

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services



MURIEL BOWSER  
MAYOR

DEBORAH A. CARROLL  
DIRECTOR

COMPENSATION REVIEW BOARD

**CRB No. 16-049**

**ZYNAB FAYE,**  
**Claimant-Respondent,**

v.

**HOWARD UNIVERSITY HOSPITAL, and**  
**SEDGEWICK CMS, INC.,**  
**Employer/ Third-Party Administrator-Petitioner.**

Appeal from a February 29, 2016 Compensation Order  
by Administrative Law Judge Gregory P. Lambert  
AHD No. 98-033A, OWC No. 721819

DEPT. OF EMPLOYMENT  
SERVICES  
COMPENSATION REVIEW  
BOARD  
2016 AUG 23 PM 12 22

(Decided August 23, 2016)

William H. Schladt for Employer  
Steven H. Kaminski for Claimant

Before JEFFREY P. RUSSELL, LINDA F. JORY, and HEATHER C. LESLIE, *Administrative Appeals Judges.*

JEFFREY P. RUSSELL for the Compensation Review Board.

**DECISION AND ORDER**

**FACTS OF RECORD AND PROCEDURAL HISTORY**

Zynab Faye (Claimant) was employed as a registered nurse by Howard University Hospital (Employer). It is undisputed that in that job, Claimant was required to lift bed-bound patients for assisting in personal hygiene and changing of bed linens, and exert herself in order to assist patients' mobility.

Following a formal hearing conducted December 15, 2015 before an Administrative Law Judge (ALJ) in the Administrative Hearings Division (AHD) of the Office of Hearings and Adjudication (OHA) within the Department of Employment Services (DOES), a Compensation Order was issued February 29, 2016 (the CO) by the ALJ.

In the CO, Claimant was awarded temporary total disability (TTD) from July 5, 2015 to the date of the hearing and continuing, interest on accrued benefits, causally related medical care, and a 10% penalty pursuant to D.C. Code § 32-1515.

The award was premised upon the ALJ's findings that Claimant had sustained injuries to her right hand, wrist and arm on October 21, 2014 when assisting a patient who had fallen to the floor. The ALJ found that the patient, weighing approximately 400 pounds, forcefully grabbed Claimant's right wrist and pulled Claimant's arm while trying to stand, causing immediate pain and leading to swelling.

The ALJ found Claimant to be a credible witness, and accepted that despite treatment received from Dr. Henry Paul, Claimant's wrist and arm complaints have worsened since the accident, and continue to cause pain and functional limitations which preclude her from returning to her job with Employer.

In so concluding, the ALJ rejected the independent medical evaluation (IME) opinion of Dr. Marc Danziger who examined Claimant on one occasion at Employer's request and concluded that Claimant's injury was a simple strain which has resolved and that she is able to return to her pre-injury job. The ALJ also concluded that Claimant's current complaints are medically causally related to the work injury and thus Employer was ordered to authorize a referral to a neurologist, an EMG, and a cervical MRI.<sup>1</sup>

Employer appealed the CO to the Compensation Review Board (CRB) by filing Employer/Insurer's Application for Review and Memorandum in Support of Application for Review (Employer's Brief).

Claimant filed Respondent's Opposition to Petitioner's Application for Review and Respondent's Brief in Opposition to the Application for Review of Compensation Order (Claimant's Brief).

Because the findings that Claimant is unable to return to her job with Employer and is in need of additional care as described in the CO as result of the work-related injury are supported by substantial evidence, we affirm the CO.

#### ANALYSIS

As a preliminary matter, we note that Employer does not specifically contest the award of a penalty or the referral for additional evaluation and treatment. The only aspect of the award adverted to in Employer's Brief that it identifies as being in error is the finding with respect to the nature and extent of Claimant's disability. *See* Employer's Brief, at 6 ("the decision regarding the nature and extent of Claimant's disability is not supported by substantial evidence and must be reversed.")

