COMPENSATION REVIEW BOARD

CRB No. 09-132 (R)

JAMIL F. MUHAMMAD,
Claimant,

v.

GEORGETOWN UNIVERSITY AND ZURICH NORTH AMERICA,
EMPLOYER AND CARRIER.

Upon Remand from the District of Columbia Court of Appeals, DCCA No. 10-AA-1049
AHD No. 03-035C, OWC No. 576531

Benjamin T. Boscolo, Esquire, for the Claimant
Mark T. Krause, Esquire, for the Employer and Carrier

Before Lawrence D. Tarr, Melissa Lin Jones, and Jeffrey P. Russell,[1] Administrative Law Judges.

Lawrence D. Tarr, Administrative Law Judge for the Review Panel:

DECISION AND REMAND ORDER

INTRODUCTION

This case is before the Compensation Review Board (CRB) on the January 5, 2012, decision by the District of Columbia Court of Appeals (DCCA), *Muhammad v. DOES*, 34 A. 3d 488 (D.C. 2012), reversing and remanding the CRB's July 26, 2010, Decision and Order, *Muhammad v. Eastern Electric*, CRB 09-132, AHD No. 03-035C, OWC No. 576531 (July 26, 2010).

BACKGROUND FACTS

The claimant, Jamil F. Muhammad, worked for the employer, Eastern Electric, as a laborer. On March 1, 2002, he injured his low back at work while lifting and carrying heavy cable wires and ladders. The claimant came under the care of Dr. William Dorn who diagnosed a lumbosacral strain and herniated disc, radiculopathy of both legs, and a right shoulder strain. Dr. Dorn referred the claimant to his associate, Dr. Hampton Jackson, who took over as the claimant's attending physician in early April, 2002.

[1] Judge Russell is appointed by the Director of DOES as a member of the Compensation Review Board pursuant to DOES Administrative Policy Issuance No. 11-02 (June 13, 2011).

After Dr. Jackson released the claimant to light-duty, sedentary work the employer provided vocational rehabilitation services to the claimant from July 2005 through April 2006. The current claim centers on the claimant's allegation that he is temporarily totally disabled from psychological problems caused by his participating in these vocational rehabilitation services.

On June 6, 2006, Dr. Jackson referred the claimant to a psychiatrist, Dr. Kenneth Smothers. Dr. Smothers met with the claimant on September 6, 2006, and two other times. Dr. Smothers diagnosed the claimant as having a mental illness, characterized by severe depression, anxiety, anger, and social and vocational dysfunction. Dr. Smothers did not relate the claimant's depression and related symptoms to vocational rehabilitation but to the claimant's chronic pain from the 2002 workplace injury.

The employer had the claimant attend a medical evaluation by another psychiatrist, Dr. Brian Schulman in October 2006. Dr. Schulman, as had Dr. Smothers, stated that the claimant suffers from a mental illness. Unlike Dr. Smothers, Dr. Schulman reported the illness was not caused by the physical injury sustained in the workplace accident but by the claimant's "limited coping response to the challenges imposed by vocational rehabilitation."

As the DCCA noted:

> Following a remand by the Compensation Review Board ("Board"), Dr. Schulman was asked to reconsider his opinion in light of the *McCamey (McCamey v. DOES*, 947 A. 2d 1191 (D.C. 2008) standard. He concluded, to "a reasonable degree of medical probability, [that] Mr. Muhammad did not develop a mental disorder as a consequence of the physical injury he sustained on March 1, 2002." Rather, Mr. Muhammad manifested the mental condition "as a consequence to his participation in vocational rehabilitation, which he felt was inappropriate; as well as his inability to tolerate the opinions of others who did not perceive of him, as he did, as being totally disabled." "I concluded that Mr. Muhammad's mental and behavioral disturbance, which was clearly manifest in my office, as well as with the vocational counselors, was directly related to the efforts to proceed with vocational rehabilitation."

