

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



F. THOMAS LUPARELLO
INTERIM DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 13-166

**CYNTHIA M. GOGGANS,
Claimant–Petitioner,**

v.

**SIBLEY MEMORIAL HOSPITAL,
Self-Insured Employer-Respondent**

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2014 APR 22 PM 12 03

Appeal from a November 21, 2013 Compensation Order by
Administrative Law Judge Leslie A. Meek
AHD No. 12-556, OWC No. 691293

Michael J. Kitzman, for the Petitioner
Joel E. Ogden¹, for the Respondent

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

HENRY W. MCCOY, for the Compensation Review Board.

DECISION AND REMAND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

Claimant was working as a sterile processing technician for Employer on November 23, 2011 when she fell and sustained injury to her head, neck, back, and right leg. While some of Claimant's co-workers witnessed the fall where Claimant injured herself, she did not report the injury to her supervisor. Claimant commenced treatment with Dr. Andrew J. Siekanowicz, an orthopedic surgeon, on May 2, 2012.

¹ David B. Stratton represented Employer at the January 24, 2013 Formal Hearing.

Claimant filed a claim seeking temporary total disability benefits from April 10, 2012 to the present and continuing, and causally related medical benefits. At the January 24, 2013 formal hearing, the initial issue presented for resolution was whether Claimant had provided timely notice of her injury to Employer. The presiding Administrative Law Judge (ALJ) determined that Claimant failed to provide Employer with timely notice of the work injury, which the ALJ further determined render moot the consideration of the other issues of whether Claimant sustained a work-related injury, medical causal relationship, nature and extent of disability.² Claimant filed a timely appeal with Employer filing in opposition.

On appeal, Claimant argues that she presented sufficient evidence to allow actual notice to be imputed to Employer and even if timely notice was not provided under any provision of the Act, the ALJ committed an error of law by denying the claim for causally related medical benefits. In opposition, Employer counters that the Compensation Order (CO) is supported by substantial evidence and is in accordance with the law and should be affirmed.

STANDARD OF REVIEW

The scope of review by the Compensation Review Board (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.³ See D.C. Workers' Compensation Act of 1979, as amended, D.C. Code §§ 32-1501 to 32-1545 ("Act"), 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.

In the CO under review, the first issue undertaken by the ALJ was whether Claimant had provided Employer with timely notice of her injury. Pursuant to § 32-1513(a), an employee is required to provide written notice to the employer within 30 days after an injury sustained at work or within 30 days after the employee becomes aware or should have become aware of the relationship between the injury and the employment. The Act, however, does provide an exception to the written notice requirement in § 32-1513(d), which states:

(d) Failure to give such notice shall not bar any claim under this chapter:

- (1) If the employer (or his agent in charge of the business in the place where the injury occurred) or the carrier had knowledge of the injury or death and its relationship to the employment

² *Goggans v. Sibley Memorial Hospital*, AHD No. 13-166, OWC No. 691293 (November 21, 2013).

³ "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).

and the Mayor determines that the employer or carrier has not been prejudiced by failure to give such notice; or

- (2) If the Mayor excuses such failure on the ground that for some satisfactory reason such notice could not be given; or unless objection to such failure is raised before the Mayor at the 1st hearing of a claim for compensation in respect of such injury or death.

Claimant does not contest that she did not provide timely written notice. Rather it is Claimant's contention that given Employer's knowledge of Claimant's work duties, evidence that the injury was witnessed by other employees, and that Employer had the ability to know about Claimant's condition was sufficient to impute that Employer had actual knowledge of the injury and it was error for the ALJ not to find as such. We are not persuaded by this argument.

Claimant relies upon *Keith v. Unity Construction Co. of D.C.*, Dir. Dkt. 89-58, H&AS No. 89-202, OWC No. 500412 (July 12, 1990), for the proposition that actual knowledge of a work injury can be imputed to an employer if the employer is aware of the employee's duties, has been advised of the nature of the employee's injury, and must know as much about the employee's condition as could be reported. As Employer in its opposition points out and we agree, Claimant's reliance on *Keith* is misplaced, primarily because in *Keith*, the employee's supervisor actually witnessed the accident that caused the injury. In the case *subjudice*, while the evidence supports the finding that a co-worker(s) witnessed the fall, there is no evidence that this information was reported to a supervisor in order to bring Employer within the ambit of § 32-1513(d)(1).

In addressing whether Claimant reported the accident to a supervisor or whether a supervisor obtained knowledge of the incident, the ALJ reasoned and concluded:

At first Claimant testified she did not report the incident to her supervisor because she just started her employment with Employer and did not believe she qualified for occupational health help. (EE 8, internal p. 8). Claimant also testified she was not familiar with the numbers to call for occupational health help. (EE 8, p. 9). Claimant also testified she did not report the incident to her supervisor because she believed she would not be able to work in sterile processing if she had a back injury. (EE 8, p. 19).

Claimant testified she did not believe she could file a workers' compensation claim as a new employee. She was not sure if new employees had to wait thirty days before they were covered by workers' compensation (EE 8, pp. 32-33). Yet the evidence shows Claimant failed to report the instant claim even after she worked for Employer for thirty days.

