GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services

MURIEL BOWSER
MAYOR

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DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 15-135

DEPT. OF EMPLOYMENT SERVICES
COMPENSATION REVIEW BOARD
2016 JAN 12 PM 12 41

LAWRENCE BROOKS,
Claimant–Petitioner,

v.

IMPREGLIO, HEALY & PARSONS, J.V.
and ESIS.
Employer/Third-Party Administrator-Respondent.

Appeal of an July 24, 2015 Compensation Order by
Administrative Law Judge Donna Henderson.
AHD No. 15-119, OWC No. 721610

(Issued January 12, 2016)

Krista N. DeSmyter for Claimant
Anthony J. Zaccagnini for Employer

Before HEATHER C. LESLIE, LINDA F. JORY, *Administrative Appeals Judges* and LAWRENCE D. TARR, *Chief Administrative Appeals Judge.*

HEATHER C. LESLIE, for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

Claimant was employed by the Employer as a crane operator. Claimant alleges that on September 5, 2014, he sustained an injury at work when he tripped and fell injuring his hands, knees, ankles and low back. Claimant continued to work his shift and for several weeks thereafter. Claimant's employment ended with Employer on or about October 3, 2014.

Claimant did not report his injury on September 5, 2014 although he was aware of Employer's policies and processes for reporting injuries. Claimant informed Employer of his injury after his employment was terminated. Claimant sought medical care with Dr. Matthew Menet.

A full evidentiary hearing occurred on May 16, 2015. Claimant sought an award of temporary total disability benefits from October 3, 2014 to the present and continuing, interest, causally related medical expenses and authorization for continued causally related medical treatment. The issues to be adjudicated were whether Claimant sustained an accidental injury, whether said injury arose out

of and in the course of his employment, whether Claimant provided timely notice of his injury to Employer, and the nature and extent of Claimant's disability, if any. A Compensation Order (CO) was issued on July 24, 2015 which denied Claimant's claim for relief, finding Claimant did not sustain an accidental injury.

Claimant timely appealed the decision. Claimant argues that the ALJ erred by discrediting Claimant's testimony in weighing the evidence when earlier the same testimony was sufficient to invoke the presumption of compensability and erred by ignoring the medical evidence in the record.

Employer did not respond to Claimant's appeal.

ANALYSIS[1]

Claimant first argues the ALJ erred when determining Claimant's testimony invoked the presumption of compensability, but then discounted Claimant's testimony when weighing the evidence to determine whether Claimant satisfied his burden, that of a preponderance of the evidence, that Claimant did suffer an accidental injury. Claimant argues these are "inconsistent determinations." Claimant's argument at 5. We disagree.

In *Washington Hosp. Ctr. v. DOES*, 744 A.2d 992, 996-97 (D.C. 2000), the District of Columbia Court of Appeals explained:

> Under the District of Columbia Workers' Compensation Act ("WCA"), once an employee offers evidence demonstrating that an injury was potentially caused or aggravated by work-related activity, a presumption arises that the injury is work-related and therefore compensable under the Act. *See* D.C. Code § 36-321(1). This presumption serves "to effectuate the humanitarian purpose of the statute [and] reflects a 'strong legislative policy favoring awards in arguable cases.'" *Ferreira v. District of Columbia Dep't of Employment Services*, 531 A.2d 651, 655 (D.C. 1987) ("*Ferreira I*") (citing *Wheatley v. Adler*, 132 U.S. App. D.C. 177, 183, 407 F.2d 307, 313 (1968) (en banc)); *accord, e.g., Brown v. District of Columbia Dep't of Employment Services*, 700 A.2d 787, 791 (D.C. 1997). In order to benefit from the presumption, an employee need only present "some evidence" of two things: (1) a disability, and (2) "a work-related event, activity, or requirement which has the *potential* of resulting in or contributing to the . . . disability." *Ferreira I*, 531 A.2d at 655 (emphasis in original); *accord, e.g., Parodi v. District of Columbia Dep't of Employment Services*, 560 A.2d 524, 526 (D.C. 1989). "The presumption then operates to establish a causal connection between the disability and the work-related event, activity, or requirement." *Ferreira I*, 531 A.2d at 655; *accord, e.g., Davis-*

[1] The 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.

