GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR

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INTERIM DIRECTOR

COMPENSATION REVIEW BOARD

CRB 14-100

DEPT. OF EMPLOYMENT SERVICES
COMPENSATION REVIEW BOARD
2015 JAN 12 AM 11 34

LANELLE DAUGHTRY,
Claimant-Respondent,

v.

TAUCK WORLD DISCOVERY,
and HARTFORD INSURANCE COMPANY,
Employer and Insurer-Petitioners.

Appeal from a July 24, 2014 Compensation Order by
Administrative Law Judge Karen Calmeise
AHD No. 14-036, OWC No. 561520

Kelli M. Rives for the Employer
Paulette E. Chapman for the Claimant

Before HEATHER C. LESLIE, MELISSA LIN JONES, and JEFFREY P. RUSSELL, *Administrative Appeals Judges.*

HEATHER C. LESLIE, for the Compensation Review Board.

DECISION AND ORDER

This case is before the Compensation Review Board on the request for review filed by the Employer of the July 24, 2014, Compensation Order (CO) issued by an Administrative Law Judge (ALJ) in the Administrative Hearings Division (AHD) of the District of Columbia's Department of Employment Services (DOES). In that CO, the ALJ granted Claimant temporary total disability benefits from June 10, 2012 to the present and continuing and causally related medical benefits. We AFFIRM.

BACKGROUND FACTS OF RECORD AND PROCEDURAL HISTORY

Claimant worked as a tour guide for Employer. On June 10, 2012, Claimant was at the Lincoln Memorial when a skateboarder collided with her, causing her to fall down the steps. Claimant continued to perform her duties that day and several days thereafter. On June 15, 2012, Claimant sought medical treatment for complaints of back pain and headaches. Claimant was treated by Dr. Sandeep Teja. Dr. Teja diagnosed Claimant as suffering from an acute intracranial

hemorrhage. Claimant's condition worsened over the next several days, requiring multiple medical procedures.

Claimant was eventually released to a rehabilitation hospital and then to an extended care facility. Claimant suffers from cognitive and physical impairments. Claimant's brother is her court appointed guardian.

Claimant submitted her medical records for a record review by Dr. Thomas J. DeGraba. Dr. DeGraba opined that her work injury "was a significant contributing factor in causing her intracranial hemorrhages." Claimant's exhibit 4.

A full evidentiary hearing occurred on January 15, 2014. Claimant sought an award of temporary total disability benefits from June 10, 2012 to the present and continuing and causally related medical benefits. The sole issue raised was whether Claimant's current medical condition is medically causally related to her work injury. A CO was issued on July 24, 2014, concluding Claimant's current medical condition is medically casually related to the work injury and granting Claimant's request for disability and medical benefits.

Employer timely appealed. Employer contends the CO is not supported by the substantial evidence in the record nor in accordance with the law. Employer specifically argues that as none of the treating physicians related Claimant's current condition to the work injury, the CO is unsupported by the substantial evidence.

Claimant opposes Employer's appeal, stating the CO is supported by the substantial evidence in the record and is in accord with the law.

THE STANDARD OF REVIEW

The scope of review by the CRB is limited to making a determination as to whether the factual findings of the appealed CO 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" is relevant evidence a reasonable person might accept to support a conclusion. *Marriott International v. DOES*, 834 A.2d 882, 885 (D.C. 2003) and D.C. Code §32-1521.01(d)(2)(A).

Consistent with this standard of review, the CRB is constrained to uphold a CO that is supported by substantial evidence, even if there also is contained within the record under review substantial evidence to support a contrary conclusion and even if the CRB might have reached a contrary conclusion. *Marriott, supra.*

DISCUSSION

A review of the CO reveals the ALJ noted:

> A claimant is entitled to a rebuttable presumption that their claim arises out of and in the course of employment if he produces credible evidence of an injury and of a work-related event which has the potential of causing the injury. See *Spartin v.*

> *District of Columbia Department of Employment Services*, 584 A.2d 564 (D.C. 1990); *Muller v. Lanman Company*, Dir. Dkt. 86-1, H&AS No. 85-346, OWC No. 0070456 (March 15, 1988). The statutory presumption includes the medical causal relationship between the disabling condition in question and the injury. *Charles Whittaker v. DOES,* 668 A.2d 844 (D.C. 1995).
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> The claimant must make an "initial demonstration" of "both an injury and a relationship between that injury and the employment." *Georgetown Univ. v. DOES*, 971 A.2d 909, 916 (D.C. 2009); *Georgetown Univ. v. DOES*, 830 A.2d 865, 870 (D.C. 2003); Ferreira, supra, 531 A.2d at 655.

CO at 3.

