

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

Department of Employment Services

VINCENT C. GRAY  
MAYOR



LISA M. MALLORY  
DIRECTOR

**COMPENSATION REVIEW BOARD**

**CRB No. 12-044**

**JENNIFER FLETCHER,**

**Claimant–Respondent,**

**v.**

**HOWARD UNIVERSITY AND SEDGWICK CMS,**

**Employer and Third Party Administrator - Petitioner.**

Appeal from a Compensation Order by  
The Honorable David L. Boddie  
AHD No. 11-324, OWC No. 678254

William Schladt, Esquire for the Petitioner  
Ryan Foran, Esquire for the Respondent

Before HEATHER C. LESLIE,<sup>1</sup> JEFFREY P. RUSSELL,<sup>2</sup> and LAWRENCE TARR *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 Employer – Third Party Administrator (Employer) of the February 22, 2012, Compensation Order (CO) issued by an Administrative Law Judge (ALJ) in the Office of Hearings and Adjudication of the District of Columbia Department of Employment Services (DOES). In that CO, the ALJ granted the Claimant’s request for temporary total disability from May 17, 2011 to

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<sup>1</sup> Judge Heather C. Leslie is appointed by the Director of DOES as an interim Board Member pursuant to DOES Administrative Policy Issuance No. 11-02 (June 13, 2011).

<sup>2</sup> Judge Russell has been appointed by the Director of the DOES as a interim CRB Member pursuant to DOES Administrative Policy Issuance No. 11-02 (June 13, 2011).

the present and continuing, causally related medical expenses, and authorization for medical treatment. We AFFIRM.

### **FACTS OF RECORD AND PROCEDURAL HISTORY**

The Claimant was injured on February 27, 2011 when restraining a combative hospital patient. The Claimant injured her back. The Claimant came under the care and treatment of Dr. Kevin McGovern. Dr. McGovern diagnosed the Claimant with a L4-L5 disc herniation and thoracolumbar strain with radiculopathy. The Claimant has not returned to work since the injury.

During May and June 2011, the Claimant received care and treatment for a stomach condition, unrelated to her injury. The Claimant underwent surgery for this condition and was hospitalized for 35 days.

The Employer contested whether or not the Claimant's stomach condition was causally related to the work injury and the nature and extent of the Claimant's disability. The Employer sent the Claimant for an Independent Medical Evaluation (IME) with Dr. Louis Levitt on September 20, 2011. Dr. Levitt opined the Claimant did not require any more care for her work injury and could return to work immediately with no restrictions.

A Formal Hearing was requested and proceeded on January 12, 2012. At the Formal Hearing, the Claimant did not allege the stomach condition was related to the work injury. The Employer argued that it should not have to pay temporary total disability benefits during the time the Claimant was in the hospital for her unrelated condition and beyond. The Claimant alleges that she was still disabled when problems for her unrelated stomach condition arose resulting in her hospitalization for a period of time.

A CO was issued on February 22, 2012 granting the Claimant's claim for relief. The ALJ declined to make any finding on whether or not the Claimant's stomach surgery was related to the work injury as the Claimant did not claim benefits related to this condition. The ALJ did find the Claimant was temporarily and totally disabled as a result of her work injury and granted the Claimant's claim for relief.

The Employer appealed. On appeal, the Employer argues that the ALJ failed to articulate why the treating physician's opinion was preferred over that of the Employer's physician, and that the ALJ did not properly consider the effect of the Claimant's hospitalizations on her entitlement to temporary total disability benefits. The Claimant argues that the ALJ was correct in giving preference to the opinion of the treating physician and was also correct in finding that the Claimant was entitled to temporary total disability benefits, regardless of her hospitalization for an unrelated condition.

### **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.*, at §32-1521.01(d) (2) (A) of the ("Act") 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 Employer first argues that the ALJ failed to clearly state why the treating physician's opinion was preferred and erred in not explaining more fully why the IME physician's opinion was rejected. The Employer argues that by not explaining why the opinion of Dr. Levitt was rejected the ALJ failed to fully weigh the evidence presented and effectively substituted his judgment in place of the treating physician and the IME physician. We reject this argument.

