GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR

DEBORAH A. CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 15-132

ZAINA A. NGOMA,
Claimant–Petitioner,

v.

WILLARD INTER-CONTINENTAL WASHINGTON and
RISK MANAGEMENT ENTERPRISE LIMITED,
Employer/Third-Party Administrator–Respondent.

DEPT. OF EMPLOYMENT SERVICES
COMPENSATION REVIEW BOARD
2016 JAN 13 PM 1 42

Appeal from a July 22, 2015 Compensation Order by
Administrative Law Judge Donna J. Henderson
AHD No. 14-155, OWC No. 699424

(Decided January 13, 2016)

Krista DeSmyter for Claimant
Kelly D. Fato for Employer [1]

Before LINDA F. JORY, HEATHER C. LESLIE and JEFFREY P. RUSSELL *Administrative Appeals Judges.*

LINDA F. JORY for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

Zaina Ngoma (Claimant) was employed as a housekeeper by the Willard Inter-Continental Washington (Employer). On November 16, 2004, while cleaning a room, Claimant struck the front or her right knee as she was passing a nightstand. Claimant sought medical care from Kaiser Permanente, her primary health care provider. Kaiser physicians ordered an x-ray of the right knee and Claimant received an injection to her right knee on January 31, 2005.

Claimant returned to Kaiser on February 8, 2006 with complaints of pain in both of her knees. X-rays were performed on both knees and Claimant's right hip. On March 10, 2006, Claimant

[1] Mary G. Weidner appeared on behalf of Employer at the Formal Hearing before Administrative Law Judge Henderson.

was given a "Verification of Treatment" (VT) form listing Claimant's diagnosis as "osteoarthritis both knees, patellafemoral joints". Claimant began physical therapy for both knees. Claimant began complaining of pain in her low back on October 2, 2006 and she was provided a VT recommending a "reduced workload for 4-6 weeks to allow back to improve". Claimant's insurance coverage with Kaiser ended in 2006. Claimant did not treat again for either knee or back pain until August 30, 2010. At that time, Dr. Jeffrey Sabloff diagnosed Claimant with degenerative joint disease of the right knee. On September 27, 2010, Dr. Sabloff reported Claimant was having problems at work due to pain in her back and knee.

On January 3, 2011, Dr. Stephen C. Saddler performed arthroscopic surgery to Claimant's right knee. According to Dr. Saddler, Claimant reported a work-related injury where she twisted her knee.

As arranged by Employer, Claimant was evaluated by Dr. Mark J. Scheer on January 27, 2014. Dr. Scheer opined that as a result of a work-related injury on November 16, 2004, Claimant sustained a right anterior knee contusion which was resolved after an injection in January 2005.

A full evidentiary hearing occurred on July 17, 2014. The Administrative Law Judge (ALJ) who conducted the hearing left the agency without issuing a Compensation Order (CO) and the matter was re-assigned. A new formal hearing was scheduled; however, the parties subsequently filed a joint request to have the matter decided on the record created on July 17, 2014. A telephonic status conference was held by the successor ALJ to discuss the parties' exhibits and the issues.

A Compensation Order issued on July 22, 2015. The ALJ concluded Claimant's current right knee problems are not causally related to the work injury of November 16, 2004 and her treatment, including the subsequent surgery, was not causally related and Claimant's claim for relief was denied.

Claimant timely appealed. Claimant asserts:

> The Compensation Order erred in failing to address Ms. Ngoma's argument that Dr. Scheer's opinion is fatally deficient because it was based on a faulty factual predicate and erred in rejecting Dr. Sadler's opinion based on the mechanism of her injury.

Claimant's Brief at 7.

Employer asserts:

> The ALJ made Findings of Fact with regard to each material contested factual issue and the Findings of Fact are supported by substantial evidence in the record.

Employer's Brief at 8.

ANALYSIS [2]

With regard to Claimant's contention that the CO erred in failing to address Claimant's argument that Dr. Scheer's opinion was insufficient to rebut the presumption of compensability because it was based on an inaccurate factual predicate, Claimant asserts Dr. Scheer's opinion that Claimant's symptoms resolved after January 2005 was based on his inaccurate hearsay rendition of Claimants' history. Specifically, Claimant asserts: "Dr. Scheer stated that Ms. Ngoma's symptoms completely resolved after she received an injection from her Kaiser doctor on January 31, 2005." Claimant's Brief at 8.

