

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



F. THOMAS LUPARELLO
ACTING DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 14-065

**REX A. JENNINGS,
Claimant-Respondent,**

v.

**E&A PROTECTIVE SERVICES-BRAVO-L-EA AND GALLAGHER BASSETT SERVICES, INC.,
Employer/Carrier-Petitioners.**

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2014 SEP 3 PM 1 57

Appeal from a April 21, 2014 Compensation Order By
Administrative Law Judge Amelia Govan
AHD No.12-132A, OWC No. 682869

Joel E. Ogden for the Petitioner
Danny R. Seidman for the Respondent

Before HEATHER C. LESLIE, HENRY W. MCCOY, and MELISSA LIN JONES, *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 Employer/Carrier-Petitioners (Employer) of the April 21, 2014, Compensation Order on Remand (COR) 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 awarded the Claimant temporary total disability benefits from June 20, 2011 to September 30, 2011, having found the April 4, 2011 injury to have arose out of and in the course of the Claimant's employment. We AFFIRM.

BACKGROUND AND FACTS OF RECORD

On April 4, 2011 the Claimant injured his right leg when looking through the window of a security kiosk. Claimant testified he leaned back onto his right leg when looking into the security kiosk and immediately felt pain shoot up his right knee.

The Claimant sought medical care and came under the treatment of Dr. Adam Ellison. After an MRI was performed, Dr. Ellison opined that the Claimant suffered from an internal derangement of the right knee and a medial meniscus tear. The Claimant underwent a partial right medial meniscus procedure on June 29, 2011. The Claimant missed time from work. Ultimately, the Claimant moved to Oklahoma for reasons unrelated to his injury.

In Oklahoma, the Claimant came under the care and treatment of Dr. Daniel Clinkenbeard. Dr. Clinkenbeard recommended pain medication to treat the Claimant's ongoing problems with his right knee.

On March 6, 2012, the Claimant underwent an independent medical evaluation with Dr. Edward R. Cohen. Dr. Cohen took a history of the Claimant's injury, performed a physical examination, and reviewed medical records. Dr. Cohen opined the Claimant suffered from a degenerative tear of the right medical meniscus, not work related.

A full evidentiary hearing proceeded on March 12, 2013. The issues to be adjudicated were whether or not the Claimant's injury arose out of and in the scope of the Claimant's employment and whether or not the Claimant's current right knee condition was medically causally related to the injury. The Employer initially raised the issue of nature and extent also, but withdrew the issue at the end of the hearing, stating that if the ALJ found the injury arose out of and in the course of the Claimant's employment and was medically causally related, the Employer would not contest the nature and extent of the Claimant's disability from June 20, 2011 to September 30, 2011.

A CO issued on July 9, 2013 granting the Claimant's claim for relief. The CO found that the Employer had failed to rebut the presumption that the Claimant's injury arose out of and in the course of the Claimant's employment, that the Claimant's current right knee condition is medically causally related to the work injury, and that the Claimant was temporarily and totally disabled from June 20, 2011 to September 30, 2011.

The Employer timely appealed. In a Decision and Remand Order (DRO) dated October 10, 2013, the CRB determined that the Employer had rebutted the presumption and remanded the case for the ALJ to analyze whether Claimant's right knee condition was legally and medically causally related to the injury of April 4, 2011 without benefit of the presumption. Because the employer did not contest the nature and extent of the disability, the finding that the Claimant was temporarily and totally disabled from June 20, 2011 to September 30, 2011 was vacated.

A COR¹ was issued on April 21, 2014. In that COR, the ALJ weighed the evidence without benefit of the presumption and concluded that the Claimant sustained an accidental work injury to his right knee on April 4, 2011 and that Claimant's right knee symptoms were medically causally related to that injury. The COR granted Claimant's relief in its entirety.

Employer timely appealed. Employer argues that the COR erred in finding Claimant suffered a compensable injury as the Claimant did not present any medical expert report or testimony showing that any event on April 4, 2011 that satisfies its burden of proving, by a preponderance of the evidence that he sustained an injury. Claimant counters, stating the COR is supported by the facts of the record and taking into consideration the credibility finding, is in accordance with the law.

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 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. Code § 32-1501, *et seq.*, (the Act) at § 32-1521.01 (d)(2)(A), and *Marriott International v. DOES*, 834 A.2d 882 (D.C. 2003). Consistent with this standard of review, 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. *Id.*, at 885.

