

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**Department of Employment Services**

VINCENT C. GRAY  
MAYOR



LISA M. MALLORY  
DIRECTOR

**COMPENSATION REVIEW BOARD**

**CRB No. 11-088**

**CHARLES STEWART,**

**Claimant–Petitioner,**

**v.**

**SYSTEMS APPLICATIONS AND TECHNOLOGIES, INC.**

**and**

**THE HARTFORD INSURANCE COMPANIES,**

**Employer/Carrier–Respondent**

Appeal from a Compensation Order by  
The Honorable Leslie A. Meek  
AHD No. 10-551, OWC No. 668333

Charles Stewart, *Pro Se* Petitioner  
Chad A. Michael, Esquire for Respondent

Before HEATHER C. LESLIE,<sup>1</sup> HENRY W. MCCOY, and LAWRENCE D. 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 of the Claimant – Petitioner (Petitioner) for review of a July 28, 2011, Compensation Order (CO), issued by an

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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).

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Administrative Law Judge (ALJ) in the Office of Hearings and Adjudication<sup>2</sup> of the District of Columbia's Department of Employment Services (DOES).

In that CO, the ALJ denied the Claimant's request for temporary total disability benefits and causally related medical expenses. We affirm.

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

The Claimant worked as a Program Systems Engineer for the Employer. Prior to February 10, 2010, the Claimant had undergone a cervical neck fusion in 1986. On February 10, 2010, the Claimant alleged that he hurt his head, neck and back when he bumped his head on his computer keyboard when he straightened up from underneath his desk. The Claimant sought treatment afterwards with several physicians, including Dr. John Rambler. The Claimant alleged that he was disabled as a result of this injury from February 16, 2010 onwards.

A Formal Hearing was held on February 24, 2011. At that hearing, the Employer raised the defense of whether an accidental injury occurred on February 10, 2010 and if so, whether or the Claimant's current medical condition was causally related to the work accident. A CO issued on July 28, 2011 denying the Claimant's claim for relief. The ALJ found that the Claimant failed to prove his current medical condition was causally related to the work injury.

The Claimant appealed with the Employer opposing.

### **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 appealed 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. "Substantial evidence" is relevant evidence a reasonable person might accept to support a conclusion. *Marriott International v. DOES*, 834 A.2d 882, 885 (D.C. 2003) and §32-1521.01(d) (2) (A) of Act.

Consistent with this standard of review, the CRB is constrained to uphold a Compensation Order that is supported by substantial evidence, even if there also is contained within the record under review substantial evidence to support a contrary conclusion and even if the CRB might have reached a contrary conclusion. *Marriott, supra*.

### **ANALYSIS**

Preliminarily, we must note that the Claimant, acting *pro se*, sent correspondence requesting an extension of time to "write the appeal" which was received by the CRB on August 26, 2011. The Employer opposed any application for review on September 29, 2011. Although technically only asking for an extension of time to appeal the CO, we are cognizant that the Claimant is proceeding *pro se* in front of the CRB. As such, and keeping in mind the humanitarian purposes of the Act, we will treat the correspondence as an application for review. We will assume, for

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<sup>2</sup> Formerly known as the Administrative Hearings Division.

purposes of this appeal, that the Claimant is alleging the CO is not supported by the substantial evidence in the record or in accordance with the law.

A review of the CO reveals that the ALJ correctly noted that D.C. Code § 32-1521 (1) provides a rebuttable presumption that the claim for workers' compensation benefits comes within the provisions of the Act. The ALJ also noted,

The statutory presumption is invoked upon a showing by the Claimant of an injury and a workplace incident, condition or event that has the potential of causing the injury. *Parodi*, supra [584 A.2d 564]; see also, *Ferreira v. District of Columbia Department of Employment Services*, 531 A.2d 651 (D.C. 1987). This presumption extends not only to the occurrence of an accidental work place injury, but also extends to the medical causal relationship between an alleged disability and the accidental injury. *Whittaker v. District of Columbia Department of Employment Services*, 531 A.2d 844 (D.C. 1995).

Claimant's testimony is enough to trigger the presumption in the instant matter.

Compensation Order at 4.

The Employer does not contest this finding and we find no error in this conclusion. The ALJ then goes on to state that,

Employer's evidence is enough to rebut the presumption that claimant's alleged work injury comes within the Act. Said evidence is also enough to rebut the presumption that Claimant's current medical condition is related to the work incident. For this reason we must now weigh the evidence of record to determine if a causal relationship between Claimant's current condition and work injury exists.

Compensation Order at 5.

While not explicitly stated, we conclude the ALJ did find that an accidental injury occurred on February 10, 2010. We conclude this not only based upon the uncontroverted testimony and evidence of record, as recited in the CO, but also based upon the fact that the ALJ analyzed the evidence to determine whether or not the Claimant proved by a preponderance of the evidence, that his current medical condition is causally related to the work injury of February 10, 2010. By analyzing this issue, it is clear that the ALJ found an accident to have occurred, a finding we affirm.

Turning to the issue of whether substantial evidence supports the finding that the Claimant's current medical condition is not causally related to the work accident of February 10, 2010, the ALJ, after finding that the Employer had successfully rebutted the presumption that the Claimant's medical condition was related to the work injury, weighed the evidence without reference thereto. The ALJ found,

In this instance, Claimant has offered no medical evidence that deems his current medical condition to be causally related to his February 10, 2010 work incident. While his physicians mention the incident, their records fail to show that Claimant required any medical treatment as a result of the February 10, 2010 incident.

