In the Matter of,	)	
	)	
ARION P. JONES,	)	
	)	
Claimant,	)	
	)	
v.	)	AHD NO. 07-144
	)	OWC NO. 633281
GEORGE WASHINGTON UNIVERSITY,	)	
	)	
and	)	
	)	
THE FRANK GATES SERVICE COMPANY,	)	
	)	
Employer/Carrier.	)	

Appearances:

HEATHER C. LESLIE, ESQUIRE
For the Claimant

JEFFREY W. OCHSMAN, ESQUIRE
For the Employer/Carrier

Before:

ANAND K. VERMA
Administrative Law Judge

AMENDED COMPENSATION ORDER

STATEMENT OF THE CASE

This proceeding arises out of a claim for workers' compensation benefits filed pursuant to the provisions of the District of Columbia Workers' Compensation Act of 1979, D.C. Code, as amended, §§32-1501 *et seq*., (hereinafter, the Act).

After timely notice, a formal hearing was held on May 1, 2007, before Anand K. Verma, Administrative Law Judge. Arion P. Jones, appeared in person and through counsel (hereinafter, claimant). George Washington University/The Frank Gates Service Company (hereinafter, employer) appeared by counsel. Claimant testified on his own behalf. No testimony was adduced by employer. Claimant

Exhibit (hereinafter, CE) No.1-4 and Employer Exhibit (hereinafter, EE) No.1-5, described in the Hearing Transcript, (hereinafter, HT) were admitted into evidence. The record closed on the receipt of an official copy of Hearing Transcript (HT) on July 30, 2007.

BACKGROUND

Claimant injured his right wrist on October 15, 2006 and received initial emergency room treatment at the George Washington University Hospital. On November 8, 2006, he sought orthopaedic consultation from Rafael A. Lopez, M.D., an orthopaedic surgeon, who felt he suffered an injury to his right wrist and right knee on October 15, 2006. With the exception of two days on March 28 and 29, 2007, claimant has not returned to work since the date of the injury.

CLAIM FOR RELIEF

Claimant seeks an award under the Act of continued temporary total disability benefits from October 15, 2006 along with interest on accrued benefits and causally related medical expenses.

ISSUES

1. Whether claimant's neck, back and right knee symptoms are medically causally related to the October 15, 2006 injury.

2. The nature and extent of claimant's disability, if any.

FINDINGS OF FACT

The parties have stipulated, and I accordingly so find, an employer/employee relationship is present under the Act; jurisdiction is vested in the District of Columbia; claimant sustained an accidental injury on October 15, 2006; the claim was timely filed; and claimant's average weekly wage is $583.50.

Based on the review of the record as a whole, I make the following findings:

Claimant was employed as a service worker and, as such, he vacuumed and cleaned offices and restrooms, as well as collected trash. In perfor1ming his daily tasks, claimant was required to bend, stoop, push, pull and climb up and down the stairs. While proceeding to clean a restroom on October 15, 2006, claimant slipped and fell on his back, injuring his right wrist and right knee. Claimant initially received emergency treatment on October 21, 2006 at the George Washington University Hospital with a follow up on October 30, 2006 for injury to his hand and wrist. The emergency treatment notes reflected the primary diagnosis of hand contusion only; there was no reference to claimant's right knee, neck and back symptoms.

Subsequently, with complaints of right wrist and right knee, claimant sought an orthopaedic evaluation by Dr. Lopez on November 8, 2006, when he was diagnosed with the right wrist and right knee injury as a result of the October 15, 2006 work incident. Dr. Lopez applied a short arm cast and recommended an MRI scan of the right knee. Claimant was prescribed Etodolac 400 mg, Ranitidine 150 mg, and Carisoprodol 350 mg for pain and spasm and was given an excuse from work until November 16, 2006. An MRI scan of the right knee performed on November 13, 2006 revealed tearing of the medial meniscus extending into the anterior and

posterior horns, chodromalacia[1] and longitudinal tear of patellar tendon.

On November 16, 2006, Dr. Lopez recommended arthroscopic right knee surgery and placed claimant in an off-work status until surgery. In his follow up of November 22, 2006, for the first time, Dr. Lopez noted claimant's subjective complaints of neck and back pain and recommended physical therapy, however, he prescribed no medications to manage the complained of pains. Without any diagnostic tests, Dr. Lopez opined claimant was totally disabled.

Dr. Lopez finally saw claimant on November 29, 2006 when he replaced the short arm cast with a new short arm cast and maintained his earlier opinion regarding claimant's total disability predicated on his subjective complaints of neck, back, wrist and knee pains.

The disability slips dated November 16, 2006 through March 30, 2006 bearing Dr. Lopez's name without any narrative of claimant's symptoms, its effect on the performance of his work as well as his physical limitations simply noted a check mark in the column "please excuse until." (CE 2).

On December 6, 2006, at the behest of employer, claimant underwent an independent medical evaluation (IME) by Robert O. Gordon, M.D., an orthopaedic surgeon, who opined in an addendum dated March 6, 2007 that claimant's knee, back and neck complaints were not casually related to what occurred at work on October 15, 2006. Claimant further submitted to James E. Callan, M.D., an orthopaedic surgeon, for an IME, on March 20, 2007, who noted that his ongoing back and knee pains were not causally related to the October 15, 2006 work injury inasmuch as he had no such complaints for the first three weeks of the injury. Finding claimant at maximum medical improvement (MMI) from the contusion of his hand and wrist and any further diagnostic tests and treatment as unnecessary, Dr. Callan opined he was fully capable of resuming to his usual employment with no restrictions.

