

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA M. MALLORY
DIRECTOR

**COMPENSATION REVIEW BOARD
CRB 11-030**

**CASSANDRA HARRIS,
Claimant-Petitioner,**

v.

**DAVITA HEALTHCARE AND BROADSPIRE,
Employer and Insurance Carrier-Respondents.**

Appeal from a Compensation Order by
Administrative Law Judge Gerald D. Roberson
AHD No. 10-538, OWC No. 644436

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2011 AUG 2 PM 10 59

Matthew J. Peffer, Esquire, for the Claimant
Shawn M. Nolen, Esquire, for the Employer and Insurance Carrier

Before LAWRENCE D. TARR, MELISSA LIN JONES, and HENRY W. MCCOY, *Administrative Appeals Judges.*

LAWRENCE D. TARR, *Administrative Appeals Judge*, for the Review Panel:

DECISION AND ORDER

OVERVIEW

This case is before the Compensation Review Board (CRB) on the application for review filed by the claimant of the March 14, 2011, Compensation Order issued by an Administrative Law Judge (ALJ) in the Hearings and Adjudication Section of the District of Columbia Department of Employment Services (DOES). In that CO, the ALJ denied the claimant's request for authorization for a right total knee replacement.

BACKGROUND FACTS OF RECORD

Cassandra Harris (claimant) worked for Davita Healthcare (employer) as a patient care technician in a dialysis clinic. On November 13, 2007, the claimant fell on both hands and knees while at work.

The claimant received medical treatment at Concentra Medical Center on the day of the accident. She was diagnosed with a left knee contusion and bilateral hand contusions and advised to return to work with certain restrictions. A January 2, 2008, MRI showed the claimant had torn her

medial meniscus in her left knee. The claimant had two partial left knee meniscus repairs on February 19, 2008, and July 15, 2008. The claimant also had a total left knee arthroplasty on January 15, 2010, and surgical debridement on her left knee on May 18, 2010.

In the present claim, the claimant seeks authorization for a total right knee replacement. The ALJ found that when the claimant was examined on the day of the accident, the claimant did not have any right knee pain nor did she have any pain when the claimant was seen by an orthopedist, Dr. Joan Shapiro, two days after the accident. The claimant was seen by another orthopedist, Dr. Sampson Kyere, six days after the accident, and examination of her right knee was unremarkable. On December 6, 2007, Dr. Shapiro reported that examination of the claimant's right knee was unremarkable.

The first reference to right knee pain in the medical records appears in a January 21, 2009, examination by orthopedic surgeon, Dr. John Cohen. Dr. Cohen reported the claimant was experiencing mild discomfort in her right knee due to splinting. On April 15, 2009, orthopedic surgeon Dr. Anthony Unger reported the claimant had a small amount of discomfort on the medial side of her right knee.

Dr. Mark Zawadsky, also an orthopedic surgeon, reported on March 1, 2010, that the claimant had degenerative changes in her right knee and likely would need a right total knee arthroplasty. On July 8, 2010, he reported that the claimant had a significant amount of pain in her right knee that was arthritic and would need an arthroplasty after she recovered from the January 2010 left knee arthroplasty. When asked by the insurance carrier whether the claimant's right knee condition was related to the November 13, 2007, work injury, Dr. Zawadsky marked that it was "indirectly related."

Dr. David Johnson performed an IME for the employer and carrier on September 16, 2010. With respect to whether the claimant's right knee problems were medically causally related to the November 13, 2007, injuries, Dr. Johnson, after noting that the claimant fell on her right knee during the accident but that she did not have any right knee complaints until January 2009, more than a year after the work injury and after two surgeries reported:

This suggests to me that unloading the left knee, that was injured on 11/13/2007, and placing more weight on the right knee because of this was not the likely source of these symptoms in the right knee, rather the normal progression of arthritis was the likely source in my opinion... I, therefore, must conclude that the patient's right knee complaints are secondary to causes that preexisted the injury of 11/13/2007, and were not caused, aggravated or accelerated by the injury of 11/13/2007. Any impairment rating to the right knee, therefore, in my opinion, would be secondary to causes unrelated to the injury of 11/13/2007...

EE3.

In the March 14, 2011, CO the ALJ found that the claimant was entitled to the statutory presumption that her right knee condition was medically causally related to the November 13, 2007, work injury. The ALJ next found that the employer, primarily through the IME opinion of

Dr. Johnson, had rebutted the presumption. The ALJ then weighed the evidence without the presumption and held that IME Dr. Johnson's medical opinion was more convincing than treating Dr. Zawadsky's opinion. The ALJ denied the claim.

The claimant timely appealed.

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 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. See District of Columbia Workers' Compensation Act of 1979, D.C. Code, as amended, §32-1501 *et seq.* at §32-1521.01(d) (2) (A) of the Act and *Marriott International v. DOES*, 834 A.2d 882 (D.C. 2003).

