

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



F. THOMAS LUPARELLO
ACTING DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 14-046

**ANGELA M. LONDON,
Claimant - Petitioner,**

v.

**HOWARD UNIVERSITY HOSPITAL,
and SEDGWICK CMS,
Employer/Third Party Administrator-Respondents.**

Appeal from a March 19, 2014 Compensation Order By
Administrative Law Judge Amelia G. Govan
AHD No.14-026, OWC No. 707212

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2014 JUN 25 PM 1 42

Michael J. Kitzman for the Petitioner
William H. Schladt for the Respondent

Before HEATHER C. LESLIE, HENRY W. MCCOY, and MELISSA LIN JONES, *Administrative Appeals Judges.*

HEATHER C. LESLIE 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 Claimant - Petitioner (Claimant) of the March 19, 2014 Compensation Order (CO) issued by an Administrative Law Judge (ALJ) in the Hearings and Adjudication Division of the District of Columbia Department of Employment Services (DOES). In that CO, the ALJ denied Claimant disability benefits but granted Claimant's request for payment of medically casually related expense for her upper extremity symptoms. We AFFIRM.

BACKGROUND AND FACTS OF RECORD

Claimant was employed by Employer as a data entry clerk. Claimant's duties included inputting data into a computer by scanning documents. Claimant had to handle large files when accomplishing this task.

Around the beginning of November 2012, Claimant began to experience bilateral hand and wrist pain when performing her duties at work. On November 3, 2012, Claimant sought treatment with Dr. Rana Siddabattuni. Dr. Siddabattuni opined Claimant's bilateral wrist and hand pain was exacerbated by her work duties. Conservative care was recommended, including physical therapy, medications and wrist splints.

Claimant continued to work and wore wrist splints while at work. Claimant also continued to seek medical treatment. Claimant provided written notice to her Employer of her work-related injury on April 24, 2013. Claimant was terminated on June 13, 2013, due to reasons unrelated to her work injury.

A full evidentiary hearing was held on February 19, 2014. Claimant sought an award of temporary total disability benefits from June 13, 2013 to the present and continuing along with interest, and payment of causally related medical expenses. The issues to be adjudicated were whether Claimant suffered a work injury on April 24, 2013, that arose out of an in the course of employment, whether Claimant's current condition is medically causally related to her employment, whether Claimant timely notified the Employer of a work injury, and the nature and extent of Claimants disability, if any. A CO was issued on March 19, 2014. The CO found Claimant did suffer a work-related injury which came under the District of Columbia Workers' Compensation Act and that Claimant's bilateral wrist and hand injuries were medically related to the work injury.¹ However, the CO also concluded that Claimant failed to timely notify her Employer of the work injury. The CO granted Claimant's request for causally related medical expenses, but denied wage loss benefits.

Claimant timely appealed. Claimant argues that the CO erred in finding Claimant did not provide timely notice and was not temporary and totally disabled. The Employer opposes the appeal, arguing the CO is supported by the substantial evidence in the record and is in accordance with the law.

THE STANDARD OF REVIEW

The scope of review by the Compensation Review Board ("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. Section 32-1521.01(d)(2)(A) of the District of Columbia Workers' Compensation Act, as amended, D.C. Code §32-1501 to 32-1545, ("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 International v. DOES*, 834 A.2d 882, 885 (D.C. 2003).

¹ These findings were not appealed by Employer.

DISCUSSION AND ANALYSIS

Claimant first argues the CO erred in finding Claimant did not provide timely notice under the Act. Claimant argues that her “use of braces, complaints of hand pain, time off for medical treatment, and ultimate transition to occupational health all gave the employer sufficient notice of the injury.” Claimant’s argument at 4. Employer argues that as Claimant never advised Employer as to the cause of the pain, even though she knew her treating physician believed the injury was caused by work, the CO’s finding that notice was untimely is supported by the substantial evidence in the record and is in accordance with the law.

It is well settled that an injured employee is required to provide written notice to an employer of a work injury either "within 30 days after the date of such injury" or "within 30 days after the employee . . . is aware or in the exercise of reasonable diligence should have been aware or a relationship between the injury . . . and the employment." D.C. Code § 32-1513(a). An employee's failure to provide such notice will nevertheless not bar a claim where either the employer has actual knowledge of the injury and has not been prejudiced by the claimant's failure to provide written notice, or where the claimant's failure is excused upon a showing of a satisfactory reason for not submitting the required notice. *See* D.C. Code §§ 32-1513(d)(1) and (d)(2).

Where, as in the instant case, the injury results from a repetitive or cumulative trauma, the date of injury is fixed as of the date on which the employee first seeks medical treatment for her symptoms, or the date the employee stops working due to her symptoms, whichever first occurs. *Vanhoose v. Respicare*, CRB No. 07-022, AHD No. 06-342 (July 23, 2007). However, the question of when the time begins to run for an injured employee to give notice to their employer, and whether that period of time has elapsed, requires more than an express finding establishing the date of injury in a cumulative trauma case. The time has been held to begin to run when the injured employee was aware or by the exercise of reasonable diligence should have been aware of a relationship between his/her injury and his/her employment. *Vanhoose, supra* (citing *King v. DOES*, 742 A.2d 460, 471, n.11 (D.C. 1999), and *Jimenez v. DOES*, 701 A.2d 837 (D.C. 1997)).