On March 28 and 29, 2007, claimant resumed his usual work, however, due to the alleged low back, neck and knee symptoms, discontinued the work thereafter. On June 4, 2007, as referred by Dr. Lopez, claimant underwent a neurosurgical evaluation by Najmaldin O. Karim, M.D., a neurosurgeon who opined he had degenerative changes that caused mass effect on the rotator cuff and diagnosed him with spondylosis[2] with radiculopathy coupled with the left shoulder pathology and recommended shoulder surgery, or in the alternative, a cervical spine surgery.

DISCUSSION

I have reviewed the arguments of counsel with respect to the issue presented herein. To the extent an argument is consistent with the findings and conclusions, it is accepted; to the extent an argument is inconsistent therewith, it is rejected.

[1]Pain and crepitus over the anterior aspect of the knee, particularly in flexion, with softening of the cartilage on the articular surface of the patella and, in later stages, effusion. DORLAND'S ILLUSTRATED MEDICAL DICTIONARY, 29th Edition, p. 344 (2000).

[2]Degenerative joint disease affecting the cervical vertebrae, intervertebral disks, and surrounding ligaments and connective tissue, sometimes with pain or paresthesia radiating down the arms as a result of pressure on the nerve roots. DORLAND'S ILLUSTRATED MEDICAL DICTIONARY, 29th Edition, p. 1684 (2000).

Whether claimant's neck, back and right knee symptoms are medically causally related to the October 15, 2006 injury.

With respect to whether a claimant sustained an accidental injury arising out of and in the course of her employment, the Act mandates that it be presumed, in the absence of evidence to the contrary, that a claim comes within the purview of the Act. D.C. Code §32-1521(1) (2001)(as amended)); *Ferreira v. District of Columbia Department of Employment Services*, 531 A.2d 651, 655 (D.C. 1987). The presumption is designed to effectuate the important humanitarian purposes of the statute and reflects a "strong legislative policy favoring awards in arguable cases." *Ferreira, supra*, at 655. To invoke this presumption, claimant must make some "initial demonstration" of (1) an injury; and (2) a work related event, activity, or requirement which has the potential of resulting in or contributing to the injury. *Id*. Thus, to establish a right to compensation, claimant must introduce evidence of both an injury and a relationship between that injury and the employment. See, e.g., *Whittaker v. District of Columbia Department of Employment Services*, 668 A.2d 844 (D.C. 1995).

When the preliminary evidence has satisfied this threshold requirement, the burden of production shifts to the employer to present substantial evidence which is "specific and comprehensive enough to sever the potential connection between a particular injury and a job-related event." *Parodi v. District of Columbia Department of Employment Services*, 560 A.2d 524, 526 (D.C. 1989). Absent such evidence, the claim will be deemed to fall within the scope of the Act, *Id*. at 526, and a causal relationship will also be presumed. *Ferreira, supra*, at 655. When evidence is presented that is sufficient to sever the injury from the work and overcome the presumption that a claimant's injury stems from any work-related event, activity or requirement, the presumption falls from consideration and all evidence submitted must be weighed without recourse to the presumption. Conversely, where employer fails to rebut the prima facie case, the presumption of compensability supplies the legally sufficient nexus between claimant's condition and her injury as well as the causal relationship between the injury and her employment. *Parodi, supra*, at 526.

The first stage of the analysis is whether an "initial demonstration" was made that was sufficient to invoke the Act's presumption of compensability of the claim. Claimant's job as a service worker unarguably involved physical rigors in that he had to vacuum and clean office rooms and restrooms which required him, among other things, to bend and stoop, push and pull as well climb up and down the stairs. The evidence is uncontradicted that while cleaning a restroom on October 15, 2006, claimant slipped and fell on his back. Although initially he complained of the right hand and wrist injury at the George Washington University Hospital's emergency room, he was later diagnosed with right knee, back and neck injuries when he was orthopedically evaluated by Dr. Lopez, starting on November 8, 2006. In his initial medical evaluation, Dr. Lopez noted claimant's right wrist and right knee injuries were sustained on the job on October 25, 2006. (CE 2 at 23).

Further, in his deposition testimony, responding to a question whether claimant's back and neck pains, albeit reported three weeks after the initial work injury, were related to the work injury, Dr. Lopez supplied an affirmative answer. (CE 1 at 50). Thus, without recourse to any additional evidence, the foregoing evidence clearly meets

the threshold requirement under the Act of presumption of compensability. Now, the burden of production shifts to employer to offer specific and comprehensive evidence in rebuttal of the presumed connection.

Employer had claimant submit to two IMEs, first by Dr. Gordon and secondly by Dr. Callan. Since Dr. Gordon possessed insufficient records of claimant's prior treatment, he deferred his opinion on causality until he had received and reviewed claimant's entire medical history. In an addendum to his December 6, 2006 IME, issued on March 6, 2007, he opined claimant's neck and back complaints were unrelated to any injuries that occurred on October 15, 2006. Similarly, in his IME performed on March 19, 2007, Dr. Callan noted claimant's ongoing back and knee pains were not causally related to the original injury of October 15, 2006. Accordingly, employer's evidence specifically and comprehensively severs the causal connection between claimant's right knee, neck and back symptoms and the original injury. Now, the statutory presumption of compensability falls from the case and the burden then reverts to claimant to prove without the aid of the presumption that a work-related injury caused or contributed to his disability.