We note that in his assessment, Dr. Scheer stated:

> Treatment at Kaiser Permanente was appropriate up through January 2005 for her right knee complaints. The examinee even reported that after the injection to her right knee, her symptoms resolved, but she started noticing pain again and at that time was re-evaluated at Kaiser Permanente in February 2006. In my opinion her complaints after this point in time were due to pre-existing degenerative disc disease and not causally related to the work-related injury on 11/16/2004.

EE 1 at 5.

However, we do not agree with Claimant's assessment of Dr. Scheer's opinion as we cannot locate a statement in Dr. Scheer's reports which equates to a statement that Claimant's symptoms "completely resolved" after she received an injection. Instead we find Dr. Scheer reported in the "History of Present Illness" section:

> Ms. Zaina Ngoma is a 50-year-old female housekeeper for Willard Intercontinental Hotel who reports an injury to her right knee while at work on 11/16/2004. She reports that she was cleaning a room. She bumped her right knee on a nightstand and noticed discomfort. She notified security and reported the incident. There was no fall. The first record is at Kaiser Permanente by her primary care physician on 11/17/2004. She was complaining of knee pain after hitting it on the corner of a vacuum yesterday. There was no initial pain, but [sic] unable to bend her knee the next morning and noticed some swelling. She was

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[2] The scope of review by the Compensation Review Board (CRB) and this Review Panel (hereafter, the Panel) as established by the District of Columbia Workers' Compensation 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. D.C. Code § 32-1521.01(d)(2)(A). "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 Int'l. v. DOES* 834 A.2d 882 (D.C. 2003) (*Marriott*). Consistent with this scope of review, the CRB and this panel are bound 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

> diagnosed with knee contusion. X-rays of the right knee on 11/17/2004 revealed 'Small osteophytes patella. Otherwise unremarkable.' She was instructed on Tylenol arthritis and knee exercises and was placed out of work for 4 days. She was also prescribed Vicodin and instructed on wearing a knee brace. On re-evaluation at Kaiser on January 31, 2005 by her primary care physician, she noticed intermittent pain when walking. Her clinical examination was unremarkable to the right knee. She was diagnosed with knee pain and degenerative disc disease as well as finger pain. A right knee injection was given as well as antibiotics for her finger.
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> Dr. Maria Aldequer at Kaiser Permanente evaluated the examinee approximately 1 year later on 2/15/2006. She was complaining of bilateral knee pain for more than a year. On physical examination, she was noted to have mild tenderness over the knee cap, otherwise a normal exam. She was referred for an orthopaedic evaluation and prescribed ibuprofen; X-rays of the right hip and the left knee were ordered. Dr. Roberta Kasman, an orthopaedic surgeon at Kaiser Permanente evaluated the examinee on 03/10/206. She was complaining of bilateral knee pain. "She thinks it started after she bumped it on a night stand". On physical examination she was noted to have some anterior knee pain with full flexion bilaterally, otherwise normal.

EE 1 at 1.

Further review of Dr. Scheer's June 18, 2014 Supplemental report does not reveal any mention of Claimant's condition in 2005. Further there is no record of any medical treatment after January 2005 until February 2006 which would support a determination that Claimant continued to have symptoms in her right knee.

Claimant relies on her testimony at the formal hearing to discredit Dr. Scheer's statement that her symptoms resolved after the injection in 2005 which consisted of:

> Q. Did you ever discuss your treatment with Kaiser with him?
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> A. Dr. Scheer asked me about it. He just tell me that he saw – with that injury how he was working with that injury. Because I told him, first of all, I was get a shot. When that shot is there pain is not that much. That is what I tell him. And he told me, oh, that shot, or that medicine is good. And I said if the medicine was good I would never (unintelligible). Pain never go away. If today you do testing and you test my leg, and you say they are equal, thank you God because Dr. Saddler already fix that problem. That's why you see that leg like this. That is what I like to say. Medicine was helping me, was not helping me nothing. Because it never heal me. And I take medicine for me now. I feel like it's just temporary. He's a liar. He's a coward also.

