

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

Department of Employment Services

VINCENT C. GRAY  
MAYOR



LISA MARÍA MALLORY  
DIRECTOR

COMPENSATION REVIEW BOARD

**CRB No. 13-016**

**Haidar N. Al-Nori,  
Claimant-Petitioner,**

**v.**

**Four Point Sheraton Hotel and Liberty Mutual,  
Employer/Insurer-Respondent.**

Appeal from a January 25, 2013 Compensation Order By  
Administrative Law Judge Karen R. Calmeise  
AHD No. 10-150B, OWC No. 664824

Michael J. Kitzman, Esquire for the Petitioner  
Robin M. Cole, Esquire for the Respondent

Before MELISSA LIN JONES, HEATHER C. LESLIE, and JEFFREY P. RUSSELL, *Administrative Appeals Judges*.

MELISSA LIN JONES for the Compensation Review Board.

**DECISION AND REMAND ORDER**

FACTS OF RECORD AND PROCEDURAL HISTORY

On October 23, 2009, Mr. Haidar Al-Nori worked as a bellman for Four Points by Sheraton (“Four Points”). He injured his back and hip when a luggage cart knocked him into the trunk of a taxicab.

At a formal hearing, Mr. Al-Nori requested temporary total disability benefits from September 28, 2010 through January 5, 2011, temporary total disability benefits from February 11, 2011 to the date of the formal hearing and continuing, causally related medical expenses, and interest. In a Compensation Order dated July 26, 2011, an administrative law judge (“ALJ”) denied Mr. Al-Nori’s claim for temporary total disability benefits from February 11, 2011 to the date of the formal hearing and continuing but granted his request for temporary total disability benefits from September 28, 2010 through January 5, 2011.<sup>1</sup>

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<sup>1</sup> *Al-Nori v. Four Points by Sheraton*, AHD No. 10-150A, OWC No. 664824 (July 26, 2011).

Mr. Al-Nori appealed the denial of temporary total disability benefits in the July 26, 2011 Compensation Order. Neither party appealed the ruling that Mr. Al-Nori's back and hip injuries are causally related to his October 23, 2009 accident.

On September 13, 2011, the Compensation Review Board ("CRB") vacated the July 26, 2011 Compensation Order because it failed to consider the independent medical examination evidence as it relates to the nature and extent of Mr. Al-Nori's disability and because it failed to apply the treating physician preference. Because it was not appealed, the ruling that Mr. Al-Nori's back and hip injuries are compensable was not subject to review.<sup>2</sup>

The ALJ issued a Compensation Order on Remand on November 10, 2011; regarding the nature and extent of Mr. Al-Nori's disability, the ALJ reached the same result as in the July 26, 2011 Compensation Order.<sup>3</sup> Mr. Al-Nori appealed the November 10, 2011 Compensation Order, and on May 2, 2012, the CRB remanded the matter for further proceedings.<sup>4</sup>

On December 12, 2012, Mr. Al-Nori proceeded to a second formal hearing before another ALJ. At that formal hearing, Mr. Al-Nori requested an MRI of his hips and pelvis. Four Points denied the requested care on the grounds that Mr. Al-Nori's left hip condition is not causally related to his on-the-job accident and the medical treatment is not reasonable and necessary.

On January 25, 2013, the ALJ denied Mr. Al-Nori's request for authorization for medical treatment and payment of medical expenses because he had not invoked the presumption of compensability:

In deciding whether Claimant's current complaints of left hip pain and the recommended MRI test are related to his work accident in 2009, after review of the medical evidence. I find there is no credible probative medical evidence to invoke said presumption.

Dr. Goyal examined the Claimant on April 17, 2012 and reviewed x-ray test results of the left and right hips. Both x-ray tests demonstrated a normal examination. (CE 2, EE 2) After assessment of the complaints of low back and bilateral lower extremity pain, Dr. Goyal concludes; [*sic*]

...I am unclear of the source of his pain...His hip examination is otherwise within normal limits with no pain with range of motion. At this point I would recommend continued

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<sup>2</sup> *Al-Nori v. Four Points by Sheraton*, CRB No. 11-079, AHD No. 10-150A, OWC No. 664824 (September 13, 2011).

<sup>3</sup> *Al-Nori v. Four Points by Sheraton*, AHD No. 10-150A, OWC No. 664824 (November 10, 2011).

<sup>4</sup> *Al-Nori v. Four Points by Sheraton*, CRB No. 11-138, AHD No. 10-150A, OWC No. 664824 (May 2, 2012).

follow-up with a pain specialist *and considering there was some history of avascular necrosis* I would order an MRI scan of the pelvis to evaluate further. I would not recommend any further treatment from the hip perspective...*(emphasis added)*

(Report of Dr. Nitin Goyal, April 17, 2012. CE 2, EE 2)

Dr. Goyal recommendation for an MRI is specifically prefaced on the consideration that Claimant presented with a history of avascular necrosis. Aside from the initial reference to the 2009 work accident, the physician's evaluation and recommendation does not relate the hip complaints to any work related incident.

