GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR

DEBORAH A. CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 15-017

MARIVIC E. GUILLEN,

Claimant– Petitioner,

v.

SIBLEY MEMORIAL HOSPITAL AND JOHNS HOPKINS WORKERS COMPENSATION

Employer/Carrier– Respondent.

DEPT. OF EMPLOYMENT SERVICES
COMPENSATION REVIEW BOARD
2015 JUN 10 AM 8 55

Appeal from a January 13, 2015 Compensation Order by
Administrative Law Judge Douglas A. Seymour
AHD No. 14-375, OWC No. 700759

John Noble for Claimant
Joel Ogden for Employer

Before, LINDA F. JORY, MELISSA LIN JONES and HEATHER C. LESLIE, *Administrative Appeals Judges.*

LINDA F. JORY, for the Compensation Review Board:

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

Claimant was employed as a registered nurse for Employer. On January 20, 2013, Claimant slipped and fell on a wet floor, landing on both hands and both knees. Claimant primarily treated with Dr. Hamid R. Quraishi for pain in her right knee, traumatic bursitis in her gluteus, and a right forearm and wrist contusion. Claimant was released to full duty work by Dr. Quraishi on April 8, 2013. On June 12, 2013, Claimant returned to Dr. Quraishi with complaints of left knee pain. Dr. Quraishi reviewed x-rays taken of the left knee on June 9, 2012 which revealed moderately severe degenerative arthritis and narrowing of the joint spaces. Dr. Quraishi injected the left knee and recommended a CT scan of the left knee.

As arranged by employer, Claimant was evaluated on August 29, 2013 by Dr. Robert A. Smith. Claimant reported to Dr. Smith that she twisted her left knee when she slipped and fell on January 20, 2013. Dr. Smith agreed with Dr. Quraishi that arthroscopic surgery was appropriate

With regard to Claimant's initial contention that "Judge Seymour was in error in not dealing with the issue of temporary total disability" the hearing transcript as well as the Stipulation Form attached to the Joint Pre-Hearing Statement (JPHS) has been reviewed. The Panel notes that Claimant was not asked at the formal hearing to state his claim for relief on the record and Claimant did not include in his opening statement any mention of a request for temporary total disability benefits. As Employer correctly asserts, the nature and extent of Claimant's disability was not listed by the ALJ as an issue to be determined the formal hearing. HT at 5. Moreover, the Stipulation Form included in the JPHS, which the parties are required to complete, indicates that the Nature and Extent of Disability was initially listed as a contested issued but scratched out, presumably by the ALJ who initially heard this matter. Similarly, the Stipulation From includes a section titled "Claim for Relief" and there was a claim for temporary total disability for a period of time however, it is scratched out, again, presumably by the original ALJ. "Authorization for Medical Treatment" is circled and checked.

It is unclear why the ALJ would have been required to discuss a claim for relief and an issue that was scratched out. The panel notes that when the ALJ recited the stipulations or the issue to be addressed at the hearing, counsel for Claimant did not object, nor did counsel mention a request for temporary total disability in his opening statement or closing argument. Inasmuch as Claimant does not assert that her claim for temporary total was related to something other her left knee condition, we must agree that even if she had made a claim for temporary total disability on the record, the ALJ was not required to address it as employer did not raise the nature and extent of claimant's disability as an issue to be adjudicated and the claim for temporary total disability was scratched out.

With regard to the ALJ's reliance on the opinion of Dr. Danziger, Claimant asserts her treating physician, Dr. Quraishi "adequately" explained the causal relationship and it should have been accepted. Claimant also asserts that the ALJ was "in error in allowing the insurer to in effect change its position on causal relationship with no new evidence to do so." Claimant's Brief at 3.

The ALJ correctly determined Claimant was entitled to the benefit of the presumption that the complained of condition of her left knee is causally related to her employment. The Panel further concludes the ALJ found that Employer had rebutted the presumption and reviewed the record evidence as a whole, without reference to the presumption, but taking into account the preference that is accorded to the opinions of treating physicians in this jurisdiction under *Short v. District of Columbia Department of Employment Services,* 723 A.2d 845 (D.C. App. 1998), as well as, *Stewart v. District of Columbia Department of Employment Services,* 606 A.2d 1350 (D.C. 1992). The ALJ determined Claimant has not established by a preponderance of the evidence, that Claimant's condition is causally related to the stipulated work injury. We find no error committed by the ALJ in his analysis.

