IN THE MATTER OF	)	
	)	
CYNTHIA BABETTE SKAHILL,	)	
	)	
Claimant,	)	
	)	AHD No.05-311A
v.	)	OWC No. 534769
	)	
UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL	)	
	)	
and	)	
	)	
ST. PAUL TRAVELERS INSURANCE,	)	
	)	
Employer/Carrier.	)	

Appearances

DANNY R. SEIDMAN, ESQUIRE
For Claimant

AMY L. EPSTEIN, ESQUIRE
For the Employer/Carrier

Before:

TERRI THOMPSON MALLETT
Administrative Law Judge

COMPENSATION ORDER

STATEMENT OF THE CASE

This proceeding arises out of a claim for workers' compensation benefits filed pursuant to the provisions of the District of Columbia Workers' Compensation Act of 1979, D.C. Code Ann. §§32-1501 *et seq*. (2001) (hereinafter, the Act).

After timely notice, a full evidentiary hearing was held on April 19, 2006, before Henry W. McCoy, Administrative Law Judge. Cynthia B. Skahill (hereinafter, Claimant) appeared in person and by counsel. United Food and Commercial Workers International (hereinafter, Employer) appeared by counsel. Claimant testified on her own behalf. Employer did not present any witnesses. Claimant Exhibit (hereinafter, CE) Nos. 1-9 and Employer Exhibit (hereinafter, EE) Nos. 1-20, described in the Hearing Transcript (hereinafter, HT), were admitted into

evidence. The record closed on May 10, 2006, upon receipt of the hearing transcript.

BACKGROUND AND PROCEDURAL HISTORY

Claimant sustained an accidental injury on June 4, 1998. Employer filed an Application for Formal Hearing on or about May 6, 2005. On or about July 26, 2005, the parties requested that the matter be dismissed and an Order followed. Employer made voluntary payments from November 10, 1998 through January 25, 1999.

In February 2006, Claimant filed an Application for Formal Hearing. Thereafter, a formal hearing was scheduled and convened.

On December 10, 2007 an Order to Show Cause was issued to the parties through which the parties were ordered to show cause why this case should not be reassigned for a decision based upon the record evidence as previously submitted. The Order further stated that failure to timely respond "shall be deemed consent and will result n the reassignment of this case." Neither party responded to the Order to Show Cause and the matter was reassigned for disposition.

CLAIM FOR RELIEF

Claimant seeks temporary total disability benefits from December 10, 2004 to October 11, 2005, causally related medical expenses and interest on accrued benefits.

ISSUE

1. Whether Claimant's condition is medically causally related to her work-incident;
2. Whether Claimant's notice of injury was timely; and,
3. The nature and extent of Claimant's disability.

FINDINGS OF FACT

The parties have stipulated, and I accordingly find, there is an employer-employee relationship; jurisdiction is vested in the District of Columbia; and, Claimant sustained an accidental injury on June 4, 1998 that arose out of and in the course of his employment. Claimant filed a timely claim.

Claimant has a significant history of automobile accident and has a history of disc disease. Claimant underwent a laminectomy in 1991 and sustained multiple back injuries prior to the 1998 work-incident. Claimant was able to perform the normal duties and responsibilities of her employment prior to the 1998 work-incident.

On November 9, 1998, Claimant had a second work-incident when she leaned down to pull out a drawer and felt a pop in her back. As a result of the November 9, 1998 incident, Claimant fell to the floor in a fetal position and required medical assistance. Employer had actual notice of this work-incident and the resulting injury to Claimant's back.

DISCUSSION

Following a thorough review of the parties' arguments, I have determined, to the extent an argument is consistent with the findings and conclusions herein, the argument is accepted; to the extent an argument is

inconsistent therewith, it is rejected.[1]

The Act expressly establishes a presumption of compensability:

> **In any proceeding for the enforcement of a claim for compensation under this chapter it shall be presumed, in the absence of evidence to the contrary:**
>
> **(1) That the claim comes within the provisions of this chapter;**
>
> **(2) That sufficient notice of such claim has been given;**
>
> **(3) That the injury was not occasioned solely by the intoxication of the employee and**
>
> **(4) That the injury was not occasioned by the willful intention of the injured employee to injure or kill himself or another.**