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<sup>1</sup> The ALJ noted that Employer did not contest the reasonableness and necessity of these recommendations, only their causal relationship to Claimant's employment. The ALJ also noted the absence in the record of any Utilization Review reports (CO at 5, nt. 1), a *sine qua non* for any litigation concerning the reasonableness and necessity of medical care. *Gonzalez v. UNICCO*, CRB No. 07-005 (February 21, 2007).

Employer argues that the finding that Claimant is disabled from her job with Employer ought to be reversed because the ALJ failed to adequately consider all the relevant and material evidence, rendering the TTD award unsupported by substantial evidence under *Darden v. DOES*, 911 A.2d 410 (D.C. 2006). Employer's Brief at 5.

Claimant argues that Employer's Brief contains a number of inaccurate assertions concerning the contents of the record, particularly concerning the number of times Dr. Danziger evaluated Claimant, the congruence or incongruence between the opinions of Dr. Danziger and Dr. Paul concerning Claimant's diagnosis, and the characterization of the ALJ's review of the evidence as being "cursory". Claimant's Brief at 1 – 2.

We agree with Claimant that Employer appears to misstate the number of times Dr. Danziger performed an in-person examination of Claimant, and that Employer focuses on a lack of positive findings on Claimant's hand and wrist imaging studies, to the exclusion of Dr. Paul's concern that Claimant's condition extends beyond the wrist, may be neurological in origin, and hence the referral to a neurologist and recommendation for an EMG. *See*, CE 8 (internally numbered page 52).

The ALJ found that Claimant "is restricted by a requirement that she lift no more than two pounds, which is sufficient to show that she cannot currently perform the physical work expected of her at her usual job with Employer." CO at 6. Review of Claimant's testimony (HT 54) and medical records (CE 4) confirms this limitation, and there is no dispute that Claimant's job required that she exceed that restriction.

Employer's evidence that Claimant can perform her pre-injury job is limited to Dr. Danziger's opinion that Claimant can return to unrestricted duty, and the argument that the MRIs in the record reveal no objective injury.

Our consideration of Employer's argument leads us to conclude that, at root, Employer disagrees with the weight assigned by the ALJ to the opinions of the treating and the IME physicians. However, as the ALJ noted, "treating physicians are ordinarily preferred as witnesses to those doctors who have been retained to examine the claimant solely for the purposes of litigation. *Stewart v. District of Columbia Dep't of Employment Services*, 606 A.2d 1350, 1353 (D.C. 1992)". CO at 4.

Not only did the ALJ consider the treating physician preference, he also gave a number of specific reasons why he accepted Dr. Paul's views as being more persuasive. Among these considerations were the brief time that Dr. Danziger spent with Claimant, the fact that Dr. Danziger's examination was conducted while Claimant's arm was encased in a hard cast, Dr. Danziger's opinions seem limited to Claimant's hand and wrist, and Dr. Paul spent significantly more time with Claimant than did Dr. Danziger. CO at 4 – 5.

Employer's argument amounts to little more than Employer asking that we reweigh the evidence and substitute our judgment for that of the ALJ. Where the ALJ's decision is supported by substantial evidence, we have no authority to do so, even where the record contains substantial

evidence from which a contrary conclusion could have been drawn. *Washington Vista Hotel v. DOES*, 721 A.2d 574, 578 (D.C. 1998); *Gary v. DOES*, 723 A.2d 1205, 1209 (D.C. 1998).

Further, the CO is based in large part upon the ALJ accepting Claimant's testimony concerning her ongoing complaints, which is obviously a question of credibility. *See e.g.*, CO at 4. An ALJ's credibility determinations are to be given great deference, due to an ALJ's opportunity to observe the nature and character of a witness's demeanor. *Dell v. DOES*, 499 A.2d 102, 106 (D.C. 1985); *Georgetown University v. DOES*, 830 A.2d 865, 870 (D.C. 2003).

We see no reason to depart from these principles in this case.

#### **CONCLUSION AND ORDER**

The findings of fact concerning Claimant's functional inability to perform her pre-injury job as a result of the work-related injury of October 21, 2014 are supported by substantial evidence, and the Compensation Order of February 29, 2016 is affirmed.

*So ordered.*