At the deposition the Claimant testified her co-worker was aware she was hurt at work and encouraged Claimant to report the incident but Claimant

did not follow this advice as she believed the co-worker did not understand the “policies” as well as Claimant did. (EE 8, internal p. 23).

At hearing [sic] in this matter Claimant testified that she understood reporting a work related injury required one to “...fill out a form I think with the manager, and then HR and then Employee Health.” (TR p. 73).

Claimant failed to provide Employer with written notice of her work-related injury of November 24, 2011, and the record is void of any evidence to show Employer had actual knowledge of Claimant’s alleged injury....⁴

In arguing that because she presented evidence that the fall was witnessed by other employees and that this meant “employer had the ability to know what Ms. Goggans knew about her injury and what had occurred”⁵, Claimant advocates for a “should have known” standard that was rejected by the D.C. Court of Appeals⁶ because subsection (d)(1) requires the employer to have “actual knowledge.” As the ALJ found no evidence in the record that Employer had actual knowledge of Claimant’s work injury, and Claimant’s points to none, there is no basis to disturb the ALJ’s ruling.

Claimant also argues that her fall was “witnessed by other employees, including those overseeing her initial training.”⁷ This argument carries the implication that “those overseeing her initial training” were individuals acting on Employer’s behalf so as to impute actual knowledge to Employer for purposes of notice under subsection (d)(1). The record, however, does not support this argument.

It is clear from the record that those who witnessed Claimant’s accident were not supervisors, nor were they acting in any capacity as “agents” for Employer. In her direct testimony (Hearing Transcript (HT), p. 47), Claimant testified there were two other sterile processing technicians in the room with her and a maintenance man. In response to a specific question (HT, p. 48), Claimant said that one of the technicians, Ms. Hall who had worked there for over eight years, was not responsible for assigning her any work, and therefore could not be perceived as a supervisor or trainer.

On cross-examination (HT, p. 65), Claimant stated that she did not report the incident to any supervisor. In summarizing Claimant’s case in closing argument (HT, p. 123), Claimant’s counsel argued that one of the employees had been working there for eight years, repeats there were two technicians and the maintenance man present, stated declaratively, “[T]here was no supervisor present.” In addition, no argument is made in closing of anyone present serving in a

⁴ CO, unnumbered p. 3-4.

⁵ Claimant’s *Memorandum of Points and Authorities in Support of Application for Review*, p. 3.

⁶ See *Howard University v. DOES*, 960 A.2d 603, 609 (D.C. 2008).

⁷ Claimant’s *Memorandum of Points and Authorities in Support of Application for Review*, p. 3.

training capacity. Therefore, no evidence has been found in the record to support the argument on appeal that the fall was witnessed by anyone “overseeing her initial training” so as to infer any actual knowledge of the incident to Employer.

Claimant next argues that the ALJ erred in denying the claim for causally related medical benefits. Claimant asserts that it well-settled in this jurisdiction that failure to give timely notice does not preclude a claim for causally related medical benefits. We agree.

In the CO, the ALJ concluded that “[A]s Claimant failed to provide Employer with timely notice of her injury, all other issues in this matter are moot.”⁸ This ruling by the ALJ is not in accordance with law in this jurisdiction. As the DCCA stated:

Under our Workers' Compensation Act we have held that "medical benefits are not subject to the same limitations as are disability income benefits. . . ." *Santos v. District of Columbia Dep't of Employment Servs.*, 536 A.2d 1085, 1089 n.6 (D.C. 1988). Based upon the language of the Act we held that there was no indication that the legislature intended to "limit the employer's liability for medical services and supplies to the period of time during which the injured employee receives disability income compensation," *id.*, but rather that the right to medical expense are to be addressed "separate and distinct from the right to income benefits." *Santos, supra* at 1089 n.6; *see also*, 2 A. LARSON, THE LAW OF WORKMENS' COMPENSATION § 61.11 (b), at 10-773 (1987).⁹

The Court went on to conclude:

In light of these controlling principles and given the deference we owe to the statutory construction of the Director, we affirm the Director's decision that claims for causally related medical expenses are not barred by the failure of the employee to give the notice required by D.C. Code § 32-1513 (2001).¹⁰

Accordingly, this matter shall be returned to allow the ALJ to determine Claimant's entitlement to causally related medical benefits.

⁸ CO, unnumbered p. 4.

⁹ *Safeway Stores, Inc. v. DOES*, 832 A.2d 1267, 1269 (D.C. 2003).

¹⁰ *Id.* at 1271.

CONCLUSION AND ORDER

The ALJ's determination that Claimant failed to give notice as required by D.C. Code § 32-1513 is supported by substantial evidence and in accordance with the law and is AFFIRMED. The ALJ's determination to render moot Claimant's claim for causally related medical benefits is REVERSED and REMANDED. Accordingly, the November 21, 2013 Compensation Order is AFFIRMED IN PART and REMANDED IN PART for further consideration consistent with the above discussion.

FOR THE COMPENSATION REVIEW BOARD:


HENRY W. MCCOY
Administrative Appeals Judge

April 22, 2014

DATE