Dr. Lopez, who treated claimant since November 8, 2006,some three weeks after the work injury, assessed that claimant's right wrist and right knee injuries were caused by the October 15, 2006 work injury. Further detailing the reasons regarding the causality of the complained of injury in his deposition on May 24, 2007, Dr. Lopez testified that his neck and back conditions were caused by the work injury. He explained that it was "a natural history of an injury to the back and neck . . . . that will cause an annular tear, some tearing of the fibers of the annulus fibrosis." (CE 1 at 50).

Conversely, employer's IME physicians, Drs. Callan and Gordon predicated on their evaluation of March 20, 2007 and March 6, 2007, respectively, refuted the medical causal connection between claimant's October 15, 2006 injury and subsequent cervical and lumbar pathology.

Nevertheless, in accordance with the preference in the District of Columbia for the opinion of the treating physician, the undersigned credits the opinion of claimant's treating physician with significant weight inasmuch as Dr. Lopez saw claimant on four (4) occasions and opined in the initial examination of November 8, 2006 that his right wrist, right knee, as well as neck and back symptoms were causally related to the October 15, 2006 work injury. See *Lincoln Hockey, LLC v. District of Columbia Department of Employment Services*, 831 A. 2d 913 (D.C. 2003). Accordingly, claimant's evidence does establish that the symptoms, at issue, are medically causally related to the October 15, 2006 work injury.

The nature and extent of claimant's disability, if any.

Claimant is not imbued with the presumption of the nature and extent of his disability under the Act; rather, he must offer substantial evidence in establishing the nature and extent of the complained of disability. See *Landesberg v. District of Columbia Department of Employment Services*, 794 A. 2d 607 (D.C. 2002).

Claimant alleges he has been continuously disabled in resuming his usual work from the date of injury on October 15, 2006. In corroboration, he offers the notes from his treating physician, Dr. Lopez who provided

medical care from November 8,16, 22 and 29, 2006. In his initial November 8, 2006 evaluation and the follow up on November 16, 2006, Dr. Lopez merely noted his assessment of claimant's malady as related to right wrist and right knee consisting of a torn meniscus and ordered an MRI scan of the right knee. The absence of any reference to the neck and back pain in the November 8, 2006 evaluation is further corroborated by the testimony adduced at the hearing, wherein, claimant unequivocally testified that he did not complain about the neck and back pain. (HT 67).

Then, in the subsequent follow up on November 22, 2006, Dr. Lopez made a maiden reference of claimant's "increasing neck and back pain" in conjunction with his continued right wrist and knee pain.[3] The last follow up of record is dated November 29, 2006 which reflects claimant's subjective complaints of persistent neck, back, right wrist and knee pain. It is interesting that in his November 22, 2006 follow up, without prescribing any pain medications to relieve the complained of cervical and lumbar symptoms, Dr. Lopez, only recommended physical therapy. In addition, although an MRI scan of the wrist was clearly recommended in the last follow up of November 29, 2006, no diagnostic tests were ordered to explore claimant's cervical and lumbar discomforts. Furthermore, without articulating what actually ailed claimant and how that impeded his ability to return to his usual work, Dr. Lopez made a bald notation in the last follow up that "he is totally disabled at this time." (CE 2 at 16).

Claimant's record also includes a number of disability slips purportedly issued by Dr. Lopez indicating a checked date of excuse with without any accompanying narrative of claimant's infirmity and its concurrent impact upon the performance of his duties.[4] (CE 2 pp 5-15). Disability, as defined in our statute, ultimately requires a legal determination. "An evaluating physician provides . . . an assessment of medical impairment; the fact finder, however, must determine the degree of disability." See *Solomon Negussie v. District of Columbia Department of Employment Services*, 915 A. 2d 391 (D.C. 2007)(quoting *Getson v. WM Bancorp*, 346 Md. 61-62, 694 A. 2d 961 (Md. 1997)).

In refuting claimant's continued disability, employer had claimant examined by its own physicians, first by Dr. Gordon on December 6, 2006 and later by Dr. Callan on March 19, 2007. On examination of claimant's right knee on December 6, 2006, Dr. Gordon observed full range of motion without any patellofemoral[5] crepitation and effusion. In fact, Dr. Gordon noted significant functional component to claimant's complaints of generalized tenderness to extremely light touch, both medially and laterally as well as above and below the jointlines and articular surfaces.

In an addendum dated March 6, 2007 to his December 6, 2006 IME, Dr. Gordon noted that aside from the right knee and right wrist

[3]In response to a question on cross examination whether he complained to Dr. Lopez on November 16, 2006 about his neck and back, claimant responded "I can't remember." Again, responding to the next question on cross examination, whether he told Dr. Lopez in his follow up on August 22, 2006 that he had "increasing neck and back pain," claimant testified "No." (HT 68-69).

[4]The disability slips offered into evidence appear to be signed in or in some cases, only initialed by Dr. Lopez's staff person, not by himself.

[5]Pertaining to patella and femur. DORLAND'S ILLUSTRATED MEDICAL DICTIONARY, 29th Edition, p. 1335 (2000)

symptoms, claimant made no mention to the neck and back pains in the December 6, 2006 examination. In addition, the emergency room records of October 21 and 30, 2006 from the George Washington University Hospital, as Dr. Gordon noted, were also devoid of any reference to the right knee, neck and back symptoms. (EE 2).

