GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

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DIRECTOR

COMPENSATION REVIEW BOARD

DEPT. OF EMPLOYMENT SERVICES
COMPENSATION REVIEW BOARD
2016 MAY 27 AM 10 08

CRB No. 15-197

JACQUELINE DENT,
Claimant–Petitioner,

v.

PROVIDENCE HOSPITAL and
SEDGWICK CLAIMS MANAGEMENT SERVICES,
Employer/Third Party Administrator-Respondent.

Appeal from a November 20, 2015 Compensation Order by
Administrative Law Judge Joan E. Knight
AHD No. 11-177A, OWC No. 670821

(Decided May 27, 2016)

David J. Kapson for Claimant
Todd S. Sapiro for Employer

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

LINDA F. JORY for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

Claimant worked for Employer as a hospital receptionist/clerk. On April 20, 2010, Claimant fell off of a toilet seat and sustained multiple injuries. Claimant sought treatment from Dr. Natasha Lamming-Lee on April 28, 2010. Claimant was diagnosed with lumbar radiculopathy and was prescribed a walking cane. On April 30, 2010, Claimant went to the Employee Health Center and she sought medical treatment from Dr. Easton Manderson for low back pain. Dr. Manderson administered a steroidal injection to the left iliolumbar interval and placed Claimant off of work from April 30, 2010 to August 20, 2010. Claimant also received treatment at employer's occupational health office between April 30, 2010 and July 23, 2010.

At the time of the work-related fall, Claimant had a significant pre-existing left knee condition, the result of a previous work-related injury. On January 16, 2005, Claimant injured her left knee

when she slipped and fell on the floor at the cafeteria of Howard University Hospital where she worked as an MRI and CT scan coordinator. Arthroscopic surgery performed on her left knee was not successful. On May 27, 2008, Marc Rankin, an orthopedic surgeon completed a medical leave form stating that Claimant has arthritis in her left knee, left knee pain and limited walking tolerance and that Claimant will make a decision about a total knee replacement on June 11, 2008.

At the request of Employer, Claimant was examined by Dr. Danziger on June 14, 2011. Dr. Danziger opined that there was no causal relationship between the work related injury and the left knee or left shoulder complaints. A dispute arose as to the causal relationship of Claimant's left knee. A hearing was conducted and a Compensation Order (CO) issued on September 29, 2011 which awarded Claimant causally related medical expenses and authorization for a left knee replacement.

Claimant subsequently presented a claim for permanent partial disability benefits which was denied in a July 23, 2013 CO.

On November 24, 2014, Claimant filed an Application for Formal Hearing (AFH) seeking authorization for additional medical treatment, payment of medical expenses and a closed period of temporary total disability.

At the request of Employer, Claimant was re-examined by Dr. Danziger on April 21, 2015.

On June 3, 2015, Employer filed a Motion to Void the September 29, 2011 CO pursuant to the CRB's decision in *Sandoval v. Hotel & Restaurant Employees International Union* and *Sinclair v. Howard University Hospital,* CRB 13-002(R) and 13-024 (R)(November 4, 2014). The ALJ assigned to the November 2014 AFH declared the September 29, 2011 CO void and a formal hearing was conducted on June 10, 2015. The issues presented to the ALJ were:

(1) Was Claimant's right knee condition medically causally related to the accidental injury on April 20, 2010?

(2) Is Claimant's left knee condition medically causally related to the accidental injury on April 20, 2010?

(3) If Claimant's right knee condition is medically causally related to the accidental injury, was she temporarily totally disabled as a result of the accidental injury from January 30, 2014 through May 12, 2014?

Dent v. Providence Hospital, AHD NO. 11-177A, OWC No. 670821 (November 20, 2015) at 2, 3.

The Compensation Order (CO) denied Claimant's claim for relief. The ALJ concluded Claimant failed to make an initial showing required to invoke the presumption that her right knee condition was medically causally related to the work-related injury of April 20, 2010. Although the ALJ found Claimant's evidence was sufficient to invoke the presumption with respect to her

left knee, the ALJ concluded that Employer rebutted the presumption that Claimant's left knee problems were causally related to the work-related injury and Claimant ultimately failed to produce by a preponderance of the evidence that her left knee condition was causally related to the work injury.

