 2011. In the most recent IME, Dr. Danzinger, after acknowledging the 2010 aggravation, opined that the Claimant's back, hip and neck pain have no causal relationship to the August 14, 2009 injury. Dr. Danzinger further stated the Claimant was at maximum medical improvement and could return to work full duty with no restrictions.

A full evidentiary hearing was held on April 25, 2012. The Claimant sought an award of temporary total disability benefits from July 1, 2011 to the present and continuing, interest, payment of causally related medical expense and bills, and authorization for aquatic therapy treatment. The issues presented were whether the Claimant's cervical and lumbar back conditions are causally related to the August 14, 2009 injury, and the nature and extent of the Claimant's disability, if any. A CO was issued on May 29, 2012 denying the Claimant's claim for relief finding that the back, hip and neck conditions were not casually related to the stipulated work accident.

The Claimant appealed on June 26, 2012 with the Employer opposing on July 5, 2012. The Claimant argues that the ALJ was in error in finding that the IME reports of Dr. Danzinger were enough to rebut the presumption of compensability and, even if the IME reports do rebut the presumption, the substantial evidence in the record supports a finding that the back, neck and hip

³ The ALJ refers to an August 14, 2010 injury in the discussion portion of the decision. CO at 4. We assume, for purposes of this appeal, that the reference to an August 14, 2010 injury was in error and the ALJ meant to refer to the August 14, 2009 stipulated injury.

condition are causally related to the August 14, 2009 work accident. The Employer opposes stating that the CO is supported by the substantial evidence in the record and should be affirmed.

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 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 District of Columbia Workers' Compensation Act of 1979, D.C. Code, as amended, §32-1501 *et seq.*, ("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 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. *Id.* at 885.

DISCUSSION AND ANALYSIS

The Claimant first argues that the opinion of Dr. Danzinger is not enough to sever the presumption of compensability.⁴ Specifically, the Claimant argues that none of Dr. Danzinger's reports "offers an unequivocal opinion that the injuries Ms. Wallace suffered to her neck, low back, and hip are not related to the August 14, 2009 injury and the accepted March 4, 2010 aggravating event."

A review of the CO reveals the following discussion:

To rebut the presumption of compensability for a claim of aggravation of the 8/14/2009 work incident, the Employer also presents the detailed and comprehensive 3/29/2011 IME opinion also authored by Dr. Danzinger in which he opines that the Claimant's underlying cervical disc disease of the cervical spine has no correlation to any of the work related injuries. (EE 2, pg 4) In an IME report dated 9/13/2011 Dr. Danzinger also opined that Claimant's recent complaints regarding her back and pelvis had no causal relationship to the 8/14/2009 injury. (EE 1, pg 2).

CO at 5.

⁴ Pursuant to §32-1521(1) of the Act, a claimant is entitled to a presumption of compensability. 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. *Ferreira v. DOES*, 531 A.2d 651, 655 (D.C. 1987). The presumption then operates to establish a causal connection between the disability and the accidental work-related event, such that the disability is compensable. *Davis-Dodson v. DOES*, 697 A.2d 1214, 1217 (D.C. 1997), citing *Ferreira*; *Washington Hospital Center v. DOES*, 744 A.2d 992, 996-97 (D.C. 2000). However, the Act's presumption of compensability operates only "in the absence of evidence to the contrary." In *Ferreira*, the Court of Appeals held, that "[o]nce the presumption is triggered, the burden is upon the employer to bring forth 'substantial evidence' showing that a disability did not arise out of and in the course of employment." *Ferreira, supra* at 655; *Parodi v DOES*, 560 A.2d 524, 526 (D.C. 1989); *Waugh v. DOES*, 786 A.2d 595, 600 (D.C. 2001).

A review of the evidence supports the ALJ's conclusion. We hold the ALJ's finding that the opinions of Dr. Danzinger are specific enough to rebut the presumption of compensability of the August 14, 2009 injury are supported by substantial evidence in the record and affirm this finding.

The Claimant next argues that Claimant proved, by a preponderance of the evidence, through her testimony and the medical reports of her treating physicians, Phillips and Green, that the Claimant's neck, low back and left hip symptoms are casually related to the injury. We disagree. The ALJ describes the Claimant's testimony as confusing and contradictory, a finding supported by the hearing transcript, and notably, is not appealed by the Claimant.

As to the reports of Phillips and Green, a review of the CO reveals the following discussion:

I find Claimant's claim of medical causally relationship of her physical complaints including lumbar pain, cervical spine pain, and left hip pain are also not supported by the medical evidence.

As stated above, Employer's medical records show that Claimant sought medical attention at Washington Hospital Center on two occasions in March 2010. At a March 10th exam the medical history noted that the Claimant had a "new problem", and that she had complaints of back pain and that it started on the 3rd of March. (No neck problems were reported nor was an August 2009 prior injury documented in the report) (EE 7, pg 16) In a March 30th exam and treatment report from Washington Hospital Center, Dr. Godwin O. Darko noted the Claimant reported upper back pain with right arm sensation after driving a bus on February 26. (EE 7) In this report no low back complaints were documented or were an August 2009 prior injury reported. In addition to the hospital reports above, Employer submits the IME report dated 9/13/211 which concludes that the Claimant's current back and pelvis complaints have no causal relationship to the 8/14/2009 injury.

Furthermore, Claimant's treating physician medical records do not provide support for her claim that her cervical spine condition is medically causally related to the August 14, 2009 work incident. Claimant presents the treatment records from Phillips and Green from June 29, 2010 to March 21, 2012. However, aside from noting that the Claimant had a prior 2009 work related injury, the treating physician's state in the various reports that the Claimant's current cervical, lumbar or right hip complaints are causally related or aggravated by the March 2010 work injury. (CE 1 and 2). Although the treating physician, Dr. Phillips opined that the Claimant was status-post injury to her back August 2009 and that she continued to have low back problems from the March 4, 2010, Dr. Phillips also notes that the Claimant claimed she was significantly worse in the low back subsequent to the 3-4-10 accident. (CE 2 pg 53)

The presentation of contradictory and confusing testimony and lack of reference to the claimed injury, in the treating physician's reports, the undersigned credits the opinion of the IME physician in over the Claimant's evidence. Claimant fails to prove, by a preponderance of the evidence, that her current low back, cervical spine and left hip condition is medically causally related to the August 2009 work incident.

CO at 7-8.

Thus, the ALJ did take into consideration the reports of Phillips and Green. The medical opinions submitted treat the March 2010 injury as the cause of the Claimant's current complaints and not the stipulated injury of August 14, 2009. It is the Claimant's burden, to prove by a preponderance of the evidence, that the Claimant's current medical condition is medically causally related to the August 14, 2009 injury. This she simply failed to do.

CONCLUSION AND ORDER

The May 29, 2012 Compensation Order is supported by the substantial evidence in the record and is in accordance with the law. The Compensation Order is **AFFIRMED**.

FOR THE COMPENSATION REVIEW BOARD:

HEATHER C. LESLIE
Administrative Appeals Judge

August 30, 2012
DATE