

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA MARÍA MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 13-048

**JUAN RIZO-RAMOS,
Petitioner,**

v.

**METRO PAVING CORPORATION,
and ZURICH AMERICAN INSURANCE COMPANY
Employer/Insurer-Respondents.**

Appeal from a March 25, 2013 Compensation Order By
Administrative Law Judge Gerald Roberson
AHD No. 13-019, OWC No. 394678

David Kapson, Esquire, for the Claimant
Mark W. Bertram, Esquire, for the Employer

Before HEATHER C. LESLIE, HENRY W. MCCOY, *Administrative Appeals Judges* and LAWRENCE
D. TARR, *Chief Administrative Appeals Judge*.

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 March 25, 2013, 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, interest on accrued benefits, and payment of causally related medical treatment. We AFFIRM.

BACKGROUND AND FACTS OF RECORD

The Claimant was employed by the Employer as a truck driver, a position he held for approximately 9 years. On July 12, 2012 the Claimant alleged he suffered an injury at work after a ladder broke, causing him to fall down on the ground and injuring his low back and legs.

The Claimant came under the care and treatment of Dr. Joel Fecther. Dr. Fecther diagnosed the Claimant with a lumbosacral spine strain with radicular complaints. Dr. Fecther opined the Claimant was unable to work. The Claimant has not returned to work since July 12, 2012.

A full evidentiary hearing occurred on February 13, 2013. The Claimant sought an award of temporary total disability benefits from July 12, 2012 to the present and continuing, causally related medicals, and interest. The issues raised were whether or not an accidental injury occurred on July 12, 2012, whether or not the Claimant's injury arose out of and in the scope of the Claimant's employment,¹ whether or not the Claimant's condition is medically casually related to the work injury, whether notice was timely, and the nature and extent of the Claimant's disability, if any. A CO was issued on March 25, 2013 which denied the Claimants claim for relief, finding the Claimant failed to prove he sustained an accidental injury on July 12, 2012.

The Claimant timely appealed. The Claimant argues the ALJ's finding that the Claimant failed to establish that he sustained an accidental injury is not supported by the substantial evidence in the record. The Employer opposes the application for review, arguing the CO is supported by the substantial evidence in the record and should be affirmed.

THE STANDARD OF REVIEW

The scope of review by the Compensation Review Board ("CRB") is limited to making a determination as to whether the factual findings of the appealed 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. Section 32-1521.01(d)(2)(A) of the District of Columbia Workers' Compensation Act, as amended, D.C. Code §32-1501 to 32-1545, ("Act"). Consistent with this standard of review, the CRB is constrained to uphold a Compensation Order that is supported by substantial evidence, even if there also is contained within the record under review substantial evidence to support a contrary conclusion and even if the CRB might have reached a contrary conclusion. *Marriott International v. DOES*, 834 A.2d 882, 885 (D.C. 2003).

DISCUSSION AND ANALYSIS

A review of the CO reveals the ALJ correctly noted that in order to benefit from the presumption that the injury occurred, the Claimant must show credible evidence of a disability and the existence of a work related event, activity, or requirement which has the potential to cause or to contribute to the disability.² The ALJ found the Claimant had invoked the presumption, and while not explicitly stated, that the Claimant presented facially credible testimony that an accident occurred which had the potential to cause the claimed disability. This finding was not appealed by the Employer and we do not disturb this finding now.

¹ The ALJ lists the issue as whether or not the evidence causally relates the Claimant's back condition to the July 12, 2012 work incident. We are assuming, for purposes of this appeal, that the ALJ meant whether or not the injury arose out of and in the course of the Claimant's employment.

² *Ferreira v. DOES*, 531 A.2d 651 (D.C. 1987).

As the Claimant correctly points out, after the presumption has been triggered, the burden shifts to the Employer to bring forth 'substantial evidence' showing that a disability did not arise out of and in the course of employment.³"

The ALJ states,

Employer offered substantial credible evidence to refute Claimant's allegations that he sustained an accidental injury on July 12, 2012. Employer provided sufficient evidence to question whether Claimant had a work related event on July 12, 2012. Employer relied on witness testimony and exhibits to question whether Claimant sustained an accidental injury on July 12, 2012 as alleged.

CO at 5.

The Claimant argues that "the ALJ cites no case-law or legal standard with respect to the analysis of whether the employer and insurer have rebutted the presumption of compensability." Claimant's argument at 7. While it is true the ALJ does not cite or refer to any case law, it is clear in the above passage, the ALJ specifically finds the Employer had presented substantial evidence to rebut the presumption of compensability pursuant. We affirm this finding.