Dodson v. District of Columbia Dep't of Employment Services, 697 A.2d 1214, 1217 (D.C. 1997).

Thus, the standards to invoke the presumption are low and the ALJ need *only look to Claimant's evidence or testimony* to determine whether the presumption has been invoked, pursuant to D.C. Code § 32-1521 in this case.[2] After the presumption is invoked, and assuming Employer has rebutted that presumption, an ALJ can ultimately find a claimant to be an incredible witness when weighing *all the record evidence* to determine whether claimant satisfied the legal burden, that of a preponderance of the evidence. We do not find the ALJ's credibility determination to be inconsistent with the Act or render the CO internally consistent necessitating a remand. We reject Claimant's argument.

Claimant next argues that the CO is in error as the ALJ did not address the medical evidence in the record when concluding Claimant failed in proving by a preponderance of the evidence that an accidental injury did occur. Claimant also argues that the ALJ made her own medical determinations when discrediting Claimant's testimony.

When weighing the evidence to conclude Claimant did not sustain an accidental injury, the ALJ stated:

> Claimant's evidence of a work-related event which resulted in his alleged injury and disability consists of his testimony and his statements to his treating physicians. I found Claimant's description of the alleged fall to lack credibility. Claimant testified that he "fell flat out on his face" (HT at 91), yet Employer's witnesses testified that he did not tell them about his injury until approximately three weeks later. HT at 105 - 106 and 132 1-4. If Claimant fell on his face, an injury should have been apparent. Claimant also testified that he landed hard on both knees (HT at 91) and twisted his ankles. HT at 92. It is not credible that he could have fallen so hard and injured his knees and ankles so badly yet still be able to climb up the crane and work very long hours in the cab not only that day, but also for weeks thereafter, until Employer laid him off. *Compare* CE 4, pp. 90 - 99.
>
> Claimant's testimony concerning his fall is not consistent with the medical records. On October 3, 2014, when Claimant visits Patient First for his first doctor's appointment after the alleged injury, the medical report states that he "caught the fall and injured [the] left side of [his] body." He was complaining of "dull aching pain to left wrist, knee and ankle." X-rays were taken of his left foot, left knee and left wrist. CE 2, p. 80. Although Claimant testified that his hands were scraped up and both his knees were bruised, the Patient First medical report does not reveal any scrapes, scabs or bruising to any body part. *Compare* HT at 46 and 47 and CE 2, p. 80.
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> Subsequently, Claimant describes falling and hitting the ground with injuries to more body parts. On October 17, 2014, when Claimant follows up at Multi-Specialty

[2] Compare *Storey v. Catholic University of America*, CRB No. 15-024, AHD No. 12-306A (July 9, 2015). In *Storey*, the CRB affirmed an ALJ's determination that the Claimant's incredible testimony failed to even invoke the presumption of compensability.

> Health Care, the chiropractor describes a trip on a gap or uneven surface which caused Claimant to fall onto his hands and knees. Claimant complained to the chiropractor of "immediate pain in both knees bilaterally as well as his wrists and right gluteal area which radiated into the right thigh." Claimant rated his right knee pain as a 7-8 in intensity and his left as 8-9 in intensity. CE 1, p. 77.
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> In his first consult with his orthopedist, Dr. Matthew Menet, he again reported severe knee pain after a trip and fall onto both knees at work on September 5, 2014. Claimant was noted by Dr. Menet as having failed to "report this incident to his supervisor." CE 1, p. 6. Although his later description of the alleged incident is more consistent with his hearing testimony, I found his testimony to lack credibility; therefore, his doctor's medical opinions are based upon Claimant's non-credible statements as to whether there was an incident, and his injuries he allegedly sustained as a result. CE 5, p. 106.
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> Claimant testified that after falling and scraping up his hands and knees "pretty good," he proceeded to a safety meeting. If as Claimant testified, he was "limping real bad that day" and he proceeded to a safety meeting (HT at 46 - 47 and 90 - 91), it is not credible that one of the three safety personnel would not ask him why he was limping or that he would state on his timesheet that he had not been injured.
>
> Claimant's report of a hazardous condition did not mention a fall, by him or anyone else. EE 5, p. 10. Claimant reported to Sharyn Hobson that someone tripped but not that anyone fell. If he was reporting a fall, even if it was not the correct form, he could have and should have reported that he fell. He did not report a fall or an injury. Ms. Hobson testified that Claimant told her that he saw someone trip but he expressed concern that reporting that he saw this person trip might make that person angry. Ms. Hobson asked if the person who tripped was the superintendent Larry, and Claimant nodded, "yes." HT at 104 - 105.
>
> Claimant's claim of injury is also contradicted by his initials in the box on the timesheet which states that he did not sustain an injury at work on the September 5, 2014. EE 7, p. 13 and HT at 75 and 159. Employer's witnesses testified that Claimant did not tell them of an injury on September 5, 2014. HT at 100, 105 - 107, 110 - 113, 117, 118, 122, 129, 134, 135 and 137 - 37. Finally, despite working long hours, Dan Miller testified that Claimant did not appear to have any difficulties with his job duties throughout his employment. HT at 152.
>
> For each and all of these reasons, I find that Claimant did not trip or fall while performing work duties for Employer on September 5, 2014.

