

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services
Labor Standards Bureau

Office of Hearings and Adjudication
COMPENSATION REVIEW BOARD



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CRB (Dir.Dkt.) No. 05-37

MARGARET YOUNG,

Claimant – Petitioner,

v.

WASHINGTON HOSPITAL CENTER AND KEMPER INSURANCE COMPANY,

Employer/Carrier – Respondent.

Appeal from a Compensation Order of
Administrative Law Judge Linda F. Jory
OHA No. 03-449, OWC No. 580592

Mark L. Schaffer, Esq., for the Petitioner

William S. Hopkins, Esq., for the Respondent

Before SHARMAN J. MONROE, FLOYD LEWIS and JEFFREY P. RUSSELL, *Administrative Appeals Judges*.

SHARMAN J. MONROE, *Administrative Appeals Judge*, on behalf of the Review Panel:

DECISION AND ORDER

JURISDICTION

Jurisdiction is conferred upon the Compensation Review Board pursuant to D.C. Official Code §§ 32-1521.01 and 32-1522 (2004), 7 DCMR § 230, and the Department of Employment Services Director's Directive, Administrative Policy Issuance 05-01 (February 5, 2005).¹

¹ Pursuant to Administrative Policy Issuance No. 05-01, dated February 5, 2005, the Director of the Department of Employment Services realigned the Office of Hearings and Adjudication to include, *inter alia*, establishment of the Compensation Review Board (CRB) in implementation of the District of Columbia Fiscal Year 2005 Budget Support Act of 2004, Title J, the D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, sec. 1102 (Oct. 1, 1994), *codified at* D.C. Code Ann. § 32-1521.01 (2005). In accordance with the Director's Policy Issuance, the CRB replaces the Office of the Director in providing administrative appellate review and disposition of workers' and disability compensation claims arising under the D.C. Workers' Compensation Act of 1979, as amended, D.C. Code Ann. §§ 32-1501 to 32-1545 (2005) and the D.C. Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Code Ann. §§ 1-623.1 to 1.643.7 (2005), including responsibility for administrative appeals filed prior to October 1, 2004, the effective date of the D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004.

BACKGROUND

This appeal follows the issuance of a Compensation Order from the Administrative Hearings Division (AHD) of the Office of Hearings and Adjudication (OHA) in the District of Columbia Department of Employment Services (DOES). In that Compensation Order, which was filed on December 27, 2004, the Administrative Law Judge (ALJ) denied the requested relief on the basis that the alleged injury did not arise out of and in the course of employment. The Claimant-Petitioner (Petitioner) now seeks review of that Compensation Order.

As grounds for this appeal, Petitioner alleges as error the ALJ's finding that the Petitioner had not established that any wage loss from March 14, 2003 through February 11, 2004 was causally related to her July 6, 2002 exposure to a large, thick cloud of powder emanating from a sealed work area near her work station.

ANALYSIS

As an initial matter, the standard of review by the Compensation Review Board (CRB) and this Review Panel, as established by the Act and as contained in the governing regulations, 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. D.C. Official Code § 32-1521.01 (d)(2)(A). "Substantial evidence," as defined by the District of Columbia Court of Appeals, is such evidence as a reasonable person might accept to support a particular conclusion. *Marriott Int'l. v. District of Columbia Department of Employment Services*, 834 A.2d 882 (D.C. App. 2003). Consistent with this standard of review, the CRB and this Review Panel are constrained to uphold 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 the reviewing authority might have reached a contrary conclusion. *Marriott*, 834 A.2d at 885.

Turning to the case under review herein, Petitioner alleges that the ALJ's decision is not supported by substantial evidence. Specifically, the Petitioner maintains that she presented evidence of a work-related event and a resulting injury, thereby invoking the presumption of compensability which carried forth to the question of causation. The Petitioner asserts that the Respondent's evidence failed to rebut the presumption as it pertained to causation and that she, accordingly, is entitled to a determination that her disability is causally related to her injury. The Petitioner asserts that all of the medical evidence shows that as a result of her exposure to particulate dust while performing her duties for the Respondent, she is unable to return to work at the same worksite where the exposure occurred.

A review of the Compensation Order shows that the parties stipulated that on July 6, 2002, the Petitioner sustained an injury which arose out of and in the course of her employment.

