

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Department of Employment Services**  
**Labor Standards Bureau**

**Office of Hearings and Adjudication**  
**COMPENSATION REVIEW BOARD**



**(202) 671-1394-Voice**  
**(202) 673-6402-Fax**

**CRB No. 05-208**

**ANTHONY NEWMAN,**

**Claimant – Petitioner,**

**v.**

**SECURITY STORAGE COMPANY AND VANLINER INSURANCE COMPANY,**

**Employer/Carrier – Respondent.**

Appeal from a Compensation Order of  
Administrative Law Judge Jeffrey P. Russell  
OHA No. 04-415; OWC No. 600360

Matthew Peffer, Esquire, for the Petitioner

William R. Levasseur, Esquire, for the Respondent

Before E. COOPER BROWN *Acting Chief Administrative Appeals Judge*, FLOYD LEWIS and  
SHARMAN J. MONROE, *Acting Administrative Appeals Judges*.

FLOYD LEWIS, *Acting Administrative Appeals Judge*, on behalf of the Review Panel:

**DECISION AND ORDER**

**JURISDICTION**

Jurisdiction is conferred upon the Compensation Review Board pursuant to D.C. Official Code §§ 32-1521.01 and 32-1522 (2004), 7 DCMR § 230, and the Department of Employment Services Director's Directive, Administrative Policy Issuance 05-01 (February 5, 2005).<sup>1</sup>

---

<sup>1</sup> Pursuant to Administrative Policy Issuance No. 05-01, dated February 5, 2005, the Director of the Department of Employment Services realigned the Office of Hearings and Adjudication to include, *inter alia*, establishment of the Compensation Review Board (CRB) in implementation of the D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, D.C. Official Code §32-1521.01. In accordance with the Director's Directive, the CRB replaces the Office of the Director in providing administrative appellate review and disposition of workers' and disability compensation claims arising under the D.C. Workers' Compensation Act of 1979, as amended, D.C. Official Code §32-1501 *et seq.*, and the D.C. Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Official Code §1-623.1 *et seq.*, including responsibility for administrative appeals filed prior to October 1, 2004, the effective date of the D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004.

## BACKGROUND

This appeal follows the issuance of a Compensation Order from the Administrative Hearings Division (AHD) of the Office of Hearings and Adjudication (OHA) in the District of Columbia Department of Employment Services (DOES). In that Compensation Order, which was filed on February 11, 2005, the Administrative Law Judge (ALJ) awarded Claimant-Petitioner temporary total disability benefits from April 2, 2004 through July 10, 2004 plus interest thereon, and medical care pertaining to his neck and back injuries through the date of the formal hearing. However, the ALJ also concluded that Claimant-Petitioner's right knee injuries and condition are unrelated to the work incident of April 2, 2004 and thus, Employer-Respondent has no responsibility for any disability or medical treatment related thereto. Claimant-Petitioner now seeks review of that Compensation Order.

As grounds for this appeal, Claimant-Petitioner asserts that the portion of the Compensation Order that denied benefits based on his right knee claim is unsupported by substantial evidence and is not in accordance with the law.

## ANALYSIS

As an initial matter, the scope of review by the Compensation Review Board (CRB) and this Review 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. *See* D.C. Workers' Compensation Act of 1979, as amended, D.C. Official Code §32-1501 *et seq.*, at §32-1522(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. District of Columbia Department of Employment Services*, 834 A.2d 882 (D.C. App. 2003). Consistent with this standard of review, the CRB and this Review Panel are constrained to uphold 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 the reviewing authority might have reached a contrary conclusion. *Marriott*, 834 A.2d at 885.

Turning to the case under review herein, Claimant-Petitioner asserts that the ALJ committed error in concluding that Claimant-Petitioner had not met his burden to trigger the presumption of compensability regarding his right knee claim, that Employer-Respondent failed to present substantial evidence to rebut the presumption, and that his knee condition is causally related to his work injury. Employer-Respondent counters that the ALJ correctly analyzed the presumption in this matter and the Compensation Order should not be disturbed.

Preliminarily, it must be noted that an employee's claim is presumed to come within the provisions of the Act. D.C. Official Code § 32-1521(1). Upon presentation of credible evidence of an injury and a work-related event or activity that has the potential of resulting in or contributing to the injury, a claimant invokes the protection of the presumption. *Ferriera v.*

*District of Columbia Department of Employment Services*, 531 A.2d 651, 655 (D.C. 1987). The focus then shifts to the employer to produce evidence specific and comprehensive enough to sever the presumed connection between the employment-related event and the injury. Without this production by an employer, the claim will be presumed to fall within the scope of the Act. *Spartin v. District of Columbia Department of Employment Services*, 584 A.2d 564 (D.C. 1990). In addition, the scope of the application for the presumption has been expanded to include the causal relationship between the current disabling condition and the injury. *Whittaker v. District of Columbia Department of Employment Services*, 668 A.2d 844 (D.C. 1995).

In support of his contention that his right knee condition resulted from his work-related motor vehicle accident of April 2, 2004, Claimant presented the reports and deposition of Dr. Charles Calao, his treating physician. To rebut Claimant's right knee claim, Employer presented the opinion of Dr. Randall Lewis, an orthopaedic surgeon, who after examining Claimant opined that Claimant did not sustain any injury to his right knee in the work-related accident.

