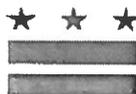


**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**Department of Employment Services**

MURIEL BOWSER  
MAYOR



DEBORAH A. CARROLL  
DIRECTOR

**COMPENSATION REVIEW BOARD**

**CRB No. 15-025**

**ANDREA L. GRANT-HOPKINS,**

**Claimant-Petitioner,**

**v.**

**ALION SCIENCE AND TECHNOLOGY AND CHUBB INSURANCE GROUP**

**Employer/Insurer-Petitioner.**

Appeal from a January 27, 2015 Compensation Order on Remand by  
Administrative Law Judge Nata K. Brown  
AHD No. 05-254B, OWC No. 606489 and 607735

Krista DeSmyter for Claimant  
Charles F. Midkiff for Employer

Before, LINDA F. JORY, MELISSA LIN JONES, and JEFFREY P. RUSSELL, *Administrative Appeals Judges.*

LINDA F. JORY, for the Compensation Review Board:

**DECISION AND REMAND ORDER**

**FACTS OF RECORD AND PROCEDURAL HISTORY**

Claimant worked for employer as an executive administrative assistant. On February 22, 2004, Claimant was injured at work when a door slammed on her right wrist, causing a crush injury. On February 24, 2004, Claimant sought treatment for her right wrist from Dr. Rida Azer and he performed surgery to remove a ganglion cyst and reconstruct a tear to the dorsal capsule on her right wrist.

On October 30, 2007, an Administrative Law Judge (ALJ) found *inter alia* Claimant sustained an accidental injury on February 22, 2004 to her right wrist in the course of her employment. *Grant v. Alion Science and Technology/ NAI Personnel*, AHD No. 05-254A, OWC Nos. 606489, 607735 (October 2007) On January 15, 2014, Claimant presented additional claims at a formal hearing before an ALJ, seeking surgery and temporary total disability in connection with

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problems associated with her right shoulder. A Compensation Order (CO) issued which denied Claimant's claims as the ALJ determined Claimant did not offer sufficient evidence to invoke the presumption of compensability pursuant to §32-1521. The CRB issued a Decision and Remand Order which reversed the CO as the CRB determined Claimant had adduced two medical opinions that support a link between the wrist injury and Claimant's shoulder problems and remanded the matter to the ALJ to determine if Employer had adduced evidence to overcome the presumption. *Grant-Hopkins v. Alion Science and Technology*, CRB No. 14-027, AHD No. 05-254B (June 26, 2014) OWC Nos.

A Compensation Order on Remand issued which again denied Claimant's claims. *Grant-Hopkins v. Alion Science and Technology*, AHD No. 05-254B, OWC Nos. 606489 and 607735 (January 27, 2015)(COR).

### ISSUE ON APPEAL

Is the January 27, 2015 COR supported by substantial evidence and in accordance with the law?

### ANALYSIS

Although the CRB had already determined that the record contained evidence that was sufficient to invoke the presumption, the ALJ conducted an analysis of Claimant's evidence and determined that Claimant has made an initial demonstration of both an injury and a relationship between Claimant's shoulder problems and the work injury and the presumption was invoked.

As to whether Employer had overcome the presumption, the ALJ concluded:

Employer's production of the above evidence is specific and comprehensive rebuttal evidence allowing Claimant's presumption of compensability to fall from the case. The burden of proof is now upon the Claimant to show, by a preponderance of the evidence that the disability was caused by a work-related injury.

COR at 6.

The evidence the ALJ described in detail in the COR as the "above evidence" includes an IME report of Dr. Innis which, according to the ALJ, was performed on April 23, 2008 in response to Dr. Azer's recommendation of bilateral elbow surgery. According to the ALJ:

It was the opinion of Dr. Innis that Claimant's right wrist ganglion was not causally related to any work accident which may have occurred on January 22, 2004. Claimant has vague bilateral upper extremity complaints, which followed no specific diagnosis or anatomic pattern. Her complaints have escalated and increased during the three years when she has not worked at all. Dr. Innis further opined that, within a reasonable degree of medical certainty, there is no residual from any January 22, 2004 work injury, which he was not certain ever occurred.

He found that there is no medical reason why [Claimant] cannot be working in full duty capacity without any specific restrictions.