After having found the presumption rebutted, the ALJ then weighed the evidence and found,

Claimant's testimony draws into question whether he sustained an accidental injury on July 12, 2012 because he testified he told his supervisor the following day after the accident not to give him truck 202 because the ladder had broken and he had fallen off. HT p. 28. During his testimony, Antonio Claro, Claimant's supervisor, testified he worked on July 12, 2012, but he was on vacation in Portugal on July 13, 2012. He testified he worked for 3-4 hours on July 12th, but left early to catch a flight at four. HT p. 50. Mr. Carlo recalled Claimant called him on August 1, 2012 stating he could not come to work because his pressure was low, and Claimant indicated he had to seek medical treatment to check his blood pressure. HT p. 51. Mr. Claro stated Claimant did not mention he was injured at work. HT p. 50. Mr. Claro remarked Claimant subsequently provided a paper indicating he could not work because he injured his back. HT p. 52. Camille Shoeib, who directs concrete deliveries as the dispatcher for Employer, testified Claimant did not tell her a ladder broke on a cement truck around July 13th. HT p. 68. Ms. Shoeib stated she could not recall when she learned Claimant was claiming that the accident happened at work. HT p. 66.

The record also contains conflicting evidence with respect to Claimant's contentions the ladder on truck 202 broke causing him to fall. With respect to the broken ladder, Mr. Claro stated a driver must inspect the truck every morning and fill out a ticket if there is anything wrong with the truck. He stated a copy of the ticket goes to the supervisor and the mechanic. Mr. Claro testified he never saw a

³ *Ferreira*, 531 A.2d at 655

ticket for Claimant's truck regarding a broken ladder on July 12th. HT p. 55. Mr. Claro testified he spoke to the mechanic, who indicated the ladder was not fixed because there was nothing wrong with the ladder. HT p. 54. Ms. Shoeib testified she inspected the ladder for truck 202 after she learned of Claimant's contentions. Ms. Shoeib testified she went to the truck physically and grabbed hold of the ladder and tried to shake it. According to Ms. Shoeib, she climbed up a couple rungs, looked at the welds and did not see anything. Ms. Shoeib further testified she went to the shop looking for a repair order and she checked the walk-around tickets, and there was no recording that the truck was damaged. HT p. 68. Ms. Shoeib commented she searched the maintenance records and did not find a single report, negative or positive, for that truck. HT p. 71. Additionally, Amado Navarrete, who is responsible for maintenance of the equipment as the shop foreman, also provided testimony regarding whether the ladder had broken on truck 202. HT p. 81. Mr. Navarrete testified he learned Claimant stated the ladder broke on truck 202, and he went to check everything, and there was nothing wrong with the ladder, and the ladder had not been repaired. HT pp. 82-83. Mr. Navarrete remarked he would know if something had been welded on the truck. HT p. 84.

Additionally, Claimant has not offered any contemporaneous medical evidence to support his contentions. The initial medical report does not offer any corroborative evidence to support Claimant's contentions. Claimant testified he sought medical treatment at Washington Adventist Hospital on July 27, 2012 due to increasing pain to his low back. The medical record from Washington Adventist Hospital does not offer any medical history with respect to the mechanism of the injury, and it failed to mention the date of accident. CE 4. The record merely contains the diagnosis of back pain (low back) without any physical findings or reference to a work incident. CE 4. As such, the totality of the evidence does not support Claimant's allegations that he sustained a low back injury on July 12, 2012 when the ladder on truck 202 broke causing him to hit his back on the ground.

CO at 5-6.

The Claimant urges us that the above reasoning utilized by the ALJ is flawed and that the ALJ's reliance upon witness testimony which call into question whether the ladder broke, causing the Claimant to fall, is in error. We cannot agree. What the Claimant is asking us to do is to reweigh the evidence in his favor, a task we cannot do. As we stated above, the CRB is constrained to uphold a Compensation Order that is supported by substantial evidence, even if there also is contained within the record under review substantial evidence to support a contrary conclusion and even if the CRB might have reached a contrary conclusion. *Marriott, supra*.

CONCLUSION AND ORDER

The March 25, 2013 Compensation Order is supported by the substantial evidence in the record and in accord with the law. It is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

HEATHER C. LESLIE
Administrative Appeals Judge

July 30, 2013
DATE