It is well settled that to benefit from the statutory presumption of compensability, an injured employee need only show some credible evidence of the existence of two basic facts: (1) an injury and (2) a work-related event, activity, or requirement which has the *potential* of resulting in or contributing to the injury. *See Parodi v. DOES,* 560 A.2d 524, 526 (D.C. 1989); *Short v. DOES,* 723 A.2d 845, 851 (D.C. 1998); D.C. Code § 32-1521(a). This showing is an "initial demonstration" and, at this juncture, the injured employee is not required to prove, by a preponderance of the evidence, entitlement to a finding that his injury arose out of and in the course of employment. *See Landesberg v. DOES,* 794 A.2d 607, 612 (D.C. 2002). *See also Washington Hospital Center v. DOES,* 744 A.2d at 992, 998 (January 20, 2000).

The ALJ found that through the testimony of Claimant's brother and the medical evidence submitted, including Dr. DeGraba's medical opinion, the Claimant had satisfied this initial burden and invoked the statutory presumption of compensability. *See* CO at 4. Employer argues Dr. DeGraba's opinion "does not rise to the level needed to medically causally relate an injury or disability under the law." Employer's argument at 8. We disagree. Dr. DeGraba's opinion, along with the witness testimony, is enough to satisfy Claimant's burden of an initial demonstration of an injury and a relationship between that injury and employment. We affirm the ALJ's conclusion that the Claimant had invoked the statutory presumption.

As the ALJ then correctly stated, with the presumption invoked, the burden shifts to the employer to provide "substantial evidence" showing that the injury is not work-related. *Parodi, supra,* 560 A.2d at 526. Substantial evidence is more than a mere scintilla and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Landesberg, supra,* 794 A.2d at 612. If the employer fails to present evidence specific and comprehensive enough to sever the potential connection between a particular injury and a job-related event, in other words, fails to rebut the presumption, the injured worker's injury is deemed to arise out of and in the course of employment. However, if the employer produces the requisite substantial evidence, the statutory presumption drops out of the case entirely and the burden falls upon to the injured employee to prove, by a preponderance of the evidence, without the aid of the presumption, that a work-related event caused his injury. *See Washington Hospital Center, supra,* 744 A.2d at 998.

Employer submitted two exhibits in defense of Claimant's claim. As the ALJ noted,

> Employer must rebut the presumption by presenting specific and comprehensive to sever the connection. Employer asserts that the Claimant's current condition is not related to the fall at work and submits the Genex Case Management Report dated July 18, 2012. Employer further asserts that the anti-coagulant, Xaralto led to the brain bleed. I do not find that the Employer's evidence rebuts the presumption.
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> Employer submitted two exhibits on the matter of medical causal relationship. The first exhibit reviewed was the Genex Case Management Report authored by Leslie Wingfield, RN, dated July 18, 2012, which documents and summarizes Claimant's medical treatment and physician's reports from June 29, 2012 through July 12, 2012. Ms. Wingfield's case management report does not present an opinion as to the causation of Claimant's debilitating condition. Ms. Wingfield received a call from Dr. Adams, Claimant's family physician but he did not give a medical opinion sufficient to rebut the evidence presented by Claimant. In the report the physician stated that he did not know what caused the brain bleed and he did not prescribe the Xeralto. (EE 1)
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> Employer's prescription information sheet (Exhibit 2) does not rebut Claimant's evidence as it is not referenced in testimony or a medical report.

CO at 4.[1]

A review of the evidence supports the ALJ's conclusion that Employer failed to rebut the presumption of compensability. The only two documents submitted included the case manager's report summarizing many of her phone calls with the hospital and various staff. The second exhibit is a document which explains what the prescription drug Xarelto is and safety information regarding the drug. We affirm the ALJ's conclusion that Employer's evidence failed to rebut the presumption of compensability.

After having failed to rebut the presumption of compensability, the burden did not shift to the Claimant to prove her case by the preponderance of the evidence. The only conclusion the ALJ could reach is that Claimant's current condition was medical casually relate to the work injury and award Claimant the requested benefits. Employer's argument that Dr. DeGraba's opinion "did not rise to the level needed to medically causally relate an injury or disability under the law" is misplaced as the Employer failed to rebut the presumption of compensability. Thus, the ALJ did not have to weigh the evidence without the presumption to determine whether the Claimant had proved her case by a preponderance of the evidence, including analyzing the medical opinions of Dr. DeGraba and the treating physicians. We affirm.

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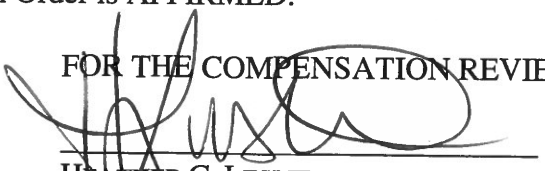
[1] We note that Dr. Adams, referenced in the CO, was not treating Claimant at all for the work injury. Employer's exhibit 1 at 3.

CONCLUSION AND ORDER

The July 24, 2014 Compensation Order is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:



HEATHER C. LESLIE
Administrative Appeals Judge

January 12, 2015
DATE