COR at 5. The ALJ also discussed the more recent IME of Dr. Robert E. Collins who examined Claimant on December 14, 2011. The ALJ found that "There is no record of Claimant complaining to Dr. Collins of a shoulder injury, or having any discussion with him regarding impairment to Claimant's shoulders during the examination". *Id.*

The ALJ further discussed Employer's allegation that Dr. Azer did not provide an opinion regarding what caused the tear in her shoulder and stated "Employer further argues that the February 22, 2004 injury and claim was heard by AHD in 2006 and Claimant did not complain about her shoulder at that time; and further, that a complication resulting from the February 22, 2004 injury nine years later must be from some other cause." *Id.*

In *Ferreira v. DOES*, 531 A.2d 651, 655 (D.C. 1987), the District of Columbia Court of Appeals (Court) held "[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." The Court added "If an employer produces evidence specific and comprehensive enough to rebut the potential connection between the work-related incident, the presumption falls from the case and the evidence must be weighed without reference to the presumption". *Ferreira, supra* at 655.

With regard to use of IME reports to rebut the presumption, the Court also 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*).

After a complete review of the record and arguments of the parties, the CRB determines that the COR is not supported by substantial evidence and is not in accordance with the law. Contrary to its assertion on appeal, Employer did not present any medical evidence that Claimant's shoulder problems are unrelated to the work injury. Instead the Employer relies solely on an inference from negative evidence to prove that Claimant's shoulder problems are unrelated to her work. The Court has held that the type of negative evidence that the Employer is relying on in this case is not sufficient to rebut the presumption. See *Bobby Brown v. Department of Employment Services*, 700 A.2d 787 (1997)(*Brown*).

Similarly, in *Shipman v. Fresenius Medical Care Holding*, CRB No. 06-13, AHD No. 05-103A, OWC No. 603796 (January 11, 2006), the CRB, relying on *Brown* held negative evidence alone is not sufficient to rebut the presumption:

While it is true that any member of this panel could have reached another result, i.e., that Petitioner's evidence, specifically Respondent's failure to tell Dr. Azer that she had suffered a work injury on March 31, 2004 was sufficient to rebut the presumption, the ALJ's approach is consistent with the Court of Appeals finding

that negative evidence is not sufficient to rebut the presumption as it is neither specific nor comprehensive. See *Bobby Brown v. Dept. of Employment Services*, 700 A.2d 787 (1997); *Onofre v. Lorinczi*, Dir. Dkt.95-48, OHA No. 92-302A, OWC No. 209231 (September 15, 2000).

See also *Swails v. Forever 21 Retail, Inc.*, CRB No. 14-138, AHD No. 13-105, OWC No. 696031 (March 25, 2015).

The ALJ's factual finding that Employer rebutted the presumption of compensability is not supported by substantial evidence in the record. Consistent with *Brown*, *Lorinczi* and *Swails*, we conclude that Employer's evidence is insufficient to sever the causal connection and therefore insufficient to rebut the presumption. We must vacate the COR as conclude it is not supported by substantial evidence nor in accordance with the law.

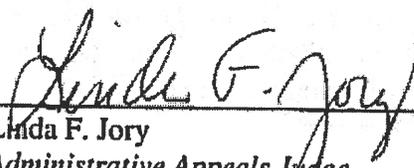
Because Employer failed to rebut the presumption of compensability, Claimant's claim is compensable as a matter of law. Although the CO and the COR list the only issue to address was whether Claimant's right shoulder condition was medically causally related to her February 22, 2004 work accident, a review of the hearing transcript reveals the nature and extent of claimant's disability was identified as an issue to be adjudicated by the ALJ. HT at 7.

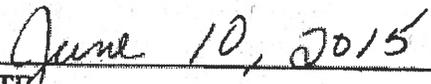
The case is accordingly remanded for conclusions of law and findings of fact on the nature and extent of Claimant's disability, if any, and an appropriate award.

#### CONCLUSION AND ORDER

The ALJ's conclusion that Employer rebutted the presumption is not supported by substantial evidence and is **REVERSED**. Claimant benefits from the presumption that her claim is compensable. The matter is **REMANDED** for further findings of fact and conclusion of law on the nature and extent of Claimant's disability.

FOR THE COMPENSATION REVIEW BOARD:

  
\_\_\_\_\_  
Linda F. Jory  
Administrative Appeals Judge

  
\_\_\_\_\_  
DATE