

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

Department of Employment Services

VINCENT C. GRAY  
MAYOR



F. THOMAS LUPARELLO  
ACTING DIRECTOR

**COMPENSATION REVIEW BOARD**

**CRB No. 14-036**

**ROBERT L. JOHNSON,  
Claimant-Petitioner,**

v.

**HAMILTON CROWNE PLAZA HOTEL  
and ZURICH AMERICAN INSURANCE CO.,  
Employer/Carrier-Respondent**

DEPT. OF EMPLOYMENT  
SERVICES  
COMPENSATION REVIEW  
BOARD  
2014 JUL 30 PM 12 12

Appeal from a February 28, 2014 Compensation Order by  
Administrative Law Judge Nata K. Brown  
AHD No. 13-219, OWC No. 647101

Robert L. Johnson, *Pro Se* Petitioner  
Mark T. Krause for the Respondent

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

HENRY W. MCCOY, for the Compensation Review Board; JEFFREY P. RUSSELL, concurring.

**DECISION AND ORDER**

FACTS OF RECORD AND PROCEDURAL HISTORY

On February 7, 2008, Claimant was working as a cook in Employer's hotel kitchen when he injured his left middle finger, consisting of a small scratch on the palm side of the hand, when it ran across the jagged metal edge of the box that cuts plastic wrap from the roll. As the injury occurred near the end of his tour of duty, Claimant claimed he attempted to report the injury, albeit unsuccessfully, then went home and self-treated.

Claimant returned to work the following day, February 8, 2008, and with pain and swelling in his left middle finger, he went to the emergency room at Howard University Hospital (HUH). Although Claimant claims he informed the treating nurse that he injured his finger at work, the hospital report does not reflect any such statement. Instead, the emergency room report states the pain and swelling started 3 days prior, and that Claimant denied any trauma or injury. Claimant was treated for an abscess on his left middle finger, given medication, and told to return in a few days.

Claimant returned to the emergency room on February 13, 2014 as the swelling had not subsided; the doctor on duty made specific reference to swelling around the nail-bed of the left middle finger, performed minor surgery to insert medication, and wrapped the finger with instructions to return the following day. Claimant returned on February 14, 2008 for further treatment and the problem with the finger eventually resolved.

When Claimant's request to Employer for reimbursement of his medical expenses associated with the treatment for his left middle finger was denied, Claimant filed a claim for causally related medical expenses. Following a formal hearing, an Administrative Law Judge (ALJ) determined that Claimant failed to make an initial showing of both an injury and a relationship between the injury and his employment so as to invoke the presumption of compensability. Accordingly, Claimant's request to be reimbursed for his medical expenses was denied.<sup>1</sup> Claimant filed a timely appeal, with Employer filing in opposition.

On appeal, Claimant argues the ALJ erred in deciding that he did not cut his finger at work and in not accepting that when a diabetic cuts a finger, a natural consequence is to develop an abscess. In essence what Claimant argues is that it was error for the ALJ not to find that he invoked the presumption by showing that the treatment he received for an abscess to his left middle finger was medically causally related to the cut to that finger that occurred at work. In opposition, Employer asserts that the ALJ's determination that the presumption was not invoked is supported by substantial evidence and is in accordance with the law and should be affirmed. We agree and affirm.

#### STANDARD OF REVIEW

The scope of review by the CRB, 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.<sup>2</sup> See D.C. Workers' Compensation Act of 1979, as amended, D.C. Code Ann. §§ 32-1501 to 32-1545 (2005), at § 32-1521.01(d)(2)(A). 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

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<sup>1</sup> *Johnson v. Hamilton Crowne Plaza Hotel*, AHD No. 13-219, OWC No. 647101 (February 28, 2014).

<sup>2</sup> "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 International v. DOES*, 834 A.2d 882 (D.C. 2003).

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.

In representing himself at the formal hearing and again in the instant appeal, Claimant has not been able to frame his case before the ALJ and now in this appeal to his best advantage. In his appeal, Claimant argues that both the ALJ and Employer are wrong, and cannot justify their respective statements that he did not cut his finger because they were not present when the incident occurred.

In his statement on appeal, Claimant argues that he was wrapping some food and cut his left middle finger on the blade of the plastic wrap box. He further states that when he went to the hospital: "All I told the nurse was [as] a diabetic [sic] and what kind of medicine I take, and that was it."<sup>3</sup> Claimant contends that what happened after he cut his finger is a direct consequence of his being a diabetic, as he argues:

If your sugar in your body is up or down you will get an apcess [sic] on your finger. The reason why I know, is because I went to Howard University to diabetic [sic] classes for two weeks.<sup>4</sup>

Essentially, Claimant is making the argument first, that he sustained a cut to his left middle finger that arose out of and in the course of his employment and that the resulting abscess that developed in that finger is medically causally related to that work-related event. Second, it is his contention that the ALJ was wrong in deciding that no such causal relationship existed. Stated another way, Claimant is arguing that he made a sufficient showing to invoke the presumption of compensability.

