

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**Department of Employment Services**

MURIEL BOWSER  
MAYOR



DEBORAH A. CARROLL  
DIRECTOR

**COMPENSATION REVIEW BOARD**

**CRB No. 15-066**

**DANISHIA WHATLEY,  
Claimant–Petitioner,**

**v.**

**SPECIALTY HOSPITAL OF WASHINGTON AND PMA INSURANCE, AND DEANWOOD  
REHABILITATION CENTER AND CHARTIS CLAIMS, INC.,  
Employers/Carriers–Respondents.**

Appeal from a March 27, 2015 Compensation Order by  
Administrative Law Judge Gregory P. Lambert  
AHD No. 14-057, OWC Nos. 699915 and 706629

(Decided September 10, 2015)

Krista DeSmyter for Claimant  
Joel Ogden for Employer Specialty Hospital of Washington  
Jane Gerbes for Employer Deanwood Rehabilitation Center

Before JEFFREY P. RUSSELL, LINDA F. JORY, and HEATHER C. LESLIE, *Administrative Appeals Judges*.

JEFFREY P. RUSSELL for the Compensation Review Board.

**DECISION AND ORDER**

**FACTS OF RECORD AND PROCEDURAL HISTORY**

Danishia Whatley (Claimant) injured her leg in a non-work related kickboxing accident in November 2011. An MRI taken following that injury revealed what the radiologist interpreted as a possible torn ACL in her left knee. Her knee was put in an immobilizer for approximately a month, and she missed some time from work from her then-employer, which was neither of the employers in this case.

Claimant became employed as a Certified Nursing Assistant (CNA) by Specialty Hospital of Washington (Specialty) in 2012. On January 5, 2013, Claimant slipped on water in a patient's room and fell on her back. She treated the following day and again on January 8, 2013 at Bowie

Health Center. The records from these treatments make reference to “severe pain in her back” as well as pain in her right knee, and a history of chronic knee problems including “her knee giving out”. She was referred to a Certified Nurse Practitioner for follow up care, and eventually came under the care of Dr. Leonid Selya, a spine specialist, and his colleagues at Capital Orthopedics. Although a left knee examination was performed during the course of that care, no treatment was rendered concerning the knee, and no restrictions on activity were ever imposed relating to the knee while Claimant was under Dr. Selya’s care.

In a knee examination performed on January 31, 2013, Dr. Selya found a normal range of motion, and there are no additional references to Dr. Selya examining or treating the knee before his release of Claimant from further care on May 9, 2013.

Shortly prior to that release, Claimant was seen and evaluated by Dr. Kevin Hanley on April 8, 2013, at the request of Specialty, for the purpose of an independent medical evaluation (IME), and he authored an IME report. In it, he observes that Claimant was found to have full range of motion and no swelling or effusion in either knee. He opined Claimant had sustained a minor contusion to her left knee, that she should restrict her activities to 20 pounds of lifting, and refrain from bending, pushing or pulling. He further opined that Claimant’s strength and reconditioning would be improved by a 3 week course of physical therapy. His report also suggests that an MRI would be required to determine if the knee condition represented anything more than a simple contusion and strain injury. However, he made no reference to the prior non-work related kickboxing injury or to the MRI that was taken in conjunction with that injury.

In an addendum written May 24, 2013 (without reviewing any additional medical records or further examining Claimant) he restated his view that if Claimant undergoes the recommended physical therapy her knee condition would resolve. Again, there was no reference to any prior knee injury sustained while kickboxing.

Claimant failed to show up for work on June 5, 6 and 7, 2013, and was terminated from employment.

Three days later, on June 10, 2013, Claimant started working as a CNA at Deanwood Rehabilitation Center (Deanwood). Two weeks later, on June 25, 2013, Claimant again slipped and fell on water, landing on her left knee. Claimant sought care for this injury at Concentra, where her injury was diagnosed as a contusion. She was advised to attend physical therapy but did not regularly attend due to child care issues. She was released to return work in a light duty capacity. After initially not returning to work, Claimant eventually returned to a position in the laundry. Although the job required a lot of standing, when she complained to Deanwood that standing caused problems with her knee, she was permitted to sit for breaks.

On July 22, 2013, the physician’s assistant (PA) overseeing her care at Concentra concluded that Claimant’s work-related contusion had resolved and that Claimant was no longer restricted in her activities from the contusion. At that time, Claimant advised the PA that she was scheduled to see an orthopedist concerning surgery for the kickboxing injury, and the AP advised her to follow up on that.