Therefore, with no additional medical evidence presented on his behalf with regard to the requested medical treatment, Claimant has failed to make an initial showing that the left hip condition is medically causally related to the work injury. His evidence does not provide sufficient medical rationale to support his claim for the requested medical treatment to his bilateral hips and the MRI test of his pelvis. Medical causal relationship not being proved, Employer's rebuttal evidence need not be considered.<sup>[5]</sup>

On appeal, Mr. Al-Nori argues "it has already been established as the law of the case that [he] sustained an injury to his back and hip when he was struck by a baggage cart."<sup>6</sup> In addition, he argues his testimony is enough to invoke the presumption of compensability. Mr. Al-Nori requests the CRB reverse the January 25, 2013 Compensation Order and remand this matter for an ALJ to determine if Four Points has submitted evidence specific and comprehensive enough to sever the presumption of compensability.

In opposition, Four Points contends Mr. Al-Nori did not produced credible evidence to prove that his hip was injured three years ago. Based upon a medical report from Dr. Nitin Goyal, Four Points asserts the Compensation Order should be affirmed.

#### ISSUES ON APPEAL

1. Did the ALJ properly apply the presumption of compensability to this case?
2. Is the January 25, 2013 Compensation Order supported by substantial evidence and in accordance with the law?

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<sup>5</sup> *Al-Nori v. Four Point Sheraton Hotel*, AHD No. 10-150B, OWC No. 664824 (January 25, 2013), p. 4.

<sup>6</sup> Memorandum of Points and Authorities in Support of Application for Review, unnumbered p. 4.

ANALYSIS<sup>7</sup>

At a prior formal hearing held on March 23, 2011, Four Points stipulated that Mr. Al-Nori sustained an accidental injury on October 23, 2009.<sup>8</sup> Although the ALJ listed the issues for resolution as

1. Is Claimant's work-related back injury medically causally related?
2. What is the nature and extent of Claimant's disability, if any.? [sic]<sup>[9]</sup>

the ALJ later explained

Employer challenges whether Claimant's lower back and left hip injuries are medically causally related to his October 23, 2009 work injury.<sup>10</sup>

After ruling that the presumption of compensability had been invoked and had been rebutted, when weighing the evidence, the ALJ stated

[o]n September 14, 2010, Claimant was examined by Dr. Frederic L. Salter who diagnosed Claimant as suffering from acute lumbosacral strain, moderate; posttraumatic headaches; bursitis and sprain left hip; and, lumbar radiculopathy. . . . On October 12, 2010, Dr. Salter examined Claimant, continued to diagnose Claimant as suffering from acute lumbosacral strain, moderate; posttraumatic headaches; bursitis and sprain left hip; and, lumbar radiculopathy. Dr. Salter stated that was nothing further to do interventionally [sic] since Claimant did not want to undergo pain management.<sup>11</sup>

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<sup>7</sup> 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).

<sup>8</sup> *Al-Nori v. Four Points by Sheraton*, AHD No. 10-150A, OWC No. 664824 (July 26, 2011), p. 1.

<sup>9</sup> *Id.* at p. 2.

<sup>10</sup> *Id.* at p. 3.

<sup>11</sup> *Id.* at p. 4.

The ALJ concluded, “Based upon the above evidence, Claimant’s diagnoses are medically causally related to his work-related injury of October 23, 2009.”<sup>12</sup>

In the July 26, 2011 Compensation Order, the diagnoses the ALJ causally related to the October 23, 2009 on-the-job accident include left hip bursitis and sprain. Although Mr. Al-Nori appealed the July 26, 2011 Compensation Order, the only issue on appeal concerned the nature and extent of Mr. Al-Nori’s disability; therefore, the causation-ruling is the law of the case.

When assessing the causal relationship between current symptoms and a compensable accident, pursuant to §32-1521(1) of the Act, a claimant may be entitled to a presumption of compensability (“Presumption”).<sup>13</sup> In order to benefit from the Presumption, a 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.<sup>14</sup> Then, the Presumption continues to apply when a claimant files for additional benefits due to new symptoms allegedly stemming from the work-related injury.

In Mr. Al-Nori’s case, the ruling in the July 26, 2011 Compensation Order that his left hip bursitis and sprain are causally related to his October 29, 2009 accident invokes the Presumption that his current left hip complaints are compensable. Furthermore, based upon Mr. Al-Nori’s testimony at the December 12, 2012 formal hearing, the ALJ determined “Claimant has testified that he has had complaints of the left side and left hip pain since the 2009 work injury,”<sup>15</sup> and in the absence of a negative credibility ruling, this finding also invokes the Presumption.

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<sup>12</sup> *Id.*

<sup>13</sup> 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.”

<sup>14</sup> *Ferreira v. DOES*, 531 A.2d 651 (D.C. 1987).

<sup>15</sup> *Al-Nori v. Four Point Sheraton Hotel*, AHD No. 10-150B, OWC No. 664824 (January 25, 2013), p. 4

CONCLUSION AND ORDER

Because the presumption of compensability has been invoked, the January 25, 2013 Compensation Order is not in accordance with the law and is VACATED. This matter is REMANDED for an ALJ to determine whether Four Points has rebutted the presumption of compensability by submitting evidence “specific and comprehensive enough to sever the potential connection between a particular injury and a job-related event.”<sup>16</sup> Then, if necessary, once the issue of causal relationship has been resolved, the ALJ shall consider the reasonableness and necessity of the requested medical treatment.

FOR THE COMPENSATION REVIEW BOARD:

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MELISSA LIN JONES  
Administrative Appeals Judge

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July 31, 2013  
DATE

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<sup>16</sup> *Waugh v. DOES*, 786 A.2d 595, 600 (D.C. 2001). (Citations omitted.)