COMPENSATION REVIEW BOARD

CRB No. 12-055

LOUISE W. BLOUNT,
Claimant–Petitioner,

v.

CHILDREN'S NATIONAL MEDICAL CENTER AND AVIZENT RISK SERVICES,
Employer/Carrier-Respondent

Appeal from a Compensation Order by
The Honorable Leslie A. Meek
AHD No. 12-012, OWC No. 682774

Krista N. DeSmyter, Esquire, for the Claimant/Petitioner
Todd S. Sapiro, Esquire, for the Employer-Carrier/Respondent

Before: HENRY W. MCCOY, HEATHER C. LESLIE,[1] AND JEFFREY P. RUSSELL,[2] *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 Leslie has been appointed by the Director of the DOES as an interim CRB member pursuant to DOES Administrative Policy Issuance No. 11-04 (October 5, 2011).

[2] Judge Russell has been appointed by the Director of the DOES as an interim CRB member pursuant to DOES Administrative Policy Issuance No. 11-03 (October 5, 2011).

OVERVIEW AND FACTS OF RECORD

This appeal follows the issuance on March 6, 2012 of a Compensation Order (CO) from the Hearings and Adjudication Section, Office of Hearings and Adjudication in the District of Columbia Department of Employment Services (DOES). In that CO, the Administrative Law Judge (ALJ) denied Claimant's request for temporary total disability wage loss benefits for the period April 28, 2011 to October 16, 2011.

On April 28, 2011, Claimant fainted and fell while performing her duties working for Employer as a patient care technician. Claimant received initial medical treatment in Employer's emergency room where x-rays revealed she had fractured her right tibia. Claimant received follow-up treatment from orthopedic surgeon Dr. James Cobey. Dr. Cobey kept Claimant off work from April 28, 2011 to October 16, 2011. Claimant filed a claim for wage loss benefits for the period she was off work.

At the formal hearing, the ALJ determined that Claimant's medical condition during the period she was off work was not medically causally related her employment and therefore she was not entitled wage loss benefits or medical expenses.[3] Claimant timely appealed with Employer filing in opposition.

On appeal, Claimant argues that the ALJ erred as a matter of law that her injury did not arise out of and in the course of her employment activities. Employer argues to the contrary that her injury did not arise out of her employment because Claimant's fall was caused by a personal condition.

STANDARD OF REVIEW

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 conclusions drawn from those facts are in accordance with applicable law.[4] *See* D.C. Workers' Compensation Act of 1979, as amended, D.C. Code §§ 32-1501 to 32-1545 (2005), 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.

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[3] *Blount v. Children's National Medical Center*, AHD No. 12-012, OWC No. 682774 (March 6, 2012).

[4] "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. DOES*, 834 A.2d 882 (D.C. 2003).

ANALYSIS

Pursuant to § 32-1521(1) of the Act, a claimant, in filing a claim for benefits, is entitled to a presumption of compensability ("the presumption").[5] In order to benefit from the presumption, the claimant initially must show some evidence of a disability and the existence of a work-related event, activity, or requirement which has the potential to cause or to contribute to the disability.[6] "[O]nce an employee offers evidence demonstrating that an injury was potentially caused or aggravated by work-related activity, a presumption arises that the injury is work-related and therefore compensable under the Act."[7]

It is the essence of Claimant's argument for reversal that the circumstances resulting in her being injured at work were sufficient to invoke the presumption. While Employer concedes that Claimant's injury occurred in the course of her employment, it argues that Claimant's injury is not compensable as it did not arise out of her employment.

The ALJ found that Claimant suffered an "idiopathic fall" at work on April 28, 2011 and as a result "fractured her right distal tibia." The ALJ cited the D.C. Court of Appeals definition of idiopathic falls[8] and addressed Claimant's argument of the applicability of positional risk to her and resolved the matter by reasoning

> Liability under the positional risk theory for idiopathic falls is limited to those cases in which the employment placed the employee in a position increasing the dangerous effects of the idiopathic fall…In level fall cases involving no increased danger attributable to the employment, liability may be imposed on the employee (sic) only if the work was a substantial factor in causing the injury.

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[5] Section 32-1521(1) of the Act states: "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."

[6] *Ferreira v. DOES*, 531 A.2d 651 (D.C. 1987).

[7] *Washington Hospital Center v. DOES*, 744 A.2d 992, 996 (D.C. 2000).