After properly considering the preference for the treating physician in assessing the weight of competing medical evidence, the ALJ concluded:

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under review substantial evidence to support a contrary conclusion, and even where the reviewing authority might have reached a contrary conclusion. *Marriott*, 834 A.2d at 885

and the injury was related to the work injury. Employer authorized the arthroscopic surgery which was performed by Dr. Quraishi on October 17, 2013. On August 27, 2014, Dr. Quraishi recommended a total knee replacement of Claimant's left knee.

As arranged by employer, Claimant was evaluated by Dr. Marc B. Danziger on April 8, 2014. Dr. Danziger agreed that Claimant was a candidate for a total knee replacement but that Claimant's left knee condition was not related to the January 20, 2013 injury.

Employer did not authorize the total knee replacement. A full evidentiary hearing occurred on September 22, 2014. The Administrative Law Judge (ALJ) who conducted the hearing left the agency without issuing a Compensation Order (CO) and the matter was re-assigned. Neither party objected to another ALJ deciding the matter based on the record created on September 22, 2014.

An ALJ issued a CO on January 13, 2015. The ALJ concluded Claimant's left knee problems are not causally related to the work injury of January 20, 2013 and her treatment, including a request for a total knee replacement, is not causally related and denied Claimant's claim for relief.

Claimant timely appealed. Claimant asserts the ALJ erred in relying on the opinion of Employer's IME physician, Dr. Mark Danziger. Claimant further asserts the ALJ erred in not addressing the issue of temporary total disability which Claimant asserts she requested.

Employer has responded asserting that it withdrew the defense of nature and extent of Claimant's disability at the formal hearing as it was undisputed that Claimant's left knee condition prevented her from returning to her pre-injury duties. Employer further asserts the finding of no causal relationship was supported by substantial evidence and should be affirmed.

ISSUES ON APPEAL

1. Did the ALJ err in not addressing Claimant's claim for temporary total disability benefits?

2. Is the January 13, 2015 Compensation Order supported by substantial evidence and in accordance with the law?

ANALYSIS[1]

[1] The scope of review by the Compensation Review Board (CRB) and this Review Panel (hereafter, the Panel) as established by the Act and as contained in the governing regulations is 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. D.C. Code § 32-1521.01(d)(2)(A). "Substantial evidence", as defined by the District of Columbia Court of Appeals, 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. App. 2003). Consistent with this scope of review, the CRB and this panel are bound to uphold a Compensation Order that is supported by substantial evidence, even if there is also contained within the record

> Upon review of the record evidence, I give more weight to the [sic] Dr. Danziger's well substantiated conclusion that the claimant's current left knee condition, and her medical treatment to that knee, including the recommended total knee replacement surgery, is not causally related to her work injury of January 20, 2013. I give less weight to the opinions of claimant's treating physician because Dr. Quraishi fails to address the significant delay of five months between claimant's work accident of January 20, 2013 and her first complaints of a significant left knee problem on June 18, 2013. There are no references whatsoever in any of Dr. Quraishi's reports to claimant's until June 18, 2013. Dr. Quraishi fails to provide an explanation of how the left knee is causally related other to (sic) simply assert that the left knee was injured on January 20, 2013. This finding is not supported by the Sibley Memorial Hospital Emergency Room Admissions Chart of January 20, 2013 which noted 'left knee exam normal'. Accordingly, I find that the claimant's left knee condition, and the medical treatment rendered thereto, including the recommended total knee replacement surgery, is not causally related to her January 20, 2013 work accident.

We conclude the ALJ sufficiently explained his decision to afford more weight to Dr. Danziger's IME opinion than to the treating physician pursuant to *Stewart v. DOES*, 606 A.2d 1350 (D.C.1992). A review of the evidence supports the ALJ's conclusion. What Claimant is asking this Panel to do is to reweigh the evidence in Claimant's favor. This is a task we cannot do. The CRB's role is limited to determining whether the CO is supported by the substantial evidence in the record and in accordance with the law. We cannot reweigh the evidence as Claimant would wish us to do. The CRB 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. *Marriot*, supra.

CONCLUSION AND ORDER

The ALJ correctly did not address a purported claim for temporary total disability. The ALJ's conclusion that Claimant has not established that her left knee problems are causally related to her employment by a preponderance of the evidence is supported by substantial evidence and is **AFFIRMED**. The ALJ's conclusion that any medical treatment rendered to the Claimant's left knee, including the recommended total knee replacement surgery, is not the responsibility of the employer and carrier is in accordance with the law and is **AFFIRMED**.

FOR THE COMPENSATON REVIEW BOARD:

Linda F. Jory
Administrative Appeals Judge

June 10, 2015
DATE