GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR

LISA M. MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 12-026

DARLENE M. MURPHY,

Claimant–Respondent,

v.

HOWARD UNIVERSITY and SEDGWICK CMS,

Employer and Third-Party Administrator-Petitioner.

Appeal from a Compensation Order by
The Honorable Linda A. Jory
AHD No. 11-445, OWC No. 678260

William Schladt, Esquire for the Petitioner
Benjamin Boscolo, Esquire for the Respondent

Before HEATHER C. LESLIE,[1] LAWRENCE D. TARR, and MELISSA LIN JONES *Administrative Appeals Judges*.

HEATHER C. LESLIE, *Administrative Appeals Judge*, 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 Employer and Third Party Administrator - Petitioner (Employer) of the January 25, 2012, Compensation Order (CO) issued by an Administrative Law Judge (ALJ) in the Office of Hearings and Adjudication of the District of Columbia Department of Employment Services (DOES). In that CO, the ALJ granted the Claimant's request for temporary total disability from

[1] Judge Heather C. Leslie is appointed by the Director of DOES as an interim Board Member pursuant to DOES Administrative Policy Issuance No. 11-02 (June 13, 2011).

March 4, 2011 to the present and continuing,[2] interest on past accrued benefits, and authorization for medical treatment. We AFFIRM.

FACTS OF RECORD AND PROCEDURAL HISTORY

The Claimant was a Campus Police Officer for the Employer. Prior to March 4, 2011, the Claimant had received several disciplinary actions for various reasons. On February 16, 2011, a memorandum was issued to the Claimant advising her that due to falling asleep at her post, she was subject to immediate disciplinary actions including dismissal. The Claimant was eventually terminated on April 8, 2011.

On March 4, 2011, the Claimant alleged that she was hurt while walking in a parking lot performing a delivery. The Claimant fell to the ground onto her knees. While attempting to get back up, the Claimant again fell to the ground injuring her left hip and right wrist. The Claimant sought medical treatment and subsequently came under the care of Dr. Joel Fechter. Dr. Fecther recommended 8 weeks of physical therapy and released the Claimant to light duty. The Claimant ultimately was recommended to undergo further objective testing due to her continued complaints, specifically an MRI and a nerve conduction study. Dr. Fechter continued his light duty restriction recommendation pending the results of the objective testing. The Employer declined to authorize these tests.

The Employer contested whether or not an accidental injury actually occurred on March 4, 2011, arguing that the Claimant fabricated the injury due to her pending dismissal. A Formal Hearing was requested and proceeded on January 10, 2012. At the Formal Hearing the Employer also raised the issues of whether or not the Claimant's alleged disability was causally related to the injury as well as the nature and extent of the Claimant's disability, if any. The Claimant testified on her own behalf. The Employer produced no witnesses.

A CO was issued on January 25, 2012 granting the Claimant's claim for relief. The ALJ found the Claimant's testimony to be credible, "especially with regard to the description of the incident." CO at 7. The ALJ found that the Employer had failed to rebut the presumption of compensability and that as the Employer had failed to submit into evidence any opinion to rebut that of Dr. Fecther and his light duty recommendation, the Claimant was temporarily and totally disabled for the period claimed and that the requested objective testing should be authorized.

The Employer appealed. On appeal, the Employer argues that the ALJ was in error in not finding that the Employer had rebutted the presumption of causation with documentary evidence regarding the impending disciplinary action. The Employer argues this evidence was specific and comprehensive enough to rebut the presumption which required the ALJ to weigh the evidence without the aid of the presumption. The Claimant argues that the CO is supported by the substantial evidence in the record.

[2] The CO states that benefits were awarded from March 4, 2011 to the present. On January 31, 2012 an Errata Order was issued stating that the CO should read "Employer shall pay claimant temporary total disability benefits from March 4, 2011 to the present *and continuing*."

THE STANDARD OF REVIEW

The scope of review by the CRB 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. S*ee* District of Columbia Workers' Compensation Act of 1979, D.C. Code, as amended, §32-1501 *et seq*. at §32-1521.01(d) (2) (A) of the ("Act") and *Marriott International v. DOES*, 834 A.2d 882 (D.C. 2003).

Consistent with this standard of review, the CRB must uphold a Compensation Order that is supported by substantial evidence, even if there is substantial evidence in the record to support a contrary conclusion, and even where the CRB might have reached a contrary conclusion. *Id*. at 885.

