

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA M. MALLORY
DIRECTOR

Compensation Review Board

CRB No. 11-057

SURRENDER GILL,
Claimant–Petitioner,

v.

HOWARD UNIVERSITY HOSPITAL AND SEDGWICK CLAIMS MANAGEMENT SERVICES,
Employer/Carrier-Respondent

Appeal from a Compensation Order on Remand by
The Honorable Heather C. Leslie
AHD No. 06-295A, OWC No. 637928

Raymond M. Hertz, Esquire, for the Claimant/Petitioner
William Schladt, Esquire, for the Self-Insured Employer/Respondent

Before: HENRY W. MCCOY, JEFFREY P. RUSSELL,¹ AND LAWRENCE D. TARR, *Administrative Appeals Judges*.

HENRY W. MCCOY, *Administrative Appeals Judge*, for the Compensation Review Board.

DECISION AND ORDER

JURISDICTION

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

¹ Judge Russell has been appointed by the Director of the DOES as an interim CRB member pursuant to DOES Administrative Policy Issuance No. 11-01 (June 23, 2011).

PROCEDURAL HISTORY AND FACTS OF RECORD

This appeal follows the issuance on May 24, 2011 of a Compensation Order on Remand (COR) from the Hearings and Adjudication Section, Office of Hearings and Adjudication in the District of Columbia Department of Employment Services (DOES). In that COR, Claimant's request for temporary total disability from October 27, 2007 to the present and continuing was denied.

Claimant worked as a manager of credit and collections for Employer. On August 23, 2005, Claimant slipped and fell on his way to a meeting injuring his neck, right shoulder, right arm, right knee, and low back. Following a formal hearing, a Compensation Order (CO) was issued on June 18, 2009 denying Claimant's claim for relief when the presiding Administrative Law Judge (ALJ) rejected the opinions of the treating physicians in favor of Employer's independent medical evaluators (IME) and found Claimant's disabling conditions were not causally related to the work accident.² Claimant timely appealed to the CRB.

On appeal, the CRB vacated and remanded the CO. The CRB determined it was error for the ALJ to discount the treating physician's opinion for failing to mention a prior motor vehicle accident when in fact he did; to disregard EE 9; and, that it was improper to rely upon a website recreated by a layperson to define a technical medical term as the site is a source that could reasonably be questioned.³

On remand, while specifically referencing and taking into consideration the treating physician's mention of Claimant's prior motor vehicle accident, the ALJ again denied the claim for relief as she stated her reasons for rejecting the treating physician's opinion and for finding the competing medical opinions more persuasive.⁴ Claimant has timely appealed with Employer filing in opposition.

Claimant argues as reversible errors on appeal that the Compensation Order on Remand (COR) (1) is not consistent with the CRB remand decision; (2) is violative of Claimant's substantive and procedural due process rights; and, (3) is not based on substantial evidence in the record and is not in accordance with the law. Employer argues to the contrary that the remand decision under review is support by substantial evidence and should be affirmed.

ANALYSIS

The scope of review by the CRB, 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

² *Gill v. Howard University Hospital*, AHD No. 06-295A, OWC No. 637928 (June 18, 2009).

³ *Gill v. Howard University Hospital*, CRB No. 09-112, AHD No. 06-295A, OWC No. 637928 (May 6, 2011).

⁴ *Gill v. Howard University Hospital*, AHD No. 06-295A, OWC No. 637928 (May 24, 2011) (COR).

conclusions drawn from those facts are in accordance with applicable law.⁵ See D.C. Workers' Compensation Act of 1979, as amended, D.C. Code Ann. §§ 32-1501 to 32-1545 (2005) (the Act), at § 32-1521.01(d)(2)(A). 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.

In the first assignment of error, Claimant argues that the ALJ failed to review the medical records in evidence in their entirety and singled out for disfavor only the treating physician reports of Dr. Blundon while giving greater weight to the IME opinion of Dr. Levitt. In addition, Claimant asserts that with the favorable report of IME physician Dr. Robert Cohen, the substantial evidence in the record supported his claim of a medical causal relationship of the work injury to his current disabling condition. We disagree.

A review of the COR shows that the ALJ made findings with regard to all the medical reports and the numerous physicians that either saw Claimant for a one-time evaluation or provided ongoing treatment. In keeping with the CRB's remand, the ALJ made a specific finding that Dr. Blundon stated in his April 17, 2007 report that Claimant was injured in a 2004 motor vehicle accident and went on to opine in that report that any symptoms resulting from that accident had resolved and that all of Claimant's current symptoms were a direct result of the August 23, 2005 work injury.

