

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



F. THOMAS LUPARELLO
INTERIM DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 13-137

MIRANDA C. RODRIGUEZ,
Claimant–Petitioner,

v.

CATHOLIC UNIVERSITY OF AMERICA and LIBERTY MUTUAL INSURANCE COMPANY,
Employer/Carrier-Respondents

Appeal from an October 24, 2013 Compensation Order by
Administrative Law Judge Gerald D. Roberson
AHD No. 12-367A, OWC No. 679273

David J. Kapson, for the Petitioner
Robin M. Cole, for the Respondents

Before: HENRY W. MCCOY, MELISSA LIN JONES, and HEATHER C. LESLIE, *Administrative Appeals Judges.*

HENRY W. MCCOY, for the Compensation Review Board.

DECISION AND REMAND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

Claimant is an instruction librarian for Employer. While on a business flight for Employer on March 12, 2011, Claimant suffered injuries to her neck, ears, and jaw on the flight to Austin, Texas. Claimant treated at an emergency room on three occasions and then referred to Dr. John Austin, an ENT physician, who saw her initially on March 17, 2011 for a diagnosis of an ear infection which he treated with medication. Upon returning to Washington, D.C.,

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Claimant continued to experience persistent pain and popping in her left ear greater than the right ear.

Claimant came under the care of Dr. Sarit Kaplan, D.M.D., on October 20, 2011, who noted Claimant's history of severe clogging of the left ear and other mandibular-related symptoms. The ALJ found that Dr. Kaplan's initial examination noted that an intraoral examination showed fractured posterior teeth #15, #30, and #31. The treatment plan consisted of the construction of a mandibular full-arch temporomandibular joint orthotic appliance with periodic adjustment and assessment of damaged teeth #15, #30, and #31 and their treatment with tooth #31 possibly needing a root canal.

At a March 1, 2012 follow-up, the ALJ noted Claimant was unable to put pressure on her right lower molars with tooth #30 being more sensitive than tooth #31. While it is not known when they were placed, the ALJ noted that Dr. Kaplan removed provisional crowns on #30 and #31. With some pain noted on the right side of the lower mandibular border and the mandibular angle, Dr. Kaplan adjusted the temporomandibular joint orthotic appliance. On September 5, 2012, Dr. Kaplan assigned Claimant a 14% permanent impairment rating as a result of the traumatic injury sustained on March 12, 2011 and identified additional treatment, including crowns on teeth #30 and #31. On August 30, 2012, permanent crowns for teeth #30 and #31 were fitted and inserted.

The parties went to an informal conference on Claimant's claim for medical treatment and wage loss benefits. Claimant rejected the memorandum of informal conference and filed for a formal hearing. While awaiting the formal hearing, the parties entered into a settlement that was approved by the Office of Workers' Compensation (OWC) on October 24, 2012.¹ Ostensibly, the settlement agreement allowed Employer to contest any bills for dental work as not being causally related to the March 12, 2011 work injury and it denied payment for the permanent crowns.

The parties submitted the issue of medical causal relationship on briefs in lieu of a formal hearing. In a Compensation Order, the ALJ denied Claimant's request for payment after determining that Claimant had not invoked the presumption of compensability that her fractured teeth and the need for medical treatment were not medically causally related to the work injury.² Claimant timely appealed with Employer filing in opposition.

On appeal, Claimant argues the ALJ erred in determining that she had failed to invoke the presumption of compensability. Claimant asserts that the ALJ improperly weighed Employer's evidence in rebuttal in making his determination. In opposition, Employer asserts that the Compensation Order (CO) is supported by substantial evidence and is in accordance with the law and should be affirmed.

¹ Employer states in its opposition brief that the settlement agreement was approved by OWC on October 23, 2012.

² *Rodriguez v. Catholic University of America*, AHD No. 12-367A, OWC No. 679273 (October 24, 2013)(CO).

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.³ See D.C. Workers' Compensation Act of 1979, as amended, D.C. Code §§ 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 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.

It is now well accepted that pursuant to § 32-1521(1) of the Act⁴, a claimant is entitled to a presumption of compensability, "once an employee offers evidence demonstrating that an injury was potentially caused or aggravated by work-related activity, a presumption arises that the injury is work-related and therefore compensable under the Act."⁵ The threshold for invoking the presumption is some 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.⁶ Further, the presumption of compensability applies not only to the work-related injury but also extends to the medical causal relationship between any alleged disabling condition and the work injury.⁷

In determining that Claimant had not invoked the presumption of compensability, the ALJ stated:

In this case, Claimant has not invoked the presumption of compensability. Despite Claimant's contentions, the record does not reveal Dr. Kaplan addressed the issue of whether the fractured teeth and the need for replacement crowns for teeth #30 and #31 were medically causally related to the work incident of March 12, 2011. . . . Additionally, Dr. Kaplan does not state whether the TMJ disorder or any diagnosed condition caused or contributed to the fractured teeth and need for provisional or replacement crowns on teeth #30 and #31. While Dr. Kaplan does offer a

³ "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).

