

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 15-AA-561

JOANN BAUER, PETITIONER,

v.

DISTRICT OF COLUMBIA
DEPARTMENT OF EMPLOYMENT SERVICES, RESPONDENT,

and

SAFEWAY, INC., *et al.*, INTERVENORS.

Appeal from the Office of Hearings and Adjudication
District of Columbia Department of Employment Services

(Submitted February 19, 2016)

Decided February 24, 2016)

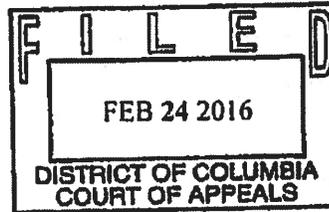
Before GLICKMAN and FISHER, *Associate Judges*, and KING, *Senior Judge*.

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: Petitioner challenges the Compensation Review Board's affirmance of a Compensation Order denying her workers' compensation payment for causally-related medical expenses. We deny her petition for review.

I.

Petitioner JoAnn Bauer was a part-time courtesy clerk for Safeway (Employer). She claimed that on January 13, 2014, she injured her head, left shoulder, and neck when a box containing four gallons of liquid soap fell on her while she was in the janitorial closet. A full evidentiary hearing was held on November 13, 2014, in front of Administrative Law Judge (ALJ) Gregory P. Lambert. Employer introduced four photos of the janitorial closet where Ms. Bauer alleged the incident took place. A Compensation Order (CO) was issued on December 10, 2014, which denied Ms. Bauer's request, finding her version of the event unbelievable and concluding the incident did not occur. Ms. Bauer appealed to the Compensation Review Board (Board). On May 12, 2015, the Board



affirmed the CO, holding that the ALJ's finding was "supported by substantial evidence in the record and [was] in accordance with the law." On May 20, 2015, Ms. Bauer petitioned this court to review the Board's decision. The petition is denied.

II.

We review the Board's decision that affirmed the ALJ's compensation order—we do not directly review the ALJ's determination on appeal. *Jones v. District of Columbia Dep't of Emp't Servs.*, 41 A.3d 1219, 1221 (D.C. 2012). "We will affirm the Board's decision unless it was '[a]rbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.'" *Id.* (quoting D.C. Code § 2-510 (a)(3)(A) (2001)).

In workers' compensation cases, we defer to the agency's determination "provided that the decision flows rationally from facts supported by substantial evidence in the record." *Marriott Int'l v. District of Columbia Dep't of Emp't Servs.*, 834 A.2d 882, 885 (D.C. 2003) (citation omitted). Substantial evidence is relevant evidence such as a "reasonable mind might accept as adequate to support a conclusion." *Giles v. District of Columbia Dep't of Emp't Servs.*, 758 A.2d 522, 524 (D.C. 2000) (quotation marks and citation omitted). The agency is "bound by the hearing examiner's findings of fact even though the [agency] may have reached a contrary result based on an independent review of the record." *Marriott, supra*, 834 A.2d at 885 (citation omitted). "If substantial evidence exists to support the hearing examiner's findings, the existence of substantial evidence to the contrary does not permit the [agency] to substitute [its] judgment for that of the examiner." *Id.* (citations omitted).

III.

Ms. Bauer relies on *Whitaker v. District of Columbia Dep't of Emp't Servs.*, 668 A.2d 844, 846 (D.C. 1995) to argue that she was entitled to a "presumption [that] operates to create a causal connection between the disability and the work related event" and that the Board erred because the ALJ did not consider her medical evidence in finding her injury was not causally related to a work incident. Ms. Bauer, however, misinterprets the ALJ's reasoning and findings. The ALJ's conclusion did not concern the causation element of Ms. Bauer's compensation claim, but involved the question of whether the incident Ms. Bauer claimed to have led to her injury even occurred. *See Ferreira v. District of Columbia Dep't of*

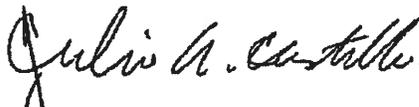
Emp't Servs., 531 A.2d 651, 655 (D.C. 1987) (to benefit from the presumption of compensation, claimant must make some "initial demonstration" of a disability and a work-related event, activity, or requirement which has the potential of resulting in or contributed to the disability).

Here, Ms. Bauer claimed the incident took place in a small janitorial closet where she prepared cleaning solution by "plunging a mop up and down into a wheeled bucket," suggesting that the mop handle knocked the box off the shelf causing it to fall on her.¹ The ALJ concluded that it would be "a physical impossibility" for Ms. Bauer's version of the event to be true because the mop handle was taller than the shelf upon which the box of liquid soap rested and Ms. Bauer testified that she was moving the mop vertically, not horizontally or diagonally; therefore, the mop handle would have to be both taller than the shelf and short enough to fit under the box on the shelf for Ms. Bauer's story to be possible, which the ALJ found was a physical impossibility.

Based on this record, the Board properly affirmed the ALJ's finding as it was supported by substantial evidence as stated above. Accordingly, Ms. Bauer's petition is denied.

So ordered.

ENTERED BY DIRECTION OF THE COURT:



JULIO A. CASTILLO
Clerk of the Court

¹ Inexplicably, she testified that she did not feel the mop handle hit the box.