34 A. 3d 488 at 490-491 (footnote omitted).

After two remands by the CRB, on August 21, 2009, Administrative Law Judge (ALJ) Anand K. Verma issued the Compensation Order or Remand that is presently on review and, as he had previously, denied the claim. Judge Verma held:

> Claimant's self perceived disability herein has been affected by factors inherent to his personal dispositions and social forces surrounding him, including his immediate family which has tended to bolster his perception. When viewed in its entirety, the record discloses no specific stressors that caused claimant's mood depression; rather, it was his own reaction to the protocols of job placement that cumulatively produced the alleged depression, which in the opinion of Dr. Jackson, his treating physician, required no psychiatric intervention. (CE 1, pp 56-57). Accordingly, when subjecting

> claimant's psychological injury to the two part test in *Jones, supra*, it is held claimant suffered from a real stressor that purely resulted not from the physical work injury, rather from his personal acrimonious and combative reactions to complying with the protocols of the job retraining and placement services initiated by employer. Indeed, claimant's mood depression and related psychological symptoms are borne out of his maladaptive aggression combined with his inability to control his impulses and bear no connection with the March 1, 2002 work injury.

The ALJ also considered the claim with respect to the *Nixon v. DOES,* 954 A.2d 1016 (D.C. 2008), a case in which an ALJ had awarded benefits to a claimant injured in an automobile accident driving home from a job interview arranged by Ms. Nixon's vocational rehabilitation counselor:

> Lastly, the CRB noted that if claimant's psychological problems stemmed from his own reactions to employer-initiated vocational rehabilitation, the undersigned should consider the claim consistent with the holding in *Nixon v. District of Columbia Department of Employment Services,* 954 A. 2d 1016 (D.C. 2008). The facts of the case in *Nixon, supra* are quite dissimilar with that in the instant case in that Nixon's head injury sustained in a snow-related automobile accident while she was driving home were directly and proximately caused by the circumstances, to wit, from a job interview arranged by her vocational rehabilitation counselor. Claimant's alleged psychological injuries, however, in the case, *sub judice*, were not the direct and natural consequences of employer-instituted vocational rehabilitation activities. Moreover, the injury in *Nixon, supra, vis-à-vis* the one alleged in the instant case, being physical in the former and mental in the latter, seem patently distinct to infer any favorable analogy therefrom.

The CRB affirmed the ALJ's decision and the claimant appealed. The DCCA reversed and remanded the CRB's July 26, 2010, Decision and Order. The DCCA concluded its decision by stating:

> The Board erred in prescribing a 'strictly personal reaction' test and by failing to correct the ALJ's dismissive attitude toward *Nixon*. For these reasons, and because the Board has yet to decide the question presented in *Nixon*, we reverse and remand for further proceedings not inconsistent with this decision.

34 A. 3d 488 at 497.

DISCUSSION AND ANALYSIS

The DCCA's remand instructions asked the CRB to analyze this case with respect to the principles that pertain to mental-mental and physical-mental claims and determine whether to adopt the 'quasi-course of employment' doctrine, identified in *Nixon v. D.C. Housing Authority*, 954 A. 2d 1016 (D.C. 2008).

As noted by the DCCA, Professor Larson, in his treatise, LARSON'S WORKERS' COMPENSATION LAW at §10.05, identified a category of employment activities that he called "quasi-course of employment" activities:

> By this expression is meant activities undertaken by the employee following upon his or her injury which, although they take place outside the time and space limits of the employment, and would not be considered employment activities for usual purposes, are nevertheless related to the employment in the sense that they are necessary or reasonable activities that would not have been undertaken but for the compensable injury. "Reasonable" at this point relates not to the method used, but to the category of activity itself.

Professor Larson identified certain principles regarding the compensability of such activities:

> When the injury following the initial compensable injury arises out of a quasi-course activity, such as a trip to the doctor's office, the chain of causation should not be deemed broken by mere negligence in the performance of that activity, but only by intentional conduct which may be regarded as expressly or impliedly prohibited by the employer.
>
> When, however, the injury following the initial compensable injury does not arise out of a quasi-course activity, as when a claimant with an injured hand engages in a boxing match, the chain of causation may be deemed broken by either intentional or negligent claimant misconduct.

The *Nixon* case, and the case at bar, involve injuries sustained while the employee was participating in employer-instituted vocational rehabilitation. As to vocational rehabilitation, Professor Larson stated:

> On the question whether rehabilitation programs should be equated with medical treatment for present purposes, Minnesota has rejected the compensability of an injury during a return trip from a training session, but Oregon and California have made awards for injuries in the course of the rehabilitation program itself. A New York court denied recovery in a case where the claimant slipped and fell after she had completed a physical therapy session. Dicta in the decision indicates New York might well allow an award under different circumstances. Here, the claimant slipped as she was getting coffee after the therapy session. The court determined that the Board could rationally determine that the work-related aspects of her visit had ended.

Id.

