

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

**VINCENT C. GRAY**  
**MAYOR**



**LISA M. MALLORY**  
**DIRECTOR**

**CRB No. 10-205**

**ROYSTON L. CLEMENT,**

**Claimant–Petitioner,**

**v.**

**STERNE, KESSLER, GOLDSTEIN & FOX AND CNA INSURANCE COMPANY,**

**Employer–Respondent.**

Appeal from a Compensation Order of  
Administrative Law Judge Joan E. Knight  
AHD No. 03-575D, OWC Nos. 552839

Matthew E. Pepper, Esquire, for the Petitioner

Joseph C. Veith III, Esquire, for the Respondent

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

JEFFREY P. RUSSELL, for the Compensation Review Board.

**DECISION AND ORDER**

**OVERVIEW**

Royston Clement sustained injuries to his left leg and back on April 13, 2000 working as a copy clerk in the offices of the law firm of Sterne, Kessler, Goldstein & Fox (Sterne). Treatment was provided for these injuries, which treatment included a certain amount of psychological or psychiatric care from a Dr. Briley, from which care he was discharged in September 2002.<sup>2</sup> In September 2009 he was seen and evaluated by Dr. Patrick Sheehan, a psychiatrist, who performed an evaluation and recommended that Mr. Clement undergo a course of cognitive therapy to treat

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<sup>1</sup> Judge Russell is appointed by the Director of DOES as an interim Board Member pursuant to DOES Administrative Policy Issuance No. 11-03 (June 23, 2011).

<sup>2</sup> There are references in medical reports in the record to additional treatment in the form of medications from a Dr. Matkovic for up to 8 months in 2003, but none of that doctor's records are in evidence.

what Dr. Sheehan diagnosed as a “major depressive disorder” and panic disorder. He authored a report in which he opined that these conditions were caused by Mr. Clement’s having developed chronic pain from the work injury.

Mr. Clement sought to obtain the care recommended by Dr. Sheehan, but based upon a medical opinion expressed by Dr. Brian Schulman, also a psychiatrist who evaluated Mr. Clement at Sterne’s request, the request was denied.

The dispute was presented to an Administrative Law Judge (ALJ) in the Department of Employment Services (DOES) at a formal hearing on January 27, 2010. Following that formal hearing, the ALJ issued a Compensation Order on March 31, 2010, in which she found that the medical report of Dr. Sheehan was sufficient to invoke the presumption that the complained of psychological condition was causally related to the work injury, that the independent medical evaluation (IME) report from Dr. Schulman sufficiently rebutted the presumption, and that she therefore was obligated to reweigh the evidence without reference to the presumption. In that analysis, the ALJ accorded to Dr. Sheehan the status of “treating physician”, entitling his opinion to an evidentiary preference over that of Dr. Schulman, and she awarded the medical care.

Sterne appealed the award to the CRB, arguing that the ALJ improperly accorded the treating physician preference to Dr. Sheehan, which Sterne argued was erroneous because Dr. Sheehan had only evaluated Mr. Clement on a single occasion, he provided no treatment on that occasion, and explicitly disclaimed being a treating physician in his report, stating that he explained the difference between a treating physician and an evaluating litigation physician to Mr. Clement.

Although Mr. Clement argued in his opposition to that appeal that the ALJ should not have found Dr. Schulman’s report to be sufficient to overcome or rebut the presumption, he did not file a cross appeal seeking a reversal of that determination.

In a Decision and Remand Order (DRO) issued on September 9, 2010<sup>3</sup>, the CRB agreed that the ALJ erred when she accorded treating physician status to Dr. Sheehan, and remanded the matter to the ALJ with instructions to reconsider the claim without reference to the preference, and treating both physicians as IME physicians.

On November 18, 2010, the ALJ issued a Compensation Order on Remand (COR) in which she reconsidered the evidence without according Dr. Sheehan an evidentiary preference, and determined that Dr. Schulman’s report and the opinions expressed therein were more comprehensive, were based upon a broader array of medical records and that he performed a more detailed mental status evaluation, and for these and other reasons that she described in the COR, she decided to accept Dr. Schulman’s views rather than Dr. Sheehan’s. She denied the request for the cognitive therapy, based upon the lack of medical causal relationship.

