

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



F. THOMAS LUPARELLO
INTERIM DIRECTOR

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2014 APR 9 PM 12 01

CRB No. 12-055 (R)

LOUISE W. BLOUNT
Claimant-Petitioner,

v.

CHILDREN'S NATIONAL MEDICAL CENTER and AVIZENT RISK SERVICES,
Self-Insured Employer and Third Party Administrator-Respondent.

Upon Remand from the District of Columbia Court of Appeals,
DCCA No. 12-AA-1299 (March 6, 2014), AHD No. 12-012, OWC No. 682774

Krista N. DeSmyter, for Petitioner
Todd S. Sapiro, Respondent

LAWRENCE D. TARR, Chief Administrative Appeals Judge, for the Compensation Review Board.

REMAND ORDER

On March 6, 2013, an Administrative Law Judge (ALJ) in the Hearings and Adjudication section of the District of Columbia Department of Employment Services (DOES) issued a Compensation Order in which she denied Claimant's request for temporary total disability wage loss benefits from April 28, 2011 to October 16, 2011.

In denying the claim, the ALJ held that Claimant was not entitled to invoke the presumption of compensability because her fall at work was idiopathic. The ALJ held:

In this case, Claimant fell not because of the presence of some work hazard (sic) or a work-related intervening factor. Claimant fell because of her idiopathic condition, a risk that was personal to her. In this circumstance, Claimant's resulting injuries are not compensable even when considering the positional risk doctrine as Claimant's employment did not place her in a position that increased the effects of the idiopathic fall.

As Claimant has failed to show that her work place condition, event or a work place incident caused or had the potential to cause her injury, Claimant has failed to invoke the presumption. As Claimant's evidence shows her fall was completely idiopathic, with no work-related increase to the dangerous effects of the idiopathic fall, Claimant's injuries are not compensable.

Claimant appealed this decision to the Compensation Review Board (CRB). On July 9, 2012, the CRB affirmed the ALJ's decision. The CRB found no merit in Claimant's argument that the positional risk test applied so as to invoke the presumption of compensability. (Decision and Order at 4).

On March 6, 2014, the District of Columbia Court of Appeals (DCCA) reversed the CRB's decision. The DCCA held:

We fail to understand the basis for the ALJ's conclusion that Blount had failed to invoke the presumption, given the standard enunciated in *Ferreira* [v. *DOES*, 531 A.2d 651, 655 (D.C. 1987)], Blount's testimony, and the employer's concession in its post-argument memorandum of law that she was entitled to the presumption.¹

The DCCA remanded the case with a specific instructions:

The finding about the idiopathic nature of the fall and the lack of causal relation to the work incident was thus made against the background where no presumption favored Blount and where no burden had been shifted to the employer as specified in *Ferreira*. In this posture, we must remand the case for further consideration with proper recognition of the presumption in Blount's favor.

Therefore, consistent with the DCCA's March 6, 2014, Memorandum Opinion and Judgment, this case is remanded to the Office of Hearings and Adjudication.

ORDER

This case is remanded to the Office of Hearings and Adjudication for such further proceedings that are consistent with the decision of the DCCA.

FOR THE COMPENSATION REVIEW BOARD:

/s/ *Lawrence D. Tarr*

LAWRENCE D. TARR

Chief Administrative Appeals Judge

April 9, 2014

DATE

¹ In a footnote to the Court's Memorandum Opinion and Judgment the Court quoted from page 4 of Employer's Opposition "The Employer concedes that the claimant's injury occurred in the course of her employment, and as such, she is entitled to a presumption that her injury 'arose out of' her employment."