The quasi-course of employment doctrine was considered by an ALJ in *Nixon v. D.C. Housing Authority*, AHD No. PBL 06-013, DCP LTUNK00909, CRB No 06-80 (R) (May 5, 2009). The salient facts of *Nixon* are as follows:

Gaynell Nixon worked for the D.C. Housing Authority as an assistant housing manager at a public housing project. On January 23, 1996, she slipped and fell at work while retrieving a document from the trunk of her car, injuring her right foot and ankle. On February 22, 2001, the claimant was involved in a car accident while returning to her home from a job interview that had been scheduled

by her vocational rehabilitation counselor. Her employer did not accept her claim for medical expenses relating to this accident.

The claimant's claim relating to the 1996 accident at work initially was accepted by the employer. Her benefits were ended by the employer but reinstated in 1997 after a hearing examiner determined she was totally disabled. *Nixon v. D.C. Housing Authority*, H&AS PBL No. 97-13; ODC No. 363016, (October 8, 1997). In September 2004, her employer reduced her benefits based on a labor market survey that identified several jobs that she could do that were consistent with her physical limitations.

In 2006, the claimant filed for a formal hearing seeking medical expenses for injuries sustained in the 2001 car accident while returning from a job interview and for reinstatement of full disability benefits. In a July 31, 2006, decision, an ALJ denied both claims. *Nixon v. D.C. Housing Authority*, PBL No 06-013 (July 31, 2006). The CRB affirmed. *Nixon v. D.C. Housing Authority*, CRB No. 06-80 (November 29, 2006).

The DCCA affirmed in part and reversed in part. The DCCA affirmed the decision that permitted the reduction in the claimant's disability benefits. The DCCA reversed and remanded the decision denying the claimant's request for medical benefits relating to the February 2001 car accident because neither the ALJ nor the CRB considered whether injuries sustained in the car accident might be covered under the quasi-course of employment doctrine. *Nixon v. D.C. Housing Authority*, 854 A. 2d 1016, 1025 (D.C. 2008).

The CRB remanded this case to the ALJ who applied the quasi-course of employment doctrine and found Nixon's injuries compensable. *Nixon v. D.C. Housing Authority*, AHD No. PBL 06-013, DCP LTUNK00909, CRB No 06-80 (R) (May 5, 2009) at 7.

As the DCCA noted, one of the reasons for the current remand was because the CRB, which serves as the agency's appellate body, did not have the opportunity to decide whether to accept the quasi-course of employment in our jurisdiction because the ALJ's decision was not appealed:

> Although the ALJ accepted the quasi-course of employment doctrine, the (CRB) did not review that order and, as far as we are aware, it has never decided the question presented in *Nixon*.

34 A.3d at 493.

With respect to vocational rehabilitation and the quasi-course of employment doctrine, the ALJ in *Nixon* held:

> Claimant was in the process of undertaking an activity at the direction of Employer in furtherance of her vocational rehabilitation from her original workplace injury. As Employer was under a statutory duty to provide vocational rehabilitation, Claimant was under a similar duty to participate. As such, the trip to the interview site was necessitated by the compensable injury and any resultant accidental injuries during

> the trip would not have been incurred but for the obligations arising out of the initial compensable injury and thus became work connected.

Nixon v. D.C. Housing Authority, supra at 7.

We agree with this analysis. Because the psychological injuries sustained by Mr. Muhammad occurred during mandated vocational rehabilitation activities, they qualify as quasi-course of employment injuries.[2] Therefore, the claimant has proven the requisite causal connection between his psychiatric condition and his employment.

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At the formal hearing, the employer also defended the claim on the ground that the claimant had not proven he was permanently and totally disabled. The ALJ did not decide this issue because he found no medical causal connection between the claimant's psychiatric condition and the accident at work. Since that determination now is reversed, we must remand this case to the ALJ to determine whether the claimant is permanently and totally disabled, and the appropriate period date for those benefits.

CONCLUSION AND ORDER

The August 29, 2009, Compensation Order on Remand is vacated and reversed. This case is remanded to the ALJ to so that he may consider the issue of whether the claimant is permanently and totally disabled and for such further proceedings not inconstant with this decision and the decision of the DCCA.

FOR THE COMPENSATION REVIEW BOARD:

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LAWRENCE D. TARR
Administrative Appeals Judge

May 18, 2012
DATE

[2] The ALJ in *Nixon* in dicta stated his view that injuries sustained by an employee traveling to a routine medical appointment would not qualify as quasi-course of employment injuries. That issue is not before us and we offer no opinion on that issue at this time.