Mr. Clement filed a timely appeal of the COR with the CRB, to which appeal Sterne filed a timely opposition.

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<sup>3</sup> *Clement v. Sterne, Kessler, et al.*, CRB No. 10-109 (September 9, 2010).

## 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 a 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

As an initial matter, we note that Mr. Clement urges in this appeal that we determine that the ALJ erred in finding that Sterne had adduced sufficient evidence to rebut the presumption that his alleged psychological injury for which he seeks authorization for additional care was causally related to the stipulated work injury. As the ALJ pointed out in the COR, and as Sterne notes in this appeal, the ALJ made that finding in the initial CO that was remanded, and the remand did not disturb that finding. The remand was for the purpose of allowing the ALJ to reconsider the weighing of the evidence without affording Dr. Sheehan the benefit of treating physician status.<sup>4</sup> It would have been beyond the scope of the remand for the ALJ to take it up anew, and she properly did not. The finding that Dr. Schulman's report is sufficient to overcome the presumption is now the law of this case. That determination was not the subject of a cross-appeal in connection with the original appeal of the first CO to the CRB. Even if this panel did not agree that the prior CRB ruling is fully supportable, it remains the governing decision under which the case shall proceed, unless reversed on appeal to the District of Columbia Court of Appeals. Thus, there is no authority for us now to address this argument, as it was implicitly resolved in the first remand.

Moving to Mr. Clement's remaining argument, he asserts that the finding that the condition for which he seeks further psychiatric treatment is not causally related to the work injury is unsupported by substantial evidence, because he asserts that the medical opinion upon which it is based, that of Dr. Schulman, concluded "that Mr. Clement's depressive state was sequelae of the April 13, 2000 work injury." AFR, unnumbered page 7 – 8. This argument must fail as well. Given that the CRB

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<sup>4</sup> In the Decision and Remand Order, the CRB wrote:

Upon remand, the ALJ shall evaluate the opinions of Drs. Sheehan and Schulman in the same posture as IME psychiatrists. [...]

## CONCLUSION

The Compensation Order of March 31, 2010 accorded the opinion of Dr. Sheehan the preference as a treating physician when such designation was not supported by substantial evidence in the record and thus not in accordance with the law.

has already determined that Dr. Schulman's report sufficiently severs the link between the work injury and Mr. Clement's mental condition such that the presumption has been rebutted, it follows of necessity that if on weighing the reports of Dr. Sheehan on the one hand and Dr. Schulman on the other, the ALJ determines that Dr. Schulman's is more persuasive, that determination is a sufficient basis upon which to find that there is no such causal relationship.

In this case, the ALJ gave numerous cogent reasons for accepting Dr. Schulman's report over that of Dr. Sheehan. She noted that Dr. Schulman's report provides "a more comprehensive analysis" of Mr. Clement's condition, including in the analysis reference to and comment upon Mr. Clement's medical history and treatment; she commented upon and described in great detail the mental status evaluation he performed; she noted Dr. Schulman's analytical reasoning concerning the lack of conformity between Mr. Clement's appearance, speech patterns, lack of agitation and irritability on the one hand, and his claimed lack of sleep, anxiety and anger on the other; she referenced that Dr. Schulman noted the lack of congruity between Mr. Clement's assertions of lack of medical care being afforded him and the demonstrably extensive medical care that the records showed had been provided; and she pointed to an overall higher congruity between the other evidence of record and the detailed, comprehensive report of Dr. Schulman, when compared to the comparatively less detailed and comprehensive report from Dr. Sheehan. COR at 6 – 7. The ALJ's determination to accept Dr. Schulman's opinions in preference to those of Dr. Sheehan are articulated and that articulation is born out by review of the record.

#### CONCLUSION

The ALJ's acceptance of Dr. Schulman's opinions as being superior those of Dr. Sheehan is supported by substantial evidence in the record. The ALJ's conclusion based thereon that Mr. Clement's current claimed psychological injury is not causally related to the work injury is in accordance with the law of this case and is accordingly in accordance with the law.

**ORDER**

The Compensation Order on Remand of November 18, 2010 is affirmed.

FOR THE COMPENSATION REVIEW BOARD:

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JEFFREY P. RUSSELL  
Administrative Appeals Judge

May 8, 2012  
DATE