Claimant also underwent an IME on March 19, 2007 by Dr. Callan, who felt he did sustain a contusion of his hand and wrist at the time of the injury. Dr. Callan's examination disclosed claimant moved freely in and out of a chair and on and off the examining table without difficulty. He had full range of motion of the neck to where chin touched the chest in flexion with normal rotation to each side and extension. In addition, he had full range of motion of the back to where the fingertips reached mid-shin with normal extension to 20 degrees and lateral bending to 30 degrees each side with no specific tenderness and spasm. Straight leg raising was normal to 90 degrees bilaterally.

The right knee examination, albeit with mild crepitus and pain on patellar compression, disclosed full range of motion without any effusion, jointline tenderness or instability. With regard to the right wrist, claimant had 60 degrees dorsiflexion and 60 degrees palmer flexion with 90 degrees pronation and supination, equal to the opposite wrist with normal strength. There was no crepitus, deformity or specific areas of tenderness noted. Measurement of the arm and forearm, as well as calf and thigh circumferences were symmetrical without any evidence of disuse or neurologically induced atrophy. Finding no causal relationship of claimant's complained of ongoing back and knee pains, Dr. Callan opined he had reached maximum medical improvement (MMI), needed no further treatment, and was fully capable of returning to his usual job with no restrictions. (EE 1).

On weighing the competing medical opinions, although in this jurisdiction a treating physician is ordinarily preferred as a witness to those doctors who have been retained to examine claimant solely for the purposes of litigation. However, the rule is not absolute, an administrative law judge is free to reject the opinion of a treating physician with a proper explanation for doing so. See *Mexicano v. District of Columbia Department of Employment Services*, 806 A. 2d 198 (D.C. 2002). In making the findings, the administrative law judge, as trier of fact, is entitled to draw reasonable inferences from the proffered evidence. See *Muhammad v. District of Columbia Department of Employment Services*, 774 A. 2d 1107 (D.C. 2001).

Here, although Dr. Lopez saw claimant on four (4) occasions, i.e., November 8, 16, 22 and 29, 2006, his treatment notes lack the indicia of objectivity in assessing the degree of claimant's continued complaints of neck and back pains in that his cervical and lumbar spine MRI scans and EMG/nerve conduction study were never undertaken. Indeed, Dr. Lopez's principal examination concerned claimant's wrist and right knee. He applied a short arm cast, ordered an MRI scan of the right knee, prescribed Etodolac as well as Carisoprodol, and physical therapy to control the alleged pain and spasm. His examination pertinent to claimant's neck and back complaints was rather cursory. In the November 22, 2006 follow up, he noted claimant's cervical rotation limited to the left at 45 degrees and to the right at 60 degrees. Claimant's lumbar flexion measured at 60 degrees and extension at 10 degrees. Tenderness and spasm were also appreciated. Predicated on these tenuous findings, Dr. Lopez opined

claimant was totally disabled. Furthermore, Dr. Lopez's last examination, being on November 29, 2006, when compared with the IME physicians' opinions of March 6 and 19, 2007, triggers a recency factor.

However, even discounting the recency factor, Dr. Lopez's disability determinations are not reliable and credible inasmuch as his disability slips dated December 4, 2006 through March 30, 2007 were issued without any contemporaneous medical examination of claimant.[6] Moreover, none of the questionable disability slips noted any physical symptoms that beset claimant and how they compromised his ability to engage in his usual employment; it merely reflected a date until which claimant was to stay off work. For these reasons, the undersigned rejects Dr. Lopez's opinion regarding claimant's inability to resume his usual work. Instead, the IME physicians' comprehensive opinions, predicated on their detailed examination of claimant in conjunction with a thorough review of his medical records, are credited with significant weight, especially, the March 19, 2007 opinion of Dr. Callan, who noted claimant at MMI with respect to the contusion of the hand and wrist and fully capable of returning to his usual employment without any restrictions[7]. Thus, the evidence adduced on behalf of claimant is deemed insubstantial in establishing his continuing inability to resume his usual work after Dr. Lopez's last treatment on November 29, 2006.

CONCLUSIONS OF LAW

Based upon a review of the record evidence as a whole, I find and conclude claimant's neck, back and right knee symptoms are causally related to the October 15, 2006 work injury. However, I further find and conclude claimant has not met his burden of proving his entitlement to continued temporary total disability after November 29, 2006.

---

[6]CE 2 at 1, purportedly Dr. Lopez's disability certificate on the letterhead of claimant's counsel is also discredited for the same reason.

[7]Dr. Callan's examination disclosed: Claimant was in no acute distress. He moved freely within the room, in and out of a chair and on and off the examining table without difficulty. He has full range of motion of the neck to where the chin touched the chest in flexion with normal rotation to each side and extension, albeit with complaint of some stiffness. In addition, claimant had full range of motion of the back to where the fingertips reached mid-shin with normal extension to 20 degrees and lateral bending to 30 degrees each side with no specific tenderness or spasm. (EE 1).

ORDER

It is **ORDERED** employer pay claimant temporary total disability benefits from October 15, 2006 through November 29, 2006 subject to credit for wages earned in March 2007. Claimant is also **GRANTED** causally related medical expenses, already incurred through November 29, 2006.

