



LUZ G. ONOFRE,

Claimant,

v.

GEORGE AND IRENE LORINCZI
and
FIREMAN'S FUND INSURANCE
COMPANY,

Employer/Carrier.

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: Dir. Dkt. No. 95-48
: H&AS No. 92-302A
: OWC No. 209231
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Appeal from the Compensation Order of
Amelia G. Govan, Hearing Examiner

John C. Duncan, III, Esquire
for the Claimant

Forest Nester, Esquire
for the Employer/Carrier

DECISION OF THE DIRECTOR

I. Preliminary Statement

This proceeding arises out of a claim for workers' compensation benefits filed pursuant to the provisions of the District of Columbia Workers' Compensation Act of 1979, as amended, D.C. Law, 3-77, D.C. Code, §36-301 et seq. (1981 Edition, as amended) (hereinafter, the "Act").

II. Background

The Hearing Examiner found, in a March 24, 1995 Compensation Order, that on February 2, 1988, Claimant injured her back and hand at work when she slipped on ice at Employer's premises. Claimant continued to work for Employer, without losing any time from work,

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until August 31, 1998. The Hearing Examiner then found that Claimant's work related back injury had resolved by August 31, 1998. The Claimant appealed this decision with the Director of the Department of Employment Services (hereinafter, "Director"). After reviewing Claimant's appeal, the Director remanded the instant case to the Hearing Examiner to apply the presumption to Claimant's back injury. The Hearing Examiner on remand found that Employer had failed to rebut the presumption that Claimant's disc herniation in her back was work-related. As a result, the Hearing Examiner granted Claimant's claim for relief. The Employer now appeals to the Director.

III. Discussion

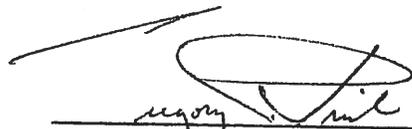
The Director must affirm the Compensation Order under review if the findings of fact contained therein are supported by substantial evidence in the record considered as a whole and if the law has been properly applied. See D.C. Code §36-322; 7 DCMR Employment Benefits §230. Substantial evidence is such relevant evidence as a reasonable mind might find as adequate to support a conclusion. George Hyman Construction Company v. Department of Employment Services, 498 A.2d 563, 566 (1985).

After a complete review of the record and arguments of the parties, the Director determines that the March 29, 1999 Compensation Order is supported by substantial evidence and is in accordance with the law. The Employer did not present any medical evidence that Claimant's herniated disc is unrelated to her work. Instead the Employer relies on negative evidence to prove that Claimant's back problems are unrelated to her work. The Employer argues that since Claimant's treating physician's reports do not mention a work related incident in relation to Claimant's injury, they can use that evidence to rebut the presumption. The Director states, however, that the District of Columbia Court of Appeals has held that the type of negative evidence that the Employer is relying on in this case is not sufficient to rebut the presumption. See Bobby Brown v. Department of Employment Services, 700 A.2d 787 (1997). As a result, the Compensation Order of March 29, 1999, must be affirmed.

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IV. Disposition

Accordingly, for the reasons stated above, the Compensation Order of March 29, 1999 is supported by substantial evidence, and is hereby **AFFIRMED**.



Gregory P. Irish
Director

Date SEP 15 2000