GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR

LISA MARÍA MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 13-056

JACQUELINE CANNON,
Claimant-Respondent,

v.

COASTAL INTERNATIONAL SECURITY and CHARTIS INSURANCE CO.,
Employer/Insurer-Petitioner.

Appeal from a April 15, 2013 Compensation Order By
Administrative Law Judge Gerald D. Roberson
AHD No. 13-012, OWC No. 695488

Julie D. Murray, Esquire for the Petitioner
Rebekah A. Miller, Esquire for the Respondent

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

MELISSA LIN JONES for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

On July 20, 2012, Ms. Jacqueline Cannon started her work day as a security officer at a federal building on Ninth Street in the District of Columbia. Midday, she had to change uniforms and duty posts, and while walking to her second post, Ms. Cannon "stepped down on a slope and her foot twisted, her leg twisted and she felt a pop and fell."[1]

In a Compensation Order dated April 15, 2013, an administrative law judge ("ALJ") awarded Ms. Cannon medical benefits and ongoing temporary total disability benefits as of July 21, 2012 because her left knee injury is compensable. Ms. Cannon's employer, Coastal International Security ("Coastal"), filed an appeal of that Compensation Order.

[1] *Cannon v. Coastal International Security*, AHD No. 13-012, OWC No. 695488 (April 15, 2013), p. 2.

Coastal disagrees with the ALJ's ruling that Ms. Cannon sustained an accidental injury (as opposed to an idiopathic fall). It argues that because Ms. Cannon was not on its premises or because Ms. Cannon did not fall as a result of any condition related to her employment, her injury is not compensable. Coastal also disagrees with the ALJ's ruling that Ms. Cannon's left leg condition and treatment are causally related to a compensable event or injury because the ALJ failed to consider Dr. Gordon's opinion to rebut the presumption of compensability:

> Here, the Employer and Insurer produced ample evidence to rebut the presumption and the Administrative Law Judge erred in failing to take this evidence into account. The Employer and Insurer's IME report is clearly specific and comprehensive enough to sever the presumption of medical causal relationship.[2]

Finally, Coastal argues there is no medical documentation to support a claim for temporary total disability benefits after February 4, 2013. For these reasons, Coastal requests the Compensation Review Board ("CRB") reverse the Compensation Order.

In response, Ms. Cannon asserts that because she fell on a sloped sidewalk during her transfer between duty stations, her injuries are compensable. Ms. Cannon also argues she is entitled to temporary total disability benefits because Coastal did not offer her work within her physical limitations and restrictions. Ms. Cannon requests the CRB affirm the Compensation Order.

ISSUES ON APPEAL

1. Is the ruling that Ms. Cannon sustained an accidental injury supported by substantial evidence in the record and in accordance with the law?

2. Is the presumption of compensability properly rebutted by Dr. Gordon's opinion?

3. Is there substantial evidence in the record to support Ms. Cannon's entitlement to temporary total disability benefits beyond February 4, 2013?

[2] Employer/Insurer's Memorandum of Law in Support of Application for Review, p. 9.

ANALYSIS[3]

An idiopathic fall caused by a disease or an infirmity strictly personal to a claimant and unrelated to that claimant's employment is not compensable,[4] and Coastal insists Ms. Cannon experienced an idiopathic fall. Based upon a review of the evidence, the ALJ disagreed:

> Claimant testified she worked all three shifts in July 2012, and her job required her to wear a uniform and her equipment while working, including handcuffs and radio. HT p. 24. Claimant testified she Claimant was working at 977 Ninth Street on the date of the accident. HT p. 29. Claimant explained she worked from 6:00 to 12:00, and she had to change uniforms when her relief came. According to her testimony, the next site required her to wear a different color shirt, and she had to change into a white shirt. Claimant stated she had to run and go back to the other site within an hour. HT p. 30. Claimant testified the two sites were within 15 minutes apart in walking distance, or several blocks. Claimant testified she stepped down on a slope and her foot twisted, her leg twisted and she felt a pop and fell. HT p. 31. Claimant remarked the sidewalk sloped down, and she twisted her foot. Claimant testified she experienced shooting pain in her left leg when she tried to step down on her leg, and she had excruciating pain shooting up the back of her leg. HT p. 33. Claimant recalled she treated with Dr. Coronel on July 30, 2012, ten days after she fell. HT pp. 37-38. Claimant indicated she called the doctor's office three days after the accident. HT p. 38. Claimant stated she subsequently received treatment with Dr. Bridges, who drained fluid off of her knee. HT p. 42. Claimant testified her treatment included x-rays, physical therapy, a MRI of the left knee, and surgery on September 13, 2012. HT pp. 44-47. Claimant testified she continued to have problems following surgery, and Dr. Bridges provided Supartz injections. HT p. 47. Claimant acknowledged she had stiffness in her knee before the accident, but the left knee pain did not disable her from working prior to July 2012. HT pp. 50-51.
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> In this case, the facts indicate a hazard of Claimant's employment contributed to her fall on July 20, 2012. Again, Claimant testified she stepped down on a slope and her foot twisted, her leg twisted and she felt a pop and fell. HT p. 31. Employer has not offered any testimony regarding the condition of the sidewalk, but merely argued Claimant fell due to an idiopathic condition, the unsoundness of her left knee. Employer, however, acknowledged the problem

[3] The scope of review by the CRB is limited to making a determination as to whether the factual findings of the appealed 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. Section 32-1521.01(d)(2)(A) of the District of Columbia Workers' Compensation Act, as amended, D.C. Code §32-1501 to 32-1545, ("Act"). Consistent with this standard of review, the CRB is constrained to uphold a Compensation Order that is supported by substantial evidence, even if there also is contained within the record under review substantial evidence to support a contrary conclusion and even if the CRB might have reached a contrary conclusion. *Marriott International v. DOES*, 834 A.2d 882, 885 (D.C. 2003).

[4] See *Georgetown University v. DOES*, 971 A.2d 909 (D.C. 2009).

> with the sidewalk, stating "She step down on part of the sidewalk that was different than the other part, and she fell and twisted her knee." HT pp. 91-92. While Employer misstated Claimant twisted her knee, rather than her foot, Employer accepts the existence of a change in the slope of the sidewalk, a hazard of the employment, which contributed to Claimant's falling. As such, Claimant has provided sufficient evidence of the first scenario of *Georgetown* to show the work incident had the potential to contribute to her injury. While Employer has provided medical evidence to rebut the presumption from Dr. Gordon who stated Claimant's left knee gave out causing her to fall, the end result would not change because Claimant has attributed her fall to a hazard of her employment, the sloping sidewalk. Employer has readily admitted Claimant stepped down on part of the sidewalk that was different, and she fell. HT pp. 91-92. When reviewing the evidence without the benefit of the presumption, Claimant has provided sufficient evidence the work incident caused the need for her to seek medical treatment for her left knee, and the treatment included surgery in September 2012 and Supartz injections in February 2013. Therefore, the record establishes the incident of July 20, 2012 had the potential to cause Claimant's left knee condition, and the condition arises out of and in the course of her employment.[5]

Coastal asserts, "There is nothing in the record to support Judge Roberson's conclusion that Claimant's employment contributed to her fall, as the record shows that Claimant fell and twisted her leg because of a personal risk, the unsoundness of her leg;"[6] however, all of the ALJ's findings of fact leading to the conclusion that Ms. Cannon sustained an accidental injury are supported by evidence in the record as referenced. Coastal's position is based upon a selective reading of the record highlighting and focusing on the facts in its favor and is not grounds for reversal.