ANAND K. VERMA
Administrative Law Judge

December 13, 2007
Date

In the Matter of,	)	
	)	
ARION P. JONES,	)	
	)	
Claimant,	)	
	)	
v.	)	AHD NO. 07-144
	)	OWC NO. 633281
GEORGE WASHINGTON UNIVERSITY,	)	
	)	
and	)	
	)	
THE FRANK GATES SERVICE COMPANY,	)	
	)	
Employer/Carrier.	)	

Appearances:

HEATHER C. LESLIE, ESQUIRE
For the Claimant

JEFFREY W. OCHSMAN, ESQUIRE
For the Employer/Carrier

Before:

ANAND K. VERMA
Administrative Law Judge

COMPENSATION ORDER

STATEMENT OF THE CASE

This proceeding arises out of a claim for workers' compensation benefits filed pursuant to the provisions of the District of Columbia Workers' Compensation Act of 1979, D.C. Code, as amended, §§32-1501 *et seq*., (hereinafter, the Act).

After timely notice, a formal hearing was held on May 1, 2007, before Anand K. Verma, Administrative Law Judge. Arion P. Jones, appeared in person and through counsel (hereinafter, claimant). George Washington University/The Frank Gates Service Company (hereinafter, employer) appeared by counsel. Claimant testified on his own behalf. No testimony was adduced by employer. Claimant

Exhibit (hereinafter, CE) No.1-4 and Employer Exhibit (hereinafter, EE) No.1-5, described in the Hearing Transcript, (hereinafter, HT) were admitted into evidence. The record closed on the receipt of an official copy of Hearing Transcript (HT) on July 30, 2007.

BACKGROUND

Claimant injured his right wrist on October 15, 2006 and received initial emergency room treatment at the George Washington University Hospital. On November 8, 2006, he sought orthopaedic consultation from Rafael A. Lopez, M.D., an orthopaedic surgeon, who felt he suffered an injury to his right wrist and right knee on October 15, 2006. With the exception of two days on March 28 and 29, 2007, claimant has not returned to work since the date of the injury.

CLAIM FOR RELIEF

Claimant seeks an award under the Act of continued temporary total disability benefits from October 15, 2006 along with interest on accrued benefits and causally related medical expenses.

ISSUES

1. Whether claimant's neck, back and right knee symptoms are medically causally related to the October 15, 2006 injury.

2. The nature and extent of claimant's disability, if any.

FINDINGS OF FACT

The parties have stipulated, and I accordingly so find, an employer/employee relationship is present under the Act; jurisdiction is vested in the District of Columbia; claimant sustained an accidental injury on October 15, 2006; the claim was timely filed; and claimant's average weekly wage is $583.50.

Based on the review of the record as a whole, I make the following findings:

Claimant was employed as a service worker and, as such, he vacuumed and cleaned offices and restrooms, as well as collected trash. In perfor1ming his daily tasks, claimant was required to bend, stoop, push, pull and climb up and down the stairs. While proceeding to clean a restroom on October 15, 2006, claimant slipped and fell on his back, injuring his right wrist and right knee. Claimant initially received emergency treatment on October 21, 2006 at the George Washington University Hospital with a follow up on October 30, 2006 for injury to his hand and wrist. The emergency treatment notes reflected the primary diagnosis of hand contusion only; there was no reference to claimant's right knee, neck and back symptoms.

Subsequently, with complaints of right wrist and right knee, claimant sought an orthopaedic evaluation by Dr. Lopez on November 8, 2006, when he was diagnosed with the right wrist and right knee injury as a result of the October 15, 2006 work incident. Dr. Lopez applied a short arm cast and recommended an MRI scan of the right knee. Claimant was prescribed Etodolac 400 mg, Ranitidine 150 mg, and Carisoprodol 350 mg for pain and spasm and was given an excuse from work until November 16, 2006. An MRI scan of the right knee performed on November 13, 2006 revealed tearing of the medial meniscus extending into the anterior and

posterior horns, chodromalacia[8] and longitudinal tear of patellar tendon.

On November 16, 2006, Dr. Lopez recommended arthroscopic right knee surgery and placed claimant in an off-work status until surgery. In his follow up of November 22, 2006, for the first time, Dr. Lopez noted claimant's subjective complaints of neck and back pain and recommended physical therapy, however, he prescribed no medications to manage the complained of pains. Without any diagnostic tests, Dr. Lopez opined claimant was totally disabled.

Dr. Lopez finally saw claimant on November 29, 2006 when he replaced the short arm cast with a new short arm cast and maintained his earlier opinion regarding claimant's total disability predicated on his subjective complaints of neck, back, wrist and knee pains.

The disability slips dated November 16, 2006 through March 30, 2006 bearing Dr. Lopez's name without any narrative of claimant's symptoms, its effect on the performance of his work as well as his physical limitations simply noted a check mark in the column "please excuse until." (CE 2).

On December 6, 2006, at the behest of employer, claimant underwent an independent medical evaluation (IME) by Robert O. Gordon, M.D., an orthopaedic surgeon, who opined in an addendum dated March 6, 2007 that claimant's knee, back and neck complaints were not casually related to what occurred at work on October 15, 2006. Claimant further submitted to James E. Callan, M.D., an orthopaedic surgeon, for an IME, on March 20, 2007, who noted that his ongoing back and knee pains were not causally related to the October 15, 2006 work injury inasmuch as he had no such complaints for the first three weeks of the injury. Finding claimant at maximum medical improvement (MMI) from the contusion of his hand and wrist and any further diagnostic tests and treatment as unnecessary, Dr. Callan opined he was fully capable of resuming to his usual employment with no restrictions.

