GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services

VINCENT C. GRAY
MAYOR

LISA M. MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 12-061

STEPHANIE BROWN,
Claimant–Respondent,

v.

HOWARD UNIVERSITY HOSPITAL and SEDGWICK CMS,
Employer/Insurer–Petitioner.

Appeal from a Compensation Order by
The Honorable Nata K. Brown
AHD No. 11-060, OWC No. 675904

William H. Schladt, Esquire, for Petitioner
Rebekah R. Miller, Esquire, for Respondent

Before MELISSA LIN JONES, HENRY W. MCCOY, and JEFFREY P. RUSSELL,[1] *Administrative Appeals Judges*.

MELISSA LIN JONES, *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. Code §§32-1521.01 and 32-1522 (2004), 7 DCMR §230, and the Department of Employment Services Director's Directive, Administrative Policy Issuance 05-01 (February 5, 2005).

FACTS OF RECORD AND PROCEDURAL HISTORY

On November 23, 2010, Ms. Stephanie Brown slipped as she was walking down the hall while working at Howard University Hospital ("HUH"). In the process of breaking her fall, Ms. Brown twisted her back.

[1] Judge Russell has been appointed by the Director of the Department of Employment Services as a temporary CRB member pursuant to Administrative Policy Issuance No. 11-03 (October 5, 2011).

Upon returning to her unit, Ms. Brown attempted to alleviate her symptoms with adjustments to her posture and heating pads. The next morning, she went to the emergency room at Doctors Community Hospital. Thereafter, Ms. Brown sought continuous treatment in the form of medication, physical therapy, diagnostic testing, and other conservative measures.

Ms. Brown was fired by HUH on March 18, 2011. For two weeks during April 2011, she worked at Southern Maryland Hospital; she quit that job because the constant sitting irritated her back, among other reasons.

Following a formal hearing to adjudicate Ms. Brown's entitlement to temporary total disability benefits from November 23, 2010 to the date of the formal hearing and continuing, an Administrative Law Judge ("ALJ") granted Ms. Brown's claim for relief. The ALJ ruled that HUH had not rebutted the presumption of compensability; had not demonstrated the availability of suitable, available, alternative employment; and had not proven that Ms. Brown had failed to accept employment commensurate with her physical capabilities.

On appeal, HUH requests the CRB reverse or vacate the ALJ's March 21, 2012 Compensation Order because

> [t]he Employer argues that the Administrative Law Judge did not properly weigh the evidence presented as required by the standard applicable in cases where causal connection is contested, did not properly consider the issue of nature and extent of the Claimant's disability, and improperly found that the Claimant had not voluntarily limited her income.[2]

In addition, HUH asserts the ALJ erred in sustaining Ms. Brown's objection to the admission into evidence of her Answers to Interrogatories.

Ms. Brown argues that HUH has requested the CRB re-weigh the evidence in HUH's favor even though the CRB does not have the authority to do so. Ms. Brown asserts substantial evidence in the record supports the Compensation Order, and it should be affirmed.

ISSUES ON APPEAL

1. Is there substantial evidence in the record to support the ALJ's ruling that HUH did not present sufficient evidence to rebut the presumption of compensability?

2. Is the ALJ's credibility determination supported by substantial evidence?

3. Did the ALJ properly consider the evidence regarding Ms. Brown's disability?

4. Did the ALJ give proper weight to the opinions of Dr. David C. Johnson?

[2] Memorandum of Law in Support of Employer and Insurer's Petition for Review, p. 1.

5. Are the findings of fact and conclusions of law contained in the March 21, 2012 Compensation Order supported by substantial evidence in the record and in accordance with the law?

6. Is the ALJ's ruling sustaining the objection to the admission of Ms. Brown's Answers to Interrogatories reversible error?

7. Was HUH deprived of the opportunity to present a full defense by an inability to make a formal proffer of excluded notes that were the supporting documentation for notations made in Ms. Brown's personnel file?