DISCUSSION AND ANALYSIS

It is well settled that the Claimant, in order to invoke the presumption of compensability that her injury comes within the act, much show some evidence of work related event, activity or requirement which has the potential of resulting in or contributing to the death or disability. *Ferreira v. DOES*, 531 A.2d 651 (D.C. 1987). Here, the ALJ found the Claimant had satisfied this threshold requirement through her testimony, a finding that the Employer does not appeal.

It is also well settled that the Act's presumption of compensability operates only "in the absence of evidence to the contrary." In *Ferreira*, the District of Columbia Court of Appeals (DCCA) has held, that "[o]nce the presumption is triggered, the burden is upon the employer to bring forth 'substantial evidence' showing that a disability did not arise out of and in the course of employment." *Ferreira, supra*, at 655; *Parodi v DOES*, 560 A.2d 524 at 526 (D.C. 1989); *Waugh v. DOES*, 786 A.2d 595, 600 (D.C. 2001). Where the Employer has presented evidence "specific and comprehensive" on the question of causality, the presumption falls from the matter and the conflicting evidence is weighed without reference thereto.[3] *Ferreira, supra*.

The Employer argues that the ALJ was in error in finding that the Employer failed to rebut the presumption of compensability. The Employer posits that "the Administrative Law Judge was presented with clear documentary evidence to indicate that the Claimant knew she was to be fired following the February 15, 2011 incident, where she was caught sleeping on the job." Employer's Argument at 4. The Employer argues that this evidence establishes a "clear motive to lie" and as such was more than sufficient to rebut the presumption.

A review of the Compensation Order reveals that when addressing the Employer's argument, the ALJ found the Claimant's testimony credible regarding the events surrounding March 4, 2011. The ALJ stated,

[3] For instance, the DCCA has held that an employer has met its burden to rebut the presumption of causation when it has proffered a qualified independent medical expert who, having examined the employee and reviewed the employee's medical records, renders an unambiguous opinion that the work injury did not contribute to the disability. *Washington Post v. DOES and Raymond Reynolds, Intervenor*, 852 A.2d 909 (D.C. 2004) (*Reynolds*).

> Employer asserts that claimant knew she was about to be fired and that the evidence submitted with regard to her termination rebuts the presumption. Employer further asserts that the variances in the description of her fall makes claimant incredible and the fact that she did not bring any witnesses to testify supports employer's theory that the incident did not occur. Specifically the employer refers to the difference in Dr. Fecther's description of the fall and claimant's. Inasmuch as I have found claimant's testimony at the formal hearing to be credible especially with regard to the description of the incident, the fact Dr. Fecther wrote a different description and she knew her employment was in jeopardy is not specific and comprehensive evidence to rebut the presumption.

CO at 7.

The Employer quotes and relies upon several cases in support of its contention that the evidence of the disciplinary action was enough to sever the presumption of compensability, including *Reynolds*, *supra*, *Safeway Stores v. DOES*, 806 A.2d 1214 (D.C. 2002), and *McNeal v. WMATA*, CRB No. 03-133, 2005 D.C. Wrk. Comp. Lexis 158. However, these cases involved the submission of medical reports which addressed medical causation and witness testimony to challenge the credibility of the Claimant in order to rebut the presumption. Such is not the case here where the Employer did not offer any witness testimony or medical expert opinion which could rebut the presumption of compensability. The Employer's defense required a finding that the Claimant was a liar, a finding the ALJ specifically rejected. Having found the Claimant's uncontroverted testimony credible, and in absence to the contrary, the ALJ concluded an accidental injury occurred. The ALJ also found, in absence to the contrary, that the Claimant's medical condition was causally related to the accident. We find no error in this.

What the Employer is in essence asking us to do is to re-weigh the evidence in favor of the Employer, finding that the Claimant was an incredible witness, and thus finding that the Employer rebutted the presumption. This we cannot do. The CO's finding that the Employer had not rebutted the presumption of compensability is supported by the substantial evidence in the record.

CONCLUSION AND ORDER

The findings of fact and conclusions of law contained in the January 30, 2012 Compensation Order is supported by substantial evidence in the record. It is **AFFIRMED**.

FOR THE COMPENSATION REVIEW BOARD:

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HEATHER C. LESLIE
Administrative Appeals Judge

May 1, 2012
DATE