**CRB No. 12-196**

**VELDA NORRIS,**
**Claimant–Petitioner,**

**v.**

**DISTRICT OF COLUMBIA OFFICE OF UNIFIED COMMUNICATIONS,**
**Employer–Respondent.**

Appeal from a November 30, 2012 Compensation Order of
Administrative Law Judge Gerald Roberson
AHD No. PBL 12-038, DCP No. 30120119503-0001

Krista N. DeSmyter, Esquire, for the Petitioner
Cory P. Argust, Esquire, for the Respondent

Before HEATHER C. LESLIE, HENRY W. MCCOY, and JEFFREY P. RUSSELL *Administrative Appeals Judges*.

HEATHER C. LESLIE, for the Compensation Review Board.

## DECISION AND ORDER

### OVERVIEW

This case is before the Compensation Review Board (CRB) on the request for review filed by the Claimant - Petitioner (Claimant) of the November 30, 2012 Compensation Order (CO) issued by an Administrative Law Judge (ALJ) in the Hearings and Adjudication Section of the District of Columbia Department of Employment Services (DOES). In that CO, the ALJ denied the Claimant's request for temporary total disability benefits from January 12, 2012 to February 6, 2012. We AFFIRM.

### BACKGROUND AND FACTS OF RECORD

The Claimant was employed by the Employer as a telecommunication operator. On January 12, 2012, the Claimant fell after her left knee locked up while walking to perform a task. The Claimant injured her left knee, left shoulder, neck and lower back. The Claimant sought medical treatment with Dr. Easton Manderson

Dr. Manderson recommended various objective testing. X-rays of the left knee revealed no abnormalities. Dr. Manderson diagnosed the Claimant with posttraumatic lumbar strain, left rotator

cuff syndrome, and contusion to the left knee. Dr. Manderson opined that the Claimant could not work. Eventually, Dr. Manderson returned the Claimant to work on February 17, 2012 with instructions she be allowed to take a 15 minute break every two hours.

The Employer filled out a first report of injury stating the Claimant "was lifting her right leg to go up a step and her right knee stiffened up on her which caused the EE to tumble and fall."

A full evidentiary hearing was held on October 9, 2012. The Claimant sought an award of temporary total disability benefits from January 12, 2012 to February 6, 2012. The issues presented for resolution were whether or not the Claimant sustained an accidental injury on January 12, 2012, whether the injury arose out of and in the course of her employment, and the nature and extent of the Claimant's disability, if any. On November 30, 2012, a CO was issued which denied the Claimant her claim for relief. While an accidental injury was found to have occurred[1], the CO concluded the injury did not arise out of or in the course of her employment.

The Claimant timely appealed. The Claimant argues the ALJ erred as a matter of law in determining the Claimant's injury did not arise out of and in the course of her employment. The Employer opposes the application for review, arguing the ALJ properly applied the facts and law in the case and the CO should be affirmed.

## STANDARD OF REVIEW

The scope of review by the CRB, as established by the Act and as contained in the governing regulations, 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. Comprehensive Merit Personnel Act of 1978, as amended, D.C. Official Code § 1-623.01, *et seq.*, (the Act), at § 1-623.28(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 are constrained to 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.

## DISCUSSION AND ANALYSIS

The Claimant's sole argument on appeal is that because the Claimant was walking at the behest of her supervisor when the left knee stiffened up, the injury arose out of and in the course of her employment. Specifically, the Claimant argues that the physical requirements of her job, namely walking, caused her right knee to give way. The Claimant states,

> There was no evidence presented by the employer that Ms. Norris's obligations to walk and deliver the information to her supervisor did not contribute, even in part, to her knee giving out causing the fall. There is no evidence to support the ALJ's conclusion that the obligation to walk "did not cause her right knee to stiffen, lock-up, and give out." Claimant's argument at 4.

[1] The Employer did not appeal this finding.

We reject the Claimant's argument.

Relying in large part on the District of Columbia Court of Appeals (DCCA) case in *Georgetown University v. DOES*[2], the ALJ found the Claimant failed to show any hazard of her employment contributed to her fall. In *Georgetown*, the Court remanded the case for a determination of whether the Claimant fell due to his knee giving way as a result of an idiopathic injury[3] or because of a hazard of employment. The DCCA concluded,

> In sum, without suggesting what specific findings of fact should be made on the existing record in this case, we observe that there are essentially three crucial findings of fact that this record might be found to support. The first is that [the Claimant] slipped and fell solely because he stepped in water on the floor. If that in fact occurred, the resulting injuries would be compensable. *See Ferreira, supra*, 531 A.2d at 656 (unexpected injury incurred during the course of work, though not specifically traumatic or particularized, may be compensable). The second is that [the Claimant] fell because of a combination of his idiopathic pre-existing leg condition and the presence of water on the floor where he stepped. In that event also, his resulting injuries would be compensable. *See Spartin v. District of Columbia Department of Employment Services.*, 584 A.2d 564, 570, n.9 (D.C. 1990) ("[A] worker's compensation claimant need not prove that his employment was the sole cause of his disability."); *cf. Shelton v. Ennis Bus. Forms, Inc.*, 334 S.E.2d 297, 299 (Va. Ct. App. 1985) ("Under the 'two causes' rule if a disability has two causes, one related to employment and one unrelated, benefits are allowed."); 1 LARSON, *supra* note 1, §§ 4.04 ("The law does not weigh the relative importance of the two causes . . . it merely inquires whether the employment was a contributing factor. If it was, the concurrence of the personal cause will not defeat compensability.") The third is that [the Claimant] fell not because of the presence of water or some other substance on the floor, but fell because of his idiopathic condition, the unsoundness of his left leg, a risk personal to him. In that circumstance, a resulting injury would not be compensable unless it is concluded, with a reasoned explication of the positional risk doctrine, that the

[2] 971 A.2d 909 (D.C. 2009).