ANALYSIS[3]

Pursuant to §32-1521(1) of the Act, a claimant is entitled to a presumption of compensability ("Presumption").4 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.5 "[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."6 There is no dispute the ALJ appropriately ruled the Presumption properly had been invoked.7

HUH's argument is that Ms. Brown "fabricated her work accident to justify her calling out of work, [*sic*] and to relate her congenital back conditions to her employment."8 HUH offered evidence of a pre-existing back condition, prior back injuries, a motive to lie, and prior inconsistent statements to rebut the Presumption. The ALJ rejected HUH's arguments:

> In rebuttal, Employer argues that there were no witnesses to the accident, and that Claimant knew that she was about to be fired because of absentee/tardiness issues, so she fabricated the story about her injury (HT 174). Employer's arguments

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[3] 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. Section 32-1521.01(d)(2)(A), D.C. Workers' Compensation Act, as amended, D.C. Code §§ 32-1501 *et seq*. ("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).

[4] 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."

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

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

[7] Memorandum of Law in Support of Employer and Insurer's Petition for Review, pp. 5-6.

[8] Memorandum of Law in Support of Employer and Insurer's Petition for Review, p. 3.

> are without merit. The results of the medical tests speak for themselves. Claimant had a CT scan in February 2011, several months before the work-related accident, wherein the findings were that she had probable congenital stenosis and a spinal tumor in the T12 area of her spine. The December 2011 CT scan of Claimant's spine, taken after her work-related accident, showed, in addition to the previous T12 findings, significant new findings in the L5/S1 level of her spine. The MRI scan was enabled [*sic*] Dr. Khan to narrow Claimant's diagnosis to her S1 area. Dr. Fossett, a neurosurgeon, recommended that Claimant have surgery to relieve her pain.
>
> Employer's arguments regarding the status of Claimant's personnel absenteeism/tardiness records, and the lack of eyewitnesses to the accident, do not negate the objective medical findings in the CT scans and the MRI. Claimant admits that she had some personnel violations; however, she was a full-time employee on duty when the accident occurred. The lack of eyewitnesses to the accident does not negate the fact that an accident occurred in the basement hallway. Claimant's testimony regarding the accommodations and assistance she received from her co-workers because of her pain as she finished her shift after the accident was not disputed by Employer.[9]

The ALJ found Ms. Brown's testimony consistent with the medical evidence; this finding is supported by substantial evidence in the record. The ALJ also found the medical evidence consistent with a compensable accident and injury; this conclusion, too, is consistent with substantial evidence in the record. HUH offered speculation and conjecture, not evidence "specific and comprehensive enough to sever the potential connection between a particular injury and a job-related event;"10 therefore, the ruling that HUH failed to rebut the Presumption is supported by substantial evidence in the record and is in accordance with the law.

Credibility is an important factor in this case, and when supported by substantial evidence in the record, 11 an ALJ's credibility determinations are entitled to deference.12 Here, the ALJ based the credibility determination on both Ms. Brown's demeanor while testifying on direct- and cross-examination as well as the record evidence including multiple medical reports demonstrating symptoms and injuries consistent with Ms. Brown's testimony regarding her injury, her post-injury symptoms, and her work capacity. The ALJ's description of the medical evidence is detailed and comports with the description of Ms. Brown's testimony. Consequently, the credibility determination is supported by substantial evidence in the record.

Regarding the nature and extent of Ms. Brown's disability, HUH offered the opinions of Dr. Johnson, and independent medical examiner. Because the ALJ did not address an implication that if Dr. Johnson had viewed Ms. Brown's radiographic studies, he would have reached the same

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[9] *Brown v. Howard University Hospital*, AHD No. 11-060, OWC No. 675904 (March 21, 2012), pp. 5-6.

[10] *Waugh v. DOES,* 786 A.2d 595, 600 (D.C. 2001) (citations omitted).

[11] See *Davis v. Western Union Telegraph,* Dir. Dkt. 88-84, H&AS No. 87-751, OWC No. 098216 (March 4, 1992).

[12] *Dell v. DOES,* 499 A.2d 102, 106 (D.C. 1985).

conclusion that Ms. Brown had reached maximum medical improvement, HUH asserts the Compensation Order is not supported by substantial evidence.

Because Dr. Johnson was not Ms. Brown's treating physician, the ALJ was not required to give any reason before rejecting Dr. Johnson's opinions;13 however, the ALJ did give a reason for rejecting Dr. Johnson's opinions.