[8] In the matter of *Georgetown University v. DOES*, 971 A.2d 909, 913, fn. 1 (D.C. 2009), the Court stated

> Because this court has not explored the so-called "idiopathic fall doctrine," or even employed the phrase, we must look elsewhere for a definition. Idiopathic is defined as "peculiar to the individual" or "arising spontaneously or from an obscure or unknown cause." *Webster's Third New International Dictionary*, 1123 (2002). Courts distinguish between idiopathic injuries and injuries with unknown causes. An idiopathic fall has been characterized as "one resulting from some disease or infirmity that is strictly personal to the employee and unrelated to his employment." *Ledbetter v. Michigan Carton Co.*, 74 Mich. App. 330, 253 N.W.2d 753, 754 (Mich. Ct. App. 1977); see *Miyamoto v. Wahiawa Gen. Hosp.*, 101 Haw.293, 67 P.3d 792, 799 (Haw. Ct. App. 2003) (distinguishing between idiopathic and unexplained falls); 1 *Larson's Workers' Compensation Law*, § 9.01 [1] (rev. ed. 2008). Larson suggests that "a majority of the courts agree" that a fall of idiopathic origin is compensable where the "employment…contribute[s] something to the hazard of the fall." *Id.* § 9.01 [4][d]. Larson, however, also states that a "distinct majority of jurisdictions…have…denied compensation" in cases of falls from level ground due to idiopathic physical conditions of the employee. *Id.* § 9.01 [4][a].

> In this case, Claimant fell not because of the presence of some work hazard or a work-related intervening factor. Claimant fell because of her idiopathic condition, a risk personal to her. In this circumstance, Claimant's resulting injuries are not compensable even when considering the positional risk doctrine as Claimant's employment did not place her in a position that increased the effects of the idiopathic fall.
>
> As Claimant has failed to show that her work place condition, event or a work place incident caused or had the potential to cause her injury, Claimant has failed to invoke the presumption. As Claimant's evidence shows her fall was completely idiopathic, with no work-related increase to the dangerous effects of the idiopathic fall, Claimant's injuries are not compensable.

It is Claimant's argument that her workplace conditions and the obligations of her employment placed her in a position to be injured and as such, the positional risk test applied so as to invoke the presumption. Claimant points to her duties requiring her to be on her feet, having to complete her rounds within a specific time-frame, and walking on a hard, tile floor as the essential elements that put her at risk. Claimant asserts that but for these risk factors, she would not have suffered the type and degree of injury that she did. We find no merit in this argument.

The ALJ found that Claimant fell due to an "idiopathic condition", that is due to a condition personal to her and not as a result of some workplace hazard or "work-related intervening factor." The medical report from Children's Hospital emergency room on April 28, 2011 shows that Claimant "became diaphoretic and passed out hitting the floor."[9] Claimant was admitted the same day to Washington Hospital Center (WHC) where the history taken stated she had suffered "a fall during a syncopal episode".[10] In other words, Claimant fainted. In addition, Claimant's treating physician at WHC, Dr. Cobey, stated she fell from a seizure, lost consciousness, and fractured her right distal tibia.[11]

The medical records submitted by Claimant make no reference to any external environmental or workplace conditions as a precipitating cause for the onset of sweating and dizziness that resulted in Claimant fainting, falling, and fracturing her tibia. This supports Employer's independent medical examination by Dr. Gary London who opined that Claimant suffered a spontaneous fainting episode of undetermined origin. Accordingly, there is substantial evidence to support the ALJ's determination that Claimant fell because of a condition personal to her and that what amount to Claimant's normal work conditions did not increase her risk for fainting thus making positional risk inapplicable.

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[9] CE 4, p. 21. Diaphoretic is defined as "pertaining to, characterized by, or promoting sweating." *Dorland's Illustrated Medical Dictionary*, 29th Ed., p. 492 (2000) (*Dorland's*).

[10] CE 3, p. 15. Syncopal or syncope is defined as "a temporary suspension of consciousness due to generalized cerebral ischemia; a faint or swoon." *Dorland's*, p. 1747.

[11] CE 1, p. 1.

CONCLUSION AND ORDER

The findings of fact and the conclusions of law in the March 6, 2012 Compensation Order on Remand are supported by substantial evidence and are in accordance with the applicable law. The Compensation Order is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

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HENRY W. MCCOY
Administrative Appeals Judge

July 9, 2012
DATE