[3] As a general proposition, an idiopathic condition or fall is not covered under the Act. In *Georgetown*, the DCCA held:

> As authority for its apparent rejection of Georgetown's claim that idiopathic falls are not compensable, the CRB emphasized that "an aggravation of a pre-existing condition may constitute a compensable accidental injury." We agree that it may. *Jackson v. District of Columbia Department of Employment Services*, 955 A.2d 728, 734-35 (D.C. 2008). The question in this case is not, however, whether the aggravation of a pre-existing injury is compensable under the statute, but rather whether the aggravating incident can be deemed to have arisen out of and in the course of [the Claimant's] employment.

*Georgetown, supra*, at 920, note 9.

doctrine extends so far as to require compensation. *See, e.g., Svehla v. Beverly Enterprises*, 567 N.W.2d 582, 590-91 (Neb. Ct. App. 1997) ("The 'unexplained fall rule,' even if deemed a corollary to the positional risk doctrine . . . is not applicable when there is evidence of a possible idiopathic origin to the fall."); *Indian Leasing Co. v. Turbyfill*, 577 S.W.2d 24, 27-28 (Ky. Ct. App. 1978) ("Liability under the positional risk theory for idiopathic falls is limited to those cases in which the employment placed the employee in a position increasing the dangerous effects of the idiopathic fall . . . . In level fall cases involving no increased danger attributable to the employment, liability may be imposed on the employer only if the work was a substantial factor in causing the injury.").

*Georgetown, supra*, at 920-921.

As the ALJ reasoned in the instant matter,

> In this case, the facts do not indicate a hazard of Claimant's employment, other than walking, contributed to her fall on January 12, 2012. During cross-examination, Claimant did not identify any problems with the steps or walking surface which may have contributed to her right knee giving way. HT pp. 20-24. Claimant testified she was walking on a carpet surface, and her knee locked and she fell. HT p. 23. Claimant stated "It stiffened up and I wasn't aware it was going to stiffen up, and when it stiffened up, I just fell over." HT p. 33. Claimant offered contradictory testimony during cross-examination. Claimant testified she fell prior to reaching the steps, and this appears to be consistent with her testimony that she attempted to reach for the rail as she was falling and the railing begins at the steps. HT p. 34. Given the fact Claimant did not identify a hazard of her employment as contributing to her fall, the first and second case scenarios, identified in *Georgetown*, do not appear to be applicable.
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> The Court examined the doctrine of positional risk in *Grayson v. D.C. Department of Employment Services*, 516 A.2d 909 (D.C. 1986). With respect to arising out of, the Court noted the Director in *Grayson* adopted a standard similar to the positional risk standard, finding:
>
> > For an employee's injury to have arisen out of the employment the obligations or conditions of employment must have exposed the employee to the risks or dangers connected with the injury.
>
> *Grayson, supra,* at 912.
>
> The Court described the Director's standard as a "but for test", stating
>
> > "An injury arises out of the employment if it would not have occurred *but for* the fact that conditions and obligations of the employment placed claimant in a position where he was injured." (citations omitted).

*Grayson, supra,* at 911.

> Application of the positional risk standard in this case would warrant a finding that Claimant's injury did not arise out of the employment. In this case, Claimant's employment did not expose her to a hazard or danger connected to her injury. As Claimant testified, she was merely walking at the place of her employment, and her right knee gave out as a result of her preexisting condition. HT p. 21. Claimant has not described any factor of her employment causing her to fall. While Claimant was in the process of performing a task associated with her employment, the obligation of her employment did not cause her right knee to stiffen, lock-up and give out. Rather her condition resembles some disease or infirmity that is strictly personal to her and unrelated to her employment. Therefore, the obligations of Claimant's employment did not place Claimant in a position where she was injured. The record does not establish Claimant's right knee would have stiffened or locked up but for some condition or obligation of her employment. The evidence in this case does not establish Claimant's injury arose out of and in the course of her employment.

A review of the hearing testimony and evidence supports the ALJ's conclusion. We reject the Claimant's assertion that because she was required to walk, the injury should be compensable. The Claimant's leg stiffening up is a risk personal to her and not a hazard or obligation of her employment. What the Claimant is asking us to do is to reweigh the evidence in her favor, a task we cannot do. The ALJ's conclusion that the injury did not arise out of or in the course of the Claimant's employment is supported by the substantial evidence in the record and in accordance with the law.

## CONCLUSION

The Compensation Order of November 30, 2012 is in accordance with the law and is supported by the substantial evidence in the record.

## ORDER

The Compensation Order of November 30, 2012 is affirmed.

FOR THE COMPENSATION REVIEW BOARD:

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HEATHER C. LESLIE
*Administrative Appeals Judge*

October 15, 2013
DATE