Coastal also makes much of the fact that Ms. Cannon was on a public sidewalk (sloped or otherwise) at the time of her fall, but given the nature of Ms. Cannon's employment, to argue "Claimant was merely walking on a public street, on a public sidewalk, when she either stepped down on a slope in the sidewalk or when her leg simply gave way"[7] is a misrepresentation of the circumstances of Ms. Cannon's employment with Coastal as the ALJ found them:

> On July 20, 2012, Claimant was working in a federal building at 977 Ninth Street. HT p. 29. She worked from 6:00 to 12:00, and she had to change uniforms when her relief came to move to a post in another building. The second post required Claimant to wear a different color shirt, and she had to change into a white shirt. Claimant had to run and go back to the other site. HT p. 30. The two sites were within 15 minutes apart in walking distance, or several blocks. As

[5] *Cannon*, *supra*, at 5-7.

[6] Employer/Insurer's Memorandum of Law in Support of Application for Review, p. 7.

[7] *Id*.

> Claimant was walking to the second site, she stepped down on a slope and her foot twisted, her leg twisted and she felt a pop and fell. HT p. 31.[8]

Under these circumstances, we disagree with Coastal that in order to be compensable Ms. Cannon's injury must arise out of "some problem or defect with the Employer that caused or contributed to the fall."[9] As stated in *Jones v. D.C. Office of Unified Communications*:

> The District of Columbia has adopted the "positional risk" doctrine in defining and analyzing whether an alleged cause of an injury under its workers' compensation laws "arises out of a claimant's employment. See, *Clark v. District of Columbia Department of Employment Services,* 743 A.2d 722 (D.C. 2000). The positional risk doctrine is summarized in the leading treatise on workers' compensation law at 1 LARSON'S WORKERS' COMPENSATION LAW, Copyright 2008, Matthew Bender & Company, Inc., (*Larson's*), PART 2 "ARISING OUT OF THE EMPLOYMENT", CHAPTER 3 *THE FIVE LINES OF INTERPRETATION OF "ARISING",* 3.05, Positional-Risk Doctrine, where the following is written:
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> > An important and growing number of courts are accepting the full implications of the positional-risk test: An injury arises out of the employment if it would not have occurred *but for* the fact that the conditions and obligations of the employment placed claimant in the position where he was injured. It is even more common for the test to be approved and used in particular situations. This theory supports compensation, for example, in cases of stray bullets, roving lunatics, and other situations in which the only connection of the employment with the injury is that its obligations placed the employee in the particular place at the particular time when he or she was injured by some neutral force, meaning by "neutral" neither personal to the claimant nor distinctly associated with the employment.
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> Citing *Clark,* the treatise then states in footnote 1:
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> > Accordingly, the claimant need not show a strong causal relationship between the employment and the injury, just a "but for" relationship. Here the claimant was assaulted in the employer's parking lot under circumstances in which it was difficult to determine if the attack was personally motivated or merely random. Since the employer could not produce evidence that the assault was purely personal, compensation was properly awarded.
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> *Larson's, supra.*[10]

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[8] *Cannon*, *supra*, at 2-3.

[9] Employer/Insurer's Memorandum of Law in Support of Application for Review, p. 8.

But for the conditions and responsibilities of her employment, Ms. Cannon would not have been in the place where her injury occurred. The ALJ's ruling that Ms. Cannon sustained an accidental injury is affirmed.

Turning to the issue of causal relationship, pursuant to §32-1521(1) of the Act, a claimant may be entitled to a presumption of compensability ("Presumption").[11] In order to benefit from the Presumption, the claimant initially must show 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.[12] "[O]nce 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."[13] There is no dispute the ALJ appropriately ruled the Presumption properly had been invoked.

