

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 15-041

**BERNICE BLAKNEY,
Claimant - Respondent,**

v.

**MARRIOTT INTERNATIONAL, and
MARRIOTT CLAIM SERVICES,
Employer/Third-Party Administrator-Petitioners.**

Appeal from a February 23, 2015 Compensation Order on Remand
By Administrative Law Judge Joan E. Knight
AHD No. 12-328, OWC No. 687105

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2015 JUL 13 PM 12 53

(Decided July 13, 2015)

Sarah M. Burton for Employer
Rebekah A. Miller for Claimant

Before HEATHER C. LESLIE and JEFFREY P. RUSSELL, *Administrative Appeals Judges* and
LAWRENCE D. TARR, *Chief Administrative Appeals Judge*

HEATHER C. LESLIE for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

Claimant was employed by the Employer as a housekeeper. Her duties included cleaning hotel rooms and bathrooms which required Claimant to get on her knees to scrub and clean floors. In 2008, Claimant began to experience bilateral knee pain. Claimant testified that she told her supervisor and her employer's loss prevention representative, Lena, numerous times starting in 2008 of her knee problems per the Employer's procedures for a work related accident.

On June 4, 2010, Claimant sought treatment with her primary care physician, Dr. Suja Thrasybule for problems with both knees. Dr. Thrasybule referred Claimant to a specialist for further treatment and testing. Dr. Thrasybule noted Claimant worked on her knees and started to develop knee problems "from the constant kneeling 2 years ago and it has progressively worsened." Claimant's exhibit 1 at 003. Claimant received conservative care, including injections into her knees. Employer denied payment of medical bills and treatment on the basis that Claimant did not give timely notice pursuant to the Act.

A full evidentiary hearing was held on October 18, 2012. Claimant sought an award of causally related medical treatment to her left knee and payment of causally related medical bills. The issues to be adjudicated were whether or not Claimant suffered an accidental injury that arose out of and in the course of her employment, whether Claimant's current condition is causally related to her work injury, and whether timely notice was given. A Compensation Order (CO) was issued which found that Claimant suffered a cumulative injury on June 2, 2010 which arose out of and in the course of Claimant's employment and was casually related to said employment. However, the CO found that Claimant failed to give timely notice. The CO denied Claimant's request in its entirety.

Claimant timely appealed to the Compensation Review Board (CRB). Claimant argued that the CO erred in finding that Claimant did not provide timely notice, specifically that as Employer had knowledge of Claimant's injury and its relationship to her employment, Employer was not prejudiced by Claimant's untimely written notice. Employer opposed, arguing the Order should be affirmed.

In a Decision and Remand Order (DRO) on July 1, 2014, the CRB concluded that the CO was not supported by the substantial evidence nor in accordance with the law. Specifically, the CRB remanded the case for a determination on whether or not Employer had been prejudiced by the untimely notice in light of the finding that Claimant credibly testified to notifying Employer several times over several years prior to June 4, 2010. The CRB also ordered the administrative law judge (ALJ) to grant the Claimant's request for medical treatment, pursuant to *Safeway Stores v. DOES*, 832 A.2d 1267 (DC 2003). Specifically,

Also, the CO did find that Claimant's bilateral knee injuries are medically causally related to the cumulative work injury. Employer did not appeal this finding. It is settled that failure to provide timely notice does not bar Claimant from receiving medically causally related treatment or expenses. To deny the Claimant's claim for relief is in error. Upon remand, the ALJ is directed to award Claimant's claim for relief. (Footnote omitted.)

DRO at 5.

A Compensation Order on Remand (COR) was issued on February 23, 2015. The COR granted Claimant's request for medical treatment, and concluded that as Claimant had testified to notifying her Employer of her bilateral knee pain and its work relatedness since 2008, Employer was not prejudiced by the failure to give timely notice.¹

Employer appealed the COR on March 18, 2015. Employer argues the Claimant failed to give timely notice of her injury and Employer was prejudiced by this failure. Claimant opposes the appeal, arguing the COR is supported by the substantial evidence in the record and is in accordance with the law.

THE STANDARD OF REVIEW

The scope of review by the Compensation Review Board ("CRB") is limited to making a determination as to whether the factual findings of the appealed Compensation Order are based

¹ The ALJ described the CRB's analysis as a determination that Claimant should not have been denied compensation for disability. As the CRB indicated Claimant should not have been denied treatment or expenses that were medically causally related to the work injury, we will treat the ALJ's statement as a drafting error.

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).

DISCUSSION AND ANALYSIS

Employer first argues that pursuant to D.C. Code § 32-1513(a) and (b), Claimant's notice was untimely. Employer points to testimony surrounding events occurring in 2010 and 2011 including medical appointments and argues it was prejudiced by Claimant's failure to provide timely notice after June 4, 2010.

In analyzing whether Employer was prejudiced by the untimely notice, the ALJ stated:

Under the Act, however, the conclusion that Claimant herein, failed to give timely notice to her Employer does not bar her claim for compensation if she satisfies the statutory exceptions to timely notice. Section 32-1513(d) states:

(d) Failure to give such notice shall not bar any claim under this chapter: (1) If the employer (or his agent in charge of the business in the place where the injury occurred) or the carrier had knowledge of the injury or death and its relationship to the employment and the Mayor determines that the employer or carrier has not been prejudiced by failure to give such notice; or (2) If the Mayor excuses such failure on the ground that for some satisfactory reason such notice could not be given; or unless objection to such failure is raised before the Mayor at the 1st hearing of a claim for compensation in respect of such injury or death.

Employer asserts Claimant's failure to provide timely written notice is prejudicial and impaired Employer's ability to investigate the circumstances of the claimed injury and properly evaluate medical treatment. This assertion, however, is not persuasive. Claimant testified that in 2008 she began reporting her work injury, and the cumulative trauma and pain from the injury, to Lena in Employer's loss prevention office. Claimant also testified that from 2008 forward, she continued to report her bilateral knee pain and its work relatedness to Employer. This testimony is uncontested. Since this credible testimony indicates that Employer was notified by Claimant of the bilateral knee pain and its work relatedness for many years starting in 2008, it is difficult to see how Employer was prejudiced by Claimant not giving written notification to Employer of her work injury. Employer, through its loss prevention office, was informed by Claimant, and repeatedly reminded by her of the work-relatedness of her injury.

COR at 5-6.

The ALJ found persuasive Claimant's uncontested testimony that she began to notify her Employer of her cumulative bilateral knee pain well before her first medical appointment on

June 4, 2010. Employer, in argument, does not address the above quoted passage or Claimant's testimony that she informed Employer multiple times beginning in 2008 of her injury and its work relatedness, nor did Employer offer any witnesses at the Formal Hearing to testify to the contrary. In light of this credible testimony, the ALJ determined that the Employer was not prejudiced by the untimely notice pursuant to 32-1513(d) as Employer had knowledge of Claimant's bilateral knee pain and its work relatedness since 2008. We affirm this conclusion.

CONCLUSION AND ORDER

The February 25, 2015 Compensation Order on Remand is supported by the substantial evidence in the record and in accordance with the law. It is **AFFIRMED**.

So Ordered.