D.C. Code § 32-1521 (1) provides that "in any proceeding for the enforcement of a claim for compensation under this chapter it shall be presumed, in the absence of evidence to the contrary: (1) That the claim comes within the provisions of this chapter. . . ." As the D.C. Court of Appeals has explained, "The statutory presumption operates to establish a causal connection between the disability and the work-related event."<sup>5</sup> As the court previously established:

In order to benefit from the presumption, a claimant needs to make some "initial demonstration" of the employment-connection of the disability. . . . The initial demonstration consists in providing some evidence of the existence of two "basic facts": a death or a disability and a work-related event, activity, or requirement which has the *potential* of resulting in or contributing to the death or disability. . . . The presumption then operates

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<sup>3</sup> Claimant's Order Opposing Points and Authorities Plaintiff Motion to Presue [sic] His Case, p. 3.

<sup>4</sup> *Id.*, p. 2.

<sup>5</sup> *Baker v. DOES*, 611 A.2d 548, 550 (D.C. 1992).

to establish a causal connection between the disability and the work-related event, activity, or requirement.<sup>6</sup>

In determining that Claimant did not make the initial demonstration of the employment-connection of his disability so as to benefit from the presumption of compensability, the ALJ reasoned:

In the instant matter, Claimant testified that he cut his left middle finger on the underside, or palm side, of his hand; and that the cut arose out of and in the course of his employment. Claimant testified that the cut was a little scratch, and that his finger was not bleeding. The cut on the underside of his hand, however, was not disabling. There was no mention in any of the HUH medical reports of treatment for a cut on the underside of his left middle finger.

The medical records show that Claimant sought medical attention for an abscess on the top of his hand, at the base of his nail bed on his left middle finger. He was treated three times at HUH for the abscess, which was not reported as a work-related injury—it was not the claimed injury. Thus, Claimant has failed to meet the second prong of the presumption of compensability. He has failed to show that there is a medical causal relationship between the injury for which Claimant was treated related [sic] and the work-related event.<sup>7</sup>

The ALJ concluded as a matter of law that

Claimant has failed to make an initial demonstration of both an injury and a relationship between that injury and the employment. He has failed to raise the statutory presumption of compensability.

As the Court stated in *Ferreira*, to benefit from the presumption, some evidence of two basic facts must be made: a death or disability and a work-related event, activity, or requirement which has the potential of resulting in or contributing to the death or disability. While it was stipulated that Claimant incurred a work-related injury, it was contested that the work injury resulted in or contributed to the claimed disability, the medical treatment received.

Where there is a dispute, as there is here, about whether the disabling medical condition is causally related to or “arose out of” the claimant’s employment, the presumption applies and is triggered if the claimant produces “some evidence” of the two basic facts described in *Ferreira*. The ALJ determined that Claimant did not provide some evidence of the two basic facts to invoke the presumption and denied the claim for reimbursement. We agree with that determination.

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<sup>6</sup> *Ferreira v. DOES*, 531 A.2d 651, 655 (D.C. 1987).

<sup>7</sup> CO, at 5.

While it was found that Claimant cut the underside of his left middle finger while at work on February 7, 2008, there are no medical reports in evidence to support any findings that the treatment he received starting on February 8, 2008 was to any type of cut or laceration to the underside of the middle finger. The first treatment report mentions swelling of the left middle finger that started three days prior, which would have preceded the work injury, and makes no mention of a work injury.

The initial emergency room medical report specifically noted that Claimant denied any trauma or injury to the finger. Subsequent treatment reports refer to treating an abscess at the base of the nail-bed of the left middle finger. To the extent that Claimant's pre-existing condition as a diabetic could have contributed to the swelling in the finger after the minor cut he received at work, there is nothing in the medical evidence that suggests this would allow for any type of reasonable inference by the ALJ.

#### CONCLUSION AND ORDER

The ALJ's determination that Claimant failed to invoke the presumption of compensability that the treatment to his left middle finger was medically causally related to the February 7, 2008 work injury is supported by substantial evidence and is in accordance with the law. Accordingly, the February 28, 2014 Compensation Order is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

  
HENRY W. MCCOY  
*Administrative Appeals Judge*

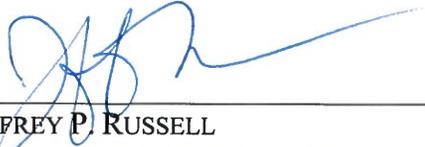
July 30, 2014

DATE

JEFFREY P. RUSSELL, *concurring*:

I must respectfully disagree with my colleagues where, in the majority Decision and Order, they agree that the evidence adduced by Claimant was insufficient to invoke the presumption that the complained of condition was causally related to a work injury. The parties stipulated that Claimant sustained an injury to his hand. The statutory presumption of compensability extends not only to the occurrence of an accidental work place injury, which in this case is not contested, but also to the medical causal relationship between an alleged disability and the accidental injury. *Whittaker v. DOES*, 668 A.2d 844 (D.C. 1995). Thus, I maintain that the statutory presumption should have been invoked. Nonetheless, I believe that in this case the failure to

accord the presumption was harmless, because my reading of the Compensation Order leads me to conclude that the ALJ weighed the evidence as if the presumption had been invoked.



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JEFFREY P. RUSSELL  
*Administrative Appeals Judge*