On March 28 and 29, 2007, claimant resumed his usual work, however, due to the alleged low back, neck and knee symptoms, discontinued the work thereafter. On June 4, 2007, as referred by Dr. Lopez, claimant underwent a neurosurgical evaluation by Najmaldin O. Karim, M.D., a neurosurgeon who opined he had degenerative changes that caused mass effect on the rotator cuff and diagnosed him with spondylosis[9] with radiculopathy coupled with the left shoulder pathology and recommended shoulder surgery, or in the alternative, a cervical spine surgery.

DISCUSSION

I have reviewed the arguments of counsel with respect to the issue presented herein. To the extent an argument is consistent with the findings and conclusions, it is accepted; to the extent an argument is inconsistent therewith, it is rejected.

Whether claimant's neck, back and right knee symptoms are medically causally related to the

[8]Pain and crepitus over the anterior aspect of the knee, particularly in flexion, with softening of the cartilage on the articular surface of the patella and, in later stages, effusion. DORLAND'S ILLUSTRATED MEDICAL DICTIONARY, 29th Edition, p. 344 (2000).

[9]Degenerative joint disease affecting the cervical vertebrae, intervertebral disks, and surrounding ligaments and connective tissue, sometimes with pain or paresthesia radiating down the arms as a result of pressure on the nerve roots. DORLAND'S ILLUSTRATED MEDICAL DICTIONARY, 29th Edition, p. 1684 (2000).

October 15, 2006 injury.

With respect to whether a claimant sustained an accidental injury arising out of and in the course of her employment, the Act mandates that it be presumed, in the absence of evidence to the contrary, that a claim comes within the purview of the Act. D.C. Code §32-1521(1) (2001)(as amended)); *Ferreira v. District of Columbia Department of Employment Services*, 531 A.2d 651, 655 (D.C. 1987). The presumption is designed to effectuate the important humanitarian purposes of the statute and reflects a "strong legislative policy favoring awards in arguable cases." *Ferreira, supra*, at 655. To invoke this presumption, claimant must make some "initial demonstration" of (1) an injury; and (2) a work related event, activity, or requirement which has the potential of resulting in or contributing to the injury. *Id*. Thus, to establish a right to compensation, claimant must introduce evidence of both an injury and a relationship between that injury and the employment. See, e.g., *Whittaker v. District of Columbia Department of Employment Services*, 668 A.2d 844 (D.C. 1995).

When the preliminary evidence has satisfied this threshold requirement, the burden of production shifts to the employer to present substantial evidence which is "specific and comprehensive enough to sever the potential connection between a particular injury and a job-related event." *Parodi v. District of Columbia Department of Employment Services*, 560 A.2d 524, 526 (D.C. 1989). Absent such evidence, the claim will be deemed to fall within the scope of the Act, *Id*. at 526, and a causal relationship will also be presumed. *Ferreira, supra*, at 655. When evidence is presented that is sufficient to sever the injury from the work and overcome the presumption that a claimant's injury stems from any work-related event, activity or requirement, the presumption falls from consideration and all evidence submitted must be weighed without recourse to the presumption. Conversely, where employer fails to rebut the prima facie case, the presumption of compensability supplies the legally sufficient nexus between claimant's condition and her injury as well as the causal relationship between the injury and her employment. *Parodi, supra*, at 526.

The first stage of the analysis is whether an "initial demonstration" was made that was sufficient to invoke the Act's presumption of compensability of the claim. Claimant's job as a service worker unarguably involved physical rigors in that he had to vacuum and clean office rooms and restrooms which required him, among other things, to bend and stoop, push and pull as well climb up and down the stairs. The evidence is uncontradicted that while cleaning a restroom on October 15, 2006, claimant slipped and fell on his back. Although initially he complained of the right hand and wrist injury at the George Washington University Hospital's emergency room, he was later diagnosed with right knee, back and neck injuries when he was orthopedically evaluated by Dr. Lopez, starting on November 8, 2006. In his initial medical evaluation, Dr. Lopez noted claimant's right wrist and right knee injuries were sustained on the job on October 25, 2006. (CE 2 at 23).

Further, in his deposition testimony, responding to a question whether claimant's back and neck pains, albeit reported three weeks after the initial work injury, were related to the work injury, Dr. Lopez supplied an affirmative answer. (CE 1 at 50). Thus, without recourse to any additional evidence, the foregoing evidence clearly meets the threshold requirement under the Act of presumption of compensability. Now, the burden

of production shifts to employer to offer specific and comprehensive evidence in rebuttal of the presumed connection.

Employer had claimant submit to two IMEs, first by Dr. Gordon and secondly by Dr. Callan. Since Dr. Gordon possessed insufficient records of claimant's prior treatment, he deferred his opinion on causality until he had received and reviewed claimant's entire medical history. In an addendum to his December 6, 2006 IME, issued on March 6, 2007, he opined claimant's neck and back complaints were unrelated to any injuries that occurred on October 15, 2006. Similarly, in his IME performed on March 19, 2007, Dr. Callan noted claimant's ongoing back and knee pains were not causally related to the original injury of October 15, 2006. Accordingly, employer's evidence specifically and comprehensively severs the causal connection between claimant's right knee, neck and back symptoms and the original injury. Now, the statutory presumption of compensability falls from the case and the burden then reverts to claimant to prove without the aid of the presumption that a work-related injury caused or contributed to his disability.