Also during that month, Claimant began working for a new employer, Unique Residential Care (Unique), as a CNA. Although standing gave her knee pain, sitting breaks were allowed for the job. This position paid \$10.50 per hour. Claimant left the job as a result of a death in the family, and although she was advised by Unique that she could return to the position, she chose not to do so.

During that month, on July 29, 2013, Claimant injured her low back in an automobile accident, and obtained medical care from Dr. Selya at Bowie Health Center.

The following month, Claimant saw Dr. Stephen Webber, a member of the same practice group as Dr. Selya. Although she advised Dr. Webber that she had a suspected tear from the kickboxing incident, she also stated that she had slipped and fallen on her left knee at work, leading Dr. Webber to write "so this is a workers' compensation injury". CE 5. At that time he advised Claimant to obtain rehabilitative therapy, for which approval would be awaited from the compensation carrier.

Thereafter Claimant obtained new employment as a cashier at Restaurant Depot. She held that job for approximately two months, but after an incident between herself and her supervisor, she was sent home and advised to wait for a call concerning when she could return to work. No call came.

Claimant sought awards of additional medical treatment for her left knee and temporary total disability benefits from June 25, 2013 and ongoing, and causally related medical care for her left knee, at a formal hearing before Administrative Law Judge (ALJ) David L. Boddie on January 23, 2014.

While awaiting ALJ Boddie's decision, in the spring of 2014, Claimant began working as a communications assistant at Anne Arundel Medical Center (AAMC), in a full time sedentary job paying \$11.00 per hour. She left that position to focus on her studies.

During this time, Claimant also worked at Southern Maryland Hospital as an emergency registrar. This full time position, which paid \$14.00 per hour, required standing and walking, but also permitted sitting at times. Claimant left that job for the same reason as she left the the AAMC job, to further her professional education.

In November and December 2014, Claimant entered and completed an externship at Concentra Urgent care, performing venipunctures, pulmonary function tests, audiograms, EKGs, and other medical technical tasks. By the end of December 2014, Claimant completed the program and obtained the certificate.

Judge Boddie left the employ of the Department of Employment Services (DOES) without issuing a Compensation Order. The matter was re-assigned to ALJ Gregory P. Lambert. Claimant sought a new hearing rather than have Judge Lambert decide the case based solely upon the record created at the January 23, 2014 formal hearing. Therefore, a second formal hearing was held January 22, 2015 before Judge Lambert. At that time the claim for relief was

amended to include temporary total disability from June 25, 2013 through July 4, 2013 and from July 19, 2013 to the present and continuing

On March 27, 2015, Judge Lambert (hereinafter, the ALJ) issued a Compensation Order denying the claims based upon his finding that there is no causal relationship between Claimant's ongoing knee complaints and either of the work injuries at issue in this case.

Claimant filed an Application for Review (AFR) and a memorandum of points and authorities in support thereof (Claimant's Brief) seeking reversal of the CO and entry of an award of the claimed benefits. Claimant argues that the CO is unsupported by substantial evidence, that the ALJ misapplied the law.

Both Employers filed oppositions to the AFR and memoranda of points and authorities in support thereof (Specialty's Brief and Deanwood's Brief, respectively), arguing that the facts as found in the CO are supported by substantial evidence and are in accordance with law, and ask that the CO be affirmed.

#### ANALYSIS

The scope of review by the Compensation Review Board (CRB) and this Review Panel, as established by, D.C. Code §§ 32-1501, *et seq.*, (the Act) at § 32-1521.01(d)(2)(A) 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. "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 Int'l. v. DOES* 834 A.2d 882 (D.C. 2003). Consistent with this scope of review, the CRB and this panel are bound 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.

Claimant phrases her first objection in her Brief as "The [CO] Erred in concluding that [Claimant's] Left Knee Condition and need for Surgery is not Causally Related to a Work Injury". This complaint is expounded upon thus:

The [CO] erred as a matter of law in finding [Claimant] solely sustained a left knee contusion where the medical reports from Concentra diagnosed her with a sprain of the left knee as well and where Dr. Hanley opined that [Claimant's] left knee condition of January 13, 2014 was the result of the aggravation of her preexisting knee condition due to the work injury of June 25, 2013. CE 4, Specialty EE 1 at 2.