The ALJ determined that Claimant failed to present evidence sufficient to invoke the presumption of compensability concerning his right knee condition. To support this finding, the ALJ emphasized that Claimant testified that he did not experience anything unusual in his knee immediately after the accident and his testimony and the testimony of other witnesses at the hearing indicated that he did not report any injuries to his knee to any witnesses at the scene of the accident or at his place of business. Hearing transcript at 69-70, 73-75. 140, 151. Moreover, in fact, Claimant did not present any hearing testimony that he sustained any knee trauma due to the accident. As the ALJ pointed out, the only reference to knee trauma is Dr. Calao's report and testimony that such knee trauma did occur and Dr. Calao's "factually unsupported assertion of a traumatic event involving the knee is also the only apparent basis for his opinion as to causation." Compensation Order at 6.

As such, the ALJ concluded that since there was no evidence of a traumatic event, Claimant did not present the required evidence of a work-related event or condition with the potential to cause injury to Claimant's right knee and thus, his knee condition was unrelated to the work accident. After reviewing the record, this panel finds that there is substantial evidence to support the ALJ's conclusion.

However, the ALJ also declared that even if Claimant had in fact presented credible evidence to trigger the presumption, Employer's contrary evidence was substantial enough to rebut the presumption, leaving the ALJ to weigh the conflicting medical evidence on causation and resolve this matter in Employer's favor without relying on the presumption. The ALJ states:

Even if one were to accept the reference in Dr. Calao's reports and deposition to knee trauma having occurred as being sufficient to invoke the presumption in Claimant's favor, review of the evidence from Employer concerning the prior significant debilitating gunshot wounds to Claimant's right leg and Dr. Lewis's reports opining as to the lack of a work connection would be sufficient to overcome that presumption, and weighing the evidence would, in my view, result in the conclusion that there is no such relationship. This is because (1) I

am convinced no trauma to the knee occurred in the accident, and (2) such trauma is the antecedent to Dr. Colao's opinion.

Compensation Order at 6, n. 3.

Even if Claimant would have prevailed on the issue of invoking the presumption, this panel must agree with the ALJ and reject Claimant's argument that Employer's evidence was not sufficient to rebut the presumption. The District of Columbia Court of Appeals in *Washington Post v. District of Columbia Department of Employment Services*, 852 A.2d 909 (D.C. 2004), describes the evidence that is needed to sever the presumed connection between the employment related event and the injury. The Court states:

We hold that an employer has met its burden to rebut the presumption of causation when it has proffered a qualified independent medical expert who, having examined the employee and reviewed the employee's medical records, renders an unambiguous opinion that the work injury did not contribute to the disability.

852 A.2d at 910.

Dr. Lewis initially examined Claimant on May 27, 2004 and the medical report reflects that Claimant indicated that he had suffered a gunshot wound in the past. Although the physician did not have the medical records concerning the gunshot wound at that time, Dr. Lewis states that there was obvious evidence of the preexisting gunshot wound to his leg and that based on his objective findings, Claimant's right knee complaints were not caused by the work accident. On November 22, 2004, Dr. Lewis again examined Claimant after reviewing all of Claimant's medical records, including the reports of the 1993 gunshot wound to the right leg that left Claimant with a chronic limp in that leg. In this second report, Dr. Lewis again clearly opined that Claimant's right knee problems were not causally related to the traumatic work incident of April 2, 2004, and it was his opinion that Claimant's knee complaints were primarily related to the gunshot wound. After a thorough review of the record evidence, there is substantial evidence to support the ALJ's conclusion that Employer's evidence was nevertheless sufficient to rebut the presumption.

Finally, and as previously noted, the ALJ indicated upon weighing the conflicting evidence as to causation, the ultimate conclusion would have been that there was no causal relationship between Claimant's knee condition and the work accident. As discussed earlier, the ALJ stressed that Claimant's treating physician, Dr. Calao based his opinion that Claimant's knee condition was related to the work accident upon the assumption that Claimant's knee sustained a traumatic injury, an assumption that the ALJ found was not supported by any evidence in the record. At the hearing, Claimant did not present any testimony that he sustained knee trauma in the accident and consequently, the only reference to knee trauma in the record is Dr. Calao's assertion that this trauma occurred. Furthermore, there is no evidence that Dr. Calao reviewed the medical records of Claimant's 1993 gunshot wound.

In contrast, Dr. Lewis emphasized the earlier debilitating gunshot wound to Claimant's right leg and based on his objective findings, Dr. Lewis unambiguously opined that the right knee symptoms that Claimant reported were not causally related to any traumatic injury of April 2, 2004. The ALJ clearly gave persuasive reasons for crediting the medical conclusions of Dr. Lewis and thus, there is substantial evidence in the record to support the ALJ's conclusion that Claimant's knee condition was unrelated to the work accident.

Accordingly, that portion of the Compensation Order denying benefits based on Claimant-Petitioner's right knee claim will not be disturbed.

#### CONCLUSION

The Compensation Order of February 11, 2005 which concluded that Claimant-Petitioner's right knee injuries and condition are unrelated to the work incident of April 2, 2004 and that Employer-Respondent has no responsibility for any disability or medical treatment related thereto is supported by substantial evidence in the record and is in accordance with the law.

#### ORDER

The Compensation Order of February 11, 2005 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

---

FLOYD LEWIS  
Acting Administrative Appeals Judge

---

April 8, 2005  
DATE