> Employer argues that Dr. Johnson, who performed the IME, clearly indicates that Claimant can return to her pre-injury job. Dr. Johnson, in his June 15, 2011 IME report, opined that Claimant can return to her pre-injury status without restrictions. This statement is not credible. Dr. Johnson admits in this same report that he did not have any of the radiographic studies to review pertaining to whether there was any worsening of the findings from the incident of November 23, 2010 noted on the CT scan of December 20, 2010 and MRI scan of January 15, 2011, compared to the earlier study of February 23, 2010. The opinions of Dr. Khan and Dr. Fossett were based on the findings from the CT and MRI studies. Dr. Johnson's opinion is not supported by objective medical evidence. Therefore, his opinion is not credited.[14]

We find no basis for disturbing the ALJ's ruling on this issue.

Although HUH asserts that Ms. Brown voluntarily limited her income by quitting her new employment with Southern Maryland Hospital, HUH concedes "[t]he Claimant did state on direct examination that she quit because her back was bothering her."15 The ALJ credited this explanation as at least part of the reason Ms. Brown remains entitled to wage loss benefits:

> Claimant has not been released by any physician [other than the independent medical examiner whose opinion the ALJ had rejected] to return to any type of work. The fact that Claimant sought alternative work because she needed income does not prove that she was capable of performing her usual job, or any other job. She testified that she left the job for two reasons -- the argument with her co-worker, and the irritation with her back due to the constant sitting. Her complaints of irritation in her back are consistent with the diagnoses she received from Drs. Nolte, Khan, and Fossett.[16]

So long as the Compensation Order 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, the CRB is constrained to affirm the

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[13] Washington Hospital Center v. DOES, 821 A.2d 898 (D.C. 2003).

[14] *Brown*, *supra*, p. 7.

[15] Memorandum of Law in Support of Employer and Insurer's Petition for Review, p. 7.

[16] *Brown*, *supra*, at 8. Although the ALJ references this evidence in the section of the Compensation Order entitled "Nature and Extent of Injury," this evidence essentially is incorporated by reference in the section entitled "Voluntary Limitation of Income": "Employer has not demonstrated that Claimant failed to accept other employment commensurate with her abilities." *Id*.

Compensation Order.17 Here, there is substantial evidence in the record to support the ruling that Ms. Brown had not been released to return to work. That she left alternate employment at least in part due to an inability to perform the physical duties of that job only bolsters her entitlement to benefits.18

Next, the ALJ sustained an objection to the introduction of Ms. Brown's Answers to Interrogatories into evidence. On appeal HUH represents that it sought to introduce that document for impeachment purposes;19 however, review of the transcript reveals a different purpose:

> Q: Have you been asked to provide the names of all the doctors you've seen in the past for your back condition?
>
> A: No.
>
> Q: No one has ever asked you that?
>
> A: No, to have all the doctors that I've seen in reference to my back?
>
> Q: Yes.
>
> A: No.
>
> Mr. Schladt: Counsel, then I would ask to submit the interrogatories and answers to interrogatories, Your Honor, because the question was asked all treatments she's received to her back, past and present.
>
> Ms. Miller: I wouldn't have any problem sending you the interrogatories. I don't see how it's relevant. She's trying to give you now and not the deposition, all the information she has.
>
> I don't know that anyone ever knows every doctor that they've seen at an emergency room for radiology testing. She's more than willing to execute medical releases. You have subpoena power. You have deposition power. To sit here and say that because she can't recall something today means that she's being less than truthful, I think is an incorrect inference.
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> Mr. Schladt: I don't think it's incorrect at all, Your Honor. The problem is that we got CT scans and we see doctors' names. We asked for information about who - - what doctors she's seen and we get zero back. So Dr. Washington, there's probably 30 Dr. Washingtons in this area. I can't go subpoena every Dr. Washington.

[17] *Marriott*, *supra*.

[18] See *Logan v. DOES*, 805 A.2d 237 (D.C. 2002).

[19] Memorandum of Law in Support of Employer and Insurer's Petition for Review, p. 8.

I've asked what the records are that she receives treatment which is in the record for her back and months, just months before this alleged incident and those records indicate that she had a herniated disk and disk bulges in the same areas she's claiming today. So as a practical matter, I'll submit the answers to interrogatories so Your Honor can see that we asked for and did not obtain any records concerning her treatment in February and December of 2009 and that Your Honor has to understand that therefore there is a problem without trying to ask the IME position to give us information about things she has not revealed to them. That's the difficulty here.