DISCUSSION AND ANALYSIS

Employer's primary argument on review is that the ALJ's decision that Claimant suffered a compensable injury is incorrect as a matter of law. Specifically, Employer argues the only medical report presented which rendered an opinion on causal relationship was Employer's expert, Dr. Cohen. Employer further posits that in cases with a complex medical history, expert medical opinion is required to prove causation. Employer points to several non-workers compensation cases in support of its argument that in complex medical cases a medical expert opinion is necessary regarding the casual relationship of the condition to the work related accident.

Much of Employer's argument that the COR was in error in awarding benefits is centered on whether Claimant's condition is medically casually related to the work injury. In our DRO, we noted that a contested issue raised was whether Claimant's injury arose out of and in the scope of Claimant's employment. On this point, the ALJ stated,

It is well settled that the requirement of an accidental injury is satisfied when something unexpectedly goes wrong with the human frame. *Jones v. DC DOES*,

¹ Judge McNair, the ALJ who presided over the Formal Hearing and who issued the CO, left the agency prior to issuance of the COR. Judge Govan issued the COR after the parties did not respond to an order to show cause why ALJ Govan could not review the evidence and issue a COR.

519 A.2d 704, 709 (D.C. 1987). The contemporaneous medical records do support the contention that something happened to Claimant's right knee at work on April 2, 2011 as alleged.

COR at 4. (Footnote omitted.)

We note, however, the COR LJ did not address whether an accidental injury occurred which arose out of and in the course of Claimant's employment, otherwise known as legal causation.²

While such an omission would normally cause us to remand for further consideration, Employer does not contest the credibility of Claimant or his testimony and does not contend that the ALJ was in error in not discussing whether the Claimant's injury did in fact arise out of and in the course of Claimant's employment. Rather, Employer argues that because a doctor did not opine that a traumatic accident occurred, the ALJ was in error in finding a compensable injury occurred. Notably, Employer does not allege the Claimant was not engaged in his duties on the date in question. Moreover, Employer stipulated an accidental injury occurred on April 2, 2011, but challenged whether the accidental injury arose out of and in the course of Claimant's employment.

Employer's central argument revolves around the medical opinions in the case, or medical causation.³ As such, any error in the above analysis is rendered harmless as the record evidence and testimony before us would result in the same conclusion -- Claimant did suffer an accidental injury which arose out of and in the course of his employment. A remand is unnecessary.

Employer argues that no medical expert affirmatively stated that Claimant's knee condition was medically causally related to the work injury. Employer argues the only opinion to definitely render an opinion on medical causation is Employer's IME, Dr. Cohen.

On this point, the COR states:

In weighing the record evidence, the reports of Dr. Ellison and the other medical professionals who provided treatment to Claimant must be compared with the IME opinion of Dr. Cohen. Claimant's testimony, which was deemed to be credible, describes a specific incident of leaning back into his right leg, on April 4, 2011, which resulted in debilitating symptoms and disability.

Claimant's testimony, as reflected in the Formal Hearing transcript, was deemed

² It is well settled under the Act that to be compensable an injury must both arise out of, and in the course of, the employment. D.C. Code § 36-301(12); *Grayson v. DOES*, 516 A.2d 909 (D.C. 1986). Both requirements must be met to be compensable. *Id.*

³ Questions pertaining to "arising out of and occurring in the course of" employment deal with legal causation, i.e., the question of whether a particular incident which caused (or is alleged to have caused) an injury occurred under circumstances making the injury a compensable event under the Act. "Medical causal relationship", on the other hand, presents the question of whether a given condition for which medical or disability benefits are sought is related to the work injury.

credible by Judge McNair. That testimony indicated that when he leaned back onto his right leg to look into a security kiosk window, he immediately felt pain shoot up his right knee and his right leg wobbled. CO, p. 3-4. It further indicated that Claimant was working without limitation prior to this incident; that prior to April 4, 2011 he missed no time from work related to right knee problems; and, that he was four hours into his work shift when it occurred. HT 33-44.

When he first sought medical care for the accidental injury on April 12, 2011 at the Orthopedic and Sports Medicine center, the intake report of Physician Assistant (P.A.) Mark Musket states:

"History: Rex had had pain at work about a week ago. It was a stabbing pain. He felt like he sort of waddled. The first time it happened, the pain was sharp and immediate and resolved almost instantaneously. The second time, he had to limp a little bit and then things eased off. Some of his employers noticed that he was limping. They asked him to go home. He had been home for a week waiting for workmen's comp information to arrive and he finally came in for evaluation without that workmen's comp information. Pain is localized somewhat laterally at the knee and also anteriorly and he had the stabbing pain anteriorly. He has noticed some popping. No locking. No swelling. There was no accident or injury. He has been resting over this past week and it has not been occurring. He did have 1 episode of brief sharp stab as he left his car to come in to see me today. It was located anteriorly." CE 5. <n1>

<n1> The opinion of P.A. Mark Musket, that "there was no accident or injury", is not legally persuasive. Apparently he is referring to a traumatic event, as it might be described by a layperson, rather than to an accidental injury as it is defined by the Act.

