

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA MARÍA MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 13-123

**STEPHANIE L. WILLIAMS,
Claimant-Petitioner,**

v.

**SIBLEY MEMORIAL HOSPITAL,¹
Self-Insured Employer-Respondent.**

Appeal from a September 11, 2013 Compensation Order By
Administrative Law Judge Linda F. Jory
AHD No. 13-297, OWC No. 679591

David Snyder, Esquire for Petitioner
Padraic K. Keane, Esquire for Respondent

Before MELISSA LIN JONES and HEATHER C. LESLIE, *Administrative Appeals Judges* and
LAWRENCE D. TARR, *Chief Administrative Appeals Judge*.

MELISSA LIN JONES for the Compensation Review Board.

DECISION AND REMAND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

In March 2011, Ms. Stephanie L. Williams was employed by Sibley Memorial Hospital (“Sibley”) part-time as a clinical associate and “as needed” in another position. On March 27, 2011, Ms. Williams injured her lower back at work.

Ms. Williams began treating with Dr. Abdul Razaq. Mr. Razaq referred her to Dr. Majid Ghauri for pain management.

On November 7, 2012, Dr. Robert Smith examined Ms. Williams at Sibley’s request. At that time, Dr. Smith opined Ms. Williams could return to sedentary or light duty work with no lifting more than 20 pounds and with an ability to change position at will. That same day, Ms. Williams was captured on videotaped surveillance repeatedly bending and lifting and carrying

¹ The caption of the September 11, 2013 Compensation Order lists Washington Hospital Center as the Self-Insured Employer; however, it is clear from the record that the correct employer is Sibley Memorial Hospital.

her son while carrying a large bag or purse. Following a normal nerve conduction study and EMG, on February 16, 2013, Dr. Smith asserted Ms. Williams could return to regular duty work without restriction.

Ms. Williams began working in March 2013 for Freedom Home Health Care as a companion. The next month, Dr. Ghauri released her to work as an endoscopy technician.

Based upon her work capacity, Ms. Williams requested temporary total disability benefits from February 20, 2013 to March 2, 2013 and temporary partial disability benefits from March 3, 2013 and continuing as well as causally related medical expenses. Following a formal hearing, an administrative law judge (“ALJ”) issued a Compensation Order denying Ms. Williams’ request for wage loss benefits; the ALJ ruled Ms. Williams had not met her burden of proving entitlement to those benefits.²

On appeal, Ms. Williams asserts the Compensation Order fails to address her entitlement to medical treatment. In addition, Ms. Williams argues that neither Dr. Razaq nor Dr. Ghauri ever released her to her pre-injury employment and that Dr. Smith’s opinion is unpersuasive because he

failed to address Ms. Williams’ ongoing and objectively verifiable back injury and symptomatology in making this determination. As such, his opinion that she could return to work is based on an incomplete reading and understanding of the evidence wherein he failed to take into account all of the accepted conditions from which Ms. Williams suffers. Additionally, the video surveillance taken by Mr. Terbush does not contradict any of Ms. Williams’ testimony at either the formal hearing or in her deposition with regard to her physical capabilities.

* * *

By contrast, Ms. Williams has relied upon the opinions of her treating physicians, Drs. Razaq and Ghauri. . . to support her contention that she is unable to return to her pre-injury employment and is therefore entitled to the requested benefits. She has also relied upon her own testimony as to her ongoing symptoms which are being treated by pain management. Because Ms. Williams’ treating physicians are entitled to a preference over those doctors retained solely for the purposes of litigation by the Employer, and because Dr. Ghauri has not released Ms. Williams to return to work in her pre-injury capacity, she is entitled to the benefits claimed.^[3]

Ms. Williams requests the Compensation Review Board (“CRB”) reverse and remand this matter.

² *Williams v. Washington Hospital Center* [sic], AHD No. 13-297, OWC No. 679591 (September 11, 2013).

³Memorandum of Points and Authorities in Support of Application for Review, pp. 14-15.

In response, Sibley argues Ms. Williams merely disagrees with the ALJ's judgment that Dr. Ghauri's opinion failed to reference any limitations or restrictions, that Dr. Smith's opinion is worthy of more weight than Dr. Ghauri's opinion, and that the surveillance evidence contradicts Ms. Williams' testimony. As for Ms. Williams' request for a functional capacity evaluation, Sibley denies this request was identified in the Joint Pre-Hearing Statement or Stipulation Form, but even if this issue was properly before the ALJ, a functional capacity evaluation is not needed because Ms. Williams has returned to work and is fully capable of returning to work as a nurse without restriction per Dr. Smith. Sibley requests the CRB affirm the Compensation Order.

ISSUES ON APPEAL

1. Does the September 11, 2013 Compensation Order address all the issues for resolution?
2. Did the ALJ properly apply the treating physician preference?
3. Is the ALJ's denial of wage loss benefits supported by substantial evidence and in accordance with the law?