We have a claimant who is treated with a number of different doctors we don't have records for because she won't tell us who they are or hasn't bothered to tell us who they are. And what little we've gotten is because she's gotten reports at places where we did obtain records like Howard University Hospital. We obtained those records from the hospital and by subpoena, by the way, because the insurance company can't just wrap - - doctor the records.

Judge Brown: Mr. Schladt, what I want to know is why would I need the answers to the interrogatories? If you have the records to which you're referring are from your exhibits, are they from your exhibits the HUH Emergency Department records, your Exhibit No. 1.

Mr. Schladt: Exhibit No. 3 is the CT lumbar spine. Counsel - -

Judge Brown: Wait, I'm not finished with my question. You submitted records that you received from Howard University Hospital. If these are records from an emergency room or reference from an emergency room, I just don't think that - - when you go to an emergency room, who knows who you're going to see. It's whoever is on duty that evening and you have these records and you've submitted into the record of this hearing. So the - - you have the information seemingly to me that you sought.

I don't know how giving me the answers to the interrogatories is going to assist because if there's something missing from the interrogatories but you have records from other physicians that you've submitted and perhaps claimant has submitted some records from physicians whose names were not listed on the interrogatories, that doesn't help. I have what I have.

Mr. Schladt: If I can respond without counsel responding - -

Ms. Miller: I haven't had a chance to respond to what you originally said.

Mr. Schladt: She's asking me a question, counsel, and I just want to respond to it.

Judge Brown: Mr. Schladt, okay, please respond.

Mr. Schladt: Well, the answer to your question is that the problem I have is that this claimant has treated obviously with a number of different doctors. She has not provided us the names of those doctors even.

For us to subpoena records - -

Judge Brown: Mr. Schladt, how do you know that?

Mr. Schladt: Wait a second - -

Judge Brown: How do you know that she's treated with other doctors if you have - - you have records here from Howard University Hospital in conjunction, records in conjunction with emergency room visits and also with Dr. Khan, to whom she - - she said she knew him in the hospital.

Mr. Schladt: Your Honor, if I may answer. I mean the problem is is [*sic*] that if you look at page 45 of Exhibit 3, the report was sent to Dr. Washington and each of these reports which we have is incomplete set of records for treatment she's been receiving from other doctors. The only thing that we got was what we could get from the hospital. We asked her about it. She's been treating since - - well, she's been treating regularly for her back through the hospital and through other doctors, but she hasn't provided reports or records. She hasn't provided the report of record for Doctors Community Hospital where she allegedly went right after the alleged incident. So we're incomplete and it's not because we haven't asked. That is the point.

Judge Brown: Okay.

Mr. Schladt: We have asked for the records and we're not saying that - - they have not been provided. That is our point. These have been treatments that she's received. She's gone to a Dr. Washington apparently, because that's where the CT scan went to. She's gone to Doctors Community Hospital because she testified she did. But we don't have those records.

And we do know that she has been having severe problems with her back just nine months before where she went to get a CT scan, nothing to do with Howard University, her job, but she went to get treatment. But she claims she never injured her back before. That's the only point of the testimony is it's to show - -

Ms. Miller: Can I respond, Your Honor?

Mr. Schladt: - - that the claimant is not telling us the truth about her back, prior back condition.

Judge Brown: Okay, you've made your point. There's a doctor I see on page 45. There's a Dr. Washington, a reference to a Dr. Washington. If there are no records

from Dr. Washington, then I'll have to make - - I make of it if she's testified she went to Doctors Hospital, there's no record. I understand that.

Mr. Schladt: Okay, I guess I'm going to actually - -

Ms. Miller: Can I respond, please? I'd just like to say that it's not been a secret that she went to Doctors Hospital. The day that she went, she told her job and she provided the out of work slip that she got from Doctors Hospitals to Employees Health. When she appeared at the informal conference with Mr. Schladt, the notes show that she told Mr. Schladt she went to Doctors Hospital.