After acknowledging that Dr. Blundon was aware of Claimant's 2004 motor vehicle accident, the ALJ reiterated her reasons for rejecting Dr. Blundon's opinion by identifying the inconsistencies and contradictions in his reports. Also, contrary to Claimant's assertion, the ALJ also evaluated the opinion of another treating physician, Dr. Margulies, and gave her reasons for rejecting the opinion, while restating her position that the opinions of the IME physicians were more persuasive on the issue of medical causal relationship.

The argument raised by Claimant amounts to a request for the CRB to re-weigh the record evidence in his favor. As we have said on numerous occasions, this is something we can not and will not do. This is especially the case with Claimant's request that we factor in the favorable opinion of IME physician Dr. Cohen to the extent that substantial evidence in the record supports a decision in Claimant's favor. As we have also stated on numerous occasions, the CRB is bound by the ALJ's findings provided there is substantial evidence to support those findings. This is the case even when a review of the evidence will support a contrary result as urged by Claimant.⁶

Claimant also makes the assertion that, insofar as the ALJ did not conduct the formal hearing in this matter, the ALJ's reliance on medical evaluations that are 3 and 4 years old to make a credibility finding constitutes an abuse of discretion as credibility is an issue that goes beyond the

⁵ "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 International v. D.C. Dept. of Employment Services*, 834 A.2d 882 (D.C. 2003).

⁶ *Id.* at 885-86.

record. We disagree. The ALJ in this matter has reviewed all the medical records in making her findings and drawing conclusions that flow rationally from those findings. As for credibility, the ALJ stated

Thus, in light of the number of doctors who all separately question the sincerity of the Claimant's responses, the uncertainty caused by Dr. Blundon's reports and the indefinite nature of his treatment with a lack of a clear plan, the undersigned *credits* the opinions of the Employers (sic) IME doctors, Dr. Levitt and Dr. Friedman, over the Claimant's treating physicians, some of who (as noted above) also question the Claimant. Claimant fails in proving, by a preponderance of the evidence, that his current conditions are medically causally related to the work accident. (Emphasis added.)⁷

In this context, the ALJ uses the word "credits" to mean that she gives greater weight to and finds the IME opinions more persuasive on the issue of medical causal relationship than the opinions of the treating physicians. This was her responsibility as the trier of fact and thus no error is found in her application of that responsibility.

Claimant's final argument is that although the ALJ has expressly excluded EE 9 from consideration, it does not "remediate the initial taint of prejudice from the excluded evidence" and therefore is inconsistent with the CRB's remand. Claimant asserts that because of this "taint" the "entire fact finding process has been so adversely affected that the Claimant has been denied his rights of due process."⁸ We find no merit in this assignment of error.

In addressing Claimant's similar argument that the ALJ had erroneously reviewed EE 9, the CRB stated in its remand decision

While this sentence is boilerplate language that appears in many COs, and it is possible the ALJ did not review Exhibit 9 but merely used a template that contained this sentence, on remand, the ALJ should not consider Exhibit 9.⁹

In addressing this instruction on remand, the ALJ noted in footnote 2 that Exhibit 9 was allowed into evidence by Judge Boddie for purposes of appeal and later in footnote 4 noted that all the other evidence of record was reviewed in deliberation, "with the exception of exhibit 9 which was not taken into consideration." These notations by the ALJ clearly show she adhered to the CRB's instruction by expressly placing on the record that she gave no consideration to Exhibit 9 in her deliberations. This was an appropriate way for the ALJ to demonstrate compliance with the CRB's directive.

⁷ COR at 10.

⁸ Claimant's *Memorandum in Support of Application for Review*, pp. 8-9.

⁹ Gill, CRB No. 09-112, at 4.

Moreover, while 7 DCMR § 221.4 requires private sector workers' compensation hearings to be conducted in accordance with the Administrative Procedures Act (APA), the CRB has held that the APA procedural requirements do not apply:

if for example, neither party objects to a decision being issued by a new ALJ based upon the record previously adduced under a prior ALJ, pursuant to notice and an opportunity to show cause why the new ALJ ought not to render the decision without further argument or reference to specific parts of the record.

Centorcelli v. American Red Cross, CRB No. 06-042 (May 23, 2006) at footnote 3. That is what happened in the present matter. The claimant did not object to ALJ Leslie deciding the case. Therefore, we find no merit to claimant's argument.

CONCLUSION AND ORDER

The Compensation Order on Remand of May 24, 2011 is supported by substantial evidence and is in accordance with the law. Accordingly, it is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

HENRY W. MCCOY
Administrative Appeals Judge

May 4, 2012
DATE