Claimant's Brief, p. 5.

The cited sources of the evidence underpinning the argument are the Concentra “Therapy Appointment” records (CE 4) and Dr. Hanley’s initial IME report (EE 1, at 2). We fail to see Claimant’s point: CE 4 and EE 1 describe Claimant’s injury as “Contusion Of Knee” and “Sprain Of Unspecified Site Of Knee And Leg” (Concentra), “1. Muscololigamentous straining injury to the lumbar spine”, and “2. Contusion, sprain/strain of the knees.” We discern no conflict here. Both agree that the injury to the left knee was a contusion and sprain. Neither asserts that her condition “was the result of the aggravation of her preexisting knee condition due to the work injury of June 25, 2013.” We are at a loss of understanding as to the basis for Claimant’s inaccurate assertion. Regardless, the argument is rejected.

As the first numbered subpart of this first stated argument (being her second argument), Claimant asserts “[Claimant] invoked the Presumption that her Disabling Condition is Causally Related to her Work Injury of January 5, 2013 with Specialty Hospital.” Claimant’s Brief, p. 6.

We are not certain why Claimant raises this argument. In the Discussion portion of the CO, under the section entitled I “Specialty Hospital”, the first sentence reads “[Claimant] presented adequate evidence to invoke the presumption of compensability”. Thus, Claimant’s second argument represents an apparent complaint about something that the ALJ did, which Claimant agrees with. This is no basis for any action on appeal.

As the second numbered subpart of the first articulated argument (being the third argument) is “Alternatively, the Evidence Presented Demonstrates a Presumed Connection between [Claimant’s] Current Left Knee Condition and need for surgery and her Work Injury of June 25, 2013 with Deanwood, but the Compensation Order failed to apply the Presumption of Compensability to [Claimant’s] left knee injuries.” Claimant’s Brief, p. 7.

Claimant’s characterization of the CO is mistaken. The first sentence in the first full paragraph on page 8 of the CO is “Deanwood rebutted the presumption that her other left knee conditions, including her ACL tear and degenerative conditions, are medically causally related to that accident”. CO p. 8. Of logical necessity, the ALJ found that the presumption had been invoked, because he says it has also been rebutted. The AJL then proceeds to outline the basis of that finding. Claimant, in support of the argument, again erroneously asserts that in his IME report “Dr. Hanley opined that [Claimant’s] complaints were due to an aggravation of preexisting conditions in her left knee, internal derangement with a possible ACL tear, that she sustained in her work injury of June 25, 2013 and that based on his examination which showed effusion in the knee, her problems from that aggravation had not resolved. Specialty EE 1.”

We don’t know where Claimant gets this version of Dr. Hanley’s IME opinion. The first two sentences of the second paragraph of the “PHYSICAL EXAMINATION” section of the report read “She has full range of motion. There are no signs of effusion”. Specialty EE 1, p. 1. Dr. Hanley’s report does not say what Claimant says it says, and in fact to the extent that it addresses any medical matter referred to by Claimant (effusion) it says precisely the opposite. We must reject this argument for these reasons.

Claimant’s next argument (labeled 3, but being the fourth raised) is “[Claimant’s] Left Knee Condition and Need for Arthroscopy is Causally related to the Work Injuries and the

Compensation Order Erred in ignoring the Expert Medical Opinion of Dr. Hanley.” Claimant’s Brief, p. 8. After reciting a number of cases that discuss what is needed to overcome a presumed causal relationship, Claimant states:

The [CO] erred as a matter of law in ignoring the opinion of Dr. Hanley regarding the causal relationship of [Claimant’s] current knee condition to the work injury of June 25, 2013 and erred as a matter of fact in stating, “no medical-causal relationship is reflected in the record evidence.” CO at 9.

Dr. Kevin Hanley opined that [Claimant’s] current knee condition is causally related by aggravation to her work injury of June 23, 2013 at Deanwood Rehabilitation and no longer to her injury at Specialty Hospital.

Claimant’s Brief, p. 9.

As noted before, Dr. Hanley’s report does not contain the statements attributed to it. First, we must note that Dr. Hanley’s IME occurred on April 8, 2013. It was before the accident at Deanwood, which occurred June 25, 2013. Having taken place more than a month prior to June 25, 2013, the IME could not possibly reflect anything relating to that date or the events occurring thereon. Further, none of the following words appear anywhere in his reports: Deanwood, Specialty, causal relationship, aggravation, internal derangement, or June 23, 2013. For these reasons we reject Claimant’s fourth argument.