ANALYSIS⁴

Although the issues for resolution at the formal hearing only address the nature and extent of Ms. Williams' disability and voluntary limitation of income, during opening statements and in written closing arguments, Ms. Williams' attorney requested authorization for a functional capacity evaluation and for continued pain management both as recommended by Dr. Ghauri.⁵ In response, Sibley's attorney asserted a functional capacity evaluation is not necessary because Ms. Williams is working.⁶

Despite raising authorization for a functional capacity evaluation and for pain management as part of the claim for relief, there is no analysis of these requests in the Compensation Order, and in order to conform to the requirements of the D.C. Administrative Procedures Act (APA),⁷ (1) the agency's decision must state findings of fact on each material, contested factual issue; (2) those findings must be based on substantial evidence; and (3) the conclusions of law must follow

⁴ The scope of review by the CRB is limited to making a determination as to whether the factual findings of the appealed 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. Section 32-1521.01(d)(2)(A) of the District of Columbia Workers' Compensation Act, as amended, D.C. Code § 32-1501 to 32-1545. 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).

⁵ Hearing Transcript, pp. 16-17.

⁶ *Id.* at p. 20.

⁷ D.C. Code §2-501 *et seq.* as amended.

rationally from the findings.⁸ Thus, when an ALJ fails to make factual findings on each materially contested issue, an appellate court is not permitted to make its own finding on the issue; it must remand the case for the proper factual findings.⁹

The CRB is no less constrained in its review of Compensation Orders.¹⁰ Moreover, the determination of whether an ALJ's decision complies with the APA requirements is a determination that is limited in scope to the four corners of the Compensation Order under review. Thus, when, as here, an ALJ fails to make express findings on all contested issues of material fact, the CRB can no more "fill the gap" by making its own findings from the record than can the Court of Appeals but must remand the case to permit the ALJ to make the necessary findings.¹¹ For this reason, the law requires we remand this matter.

On the issue of Ms. Williams' entitlement to wage loss benefits, the Memorandum of Points and Authorities in Support of Application for Review is filled with irrelevant passages of inapplicable law and summaries of the Compensation Order but offers little specific argument regarding the legal insufficiency of that Compensation Order. That Ms. Williams is presently working less and earning less is not in-and-of-itself grounds for ongoing wage loss benefits.

As the ALJ noted, Ms. Williams was not entitled to any presumption regarding the nature and extent of her disability.¹² With the burden on Ms. Williams, the ALJ determined that Dr. Ghauri's release to an endoscopic technician position was not enough to overcome the impact of Dr. Smith's opinion. Although Dr. Ghauri is Ms. Williams' treating physician, the preference for the opinions of a treating physician is not absolute, and when there are specific reasons for rejecting the opinion of a treating physician, the opinion of another physician may be given greater weight.¹³ The ALJ considered that Dr. Ghauri did not provide any physical limitations or restrictions for guidance; "there is no indication that Dr. Ghauri has advised claimant not to do any specific activities, such as lifting, bending etc."¹⁴ The ALJ also relied upon the surveillance evidence demonstrating Ms. Williams' physical abilities to devalue Dr. Ghauri's opinion.¹⁵ On

⁸ *Perkins v. DOES*, 482 A.2d 401, 402 (D.C. 1984).

⁹ *King v. DOES*, 742 A.2d 460, 465 (Basic findings of fact on all material issues are required; only then can the appellate court "determine upon review whether the agency's findings are supported by substantial evidence and whether those findings lead rationally to its conclusions of law.")

¹⁰ See *Washington Metropolitan Area Transit Authority v. DOES*, 926 A.2d 140 (D.C. 2007).

¹¹ See *Mack v. DOES*, 651 A.2d 804, 806 (D.C. 1994).

¹² *Dunston v. DOES*, 509 A.2d 109, 111 (D.C. 1986).

¹³ 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).

¹⁴ *Williams, supra*, p. 6.

¹⁵ The ALJ relied upon more than Ms. Williams' lifting of her son to discredit Ms. Williams' testimony; the ALJ considered Ms. Williams "lifting and bending repeatedly and carrying her son and a large bag, without difficulty or any evidence of pain," *Williams, supra*, at p. 6, and an ALJ's credibility determinations are entitled to deference. *Dell v. DOES*, 499 A.2d 102 (D.C. 1985).

the other hand, the ALJ took into account that Dr. Smith relied upon MRI results, normal electrodiagnostic study results, and a personal examination of Ms. Williams to assert Ms. Williams was capable of returning to regular duty work without restriction as of February 16, 2013. Based upon this evidence, the ALJ reasonably accepted Dr. Smith's opinion over that of Dr. Ghauri.

There is substantial evidence in the record to support the ALJ's findings that Ms. Williams could return to regular duty work without restriction, namely Dr. Smith's opinion. Ms. Williams' argument that neither Dr. Razaq nor Dr. Ghauri ever released her to her pre-injury employment is not persuasive because in order for that evidence to effect the outcome of this case, the CRB would have to reweigh the evidence; it is not permitted to do so.¹⁶

CONCLUSION AND ORDER

Because the Compensation Order does not address Ms. Williams' entitlement to a functional capacity evaluation or to pain management, this matter is REMANDED for further consideration consistent with this Decision and Remand Order. The portion of the Compensation Order denying Ms. Williams' request for wage loss benefits is supported by substantial evidence, is in accordance with the law (including the treating physician preference), and is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

MELISSA LIN JONES
Administrative Appeals Judge

November 18, 2013
DATE

¹⁶ *Marriott, supra.*