D.C. Code § 32-1521 (1)-(4). The purpose of this section is "to 'advance the humanitarian goal of the statute and to provide compensation to employees for work-related disabilities reasonably expeditiously, even in arguable cases.'" *Mexicano v. District of Columbia Department of Employment Services*, 806 A.2d 198, 204 (D.C. 2002) (quoting *Brown v. District of Columbia Department of Employment Services*, 700 A.2d 787, 791 (D.C. 1997)). Thus, "doubts about law or facts are generally to be resolved in the employee's favor." *Safeway Stores, Inc. v. District of Columbia Department of Employment Services*, 832 A.2d 1267, 1271 (2003) (citations omitted). *See Bath Iron Works Corp. v. United States Department of Labor*, 336 F. 3d 51, 57 (1st Cir 2003) (the statutory presumption of § 32-1521(2) is applicable to the requirement of timely notice); *Howrey & Simon v. District of Columbia Department of Employment Services*, 531 A.2d 254, 256 n. 2 (D.C. 1987); *Stevenson v. Linens of the Week*, 223 U.S. App. D. C. 1, 5-6, 688 F.2d 93, 97- 98 (1982).

On the issue of notice, the Act requires a claimant provide written notice of an injury within thirty days of the date on which he is aware of the relationship between the injury and his employment. D.C. Code §32-1513 (a). Failure to provide such notice does not, however, bar a claim for benefits where the employer, his agent or the carrier has actual notice of the injury and its relationship to the employment; employer has not been prejudiced by the failure to provide written notice; or, such failure is excused by the Mayor on the ground that for some satisfactory reason such notice could not be given. D.C. Official Code §32-1513(d). *See Jiminez v. District of Columbia Department of Employment Services*, 701 A.2d 837 (D.C. 1997).

In the matter *sub judice*, Claimant presents her live testimony and medical reports of her treating physician to support her claim. In the June 16, 2004 medical report of Dr. Ian Gordon, Dr. Gordon opines the three

[1]While each documentary exhibit received in evidence is not specifically referenced in the discussion, all evidence of record was reviewed as part of this deliberation.

surgeries performed on Claimant since 1998 were all work related. CE 1 at 27, 52 and 53. This evidence, along with Claimant's testimony, is sufficient to invoke the presumption that her condition is causally related to the 1998 work-incident. The burden now shifts to Employer.

To rebut Claimant's assertion of causal relationship, Employer presents medical records related to Claimant's prior back injuries, certain medical reports from Claimant's treating physicians and medical reports of Drs. Steven Hughes and Willie E. Thompson.

The medical reports of Dr. Stephen Hughes include statements that Claimant's back condition is not causally related to the 1998 work-incident. EE 14 and 19. However, a mere statement that Claimant's condition is not causally related is not sufficient to carry Employer's burden. "To rebut the presumption of work-relatedness, the employer must show by substantial evidence that the [injury and/or] the disability did not arise out of and in the course of the employment." *Davis-Dodson*, 697 A.2d at 1217; Baker, 611 A.2d at 550. See also *Parodi v. District of Columbia Department of Employment Services,* 560 A.2d 524 (D.C. 1989); *Ferriera v. District of Columbia Department of Employment Services*, 667 A.2d 310, 312 (D.C. 1995). The statements of Dr. Hughes are not supported by a medical rationale and Dr. Hughes does not present a scientific basis for this conclusion.

The report of Dr. Willie Thompson does not present an opinion of causal relationship and the reports of Claimant's treating physicians are either silent or are consistent with Claimant's evidence. EE 12, 13, 15, 16, and 18. Thus, Employers evidence is not sufficient to rebut that which is put forth by Claimant.

Even if Employer's evidence was sufficient to rebut the presumed causal relationship between Claimant's condition and the 1998 work-incident, the medical opinions of Claimant's treating physicians would be given preference. *Velasquez v. District of Columbia Department of Employment Services,* 723 A.2d 401 (D.C. 1999), citing *Canlas v. District of Columbia Department of Employment Services*, 723 A.2d 1210(D.C. 1999); *Stewart v. District of Columbia Department of Employment Services*, 606 A.2d 1350, 1353 (D.C. 1992). Thus, Claimant's evidence is sufficient to support her assertion that her condition is related to the 1998 work-incident.

The query now turns to the nature and extent of Claimant's disability from December 10, 2004 to October 11, 2005. In interpreting the Act, it has been found, and is presently widely acknowledged, that there is no presumption of the nature and extent of a claimant's disability. A claimant has the affirmative duty to present substantial credible evidence of the level of benefits sought. See, *Otis Dunston v. District of Columbia Department of Employment Services*, 509 A.2d 109 (D.C. 1986).