HT at 70. While we are not in a position to know exactly what Claimant told Dr. Scheer, we deem it reasonable that if she told him her pain was "not that much" after the injection that Dr.

Scheer equated that to be that her symptoms resolved after the injection and we do not agree with Claimant that this statement, without evidence of medical treatment for pain, renders Dr. Scheer's opinion "flawed". We conclude the ALJ's determination that Employer rebutted the presumption to be supported by substantial evidence. The CRB's role is limited to determining whether the CO is supported by the substantial evidence in the record and in accordance with the law. We cannot reweigh the evidence as Claimant would wish us to do. 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. *Marriott, supra.*

We further reject Claimant's argument that "When weighing the competing evidence on the causal relationship of Ms. Ngoma's knee condition, the Compensation Order erred in rejecting Dr. Saddler's opinion based on its own characterization of the mechanism of her injury". Claimant's Brief at 9. We note the ALJ properly explained the preference for the opinion of the treating physician's opinion in this jurisdiction, citing *Stewart v. DOES*, 606 A.2d 1350 (D.C. 1992); and stated that a rejection of the opinion of a treating physician requires an explanation, citing *Canlas v. DOES*, 723 1210 (D.C. 1999).

We disagree with Claimant's assertion that the CO mischaracterizes her injury. While we note the CO states:

> Additionally, at the time of surgery, Dr. Saddler described the work-related injury as a twisting injury rather than a blow to the front of the knee. In his opinion letter, Dr. Saddler does not describe the nature of the injury described the work – related injury as a twisting injury. For these reasons, Dr. Saddler's causal relationship opinion between the injury on November 16, 2004 and Claimant's symptoms and complaints while he was treating her, including his findings during is arthroscopic exam is rejected.

The ALJ explained in a footnote:

> Claimant had difficulty describing the incident and was assisted, and interrupted, repeatedly by the ALJ and her counsel. Although Claimant testified that her knee "turned like this", (HT at 42), she repeatedly describes the injurious action as having hit the front of her right knee very hard. HT at 41-44.

CO at 10, n 7.

A review of pages 41 through 44 of Claimant's testimony supports the ALJ's finding and we further note the only characterization of claimant's injury as a "twisting" injury was through the attempts of Claimant's counsel to have the Claimant state it was a twisting injury as Claimant never testified that she twisted her right knee. HT at 43.

Nevertheless, with the following well-reasoned explanation, we conclude the ALJ sufficiently explained her decision to reject the medical causal opinion of Dr. Saddler which Claimant asserts he provided[3]:

> Dr. Saddler qualified his causal relationship opinion in three ways: temporally, historically and medically. Dr. Saddler qualified his opinion temporally stating, 'Note that my opinion is based on the medical information obtained from the patient several years after the original injury.' Dr. Saddler qualified his opinion historically stating, 'If there were no further injuries after her date of injury on November 6, 2004 nor any prior injury . . .' Claimant revealed prior and possible subsequent injuries to her knees to Dr. Scheer. EE 1, p.3.
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> Dr. Saddler qualified his opinion medically stating, 'I have not reviewed any treatment that the patient may have received at the time of her injury. Not have excess [sic] or knowledge of any MRI studies done at the time of the original injury. I cannot comment on the linkage between her patellofemoral and medial femoral condylar injury and her work-related accident'. In so far as Claimant did not provide Dr. Saddler with the medical records of her early treatment before asking for his narrative causal relationship opinion, the weight of Dr. Saddler's opinion without her medical history is greatly reduced.

CO at 9.

The Panel concludes that the ALJ's determination that Claimant did not meet her burden of establishing by a preponderance of the evidence that there is a medical causal relationship between her current right knee condition, her claimed disability and the subsequent surgery and the November 16, 2004 work-related injury is supported by substantial evidence and is in accordance with the law.

CONCLUSION AND ORDER

The Compensation Order is supported by substantial evidence and is in accordance with the law and is **AFFIRMED**.

So ordered.

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[3] The statement of Dr. Saddler which appears to be an opinion with respect to the medical causal relationship is: "If there were no further injuries after her date of injury on November 16, 2004, nor any prior injury, I can say within a reasonable degree of medial certainty that the meniscal tears were caused by her work-related injury". CE 9 at 2.