Claimant filed an application for review asserting the November 20, 2015 CO is not supported by substantial evidence. Employer filed a timely response arguing that the CO should be affirmed.

ISSUE ON APPEAL

Is the November 20, 2015 CO supported by substantial evidence and in accordance with the law?

ANALYSIS

The scope of review by the CRB as established by the District of Columbia Workers' Compensation Act (the Act) and as contained in the governing regulations is limited to making a determination whether the factual findings of a Compensation Order on appeal are based upon substantial evidence in the record, and whether the legal conclusions flow rationally from those facts and are otherwise in accordance with applicable law. D.C. Code § 32-1521.01(d)(2)(A). "Substantial evidence" as defined by the District of Columbia Court of Appeals (DCCA), 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) (*Marriott*). Consistent with this scope of review, the CRB is 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 members of the CRB review panel considering the appeal might have reached a contrary conclusion. *Marriott*, 834 A.2d at 885.

Claimant argues in her Memorandum of Points and Authorities in Support of Claimant's Application for Review (Claimant's Brief) that the ALJ's failure to apply the presumption of compensability found in D. C. Code § 32-1521 to Claimant's right knee condition and the work injury of April 20, 2010 is not supported by substantial evidence. In support of her position Claimant asserts:

> Ms. Dent testified that between 2011 and 2013, she had continued left knee pain that caused her to limp. She then began to develop pain in the right knee. Dr. Manderson's medical reports confirm the difficulty walking as well the need for a total knee replacement. CE-1, 14. This evidence is sufficient to invoke the presumption of compensability with respect to the right knee condition. The ALJ ignores, or simply dismisses this evidence in finding that Ms. Dent has failed to submit evidence sufficient to invoke the presumption. Instead the ALJ focuses on the duration of time between the April 20, 2010 work injury and the first complaints of right knee problems to support the finding that Ms. Dent has not invoked the presumption here.

Claimant's Brief at 8.

We disagree with Claimant. Review of CE-1, 14 which Claimant asserts the ALJ "ignores or simply dismisses", supports the ALJ's determination that:

> Claimant's treating physician never offered a causal relationship opinion addressing the need for a total right knee replacement and the April 20, 2010 work injury.

CO at 6.

The fact that Claimant testified about her limping and that her treating physician acknowledged her "difficulty walking" does not meet Claimant's burden of demonstrating that her employment had the potential to cause her need for a right knee replacement. Because the ALJ's conclusion that Claimant failed to meet her initial burden of proof is supported by substantial evidence and in accordance with the law, it is accordingly affirmed.

Claimant next argues that the ALJ erred in concluding Claimant failed to prove, by a preponderance of the evidence, that her left knee condition is medically causally related to the work accident. In doing so Claimant first argues Dr. Danziger's opinions are not specific and comprehensive enough to rebut the presumption of compensability. We disagree. Dr. Danziger reported:

> It is my impression Ms. Dent had longstanding preexisting bilateral knee arthritis that was clearly documented by Dr. Rankin when he treated her in 2005, 2007 and 2008. It is clear she needed a knee replacement well before the work related accident of 4/20/10. In no way was either knee rendered symptomatic by the work incident. Her left knee was bothering her less than the right knee and she ended up having a right knee replacement and the left knee replacement has been delayed. When one checks her history, the timeline is one of a slip and fall on 4/20/10. She sought treatment for a lumbar strain and was treated over the next several months. She returned to work without problems after two weeks. She had an exacerbation that lasted only six days and she then returned to work. It was not until 2/14/11, well over 10 months after the work related accident that any symptoms in the left knee were present. The knee complaints are clearly related to preexisting disease and they were not in any way aggravated as the temporal relationship doesn't fit.

EE 1 at 5.

