

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
DIRECTOR

CRB No. 16-018

JUAN GARCIA-JIMENEZ,
Claimant-Petitioner,

v.

WASHINGTON CONVENTION CENTER AND
BERKLEY SPECIALTY UNDERWRITING MANAGERS, LLC
Employer and Carrier - Respondents.

Appeal from a January 15, 2016 Compensation Order by
Administrative Law Judge Lilian Shepherd
AHD No. 15-386, OWC No. 679374

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2016 JUN 27 AM 10:19

(Decided June 27, 2016)

Ashlee S. Turmelle for the Employer
David J. Kapson for the Claimant

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

HEATHER C. LESLIE for the Compensation Review Board:

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

Claimant, a painter, injured his right knee when he slipped and fell while working on September 21, 2010. Claimant did not have any issues with his right knee before the work accident.

Claimant sought treatment with Dr. John Albrigo. After a November 2, 2010 MRI revealed a tear of the medial meniscus in his right knee, Claimant underwent surgery performed by Dr. Albrigo. Thereafter, Claimant underwent physical therapy.

Claimant then came under the care of Dr. Andrew Holmes who diagnosed Claimant with right knee arthritis. Claimant received injections and medication under the care of Dr. Holmes.

Employer sent the Claimant for an independent medical evaluation (IME) with Dr. Louis Levitt. Dr. Levitt took a history of Claimant's injury and treatment to date. Dr. Levitt also performed a physical exam and took x-rays of the knees. Thereafter, Dr. Levitt opined that Claimant's need for surgery was causally related to the work injury. However, Dr. Levitt further opined Claimant's current right knee problems are related to arthritis.

Claimant continues to seek treatment with Dr. Holmes for his right knee.

A full evidentiary hearing occurred on December 10, 2015. Claimant's claim for relief was for authorization for medical treatment to his right knee.¹ The sole issue to be adjudicated was whether Claimant's current right knee condition was medically causally related to the work injury. A Compensation Order (CO) was issued on January 15, 2016 which denied Claimant's claim for relief.

Claimant appealed. Claimant argues Dr. Levitt's opinion is not specific or comprehensive enough to sever the presumption of compensability

Employer opposes Claimant's appeal, arguing that the CO's conclusion that Claimant's current disability is not medically causally related to the work accident is not arbitrary or an abuse of discretion as it was based on substantial evidence. Employer argues the CO should be affirmed.

ANALYSIS²

Claimant argues that the ALJ erred in finding Dr. Levitt's opinion rebutted the presumption of compensability and that Dr. Levitt's opinion "cannot be used as the basis to demonstrate that without the presumption of compensability, Mr. Garcia-Jimenez's right knee condition was not causally related to the September 21, 2010 injury." Claimant's argument unnumbered page 8.

Addressing Claimant's first argument, Claimant argues that Dr. Levitt's inconsistent statements regarding whether Claimant's underlying arthritic changes were aggravated by the work accident render his opinion not specific or comprehensive enough to sever the presumption of compensability. Claimant specifically points to the following statements from Dr. Levitt's IME report in support of his argument:

¹ Claimant specifically sought "authorization for a follow-up visit with Dr. Holmes's, Mr. Garcia-Jimenez's treating physician, and potentially and injection to the right knee..." Hearing transcript at 10.

²The scope of review by the CRB 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.

- He had substantial preexisting arthritis to the knees that was clearly rendered somewhat symptomatic by the work injury and by the surgery subsequently performed. Employer's exhibit 1 at 2.
- I do not believe the slip and fall event at work and the subsequent surgery performed advanced his arthritis or aggravated it into a worsened state. Employer's exhibit 1 at 3.

We disagree with Claimant. The above two sentences cannot be read in a vacuum and must take into account Dr. Levitt's opinion as a whole. A review of Dr. Levitt's IME shows that after the first sentence quoted above, Dr. Levitt stated,

- I believe the true pathology that is exclusive of the 9/20/10 work trauma is related to the meniscus and some minor articular damage to the joint.
- The arthritis identified on his x-ray today really reflects degenerative involuntional age related and genetic disease and is not related causally to the work trauma of 9/20/10.

Employer's exhibit 1 at 2.

It is clear that while Dr. Levitt believed that Claimant's arthritis was somewhat aggravated after the work injury, Dr. Levitt believes Claimant's present condition is entirely related to preexisting arthritic changes and not related to the work injury. Dr. Levitt's opinion is specific and comprehensive enough to rebut the presumption of compensability and it was not in error for the ALJ to rely upon Dr. Levitt's opinion for rebuttal.

Claimant's second argument is that Dr. Levitt's opinion is insufficient to prove that Claimant's right knee condition is not causally related to the work injury and points to Claimant's credible testimony to support the argument that Claimant's arthritis has been aggravated and remains aggravated by the work injury. On this point the ALJ stated:

Claimant is being treated by Dr. Holmes and throughout Dr. Holmes' treatment of Claimant he has opined that Claimant has moderate osteoarthritis. In the medical report dated October 26, 2012, Dr. Holmes opined Claimant had degenerative joint disease. He discussed giving Claimant an injection which he declined. In the medical report dated March 28, 2014, Dr. Holmes discussed with Claimant his options for his arthritis. He recommended over the counter anti-inflammatories or prescription of anti-inflammatories and after they fail, he could have steroid injections. Claimant returned to Dr. Holmes on November 3, 2014 and received the steroid injection. In the medical report dated October 23, 2015, Dr. Holmes opined the Claimant had right knee osteoarthritis, status post arthroscopy. He does not opine that Claimant's current condition is related to the work injury.

The IME examination and opinion of Dr. Levitt provides a more thorough explanation regarding the likely cause of Claimant's condition and is therefore accorded greater weight. The undersigned is persuaded that Dr. Levitt's medical opinion is more comprehensive. Dr. Levitt opined that Claimant had substantial pre-existing arthritis to the knees that was rendered somewhat symptomatic by the

work injury and by the surgery subsequently performed. Dr. Levitt opined that the x-rays showed rather advanced arthritis to particularly the medial compartments. The arthritis identified on the x-ray reflects degenerative involuntional [sic] age related and genetic disease. Dr. Levitt explains his reasons for his medical conclusion which outweighs the medical opinion of Dr. Holmes. The undersigned is not rejecting the treating physician's preference but has found that Dr. Holmes consistently discussed with Claimant the status of his arthritis and he is silent on the causation of Claimant's current condition. Dr. Holmes does not opine that Claimant's current condition is related to his work injury of September 21, 2010.

CO at 4-5.

After the presumption of compensability is rebutted, it drops from the case and Claimant has the burden of proving, by a preponderance of the evidence, that his right knee is medically causally related to the work injury. *Ferreira v. D.C. Department of Employment Services*, 531 A.2d 651, 655 (D.C. 1987). Claimant, in argument, only relies on Claimant's credible testimony. As the ALJ points out, Claimant's treating physician fails to opine Claimant's current need for treatment is related to the work injury.

A review of the evidence supports the ALJ's conclusion. In argument Claimant does not allege that the ALJ's summarization of Dr. Holmes opinion is erroneous, but only points out Claimant's testimony in support of his argument that the "substantial evidence" supports only one outcome, that his current right knee condition is medically causally related to the work accident. We disagree. What Claimant is asking us to do is to reweigh the evidence in his favor, a task we cannot do. *Marriot, supra*.

CONCLUSION AND ORDER

The January 15, 2016 Compensation Order is supported by the substantial evidence in the record and in accordance with the law and is AFFIRMED.

So ordered.