It is well settled in the District of Columbia, that there is a preference for the testimony of treating physicians over doctors retained for litigation purposes. *See Short v. District of Columbia Department of Employment Services*, 723 A.2d 845 (D.C. 1998); *see also, Stewart v. District of Columbia Department of Employment Services*, 606 A.2d 1350 (D.C. 1992). Here, the ALJ, stated

Upon review and consideration of the medical evidence in the record, I find no reason to depart from applying the treating physician preference in this case, which I find the most persuasive and consistent with the evidence in the record, and I therefore accord the greater weight to the Claimant's evidence and the medical opinions of the treating physician.

CO at 8.

It is clear that the ALJ found the treating physician's reports more persuasive after reviewing the record. What the Employer fails to consider is that in *Washington Hospital Center v. DOES and Paul A. Thielke, Intervenor*, 821 A.2d 898 (2003) (Thielke), the District of Columbia Court of Appeals held that it is only with respect to treating physicians that reasons for *rejecting* a physician's opinion must be explained.<sup>3</sup>

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<sup>3</sup> Indeed, the Court in *Thielke* went on to say,

Nevertheless, this court's task is not to parse finely the reasons given by the finder of fact for accepting one set of expert opinions rather than another. Only with respect to *treating* physicians have we even held that the examiner must give reasons for rejecting medical testimony, *see Canlas v. District of Columbia Dep't of Employment Servs.*, 723 A.2d 1210, 1211-12 (D.C. 1999), although such an explanation obviously facilitates appellate review by the Director and this court.

We also note, the general rule is that "an agency, as a finder of fact, may credit the evidence upon which it relies to the detriment of conflicting evidence, and .....need not explain why it favored the evidence of one side over that of the other." *Metropolitan Poultry v. DOES*, 706 A.2d 33, 35 (D.C. 1998).

Moreover, the Employer simply summarizes the report of Dr. Levitt as support for the proposition that the ALJ should have given more reasons for rejecting the opinion of Dr. Levitt. A review of page 7 of the CO reveals the ALJ did consider and summarize the report of Dr. Levitt. After so doing, the ALJ recognized the treating physician preference and accepted the opinion of Dr. McGovern. We find no error in the ALJ's reliance on the treating physician.

We also specifically reject the Employer's argument that the ALJ substituted his own judgment for that of Dr. McGovern and Dr. Levitt. We are unsure of what the Employer is referencing as no specific mention of the ALJ substituting his judgment is given in support of this argument and we can find none. The ALJ clearly found the opinions of the treating physician persuasive and relied upon them. What the Employer is in essence asking us to do is to re-weigh the evidence and find more persuasive the opinion of Dr. Levitt. This we decline to do.

The Employer's next argument is that the ALJ "did not properly consider the effect of the Claimant's hospitalizations on her entitlement to temporary total disability benefits." Employer's Argument at 5. The Employer argues that the stomach operation was an "intervening cause" that prevented the Claimant from working and that the Employer should not be liable to pay temporary total disability benefits for that time period.

A review of the CO reveals the ALJ took into consideration the Employer's argument and rejected it. The ALJ took special note of the medical reports of Dr. McGovern immediately preceding her hospitalization which stated that the Claimant was totally disabled. Furthermore, the ALJ rejected the opinion of Dr. Levitt, specifically relied upon by the Employer for the proposition that she would have returned to work had the unrelated hospitalization not occurred. Specifically, the ALJ held:

Further, while the Employer relies upon the IME of Dr. Levitt and asserted it would support their position the Claimant was sufficiently recovered from her work injuries to return to work in her usual occupation as a Special Police Officer at the time she had surgery for an unrelated condition, a review of his report does not reflect that he addressed the causal relationship issue ... of the Claimant's condition at all, and that he focused upon the nature and extent of her lumbar and leg symptoms alone, and nor does he speak to whether she was capable of returning to work at any time earlier than the date of his IME.

CO at 5.

We find no error in the analysis above. We find no error with the ALJ reaching the conclusion that the Employer's argument on this point calls for speculation that cannot be the basis for a CO. The ALJ relied upon the treating physician's opinion which had Claimant in a continued total disability status as a result of her injury, even during the hospitalization stay for an unrelated condition. We find this conclusion, as well as the CO in general, to be supported by the substantial evidence in the record and is affirmed.

**CONCLUSION AND ORDER**

The findings of fact and conclusions of law contained in the January 30, 2012 Compensation Order is supported by substantial evidence in the record. It is **AFFIRMED**.

FOR THE COMPENSATION REVIEW BOARD:

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HEATHER C. LESLIE  
Administrative Appeals Judge

May 10, 2012  
DATE