Dr. Danziger's opinion rendered on April 21, 2015 is consistent with his opinion when he first examined her on June 14, 2011. EE 1 at 1-3. We determine the ALJ's conclusion that Dr. Danziger's opinion is sufficient to rebut the presumption is in accordance with the law because Dr. Danziger's opinion is an unambiguous opinion that the work injury no longer contributes to the disability and was rendered by a qualified independent medical expert who examined Claimant and reviewed the medical records. *Washington Post v. DOES*, (*Raymond Reynolds, Intervenor*), 852 A.2d 909, 914 (D.C. 2004).

With regard to the ALJ's conclusion that Claimant failed to bear her burden to produce the preponderance of the evidence that her left knee condition was causally related to the work related accident on April 20, 2010, Claimant asserts:

> . . . The ALJ's rejection of the treating physician here, is not supported by substantial evidence.
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> Specifically, Dr. Manderson, who has provided treatment to Ms. Dent since the onset of this injury, has reviewed her medical file, and who is familiar with her history and complaints, has opined that the fall resulted in an exacerbation of her knee condition, necessitating surgical intervention. Dr. Manderson documented that Ms. Dent has complaints of left shoulder pain, related to her work injury, and complaints of left knee pain. CE-1 pp. 15-16. Dr. Manderson further opined on February 14, 2011, that the fall exacerbated and precipitated the complaints in the knee. CE-1, p. 16; CO at 6. Based on the examination and x-rays, Dr. Manderson recommended a total knee arthroplasty to the left knee. CE-1. Dr. Manderson's opinion and explanation closely mirror the claimant's testimony as to the history and progression of her left knee complaints both before and after the accident. Ms. Dent testified that she did have previous problems with her left knee, but that the incident on April 20, 2010, increased the pain and other symptoms that she was having. HT. Ms. Dent testified to experiencing increased pain and swelling in the left knee, and difficulty walking and standing since her April 20, 2010 fall. HT.

Claimant's Brief at 11, 12.

We reject Claimant's assertion that Dr. Manderson's opinion and explanation "closely mirrors" Claimant's testimony. The ALJ pointed out the discrepancies between Claimant's testimony and what the actual medical records revealed with regard to the left knee:

> After Dr. Rankin recommended left total knee replacement, Claimant did not "speak with Dr. Manderson about the left knee, as much – I knew it needed to be done so I didn't speak with him about that." HT at 25. Claimant's testimony is inconsistent insofar as she testified that she went to Dr. Manderson primarily for treatment of the left knee after the April 20, 2010 injury but later testified that "she didn't speak to him" about the left knee because she knew the total knee replacement needed to be done."
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> * * *
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> While I reject Dr. Manderson's causal relationship opinion, I do credit Dr. Manderson's September 27, 2010 report over Claimant's testimony that she went to see Dr. Manderson "basically, being treated for my knee" after the fall. For five months, Dr. Manderson treated only Claimant's low back pain. There is no evidence in the record that Claimant complained to Dr. Manderson about her left

> knee pain before January 31, 2011. Further, she did not complain to Employee Health about left knee pain either.

CO at 10.

As Employer has correctly pointed out, it is unclear if Dr. Manderson was aware of the pre-injury recommendation for a total left knee replacement or that Claimant had arthroscopic surgery on her left knee. Nevertheless the statement in his February 14, 12011 report that "It must be noted that she was not seeking treatment for left knee pain prior to this event" is not consistent with the x-rays and record of Dr. Rankin. EE 9, 10.

This Panel has determined substantial evidence supports the ALJ's rejection of Dr. Manderson's opinion in favor of Dr. Danziger's opinion, specifically her conclusion:

> Dr. Danziger opined that Claimant's periodic treatment for left knee pain "speaks to the sporadic nature of her arthritis".
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> * * *
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> Because Dr. Manderson did not explain why Claimant's left knee complaints would arise months after the April 20, 2010 injury and did not discuss Claimant's pre-injury condition and because Dr. Danziger explains his opinion thoroughly, I reject Dr. Manderson's opinion that Claimant's left knee complaints are causally related to the fall which arose out of and in the course of her employment on April 20, 2010.

CO at 10.

CONCLUSION AND ORDER

For the reasons explained herein, we find the November 20, 2015 Compensation Order is supported by substantial evidence in the record and is in accordance with the law and is AFFIRMED.

So ordered.