The Act defines "disability" as "physical . . . incapacity because of injury which results in the loss of wages." D.C. Code § 32-1501(8). This requires transformation of the general concept of "disability" from one focused on issues of medical expertise and physical capacity to one centered on economics and wage earning. "Because disability [in a workers' compensation context] is an economic concept, its existence depends on

the realities of the marketplace. A claimant suffers from total disability if his injury prevents him from engaging in the only type of gainful employment for which he is qualified". *The Washington Post v. District of Columbia Department of Employment Services*, (hereinafter, *Mukhtar*) 675 A.2d 37, 41 (D.C.App.1996) citing, *American Mutual Insurance Company v. Jones*, 426 F.2d 1263, 1266 (1970).[2] *Mukhtar* further states,

> [t]he degree of disability in any case cannot be measured by physical condition alone, but there must be taken into consideration the injured man's age, his industrial history and the availability of the type of work which he can do. Even a relatively minor injury must lead to a finding of total disability if it prevents the employee from engaging in the only type of gainful employment for which he is qualified. . . Conversely, a continuing injury that does not result in any loss of wage-earning capacity cannot be the foundation for a finding of disability.

Id. at 1265-66 (citations, footnotes and internal quotation marks omitted).

In support of her request for temporary total disability benefits, Claimant presents undisputed evidence that she was unable to perform the normal duties of her employment during the December 2004 to October 2005 period, including her uncontradicted testimony. CE 1. Claimant's inability to perform such duties is causally related to the 1998 work-incident and resulting injury. CE 1.

On the issue of notice, the Act requires a claimant provide written notice of an injury within thirty days of the date on which he is aware of the relationship between the injury and his employment. D.C. Code §32-1513 (a). Failure to provide such notice does not, however, bar a claim for benefits where the employer, his agent or the carrier has actual notice of the injury and its relationship to the employment; employer has not been prejudiced by the failure to provide written notice; or, such failure is excused by the Mayor on the ground that for some satisfactory reason such notice could not be given. D.C. Official Code §32-1513(d). *See Jiminez v. District of Columbia Department of Employment Services*, 701 A.2d 837 (D.C. 1997).

In the case at bar, the parties stipulate that Claimant sustained a work-related injury on June 4, 1998 and that a timely claim was filed. The parties initially stipulated that notice under D.C. Code §32-1513 was timely. Nonetheless, at the hearing, Employer alleged insufficient notice of the injury. This issue is barred since the procedures required of procedural due process have not been met. *Transportation Leasing Co. v. Department of Employment*

[2]The claim for benefits in *American Mutual* was brought under the Longshoremen and Harbor Workers Act, 33 U.S.C. § 901 et seq. (1964), the predecessor Act to the instant statute, however, the definition of disability as contained therein is not materially different from the Act, and precedent illuminating such a provision has been found to be persuasive. *See Robert L. Hughes v. District of Columbia Department of Employment Services*, 498 A.2d 567, 571 (D.C.App. 1985).

Services, 690 A.2d 487 (D.C. 1978) (An individual is entitled to fair and adequate notice of administrative proceedings that will affect his rights, in order that he may have an opportunity to defend his position.).

Even if this issue should be resolved on the merits, the findings of fact herein are insufficient to conclude that Employer was prejudiced by whatever flaw there is in Claimant's notice of her injury. D.C. Code §32-1513(d)(1). Claimant presented uncontroverted testimony that the occurrence on June 4, 1998 was common knowledge through the workplace. Employer, through its counsel, asserts it did not have notice of Claimant's June 4, 1998 work-injury until the November 9, 1998 work-incident. It was only after this injury that Claimant requested wage loss benefits.

Further, Employer had immediate actual notice of the relationship between Claimant's back problems and the November 9, 1998 work incident. Claimant's testimony, which was not contradicted, was that she was witnessed to have keeled over after feeling a "pop" in her back and was carried to the hospital from Employer's premises by ambulance. HT 104-105.

CONCLUSION OF LAW

I hereby find and conclude Employer had sufficient notice under D.C. Code §32-1513; Claimant's condition is causally related to the June 4, 1998 work-incident; and, Claimant was temporarily and totally disabled from December 10, 2004 to October 11, 2005. Claimant is entitle to causally related medical expenses.

ORDER

It is hereby **ORDERED** Claimant's claim for relief be, and hereby is, **GRANTED**.

TERRI THOMPSON MALLETT
ADMINISTRATIVE LAW JUDGE

December 28, 2007
Date