⁴ Section 32-1521(1) of the Act states: "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."

⁵ *Washington Hospital Center v. DOES*, 744 A.2d 992, 996 (D.C. 2000).

⁶ *Ferreira v. DOES*, 531 A.2d 651 (D.C. 1987).

⁷ See *Whittaker v. DOES*, 668 A.2d 844 (D.C. 1995).

treatment plan for the fractured teeth and rendered medical treatment for the teeth, she does not relate the treatment to any work incident or employment factors. At this time, the record does not include an opinion regarding whether the initial ear infection or subsequent pathology caused or aggravated the fractured teeth and the need for the crown placement. As such, Claimant has not met her initial burden to provoke the presumption of compensability.⁸

In the instant appeal, Claimant argues that the ALJ's determination that she failed to invoke the presumption of compensability is not supported by substantial evidence in the record. Claimant asserts that Dr. Kaplan made a diagnosis of left-sided TMJ related to the March 12, 2011 incident and proposed treatment to address the fractured teeth, #30 and #31, which included crowns. It is Claimant's contention that the totality of Dr. Kaplan's reports is sufficient to invoke the presumption that the damage and treatment to teeth #30 and #31 are medically causally related to the work incident. We agree.

The evidence shows that when Dr. Kaplan started treating Claimant on October 20, 2011, the patient history noted the March 12, 2011 incident while on a flight to Texas where Claimant experienced severe clogging of the left ear. Dr. Kaplan noted Claimant's mandibular-related symptoms and an intraoral examination identified fractured posterior teeth #15, #30, and #31. The diagnosis included "Synovitis, TMJ, left sided" with an element of the treatment plan to provide "Assessment of damaged teeth and their treatment, #15, #30, #31. Tooth #31 may possibly need root canal treatment." CE 3, p. 17-18.

Dr. Kaplan continued to note Claimant's problems with teeth #30 and #31 in subsequent follow-up visits, specifically on March 2, 2012 when it is noted that provisional crowns on those two teeth were removed, cleaned and evaluated. In a September 5, 2012 report, Dr. Kaplan gave Claimant a permanent impairment rating of 14% that he related directly to the traumatic injury she suffered on March 12, 2011. Dr. Kaplan proceeded to outline a treatment plan with estimated costs:

1. Ongoing monitoring at 4-6 month intervals for the patient's lifetime - \$179 per visit.
2. Replacement appliance every 5 years - \$1500
3. The following restorative dental treatment: The crowns on teeth #30, 31 will have to be replaced. Based on an average life expectancy of crowns of 10 years, each crown will need to be replaced about 4 to 5 times. \$2,005 x 10

Dr. Kaplan concluded by stating "The above, as well, is indicated as a consequence of the injury of March 12, 2011." CE 2, p. 4.

In CE 1, a report dated June 1, 2012 with the date of injury March 12, 2011, signed and dated by Dr. Kaplan on May 30, 2012, Dr. Kaplan give the diagnoses as: degenerative joint

⁸ CO, p. 6-7.

syndrome, bilaterally; articular disk displacement, left sided and possible right sided; retrodiskitis, left sided; synovitis, TMJ, left sided. In response to the question whether the condition diagnosed was caused, contributed to or aggravated, even in part by the above-reference incident, Dr. Kaplan responded “Yes” and proceed to given a detailed explanation.

Dr. Kaplan commenced her treatment of Claimant as a continuation of the treatment Claimant received following the severe clogging of her left experience during a flight on March 12, 2011. All subsequent diagnoses and treatment by Dr. Kaplan flow from that one incident. It is during Dr. Kaplan’s initial examination of Claimant that the fractured posterior teeth are identified and a treatment plan developed. Part of that treatment plan is crowns for teeth #30 and #31 which Dr. Kaplan relates to the work injury. Contrary to the ALJ’s assessment, there is sufficient record evidence to show that Dr. Kaplan addressed the issue of whether the fractured teeth and the need for replacement crowns for teeth #30 and #31 were medically causally related to the work incident of March 12, 2011.

Accordingly, this matter will be returned to the ALJ for the proper determination that the Claimant has met her burden to invoke the presumption of a medical causal relationship between the condition of her teeth and their need for crowns and the work incident of March 12, 2011. With the presumption invoked, the ALJ shall proceed to determine whether Employer has offered sufficient evidence to rebut the presumption and if so found, to weigh the evidence according Claimant’s medical evidence the treating physician preference and determining whether Claimant has met her burden of medical causal relationship by a preponderance of the evidence.

CONCLUSION AND ORDER

The ALJ’s determination that Claimant failed to invoke the presumption that her fractured teeth and the need for replacement crowns for teeth #30 and #31 were medically causally related to the work incident of March 12, 2011 is not supported by substantial evidence in the record and is REVERSED. Accordingly, the October 24, 2013 Compensation Order is REMANDED for further consideration consistent with the above discussion.

FOR THE COMPENSATION REVIEW BOARD:


HENRY W. MCCOY
Administrative Appeals Judge

March 31, 2014
DATE