Claimant’s next argument, identified as “B”, representing the fifth point raised in this appeal, is that “The [CO] Erred as a Matter of Law in Forming its own Medical Opinions to Deny [Claimant’s] Claim for Relief”. Claimant then cites part of the CO as the offending language: “I conclude that the contusion to her left knee did not change or worsen her preexisting ACL tear.” Claimant’s Brief, p. 9.

This argument is underpinned by Claimant’s assertion that “these are medical conclusions not stated by any medical expert in the record and are, in fact, contradicted by the opinion of Dr. Hanley”. Claimant’s Brief, p. 10.

Once again we repeat: Dr. Hanley does not state and could not possibly state that an accident that occurred after his IME is the cause of the conditions he observed during his examination. And, although Claimant asserts that “The fact finder then relied on his substituted judgment to reject the treating physician’s opinion” (Claimant’s Brief, p. 10), nowhere in the Brief does Claimant direct our attention to a specific opinion from a treating physician. And, we note that the ALJ noted and cited the July 22, 2013 Concentra treatment notes to the effect that the contusion had resolved and Claimant was released from their care for the work-related injury. CO, p. 4; what remained after resolution was non-work related preexisting ACL problems. Specifically, the July 10, 2013 note from her treating medical providers at Concentra contain the following statements:

Return to work on 7/12/2013 with the following restrictions  
No prolonged standing and/or walking more than 25 min/hr  
No squatting and/or kneeling

...

Remarks: MINIMIZE CLIMBING STAIRS. FOLLOW UP WITH AN ORTHOPEDIST FOR YOUR NON WORK RELATED MEDICAL ISSUE.

CE 4, at 73 (emphasis by capitalization in original).

The only treating physician records or testimony that we have seen relating to causal relationship between Claimant's ongoing problems and either of Claimant's work injuries are from Dr. Selya, whose opinion is related to her back only, and does not mention the left (or right) knee (CE 3, at 68) and the deposition of Dr. Webber, which opinions the ALJ rejected for numerous, cogent reasons, none of which are attacked by Claimant in this appeal. See, CO, p. 6. We set them forth as the ALJ laid them out:

Dr. Webber's conclusions are unreliable. He did not remember meeting [Claimant]. . CE 8 at 101 ("I don't have any independent recollection or memory of the patient..."); CE 8 at 128. He didn't recall whether he reviewed Dr. Selya's notes about {Claimant}. CE 8 at 101 -102, 128. At the time of his February 2014 deposition, he had no way of knowing [Claimant's] Current condition. CE 8 at 120. Although Dr. Weber stated that Ms. Whatley's knee had given her more problems after the January fall, he did not know about her fall in June 2013. CE 8 at 99 ("[S]he indicated that she was having greater – greater symptoms and more frequent symptoms since January of 2013,"); CE 8 at 115 (notes do not reflect injury after January 2013); CE 5 at 81 ("She describes an injury a few years ago...[H]er knee symptoms were exacerbated by a fall which occurred in January."); CE 8 at 134 (Q. Did [Claimant] advise you anything about a new accident she had on June 25, 2013? A. Not that-I don't have any recollection of that."). Dr. Weber noted that he would have found the fall in June relevant to his opinions. CE 8 at 134. He had also not received any of the records documenting [Claimant's ] care that followed her June accident. CE 5; CE 8. In fact [Claimant] even advised Dr. Webber that she had not received any care to her left knee prior to seeing him. CE 8 at 135; CE 5 at 83 (She denies any treatment to her knee thus far.) *but see* BHT at 66 – 67. Even so, Dr. Webber could not draw a medical causal relationship between [Claimant's] ACL tear and the January accident. CE 8 at 116 (I don't think the condition of her – of her cruciate ligament was necessarily impacted by the fall of 2013 January. I'm – I can't say for sure.").

CO pp. 6 – 7.

We see no reason to find that the ALJ's conclusions are not supported by his reading of the medical evidence, his consideration of its shortcomings, and his reaching a reasonable inference from them.

