

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Department of Employment Services

MURIEL BOWSER  
MAYOR



DEBORAH A. CARROLL  
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 15-184

PHYLLICE GILES,  
Claimant-Petitioner,

v.

ST. PHILLIPS EPISCOPAL CHURCH and  
LIBERTY MUTUAL INSURANCE COMPANY,  
Employer/Insurer-Respondent.

Appeal from an October 29, 2015 Compensation Order  
by Administrative Law Judge Joan E. Knight  
AHD No. 10-481C, OWC No. 669911

DEPT. OF EMPLOYMENT  
SERVICES  
COMPENSATION REVIEW  
BOARD  
2016 APR 14 PM 11 44

(Decided April 14, 2016)

Matthew Peffer for Claimant  
Christopher R. Costabile for Employer

Before JEFFREY P. RUSSELL, and HEATHER C. LESLIE, *Administrative Appeals Judges* and  
LAWRENCE D. TARR, *Chief Administrative Law Judge*.

JEFFREY P. RUSSELL for the Compensation Review Board.

**DECISION AND REMAND ORDER**

BACKGROUND AND FACTS OF RECORD

Phyllice Giles (Claimant) was employed by St. Phillips Episcopal Church (Employer) as a cook and daycare provider.

On May 3, 2010 Claimant slipped and fell at work on a wet floor. Employer voluntarily paid temporary total disability (TTD) and provided medical care from the date of injury until April 4, 2011, when Employer ceased paying TTD or providing ongoing medical care, based upon the results of an independent medical evaluation (IME).

Claimant sought resumption of TTD and medical care at a formal hearing held before an administrative law judge (ALJ) in the Department of Employment Services (DOES) on July 8, 2015. The issues in dispute as identified in the CO were (1) whether Claimant's current knee

conditions are causally related to the injury of May 3, 2010, and if so (2) whether further medical care (in the nature of bilateral knee replacement surgery) is reasonable and necessary.<sup>1</sup>

On October 2, 2015, the ALJ issued a Compensation Order (the CO) in which the claims for relief were denied. Because the ALJ's decision was premised upon her legal conclusion that the current condition of Claimant's knees is not causally related to the stipulated work-related injury, the issue concerning reasonableness and necessity was not addressed in the CO.

Because the CO is legally deficient in that it did not conduct a complete analysis on the issue of causal relationship, we vacate the denial of the claimed benefits and remand the matter for further consideration.

#### DISCUSSION AND ANALYSIS

Although we normally undertake an examination of the facts and assess how the AJL applied those facts to the law, in this case we shall dispense with a close review of the evidence presented or a discussion of how those facts are to be applied to the law. We do so because the CO is fundamentally incomplete, so much so that we are unable to determine whether the ALJ's ultimate conclusion is in accordance with the law.

Both parties acknowledge that the ALJ was correct in determining that Claimant adduced sufficient evidence to invoke the statutory presumption that Claimant's knee conditions are causally related to the May 3, 2010 slip and fall at work, and that Employer adduced sufficient evidence to overcome that presumption.

Thus it is inarguable that the next step for the ALJ to have taken should have been to re-weigh the evidence, placing the burden of proof by a preponderance of the evidence upon Claimant, but taking into account the preference generally accorded to the opinions of treating physicians over an IME medical opinion, which requires that a rejection of treating physician opinion be based upon legitimate, articulable reasons in the record.

That the ALJ did not do. Rather, the ALJ proceeded to accord treating physician status to the opinion of Dr. Brian Evans, a physician to whom Claimant was referred by the physician who had been managing Claimant's ongoing knee complaints both before and after the work injury, said referral being for the sole purpose of assessing whether Claimant was a suitable candidate for knee replacement surgery.

Dr. Evans, who saw Claimant twice and whose treatment provided, if any, is not included in the CO, did not express an opinion on causation until solicited by Claimant's counsel. For this and other reasons (including that Claimant never reported the work injury to Dr. Evans and the ALJ's findings that Claimant's description of her pre versus post-injury symptoms and complaints was not credible) the ALJ concluded that "Claimant has failed to bear her burden by a preponderance of the evidence". CO at 8. The ALJ did so without discussing or referring to the IME evidence,

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<sup>1</sup> The CO does not identify the nature and extent of disability as an issue, and neither party addresses the issue in this appeal. Therefore, we assume that the parties agree that Claimant is temporarily totally disabled from her job with Employer.

or repeating or reanalyzing Claimant's credibility and explaining how, if at all, that lack of credibility contributed to the ultimate conclusion.

If one analyzes the fashion in which the ALJ reached her conclusion, she did not in fact re-weigh the evidence. Rather, she examined only the opinion of Dr. Evans, and concluded that because of its perceived shortcomings, Claimant had failed to prove her case by a preponderance of the evidence. However, it is logically impossible to reach such a conclusion without considering competing evidence. By limiting the analysis to just the opinion of Dr. Evans, the ALJ has in effect determined that Claimant's evidence is in and of itself insufficient to support her claim. In other words, the ALJ has contradicted her earlier determination that Claimant had adduced sufficient evidence to invoke the presumption that the knee conditions are causally related to the work injury. It is irreconcilably contradictory to conclude that evidence which is sufficient to invoke the presumption, is, if not weighed against other evidence or if on weighing found to be incredible, insufficient to carry the burden of proof by preponderance thereof.

This failure to follow the long established methodology in determining the ultimate issue of compensability has not been raised by Claimant as a basis for this appeal.

The CRB usually only considers those issues raised in the appeal. However, the CRB may consider other issues when the interests of justice so require. *See Jerome Mgt., Inc. v. D.C. Rental Housing Commission*, 682 A.2d 178, 229 n. 5 ("Normally 'contentions not urged at the administrative level may not form the basis for overturning the decision on review'. But 'courts may show a measure of flexibility in this regard when the interests of justice so require'"). Just as the District of Columbia Court of Appeals has stated that it cannot ignore a fundamental misunderstanding of the law, nor can we affirm a decision which reflects a misconception or faulty application of relevant law. *See D.C. Department of Mental Health v. DOES*, 15 A.3d 692 (D.C. 2011). We do so in this instance because of the irreconcilable nature of the findings invoking the presumption and the ALJ's consideration of only those findings to deny the claim is inconsistent with established law with regard to invocation of the presumption, rebutting the presumption, and then re-weighing the evidence.

Although one might view the failure to discuss opposing evidence to be harmless error, in this case it is not, because the conclusion of a lack of causal relationship cannot possibly flow rationally from the same evidence upon which the presumption was invoked in the first instance, without discussion of all the evidence in the record.

While in most cases we would not *sua sponte* consider an issue not raised by either party on appeal, in this instance the irreconcilable nature of the findings invoking the presumption the ALJ's consideration of only those findings to deny the claim is inconsistent with established law with regard to invocation of the presumption, rebutting the presumption, and then re-weighing the evidence.

If a claimant's initial showing is sufficiently credible to support the invocation of the presumption, if it is not ultimately weighed against any other evidence, it can not be said that it is insufficient to prove the claim. Therefore we must vacate the CO and remand for further consideration.

## CONCLUSION AND ORDER

The failure to weigh the evidence following invocation and rebuttal of the presumption of compensability is not in accordance with the law, and the determination that Claimant had failed to adduce sufficient evidence to support her claim is vacated. The matter is remanded for further consideration of the evidence in a manner consistent with the foregoing Decision and Remand Order.

*So ordered.*