Dr. Ellison's earliest report, dated May 10, 2011, indicates that 5 weeks earlier, on April 4, 2011, Claimant was cleaning a window at work and felt a sharp shooting pain up his knee. The report reads as follows:

"Patient denies specific injury or trauma. Pt. was cleaning a window at work and felt a sharp shooting pain up his knee.

....

Aggravating factors:

- standing for a certain amount of time.
- simply walking." CE 1, p. 11.

Dr. Cohen's March 6, 2012 IME report indicates that Claimant had a "degenerative tear, right medical meniscus, non-work related." He further opined

that he "did not causally relate Claimant's right knee complaints to an occurrence on April 4, 2011." In addition to his opinion that there was no definitive work-related injury on April 4, 2011, Dr. Cohen categorically states that in his opinion, Claimant's right knee condition was not caused by "simply leaning in as he described" on the day in question. RX 1, p. 3.

...
The medical records closest in time to the alleged incident do indicate there was a specific incident on April 4, 2011. Something unexpectedly went wrong with Claimant's right knee, while he was performing his work duties, which resulted in debilitating symptoms and disability. The treating physicians' accounting of the injury is consistent with Claimant's credible testimony in all pertinent respects. Claimant leaned back on his leg and felt a sharp shooting right knee pain which caused him to limp and seek medical treatment. The only medical opinion that contests the connection between Claimant's April 4, 2011 work activity and his right knee condition thereafter is that of Dr. Cohen.

Claimant's argument is the more persuasive in this case. The record-based evidence that an April 4, 2011 work related injury or event caused or contributed to his disability outweighs the evidence submitted to disprove his claim. Claimant has proven his case by a preponderance of the evidence of record.

COR at 3-4.

As we noted above, Employer relies upon several cases dealing with other areas of law for the proposition that complex medical cases such as the one before us where there was evidence of pre-existing knee issue, expert testimony is *required* to prove causation. However, Employer has failed to cite a workers' compensation case supporting its argument. We find no merit in Employer's argument.

While ALJ's cannot substitute a legal opinion for a medical opinion⁴, ALJ's may draw inferences from the evidence presented.⁵ Such is the case here. The ALJ noted in the findings of fact, which were fully adopted, that the Claimant was able to perform his duties prior to the work injury, and that afterwards he was not. The ALJ was also persuaded by the Claimant's credible testimony, the medical evidence submitted, as well as the consistent history given to the treating physicians of a leaning event which caused his injury to occur.

We conclude the COR supported by the substantial evidence in this case.⁶ Stated another way, the COR is supported by such relevant evidence as a reasonable mind might accept as adequate

⁴ See *Seals v. The Bank Fund Staff Federal Credit Union*, CRB No. 09-131, AHD No. 144, OWC No. 653446 (May 20, 2010).

⁵ See *George Hyman Construction Co. v. DOES*, 498 A.2d 563, 566 (D.C. 1985).

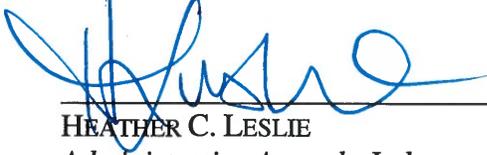
⁶ As we have observed previously, the "purpose of the Workers' Compensation Act is to advance the humanitarian goal to provide compensation to employees for work-related disabilities reasonably expeditiously, *even in arguable cases.*" *WMATA v. DOES*, 827 A.2d 35, 39 (D.C. 2003) (citations omitted) (italics added). The Workers' Compensation Act "is to be construed liberally for the benefit of employees and their dependents," *Ferreira v.*

to support a conclusion. *Marriott, supra*. The ALJ weighed the evidence, including the credible testimony of the Claimant and the medical records submitted, rejected the opinion of the IME, and concluded Claimant right knee condition was medically causally related to the work injury.

CONCLUSION AND ORDER

The April 21, 2014 Compensation Order on Remand is supported by the substantial evidence in the record and in accordance with the law. It is **AFFIRMED**.

FOR THE COMPENSATION REVIEW BOARD:



HEATHER C. LESLIE
Administrative Appeals Judge

September 3, 2014
DATE

DOES, 531 A.2d 651, 655 (D.C. 1987) (citations omitted), and "doubts are to be resolved in favor of the claimant."
Baker v. DOES, 611 A.2d 548, 550 (D.C. 1992).