CO at 5-6.

As seen above, contrary to Claimant's argument, the ALJ did consider the treating physician's initial report when determining that Claimant testimony was inconsistent with the medical records and ultimately not credible. As Claimant's testimony was found to be incredible, Dr. Menet's opinions,

based in large part on Claimant's description of the accident and injuries, were not found to have any probative value by the ALJ, as they are based upon "Claimant's non-credible statements."

We also cannot agree that in determining Claimant was an incredible witness, the ALJ made various medical determinations, not based upon the medical evidence in the record. In so arguing, Claimant points to the ALJ noting Claimant's testimony that he scraped up both hands and bruised his knees but that the Patient First Medical report does not reveal any scraping or bruising of any kind.

While we agree that it is possible that Claimant's hand and knee scraping/bruising did heal by the time Claimant visited Patient First, we do not agree that this statement alone renders the CO not supported by the substantial evidence in the record. This is but one statement of several, both medical and non-medical, the ALJ noted as inconsistent with Claimant's testimony.

We also cannot agree that this is making a medical determination. The ALJ does take notice that Claimant testified he injured his hands and knees "pretty good" and also took notice that the medical record from the first visit at Patient First did not mention any scrapes or bruising. CO at 6. A review of the testimony and evidence supports these assertions. To the extent that such a statement may be in error, we find such error harmless as the ALJ noted another inconsistency from the Patient First visit, including the description of the accident, which Claimant in argument does not contest.

Finally, Claimant takes umbrage with the ALJ crediting the testimony of Employer's witnesses that Claimant appeared to work without difficulties after the injury through his termination, over that of Claimant's testimony. We only note that Claimant did testify he continued to work after the injury, albeit *maybe* a "bit slower." Hearing transcript at 48. Moreover, again the ALJ determined Claimant's testimony to be incredible. The ALJ found:

> From Claimant's demeanor and his tone in answering questions, I find his testimony to lack credibility. I also find that his testimony lacks credibility because of the inconsistencies which I found between his testimony and the medical records of his initial treatment, the evidence concerning his reporting of the hazardous condition, and the time sheet which he initialed to indicate that he had not sustained an injury on September 5, 2014.

CO at 4.

In essence, Claimant is asking us to reweigh the record in his favor and overturn the ALJ's credibility determination that an accidental injury did not occur, a task we cannot do. As we have stated before, the credibility findings of an ALJ are entitled to great weight. *See Murray v. DOES*, 765 A.2d 980, 984-985 (D.C. 2001) citing *Dell v. DOESs*, 499 A.2d 102, 106 (D.C. 1985). We conclude the ALJ's credibility determination to be supported by the substantial evidence in the record when reviewed as a whole. *Davis v. Western Union Telegraph*, Dir. Dkt. 88-84, H&AS No. 87-751, OWC No. 098216 (March 4, 1992). We also conclude the ALJ's conclusion that an accidental injury did not occur to be supported by the substantial evidence and in accordance with the law.

CONCLUSION AND ORDER

The July 24, 2015 Compensation Order is supported by the substantial evidence in the record and in is in accordance with the law. It is AFFIRMED.

So ordered.