Once the Presumption was invoked, it was Coastal's burden to come forth with substantial evidence "specific and comprehensive enough to sever the potential connection between a particular injury and a job-related event."[14] To rebut the Presumption, Coastal relied upon Dr. Gordon's opinion, and the ALJ agreed that Dr. Gordon's opinion sufficed to rebut the Presumption:

> To challenge medical causal relationship and rebut the presumption, Employer relied on the IME report of Dr. Gordon dated December 11, 2012. Dr. Gordon stated her left knee gave way because of her significant preexisting arthritic condition in her left knee and not because of any injury that occurred at work. According to Dr. Gordon, the medical history indicated Claimant had a left knee injury in 1987, and Claimant stated she totally recovered within a few weeks and had no additional problems with her knee. Dr. Gordon remarked this is quite incredible based on the records he reviewed. Dr. Gordon offered the impression of arthritis, left knee. Dr. Gordon indicated Claimant told him and other health care providers the reason she fell was that her knee popped. Dr. Gordon remarked this obviously occurred because of her significant preexisting degenerative change. Dr. Gordon stated he had not seen the radiographic studies, but the reports showed advanced arthritic changes in the knee and a degenerative tear of the meniscus. EE 1, p. 1. Dr. Gordon stated his examination did not indicate any

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[10] *Jones v. D.C. Office of Unified Communications*, CRB No. 09-049, AHD No. PBL 08-062, DCP No. 2008-01330-846 (May 12, 2009). The positional-risk test has been applied to private sector workers' compensation cases in *Bentt v. DOES*, 979 A.2d 1226 (D.C. 2009).

[11] 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."

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

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

[14] *Waugh v. DOES,* 786 A.2d 595, 600 (D.C. 2001) (citations omitted).

> specific work injury occurred, but rather the knee gave way because of the preexisting severe arthritic condition. Dr. Gordon further stated the work incident did not aggravate her preexisting condition or the medical treatment was related to anything that occurred on July 20, 2012. Dr. Gordon remarked "The arthroscopic procedure was clearly directed at a preexisting condition." EE 1, p. 2. With the medical evidence from Dr. Gordon, Employer has rebutted the presumption of compensability regarding medical causal relationship. Therefore, Claimant loses the benefit of the statutory presumption, and the record medical evidence must be weighed without further reference thereto.[15]

It is clear that Coastal's real argument is not that the ALJ failed to take Dr. Gordon's opinion into account to rebut the Presumption; its real argument is that the ALJ did not afford Dr. Gordon's opinion the appropriate weight to allow Coastal to prevail:

> The Compensation Order is also erroneous because it fails to accept the opinions of Dr. Gordon over the treating physician where there is ample evidence to support Dr. Gordon's opinion of no causal relationship of the left leg and knee.[16]

The role of this tribunal is to determine whether the factual findings of the appealed 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.[17] It is not the role of this tribunal to reweigh the evidence.

Finally, regarding the nature and extent of Ms. Cannon's disability, the ALJ ruled:

> In this case, Claimant argued she is waiting to have a date to return back to work, and stated Employer has not put her back on the schedule or told Claimant she can return with a 30 pound weight restriction. HT p. 14. Claimant maintains Dr. Bernstein does not think she can return to work as a security guard due to her knee. HT p. 84. Employer disagreed with Claimant's contentions, and argued temporary total disability should end on February 4, 2013 when Claimant was released to return to work. HT pp. 98-99. Employer argued Dr. Bridges found Claimant could constantly bend, stoop, balance and climb, but she could not lift over 30 pounds. HT p. 99 and EE 7. Employer stated Claimant can seek assistant if feels she cannot lift something, and there is no medical documentation to support entitlement to temporary total disability beyond February 4, 2013. HT p. 99.
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> Claimant testified her physical duties included a lot of walking, running up steps, assisting people, and lifting items and placing them on the x-ray machine. Claimant stated she performed a lot of bending and stooping. HT p. 25. Claimant

[15] *Cannon*, *supra*, pp. 8-9.

[16] Employer/Insurer's Memorandum of Law in Support of Application for Review, p. 12.

[17] *Marriott*, *supra*.