Dr. Lopez, who treated claimant since November 8, 2006,some three weeks after the work injury, assessed that claimant's right wrist and right injuries were caused by the October 15, 2006 work injury. Further detailing the reasons regarding the causality of the complained of injury in his deposition on May 24, 2007, Dr. Lopez testified that his neck and back conditions were caused by the work injury. He explained that it was "a natural history of an injury to the back and neck . . . . that will cause an annular tear, some tearing of the fibers of the annulus fibrosis." (CE 1 at 50).

Conversely, employer's IME physicians, Drs. Callan and Gordon predicated on their evaluation of March 20, 2007 and March 6, 2007, respectively, refuted the medical causal connection between claimant's October 15, 2006 injury and subsequent cervical and lumbar pathology.

Nevertheless, in accordance with the preference in the District of Columbia for the opinion of the treating physician, the undersigned credits the opinion of claimant's treating physician with significant weight inasmuch as Dr. Lopez saw claimant on four (4) occasions and opined in the initial examination of November 8, 2006 that his right wrist and right knee conditions were causally related to the October 15, 2006 work injury. See *Lincoln Hockey, LLC v. District of Columbia Department of Employment Services*, 831 A. 2d 913 (D.C. 2003). Accordingly, claimant's evidence does establish that his right knee symptoms are medically causally related to the October 15, 2006 work injury.

The nature and extent of claimant's disability, if any.

Claimant is not imbued with the presumption of the nature and extent of his disability under the Act; rather, he must offer substantial evidence in establishing the nature and extent of the complained of disability. See *Landesberg v. District of Columbia Department of Employment Services*, 794 A. 2d 607 (D.C. 2002).

Claimant alleges he has been continuously disabled in resuming his usual work from the date of injury on October 15, 2006. In corroboration, he offers the notes from his treating physician, Dr. Lopez who provided medical care from November 8,16, 22 and 29, 2006. In his initial November 8, 2006 evaluation and the follow up on November 16, 2006, Dr.

Lopez merely noted his assessment of claimant's malady as related to right wrist and right knee consisting of a torn meniscus and ordered an MRI scan of the right knee. The absence of any reference to the neck and back pain in the November 8, 2006 evaluation is further corroborated by the testimony adduced at the hearing, wherein, claimant unequivocally testified that he did not complain about the neck and back pain. (HT 67).

Then, in the subsequent follow up on November 22, 2006, Dr. Lopez made a maiden reference of claimant's "increasing neck and back pain" in conjunction with his continued right wrist and knee pain.[10] The last follow up of record is dated November 29, 2006 which reflects claimant's subjective complaints of persistent neck, back, right wrist and knee pain. It is interesting that in his November 22, 2006 follow up, without prescribing any pain medications to relieve the complained of cervical and lumbar symptoms, Dr. Lopez, only recommended physical therapy. In addition, although an MRI scan of the wrist was clearly recommended in the last follow up of November 29, 2006, no diagnostic tests were ordered to explore claimant's cervical and lumbar discomforts. Furthermore, without articulating what actually ailed claimant and how that impeded his ability to return to his usual work, Dr. Lopez made a bald notation in the last follow up that "he is totally disabled at this time." (CE 2 at 16).

Claimant's record also includes a number of disability slips purportedly issued by Dr. Lopez indicating a checked date of excuse with without any accompanying narrative of claimant's infirmity and its concurrent impact upon the performance of his duties.[11] (CE 2 pp 5-15). Disability, as defined in our statute, ultimately requires a legal determination. "An evaluating physician provides . . . an assessment of medical impairment; the fact finder, however, must determine the degree of disability." See *Solomon Negussie v. District of Columbia Department of Employment Services*, 915 A. 2d 391 (D.C. 2007)(quoting *Getson v. WM Bancorp*, 346 Md. 61-62, 694 A. 2d 961 (Md. 1997)).

In refuting claimant's continued disability, employer had claimant examined by its own physicians, first by Dr. Gordon on December 6, 2006 and later by Dr. Callan on March 19, 2007. On examination of claimant's right knee on December 6, 2006, Dr. Gordon observed full range of motion without any patellofemoral[12] crepitation and effusion. In fact, Dr. Gordon noted significant functional component to claimant's complaints of generalized tenderness to extremely light touch, both medially and laterally as well as above and below the jointlines and articular surfaces.

In an addendum dated March 6, 2007 to his December 6, 2006 IME, Dr. Gordon noted that aside from the right knee and right wrist symptoms, claimant made no mention to the neck and back pains in the December 6, 2006 examination. In addition, the emergency room

[10]In response to a question on cross examination whether he complained to Dr. Lopez on November 16, 2006 about his neck and back, claimant responded "I can't remember." Again, responding to the next question on cross examination, whether he told Dr. Lopez in his follow up on August 22, 2006 that he had "increasing neck and back pain," claimant testified "No." (HT 68-69).

[11]The disability slips offered into evidence appear to be signed in or in some cases, only initialed by Dr. Lopez's staff person, not by himself.