Claimant's remaining arguments concern the nature and extent of Claimant's disability, if any. Claimant argues that, because she has never been medically cleared to return to unrestricted duty as a CNA, she remains disabled. Claimant's Brief does not challenge any of facts found by the

ALJ concerning the multiple returns to employment, the wages paid in those jobs, and non-injury related reasons that she ended each employment.

That is, she does not challenge the finding that Claimant returned to work in July 2013 at Unique as a CNA and that, while standing gave her knee pain, sitting breaks were allowed for the job; the position paid \$10.50 per hour, and Claimant left the job as a result of a death in the family, and although she was advised by Unique that she could return to the position, she chose not to do so.

Nor does Claimant challenge the ALJ's finding that Claimant obtained employment as a cashier at Restaurant Depot, that she held that job for approximately two months, that after "an incident" not otherwise described between herself and her supervisor she was sent home and advised to wait for a call concerning when she could return to work, and that no call came. In other words, she does not challenge the finding that she was fired from this job and does not claim the termination was injury related.

Similarly, Claimant does not challenge the finding that in the spring of 2014, Claimant began working as a communications assistant at AAMC, in a full time sedentary job paying \$11.00 per hour, or that she left that position to focus on her studies and not due to any physical issues related to her claimed work injuries.

Nor does Claimant contest the findings that Claimant worked at Southern Maryland Hospital as an emergency registrar in "in the spring of 2014", or that this full time position paid \$14.00 per hour (which is more than the stipulated average weekly wage for the position she held when she sustained the alleged injury at Deanwood). While the ALJ found that the job required standing and walking, he also found that it permitted sitting at times, and that Claimant left that job for the same reason as she left the AAMC job, to further her professional education.

In considering the nature and extent of the alleged disability, the ALJ wrote:

[Claimant] has proven capable of working in her pre-injury capacity and without wage loss. HT at 39) (She was able to perform her duties as required at Southern Maryland Hospital, Anne Arundel Medical Center, Restaurant Depot, and Unique Residential Care). She received \$11.00 an hour while working full-time at Deanwood Rehabilitation. DE 11. When she obtained a position at Unique Residential Care, she received \$10.50 an hour. BHT at 68. [<sup>1</sup>] She left that position of a death in the family, not her knee. BHT at 68. Later, she worked at Anne Arundel Medical Center for approximately \$11.00 an hour. HT at 26 – 29. [<sup>2</sup>] She left that full-time position to return to school, not because of pain to her left knee. HT at 28, 33. Next, she went to Southern Maryland Hospital, an employer that paid her fourteen dollars an hour, full time. HT at 30. While there, she was able to complete eight-hour shifts while standing. HT at 31. Again, she left that employer to return to school rather than because of an inability to do her work because of problems related to her left knee. HT at 31, 33. If [Claimant] had

---

<sup>1</sup> BHT refers to the transcript of proceedings conducted before Judge Boddie.

<sup>2</sup> HT refers to the transcript of proceedings conducted before Judge Lambert.

chosen to stay at either Anne Arundel Medical Center or Southern Maryland Hospital, she would have been allowed to do so. HT at 34. [Claimant] is now looking for a new job. HT at 38. She has had two interviews. HT at 38. If she is offered a position, she plans to accept it. HT at 38. She also has demonstrated the ability to earn wages in excess of her pre-injury average weekly wage. DE 11 [<sup>3</sup>]; HT 26 – 29, 30.

We reject Claimant's suggestion that these jobs should not be considered evidence sufficient to establish Claimant's employability, and do not understand the characterization that they are merely "odd jobs". Claimant's Brief, p. 12. All of them except the cashier job are in the same field as her jobs with Deanwood and Specialty, the health care field. At least one was in the same job classification, CNA. In other words, there is ample evidence that each of the subsequent employments were suitable alternative employment, hence the ALJ's conclusion that they represent employability is not inconsistent with *Logan v. DOES*, 805 A.2d 237 (D.C. 2002).

Of particular significance, we affirm the finding that Claimant voluntarily left the registrar job at Southern Maryland Hospital, which paid more than either job at issue in this claim, for reasons unrelated to her claimed work injuries, and that any wage loss thereafter from the date Claimant commenced that employment is unrelated to either of the work injuries in this claim.

#### CONCLUSION AND ORDER

The denial of the claims for temporary total disability is supported by substantial evidence and is in accordance with the law, and is affirmed.

*So ordered.*

---

<sup>3</sup> DE refers to employer Deanwood's exhibits.