Compensation Order at p. 2. Thus, the presumption of compensability attached in this case. As the court held in *Whittaker v. District of Columbia Department of Employment Services*, 668 A.2d 844 (D.C. 1995), the presumption, once attached to establish a causal connection between the disability and the work-related event, activity, or requirement, also extends to the question of the medical causal relationship between the current disability and the work-related injury. Accordingly, in order to rebut the presumption of medical causal relationship, an employer must present evidence specific and comprehensive enough to sever the potential connection between the disability and work-related injury. See *Whittaker, supra* at 845-846.

In an effort to rebut the presumption, the Respondent presented the medical opinion of Dr. Ross Myerson, the independent medical examiner, as well as the testimonies of John Morosko and John Kerner. The ALJ found that Dr. Myerson's "exhaustive report standing alone" rose to the level of evidence specific and comprehensive enough to rebut the presumption. Compensation Order at p. 6. The evidence shows that Dr. Myerson examined the Petitioner on August 19, 2002, reviewed an extensive amount of medical reports relating to her treatment for the July 6, 2002 exposure and reviewed the reports concerning the abatement activities which occurred at the Respondent's worksite. Based thereon, Dr. Myerson opined, with reasonable medical certainty, that there was "no credible medical or scientific data" which linked the Petitioner's multi-symptom complaints to her exposure to dust on July 6, 2002. Employer Exhibit No. 3. The Panel determines that the ALJ's finding is supported by substantial evidence and, accordingly, rejects the Petitioner argument that the Respondent failed to rebut the presumption.

The presumption being rebutted, the Petitioner was required to prove the medical causal relationship between her current disability, multi-symptom complaints, and physical and her work injury, exposure to mold dust, in order to prevail on her claim for benefits. See *Whittaker, supra*. The Petitioner presented the medical opinions of Dr. Andrew Campbell, medical director for the Center for Immune Environmental and Toxic Disorder, Dr. William High, a neurologist, and Dr. Norton Elson, a consultant in pulmonary medicine. The ALJ rejected Dr. Campbell's opinion because it did not state the cause of the Petitioner's disability, rejected Dr. High's opinion because it was based upon an exaggerated and incorrect medical history of the injury, and rejected Dr. Elson's opinion because it was speculative.² The evidence demonstrates that while Dr. Campbell opined his March 13, 2003 report that the Petitioner's complaints were related to the exposure at work, his opinion was based upon an understanding that the Petitioner was exposed to mold. Further, in his subsequent opinions dated July 3, 2003 and August 27, 2003, Dr. Campbell did not provide an opinion as to the cause of the Petitioner's complaints. Similarly, the opinions of Dr. High and Dr. Elson were based upon an understanding that the Petitioner was exposed to mold and Dr. Elson's opinion was couched in tentative language.

As part of the necessary weighing of evidence to determine whether the Petitioner sustained her burden of proof, the ALJ also considered the testimonies of John Morosko and John Kerner,

² Although the ALJ did not so state, it is well-settled in this jurisdiction that the opinion of the treating physician is to be accorded great weight. See *Stewart v. District of Columbia Department of Employment Services*, 606 A.2d 1350 (D.C. 1992). However, if an adjudicator rejects the treating physician's opinion, the adjudicator must explicitly address and set forth the reasons for rejecting the opinion. See *Lincoln Hockey, LLC v. District of Columbia Department of Employment Services*, 831 A.2d 913 (D.C. 2003).

the Respondent's witnesses. Mr. Morosko, crew supervisor for the abatement company, testified that on July 6, 2002, his company was performing flood abatement on the Respondent's premises near the Petitioner's work station and there was no mold growth present. Mr. Kerner, senior scientist and certified industrial hygienist, also testified that there was no mold growth present on the Respondent's premises near the Petitioner's work station.

After reviewing the Petitioner's medical evidence, the Panel discerns no reason for disturbing the ALJ's determination that the Petitioner failed to prove that her wage loss from March 14, 2003 through February 11, 2004 was causally related to her July 6, 2002 exposure at work. The Panel is constrained to uphold 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 the Panel might have reached a contrary conclusion. *Marriott*, 834 A.2d at 885.

CONCLUSION

The Compensation Order of December 27, 2004 is supported by substantial evidence in the record and is in accordance with the law.

ORDER

The Compensation Order of December 27, 2004 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

SHARMAN J. MONROE
Administrative Appeals Judge

August 31, 2005
DATE