> indicated she had to squat to lift up big suitcases, and place them on the x-ray machine. HT pp. 25-26. Claimant testified she would kneel when coming into contact with a suspect. HT pp. 26-27. Claimant testified Dr. Bridges released her to return to work on February 4th with the restriction of no lifting more than 30 pounds. Claimant explained she provided the restrictions to Employer, but has not been placed back on the work schedule. HT p. 49. Claimant testified her job also requires her to have the ability to control violent and unruly crowds. HT p. 71. Claimant testified she is required to subdue a person in a life and death situation. HT p. 72.
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> Claimant relied on medical evidence from the treating physicians to support entitlement to temporary total disability benefits. On July 30, 2012, Dr. Coronel reported Claimant was unable to fully flex her left knee and she experienced left knee pain. CE 4. On August 24, 2012, Dr. Bridges indicated Claimant had a number of restrictions related to her employment including inability to physically control violent or unruly crowds. CE 1, p. 10. On January 25, 2013, Dr. Bernstein indicated Claimant was unable to return to her job as security guard. Dr. Bernstein did not offer any specific restrictions. The record contains a work release from Dr. Bridges dated February 4, 2012. Dr. Bridges provided a 30 pound limitation with respect to heavy lifting and carrying. Dr. Bridges, however, did not offer any restrictions with respect to Claimant's ability to physically control violent or unruly crowds or attempt to subdue person in case of life and death situation. EE 7. On December 11, 2012, Dr. Gordon stated Claimant no longer had any restrictions related to the July 20, 2012 incident or the arthroscopy. He placed Claimant at maximum medical improvement. EE 1, p. 2. As noted above, Dr. Gordon does not believe Claimant sustained a work injury on July 20, 2012. Therefore, his opinion lacks probative value. As such, the medical evidence indicates Claimant can perform her pre-injury employment with a 30 pound restriction for lifting and carrying. Dr. Bridges indicated Claimant suffered from mild pain, and she had a lifting limitation of 30 pounds. EE 7. At this time, the record does not reveal Employer has offered Claimant employment consistent with her medical restriction. Thus, Claimant remains temporarily totally disabled. Therefore, Claimant has established entitlement to temporary total disability benefits from July 21, 2012 to the present and continuing.[18]

The ALJ accepted the evidence that "Dr. Bridges released her to return to work on February 4th with the restriction of no lifting more than 30 pounds."[19] With that finding, it was incumbent upon Coastal to present evidence of suitable, available, alternative employment:

> To summarize, once a claimant establishes a prima facie case of total disability, the employer must present sufficient evidence of suitable job availability to overcome a finding of total disability. If the employer meets that

[18] *Cannon*, *supra*, pp. 10-11.

[19] *Id*. at p. 11.

> evidentiary burden, the claimant may refute the employer's presentation -- thereby sustaining a finding of total disability -- either by challenging the legitimacy of the employer's evidence of available employment or by demonstrating diligence, but a lack of success, in obtaining other employment. Absent either showing by the claimant, he is entitled only to a finding of partial disability.[20]

In the end, the ALJ was not obligated to inventory all of the evidence of record. The ALJ ruled Ms. Cannon cannot return to her pre-injury work; therefore, it was Coastal's burden to satisfy *Logan's* burden-shifting requirement, and it failed to do so.

CONCLUSION AND ORDER

The ruling that Ms. Cannon sustained an accidental injury is supported by substantial evidence and is in accordance with the law. The ALJ accepted that Dr. Gordon's opinion was sufficient to rebut the presumption of compensability; however, when weighing the evidence as a whole, he appropriately determined Ms. Cannon's injury is causally related to her employment. Thus, because Coastal failed to present evidence of suitable, available alternative employment consistent with Ms. Cannon's physical limitations and restrictions as the ALJ determined them to be, Ms. Cannon is entitled to temporary total disability benefits. The April 15, 2013 Compensation Order is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

/s/ *Melissa Lin Jones*
MELISSA LIN JONES
Administrative Appeals Judge

June 24, 2013
DATE

[20] *Logan v. DOES,* 805 A.2d 237 (D.C. 2002).