As Claimant's physicians fail to report any other information regarding the work incident other than stating that said incident occurred, I give greater weight to IME physician, Dr. Collins' report that states Claimant's February 10, 2010 work injury has long resolved.

I find, no causal connection between Claimant's current medical condition and the February 10, 2010 incident exists.

Compensation Order 5 – 6.

The ALJ stated why she would not extend the treating physician preference to the Claimant's physicians in line with case precedent.<sup>3</sup> Instead, after giving reasons why the ALJ did not find the treating physician's opinion persuasive, the opinion of the IME physician was accorded greater weight and the ALJ found the Claimant had failed to prove that his current condition was medically causally related to the work injury. We find no error in this.<sup>4</sup>

As stated above, CRB is constrained to uphold a Compensation Order that is supported by substantial evidence, even if there also is contained within the record under review substantial evidence to support a contrary conclusion and even if the CRB might have reached a contrary conclusion. *Marriott, supra*. While the Claimant may disagree with the ultimate conclusion and evidence may support his claim for relief, we cannot re weigh the evidence in the Claimant's favor.

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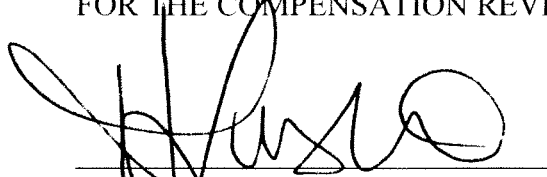
<sup>3</sup> In the District of Columbia, there is a preference for the testimony of treating physicians over doctors retained for litigation purposes. See *Short v. District of Columbia Department of Employment Services*, 723 A.2d 845 (D.C. 1998); see also, *Stewart v. District of Columbia Department of Employment Services*, 606 A.2d 1350 (D.C. 1992). However, even with this preference, the trier of facts may choose to credit the testimony of a non-treating physician over a treating physician. *Short, supra*. And where there are persuasive reasons to do so, a treating physician's opinions may be rejected. *Stewart v. District of Columbia Department of Employment Services*, 606 A.2d 1350 (D.C. 1992). In so doing, the fact finder must give reasons for rejecting the opinion of the treating physician. *Canlas v. District of Columbia Department of Employment Services*, 723 A.2d 1210 (D.C. 1999).

<sup>4</sup> We note that on page 6 the ALJ misstated the standard of proof when she determined the claimant failed to prove by "substantial evidence" the nature and extent of his disability and that his inability to work is due to the February 10, 2010, work incident. It is well settled that the Claimant must prove both by a preponderance of the evidence. See *Golding-Alleyne v. DOES*, 980 A.2d 1209, *CRB 07-168*, (D.C. 2009). However, we find this error harmless as the ALJ denied the claim in the preceding paragraphs based on the Claimant's failure to prove the disability was medically causally related to the work injury.

**CONCLUSION AND ORDER**

The findings of fact and conclusions of law in the July 28, 2011 Compensation Order is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

A handwritten signature in black ink, appearing to read 'H. Leslie', is written over a horizontal line.

HEATHER C. LESLIE  
Administrative Appeals Judge

March 16, 2012

DATE

## APPEAL RIGHTS

Any party aggrieved by this Decision and Order may petition the District of Columbia Court of Appeals for its review. D.C. Court of Appeals Rule 15 (a) requires that the Petition for Review be filed within thirty (30) calendar days of the mailing date shown on the Certificate of Service.

The Court of Appeals is located at 430 E Street, N.W. Washington, D.C. 20001. The Court is open from 8:30 a.m. to 5:00 p.m., Monday through Friday, except legal holidays.

In addition to filing a Petition for Review with the Court of Appeals, you must send a copy of the Petition and any motions, briefs, or other documents that you submit to the court, to the opposing party in this case, and also to:

Todd S. Kim, Solicitor General  
Office of the Solicitor General  
441 4<sup>th</sup> Street NW, Suite 600 S  
Washington, DC 20001

and

Chief Clerk  
Compensation Review Board  
Labor Standards Bureau  
Department of Employment Services  
64 New York Avenue, N.E., 3<sup>rd</sup> Floor  
Washington, D.C. 20002

**Stewart, Jr. V. Systems Application & Technologies, Inc.**  
**CRB No. 11-088**

**CERTIFICATE OF SERVICE**

I certify that on March 16, 2012 the attached Decision and Order was deposited in the U.S. mail, postage pre-paid addressed as indicated below, or hand delivered, as noted:

Charles W. Stewart, Jr.  
3307 Cullers Court  
Woodbridge VA 22192

Certified Mail; Return Receipt Requested  
No. 7005 3110 0000 9465 6481

Charles W. Stewart, Jr.  
3307 Cullers Court  
Woodbridge VA 22192

First Class Mail

Chad A. Michael, Esq.  
Law Offices of Pamela Randi Johnson  
307 International Circle, Suite 520  
Hunt Valley MD 21030

Certified Mail; Return Receipt Requested  
No. 7005 3110 0000 9465 6474

Office of Hearings and Adjudication  
D.C Department of Employment Services  
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