They also, after that, at the deposition on April 26th, she told Mr. Schladt she went to Doctors Hospital and talked about Dr. Washington. Then Mr. Schladt issued subpoenas on April 13th to Janet Sailor, a doctor; Dr. George Washington. So he must know which doctor it was. On April 13th, the subpoena was issued from your office to Dr. Kilman. On April 13th subpoenas were issued, and to Dr. Knolte on April 13th, subpoenas were issued and maybe other days, also, Dr. Selya.

So I don't know if you didn't get a response to subpoena, you didn't get a response that you wanted to submit. The discovery period was open. She provided information that she had. She provided information she had for providers and obviously the names and addresses is enough for your office to submit subpoenas.

If you didn't get a response to subpoena or you didn't get information that you wanted to submit as an exhibit, I don't think that can be an inference against the claimant that she's being less than truthful.

I also object to his characterization that she had an on-going severe back problem. He's asked her 20 ways from yesterday about her back problem in February which she can't recall. She doesn't disagree that she went to the doctor about it, but her thing would be that it wasn't so severe that it was stopping her from working. So I think we just need to let the records speak for themselves. And a copy of the subpoena should be in the Court's records as well. Maybe it's not a subpoena. Maybe it's just a request for records, maybe I'm misreading it.

Mr. Schladt: I got nothing from Dr. George Washington. I don't know if it was the correct doctor.

Ms. Miller: If you didn't get any response, that still doesn't mean that she's being less than truthful. You have reports that show that the doctor - - who the doctor was.

Mr. Schladt: Your Honor - -

Judge Brown: Mr. Schladt and Ms. Miller, I have what you've submitted. I have what you submitted and the - - I'm here observing the claimant, so I can determine credibility. I'm looking at her. I'm hearing her.

The ultimate decision has to rest with what you have.

Mr. Schladt: I understand.

Judge Brown: What you've submitted. And you're offering additional exhibits, post hearing.

Mr. Schladt: Correct.

Judge Brown: So that's all we can do.[20]

Based upon the objection made by Ms. Brown's counsel at the formal hearing, the accompanying argument actually made by counsel for HUH, and the comments of the ALJ, it is evident the dispute primarily was a discovery issue having little, if anything, to do with impeachment of the witness's testimony at the formal hearing. To the extent HUH's counsel wished to attempt to impeach Ms. Brown's testimony, the method of accomplishing that is to confront her with a specific question and answer which counsel contends is contradictory to a specific answer given from the witness stand, not to offer into evidence an entire set of Answers to Interrogatories. We find no abuse of discretion on the ALJ's part in not accepting the Answers to Interrogatories into evidence.21

Finally, HUH asserts error in the ALJ's failure to allow HUH to proffer the contents of "two records which were the supporting documentation for notations made in the Claimant's personnel file"22 to show Ms. Brown previously had called out of work in December 2009 and February 2010 for back problems. HUH argues failure to allow the proffer deprived it of the opportunity to present a full defense.

Again, a review of the transcript is helpful in resolving this issue:

Q: Ms. Toledo, do you have the records that you based your notes on? Do you have them here?

A: Uh-huh.

Judge Brown: Is that yes?

Mr. Schladt: You have to say yes.

Judge Brown: Please say yes.

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[20] Hearing Transcript, pp. 91-102.

[21] When the Order on review is not one based on an evidentiary record produced at a formal hearing that the applicable standard of review is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. See 6 Stein, Mitchell & Mezines, *Administrative Law*, §51.03 (2001).

[22] Memorandum of Law in Support of Employer and Insurer's Petition for Review, p. 9. Ms. Brown's personnel file was admitted into evidence as Employer's Exhibit No. 5.

The Witness: Oh, yes.

By Mr. Schladt:

Q: Could you find the record for the December 20th and February 17th notation?

A: Do you mean the doctor's note?

Q: Whatever record you have. I mean, you indicated there was a doctor's note.

A: That's December 20, 2009.

Q: Okay.

Q: This is February 17, 2010.

Mr. Schladt: Since there has been a question about it, I would submit - - ask that copies be made and submit those to the record, so that - -

Ms. Miller: I would object.

Mr. Schladt: On what basis? Because that makes it clear as to what the condition was that she was complaining about at that time. The back and forth about this, frankly, the Doctors Community Hospital note, is exactly what I was complaining we didn't have. And I didn't know she had it. Obviously, I asked for the full record, but for whatever reason didn't get it.