[12]Pertaining to patella and femur. DORLAND'S ILLUSTRATED MEDICAL DICTIONARY, 29th Edition, p. 1335 (2000)

records of October 21 and 30, 2006 from the George Washington University Hospital, as Dr. Gordon noted, were also devoid of any reference to the right knee, neck and back symptoms. (EE 2).

Claimant also underwent an IME on March 19, 2007 by Dr. Callan, who felt he did sustain a contusion of his hand and wrist at the time of the injury. Dr. Callan's examination disclosed claimant moved freely in and out of a chair and on and off the examining table without difficulty. He had full range of motion of the neck to where chin touched the chest in flexion with normal rotation to each side and extension. In addition, he had full range of motion of the back to where the fingertips reached mid-shin with normal extension to 20 degrees and lateral bending to 30 degrees each side with no specific tenderness and spasm. Straight leg raising was normal to 90 degrees bilaterally.

The right knee examination, albeit with mild crepitus and pain on patellar compression, disclosed full range of motion without any effusion, jointline tenderness or instability. With regard to the right wrist, claimant had 60 degrees dorsiflexion and 60 degrees palmer flexion with 90 degrees pronation and supination, equal to the opposite wrist with normal strength. There was no crepitus, deformity or specific areas of tenderness noted. Measurement of the arm and forearm, as well as calf and thigh circumferences were symmetrical without any evidence of disuse or neurologically induced atrophy. Finding no causal relationship of claimant's complained of ongoing back and knee pains, Dr. Callan opined he had reached maximum medical improvement (MMI), needed no further treatment, and was fully capable of returning to his usual job with no restrictions. (EE 1).

On weighing the competing medical opinions, although in this jurisdiction a treating physician is ordinarily preferred as a witness to those doctors who have been retained to examine claimant solely for the purposes of litigation. However, the rule is not absolute, an administrative law judge is free to reject the opinion of a treating physician with a proper explanation for doing so. See *Mexicano v. District of Columbia Department of Employment Services*, 806 A. 2d 198 (D.C. 2002). In making the findings, the administrative law judge, as trier of fact, is entitled to draw reasonable inferences from the proffered evidence. See *Muhammad v. District of Columbia Department of Employment Services*, 774 A. 2d 1107 (D.C. 2001).

Here, although Dr. Lopez saw claimant on four (4) occasions, i.e., November 8, 16, 22 and 29, 2006, his treatment notes lack the indicia of objectivity in assessing the degree of claimant's continued complaints of neck and back pains in that cervical and lumbar spine MRI scans and EMG/nerve conduction study were never undertaken. Indeed, Dr. Lopez's principal examination concerned claimant's wrist and right knee. He applied a short arm cast, ordered an MRI scan of the right knee, prescribed Etodolac as well as Carisoprodol, and physical therapy to control the alleged pain and spasm. His examination pertinent to claimant's neck and back complaints was rather cursory. In the November 22, 2006 follow up, he noted claimant's cervical rotation limited to the left at 45 degrees and to the right at 60 degrees. Claimant's lumbar flexion measured at 60 degrees and extension at 10 degrees. Tenderness and spasm were also appreciated. Predicated on these tenuous findings, Dr. Lopez opined claimant was totally disabled. Furthermore, Dr. Lopez's last examination, being on November 29, 2006, triggers a recency factor, especially when compared with a more recent IME

physicians' opinions of March 6 and 19, 2007.

However, even discounting the recency factor, Dr. Lopez's disability determinations are not reliable and credible inasmuch as his disability slips dated December 4, 2006 through March 30, 2007 were issued without any contemporaneous medical examination of claimant.[13] Moreover, none of the questionable disability slips noted any physical symptoms that beset claimant and how they compromised his ability to engage in his usual employment. For these reasons, the undersigned rejects Dr. Lopez's opinion regarding claimant's inability to resume his usual work. Instead, I credit the comprehensive IME opinions with significant weight, especially, the March 19, 2007 opinion of Dr. Callan who noted claimant at MMI with respect to the contusion of the hand and wrist and fully capable of returning to his usual employment without any restrictions[14]. Thus, the adduced evidence does not establish claimant's continuing inability to resume his usual work after Dr. Lopez's last treatment on November 29, 2006.

CONCLUSIONS OF LAW

Based upon a review of the record evidence as a whole, I find and conclude claimant has established with substantial evidence that his neck and back symptoms are causally related to the October 15, 2006 work injury. I further find and conclude claimant has not met his burden of proving his entitlement to continued temporary total disability after November 29, 2006.

---

[13]CE 2 at 1, purportedly Dr. Lopez's disability certificate on the letterhead of claimant's counsel is also discredited for the same reason.

[14]Dr. Callan's examination disclosed: Claimant was in no acute distress. He moved freely within the room, in and out of a chair and on and off the examining table without difficulty. He has full range of motion of the neck to where the chin touched the chest in flexion with normal rotation to each side and extension, albeit with complaint of some stiffness. In addition, claimant had full range of motion of the back to where the fingertips reached mid-shin with normal extension to 20 degrees and lateral bending to 30 degrees each side with no specific tenderness or spasm. (EE 1).

ORDER

It is **ORDERED** employer pay claimant temporary total disability benefits from October 15, 2006 through November 29, 2006 subject to credit for wages earned in March 2007. Claimant is also **GRANTED** causally related medical expenses, already incurred.

ANAND K. VERMA
Administrative Law Judge

December 10, 2007
Date