Turning to the CO before us, the ALJ determined that the date Claimant first sought treatment for her bilateral upper extremity symptoms was on November 3, 2012, the date Claimant first saw Dr. Siddabattuni. On that date, Dr. Siddabattuni opined that Claimant’s hand and wrist pain were exacerbated by her work duties. Specifically, Dr. Siddabattuni stated that the Claimant presented with complaints of,

Chronic pain in her hands and wrists which has become exacerbated by her new temp job as an administrative assistant. She has found that reaching in and out of file cabinets and organizing folders has caused strain in both wrists.

Claimant’s exhibit 3 at 27.

Thus, on November 3, 2012 Claimant was aware not only of her bilateral hand and wrist injuries, but the injuries work-relatedness. It was incumbent upon Claimant to then report her work injury within 30 days of November 3, 2012. This she did not do.

Claimant argues that because she wore braces and told her employer that she needed to use them at work for her hand pain, Claimant provided sufficient notice. Claimant’s argument at 4. Claimant relies upon *Keith v. Unity Construction*, Dir Dkt. 89-58, H&AS No. 89-202, OWC No. 500412 (July 12, 1990) in support of her argument that “if the Employer alleges that the

Claimant should have perceived the work-relatedness of her condition, that same perception should be imputed on Employer when they are provided with all of the information in Claimant's control." Claimant's argument at 3. We reject this argument. Being aware of a medical condition does not impute notice upon an Employer. As the testimony shows, the Claimant did not indicate to the Employer her belief that her condition arose out of her employment. Furthermore, the Claimant's reliance on *Keith v. Unity Construction Co. of D.C.* is misplaced. In *Keith*, timely notice was found to have been given, in part because at the time of the injury, an Employer representative witnessed the event, a fall from a tree. *Keith* did not establish a test to determine if actual notice had been imputed upon the Employer as Claimant argues. See also *Morrow v. WMATA*, CRB No. 12-139, AHD No. 12-129 (November 13, 2012); *Goggans v. Sibley Memorial Hospital*, CRB No. 13-166, AHD No. 12-556 (April 22, 2014).

In essence, Claimant is arguing that the Employer "should have known" of the work-relatedness and this is sufficient to establish notice. The CRB and the District of Columbia Court of Appeals has previously rejected this argument. In *Howard University Hospital v. DOES*, 960 A.2d 603, 608-609 (D.C. 2008), (*Tagoe*), the Court reasoned:

The CRB reasoned that because the Workers' Compensation Act defines a compensable "injury" as an "accidental injury or death arising out of *and* in the course of employment," the notice exception in D.C. Code § 32-1513 (d)(1) requires an employer's knowledge to encompass both components of the definition. In addition, relying on an earlier decision by the Director, the CRB rejected a "should have known" standard and concluded that subsection (d)(1) requires an employer to have "actual knowledge." Thus, the CRB concluded, "[i]n order for [D.C. Code] § 32-1513 (d)(1) to be satisfied, an employer must know that the injury arose out of the employment and that the injury occurred in the course of the employment, and an employer must have actual knowledge of the injury and its relationship to the employment." While the CRB's interpretation of subsection (d)(1) may not be compelled by the statutory language, it comports with the general rule throughout the United States and is not foreclosed by any prior decisions of this court. It is a reasonable construction; since subsection (d)(1) allows the employer's knowledge to substitute for timely written notification of the cause of the injury, it is logical that the employer must have actual knowledge of the cause for the subsection to be satisfied. Deferring to the CRB, we accept its answers to our questions as binding. Footnotes omitted.

Nowhere in argument does Claimant state that she reported to Employer that her bilateral wrist pain and symptoms which necessitated the use of wrist splints, was caused by her work duties. Reviewing the hearing transcript, Claimant testified she told her supervisor in April 2013 that she was "having pain in my wrists and that I needed to see Employee Health" and that prior to her termination in June of 2012 she had notified her supervisor that she thought her hand problems were related to her job. Hearing transcript at 19 and 22. However, Claimant failed to prove that she reported her work injury to her Employer within 30 days of November 3, 2012. Claimant's notice to Employer was untimely. We affirm the CO's conclusion.

Claimant next argues that she is entitled to temporary total disability benefits under *Logan v. DOES*, 805 A.2d 237 (D.C. 2002) and that the CO erred in denying disability benefits. We disagree but on different grounds. While the ALJ did analyze whether Claimant was entitled to

disability benefits, such analysis was unnecessary as Claimant was found not to have given proper notice under the Act. In such situations, while Claimant is still entitled to causally related medical benefits, Claimant is no longer entitled to disability benefits. As the Court stated in *Tagoe*,

The purposes of this notification requirement are to enable the employer to investigate the facts surrounding the injury and to provide prompt medical attention. While the failure to give proper notice does not preclude a claim for causally related medical expenses (which may include the cost of vocational rehabilitation services), it ordinarily does bar a claim for disability income benefits. Footnotes omitted.

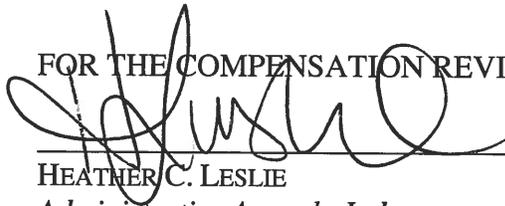
Tagoe, supra at 607.

Claimant is not entitled to disability benefits as notice was untimely. We affirm the denial of disability benefits.

CONCLUSION AND ORDER

The March 19, 2014, Compensation Order is supported by the substantial evidence in the record and in accordance with the law and is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:



HEATHER C. LESLIE

Administrative Appeals Judge

June 25, 2014

DATE