

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA M. MALLORY
DIRECTOR

CRB No. 11-118

JACQUELINE DENT,

Claimant-Respondent,

v.

PROVIDENCE HOSPITAL AND SEDGWICK INSURANCE COMPANY,

Employer and Insurer-Petitioner.

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2012 JUN 27 AM 11 15

Appeal from a Compensation Order of
Administrative Law Judge Anand K. Verma
AHD No. 11-177, OWC No. 670821

Todd S. Sapiro, Esquire, for the Petitioner

Michael J. Kitzman, Esquire, for the Respondent

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

JEFFREY P. RUSSELL, for the Compensation Review Board.

DECISION AND ORDER

BACKGROUND

On April 20, 2010, Jacqueline Dent fell off a toilet seat while working for Providence Hospital. She filed a claim for workers' compensation benefits. Providence accepted the claim as compensable and provided wage loss and medical benefits for injuries to Ms. Dent's low back and "left side". Her treatment was provided by and under the direction of an orthopedic surgeon, Dr. Easton L. Manderson.

¹ Judges Russell was appointed by the Director of DOES as an Interim Board Member pursuant to DOES Administrative Policy Issuance Nos. 11-02 (June 23, 2011).

In February 2011, Ms. Dent complained of left knee pain to Dr. Manderson. Based upon her level of pain and the results of an MRI, Dr. Manderson recommended knee replacement surgery, and opined that the problem was the result of the work injury.

Providence had Ms. Dent seen and evaluated by Dr. Marc Danziger on June 14, 2011, for the purpose of an independent medical evaluation (IME). Dr. Danziger opined that "there is absolutely no temporal relationship between the 4/20/10 back injury and the knee complaints". Based upon this report, Providence declined to provide the requested medical care.

Ms. Dent requested a formal hearing to obtain an award for that care, which hearing was held August 11, 2011. The Administrative Law Judge (ALJ) before whom the hearing was held issued a Compensation Order on September 29, 2011, in which he awarded the requested medical care.

Providence timely appealed that Compensation Order, which appeal Ms. Dent opposes. We affirm.

STANDARD OF REVIEW

The scope of review by the CRB, as established by the Act and as contained in the governing regulations, is generally 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*, D.C. Workers' Compensation Act of 1979, as amended, D.C. Code § 32-1501, *et seq.*, (the Act) at § 32-1521.01 (d)(2)(A), and *Marriott International v. DOES*, 834 A.2d 882 (D.C. 2003). Consistent with this standard of review, the CRB and this review panel must affirm 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 this panel might have reached a contrary conclusion. *Id.*, at 885.

DISCUSSION AND ANALYSIS

In this case, Providence concedes that the ALJ properly invoked the presumption of compensability, imbuing Ms. Dent with the presumption that her left knee condition is causally related to her work injury. *See*, *Whittaker v. DOES*, 668 A.2d 844 (D.C. 1995). Further, Ms. Dent does not dispute that Providence successfully rebutted the presumed causal relationship by resort to the IME by Dr. Danziger. *See*, *Washington Post v. DOES and Raymond Reynolds, Intervenor*, 852 A.2d 909 (D.C. 2004) (*Reynolds*).

Thus, the role of the ALJ became to assess the evidence anew, without reference to any presumptions, with Ms. Dent having the burden of establishing that her left knee condition was caused or aggravated by the work injury by a preponderance of the evidence, taking into account the fact that the opinions of her treating physician, Dr. Manderson, are entitled to be given great weight and accorded an evidentiary preference when considered against the IME opinions presented by Providence. *See*, *Lincoln Hockey, LLC v. DOES*, 831 A.2d 913 (D.C. 2003).

The ALJ considered the conflicting medical opinions on the causation issue, and ultimately decided that he would accept the opinion of the treating physician that the current left knee condition is

causally related to the work injury. Providence argues that this is error, in essence asserting that the statement in Dr. Manderson's report to the effect that Ms. Dent "was not seeking treatment for left knee pain prior to this event" is so demonstrably wrong as to *compel* rejection of his opinion. As framed by Providence in its Memorandum of Points and Authorities in Support of Employer's Application for Review, "Employer takes issue with the weight given by the Administrative Law Judge to the opinion of claimant's treating physician, Dr. Manderson, over the opinion of Dr. Danziger, an independent medical examiner". Providence's Memorandum, page 7.

This argument is premised upon and buttressed by the fact that Providence produced medical records from as early as August 2004 demonstrating a significant prior history of left knee pain, including a report from Dr. Marc Rankin from May 27, 2008 in which he described Ms. Dent's left knee as being arthritic, and stated that "it likely would require" replacement surgery in the future. EE 9.

The ALJ is the finder of facts; where the facts found are supported by substantial evidence, we are without authority to substitute our judgment for that of the ALJ in the absence of clear error. While we may well have decided this case differently, it is evident that the ALJ was aware of and considered Ms. Dent's prior history of knee pain, alluding specifically to evidence of the "six year treatment history" described by Dr. Danziger in his IME report, including the contemplation of imminent knee replacement surgery (Compensation Order at page 5).

And, while one reading of Dr. Manderson's statement concerning the absence of treatment to the left knee "prior to this event" is that he was unaware that Ms. Dent had had prior left knee problems of any kind, that is not the only interpretation. His statement could be read as merely asserting that at the time of the fall in this case Ms. Dent was not undergoing an active course of treatment for left knee pain, an assertion which is, on this record, true. Indeed, in his report of February 14, 2011, Dr. Manderson reviewed left knee x-rays which demonstrated the existence of "moderate arthritis", which in his view "was probably exacerbated and precipitated by the fall". CE 1, cited by the ALJ in the Compensation Order at page 5.

The date of injury in this case is April 20, 2010; the most recent medical record concerning any prior attention to the left knee is EE 9, Dr. Rankin's May 27, 2008 report. This report pre-dates the date of injury by nearly two years, and there is no record of any intervening medical treatment for the left knee.

While Providence argues "that there are persuasive reasons to reject the opinions of claimant's treating physician", we must point out that even if we were to agree, that fact alone would not warrant reversal of the ALJ's decision. Persuasive reasons to reject treating physician opinion *permit* such rejection, but do not *compel* it.

In this case, the ALJ considered the medical and other evidence of record, and made findings of fact consistent with that record and based thereon. Accordingly, the Compensation Order must be affirmed.

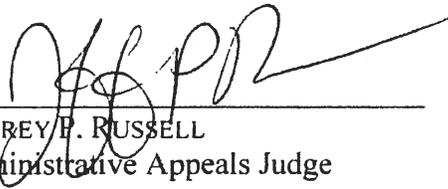
CONCLUSION

The finding that Ms. Dent's left knee condition and injury is causally related to the work injury of April 20, 2010 is supported by substantial evidence and is in accordance with the law.

ORDER

The award of causally related medical care is affirmed.

FOR THE COMPENSATION REVIEW BOARD:



JEFFREY P. RUSSELL
Administrative Appeals Judge

January 27, 2012
DATE