Ms. Miller: My objection would be - - and I kind of created a really wide swath there that my guess is that none of this is relevant to her getting hurt on November 23, 2010. We'll save the rest for argument. That she gave notes for a year earlier when she was out is consistent with everything that Ms. Toledo has said and consistent with what the Claimant has said. Why she was - -

Judge Brown: I agree.

Ms. Miller: - - she went and got medical care, she brought a note, she came back to work.

Judge Brown: I agree. So the objection is sustained.

Mr. Schladt: Well, I'm going to ask that they be marked, and I'll submit them as copies for appeal, if I could.

Judge Brown: Well, what is the relevance of a note that was written one year - - was written about a year prior to the - -

Mr. Schladt: Your Honor - -

Judge Brown: - - incident that we are here for and her condition at a year earlier and what it may have been at the time she went to Doctors Hospital?

Mr. Schladt: Well, Your Honor, can I - - I'll answer that. It's extremely relevant, because the Claimant not only denied in her deposition that she had any problems with her back previously, she also had - - apparently had very extensive problems with her back, to the extent that she had a CAT scan that found that she had a herniated disc, disc bulges in her back, and the same condition that she is claimant occurred when she allegedly slipped like that.

Judge Brown: Well, Mr. Schladt, she testified to all of that.

Mr. Schladt: No, she didn't. She testified - -

Judge Brown: The Claimant - -

Mr. Schladt: She said she had no injury, and then, upon cross-examination, she said, "Well, maybe I did." And that's the point is that this is a claimant who has been hiding the fact that she has a longstanding back problem. She has been hiding it because she denied it in her deposition.

She denied it here today when she was asked. Before I started cross-examining her on these individual incidents, I asked her, "Have you had any problems with your back before?" Now, this is not just one or two incidents. It's a number of incidents, and not just a small incident of, oh, you know, maybe I fell down the steps. She had an incident in which she had to go to the hospital and received a CT scan to a - -

Judge Brown: Okay. Yes, we've been down that road, and you have - - you have submitted Emergency Department records starting from February 22, 2009. So those are - - those are the records that - -

Mr. Schladt: 2010, Your Honor.

Judge Brown: Yes, going through 2010. So there is - -

Mr. Schladt: Nine months before this alleged incident occur, [*sic*] what she said, problems with her back.

Judge Brown: Right. So you have submitted - -

Mr. Schladt: That's the point.

Judge Brown: Right. These show that she was - - she went to the emergency room. I don't think that those - - I mean, those records were - -

Mr. Schladt: Well, she has testified to it. I'm not going to push the issue, because she has testified as to everything that's in here. She certainly - - Ms. Brown denied it, and now confronted, and that's the issue.

Judge Brown: Okay. That's your argument. All right. Is that - -

Mr. Schladt: I have no further questions.[23]

As is apparent, HUH attempted to impeach Ms. Brown's testimony by offering documents into evidence in response to questioning a different witness; such a collateral attack does not necessarily warrant admission of the documents into evidence. Moreover, the discourse at the formal hearing more than sufficed as a proffer. We find no error in the ALJ's refusal to permit a formal proffer, and we find no merit to the allegation that HUH was prevented from presenting a full defense as a result of the inability to submit the documents (documents which Mr. Schladt conceded duplicated testimony) into evidence.

Conclusion and Order

The March 21, 2012 Compensation Order (including its rulings that HUH did not present sufficient evidence to rebut the presumption of compensability, that Ms. Brown's testimony is credible, that Dr. Johnson's opinion is not persuasive, and that Ms. Brown is entitled to ongoing wage loss benefits) is supported by substantial evidence, is in accordance with the law, and is affirmed. Sustaining an objection to the introduction of Ms. Brown's Answers to Interrogatories into evidence was not arbitrary, capricious, or an abuse of discretion. HUH was not deprived of the opportunity to present a full defense in this case.

FOR THE COMPENSATION REVIEW BOARD:

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MELISSA LIN JONES
ADMINISTRATIVE APPEALS JUDGE

June 27, 2011
DATE

[23] Hearing Transcript, pp. 133-139.