Consistent with this standard of review, the CRB must uphold a Compensation Order that is supported by substantial evidence, even if there is substantial evidence in the record to support a contrary conclusion, and even where the CRB might have reached a contrary conclusion. *Id.* at 885.

DISCUSSION AND ANALYSIS

The employer does not challenge the ALJ's finding that the claimant produced sufficient evidence to invoke the presumption that there was a medical causal relationship between the claimant's right knee problems and the November 13, 2007, work incident.

The claimant argues that the ALJ incorrectly held that Dr. Johnson's opinion sufficiently rebutted the presumption and even if it did, the ALJ erred by not accepting the opinion of Dr. Zawadsky, the treating physician.

To rebut the presumption, the employer had the burden to present substantial evidence that the claimant's right knee problems were not causally related to the work incident. When the employer seeks to rebut the presumption by an IME doctor, the District of Columbia Court of Appeals (DCCA) has held

[a]n employer has met its burden to rebut the presumption of causation when it has proffered a qualified independent medical expert who, having examined the employee and reviewed the employee's medical records, renders an unambiguous opinion that the work injury did not contribute to the disability.

Washington Post v. DOES and Reynolds, Intervenor, 852 A.2d 909, 910 (D.C. 2004).

We do not agree with the claimant that Dr. Johnson's opinion is not sufficient because he did not specifically state that the claimant's favoring of her injured left knee could not have caused her right knee problems. There is no requirement under *Reynolds* that an IME doctor discount all possible theories of liability.

Nor do we agree with claimant's argument that Dr. Johnson's opinion "concedes the possibility" that the work injury caused her right knee problems because she favored her left knee. Although

Dr. Johnson wrote the work incident was not the “likely source” of the problems, he wrote that he “must conclude” that the claimant’s right knee problems “are secondary” to pre-existing causes and “were not caused, aggravated or accelerated” by the November 13, 2007 injury.

Dr. Johnson’s report shows he examined the claimant, reviewed the pertinent medical reports, and stated an unambiguous opinion that the work injury did not contribute to the disability. Therefore, we affirm the ALJ’s finding that the employer, through Dr. Johnson’s IME report, presented sufficient evidence to rebut the statutory presumption.

We also disagree with the claimant’s argument that the ALJ erred by accepting Dr. Johnson’s opinion. The ALJ correctly acknowledged the evidentiary preference for the opinion of the treating physician and correctly stated that this preference is not absolute. The ALJ articulated the reasons why he was not persuaded by Dr. Zawadsky’s opinion:

In this case, the medical evidence from the treating physician, particularly Dr. Zawadsky, does not causally relate Claimant’s right knee condition and the need for surgery to the work incident of November 13, 2007. Dr. Zawadsky has not offered any medical rationale to support his statement regarding medical causal relationship. He did not explain how the work incident indirectly caused the need for the right total knee replacement. He merely placed a check mark on a form without offering rationale to explain how the mechanism of the injury caused an injury to the right knee and the need for surgery. Additionally, Dr. Zawadsky does not appear to rationally relate the need for surgery to the overuse of the right knee, or identify overuse as a contributing factor to the proposed request for total knee replacement. This appears to be a legal argument advanced by Claimant unsupported by the medical evidence. Dr. Zawadsky has not offered any physical findings to support Claimant’s contention regarding overuse.

CO at 7.

The ALJ further stated why he favored Dr. Johnson’s opinion:

Dr. Johnson opined the work incident did not contribute to Claimant’s right knee condition, and his assessment appears consistent with the initial medical records from Concentra, which contain no complaints or symptoms related to the right knee...The record reveals Claimant did not have right knee complaints until January 2009.

Given the dearth of medical evidence showing the incident of November 13, 2007 contributed to the right knee condition directly or indirectly through overuse, Dr. Johnson has provided sufficient medical rationale to support his findings regarding the causal connection of the right knee condition to the work incident.

Id. at 8.

The ALJ articulated legitimate reasons for not following Dr. Zawadsky's opinion and his decision to accept Dr. Johnson's opinion:

Similarly, Claimant has not offered any medical evidence to support her contention the overuse of the right knee due [to] her left knee condition caused the right knee condition and her need for medical treatment. Dr. Johnson adequately addressed this contention, and found no medical causal connection to the November 13, 2007 work incident.

Id.

Substantial evidence supports the ALJ's decision that the claimant's right knee condition and the need for surgery are not medically causally related to the work injury. The medical records establish the claimant's right knee problems did not arise until over one year after the work injury and no physician has stated that these problems were caused by the claimant overusing her right knee because of the extensive damage to her left knee.

CONCLUSION AND ORDER

The March 14, 2011, Compensation Order is supported by substantial evidence and is in accordance with the applicable law. It is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

Lawrence D. Tarr
Lawrence D. Tarr
Administrative Appeals Judge

August 2, 2011
DATE