

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA M. MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 11-128

JOYCE A. BROWN,¹
Claimant–Petitioner,

v.

GUEST SERVICES and SPECIALTY RISK SERVICES,
Employer/Carrier-Respondent.

Appeal from a Compensation Order on Remand by
The Honorable Belva D. Newsome
AHD No. 10-245, OWC No. 652301 & 652303

William S. Newton, Esquire for the Petitioner
Barry Bernstein, Esquire for the Respondent

Before MELISSA LIN JONES, HEATHER C. LESLIE,² and LAWRENCE D. TARR, *Administrative Appeals Judges*.

MELISSA LIN JONES, *Administrative Appeals Judge*, for the Compensation Review Board.

DECISION AND REMAND ORDER

JURISDICTION

Jurisdiction is conferred upon the Compensation Review Board (“CRB”) pursuant to §§32-1521.01 and 32-1522 of the District of Columbia Workers’ Compensation Act of 1979, D.C. Code, as amended, §32-1501 *et seq.*, (“Act”), 7 DCMR 250, *et seq.*, and the Department of Employment Services Director’s Administrative Policy Issuance 05-01 (February 5, 2005).

FACTS OF RECORD AND PROCEDURAL HISTORY

¹ Although the Compensation Order on appeal notes Claimant’s name as “Joyce T. Brown,” the medical records submitted into evidence by Ms. Brown at the hearing spell her name “Joyce A. Brown.”

² Judge Leslie has been appointed as a temporary CRB member pursuant to the Department of Employment Services Director’s Administrative Policy Issuance No. 12-02 (June 20, 2012).

On May 1, 2008, Ms. Joyce A. Brown allegedly struck her hand on a shelf in a walk-in freezer while removing a box of cheese; when she was treated at Kaiser Permanente approximately two weeks after her alleged accident, Ms. Brown told her doctor she had suffered a work-related injury. On June 1, 2008, Ms. Brown allegedly struck her right hand on a cart in a walk-in freezer when a box of lettuce began to fall from the top shelf.

Ms. Brown's employer, Guest Services, denied compensability of Ms. Brown's workers' compensation claims, and the parties proceeded to a formal hearing to resolve the issues of timely notice, timely claim, accidental injury arising out of and in the course of employment, nature and extent, voluntary limitation of income, and failure to cooperate. On October 17, 2011, the presiding administrative law judge ("ALJ") denied Ms. Brown's claim for wage loss and medical benefits because Ms. Brown had not provided timely notice pursuant to the requirements of the Act.

On appeal, Ms. Brown contends her testimony is sufficient evidence to support a ruling that she provided timely notice. In the alternative, Ms. Brown argues Guest Services was not prejudiced by her failure to give written notice. Ms. Brown also argues that regardless of whether or not she provided timely notice, she is entitled to medical benefits under the Act; therefore, it was error for the ALJ to fail to rule on the issues of medical causal relationship and reasonableness and necessity of medical treatment.

Guest Services asserts the ALJ's finding that Ms. Brown was not credible supports the ruling that Ms. Brown did not provide timely notice. Guest Services requests we affirm the Compensation Order because the ALJ's findings of fact and conclusions of law are supported by substantial evidence.

ISSUES ON APPEAL

1. Did the ALJ properly analyze the issue of timely notice?
2. Was it error for the ALJ to rule solely on the issue of timely notice?

ANALYSIS³

Section 32-1513(a) of the Act states

Notice of any injury or death in respect of which compensation is payable under this chapter shall be given within 30 days after the date of such injury or death, or 30 days after the employee or beneficiary is aware or in the exercise of reasonable diligence

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 on Remand 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 Act. Consistent with this standard of review, the CRB is constrained to uphold a Compensation Order on Remand 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).

should have been aware of a relationship between the injury or death and the employment. Such notice shall be given to the Mayor and to the employer.

While it is true that there is a rebuttable presumption of timely notice,⁴ Ms. Brown relied upon her own testimony to invoke that presumption, but the ALJ found Ms. Brown “not to be credible based upon her testimony not being consistent with and supported by the evidence of record.”⁵ Ms. Brown’s unbelievable testimony is not sufficient to invoke the presumption of timely notice.

Similarly, Ms. Brown relied upon her own testimony as the basis for invoking actual knowledge. An employer is held to have actual knowledge “when there is an incident at work witnessed by an employer’s representative which ultimately results in an injury,” even if the seriousness of the incident is underestimated,⁶ and although Guest Services may have had actual knowledge that Ms. Brown hit her left hand on a shelf and her right hand on a cart at a later date, such events alone without some indication that Ms. Brown had sustained an injury resulting in a disability do not qualify as actual notice under the Act, particularly when the kitchen employees frequently hit their hands and when Ms. Brown continued to work after the events.⁷

The ALJ’s conclusion that Petitioner did not satisfy the notice requirements in the Act flows rationally from the credibility findings in the Compensation Order. We are not inclined to upset her credibility findings⁸ or the results that naturally flow from them and the substantial evidence of record.

Nonetheless, it is well-settled that failure to give timely notice does not bar a claimant from receiving medical benefits.⁹ The law, therefore, requires we remand this matter for further consideration of whether Ms. Brown sustained an accidental injury arising out of and in the course of employment which would entitle her to medical benefits if her claim was timely filed.

Finally, although the claim for relief as set forth in the Compensation Order includes “causally related medicals,”¹⁰ a review of the Joint Pre-Hearing Statement and the hearing transcript does not conclusively reveal whether reasonableness and necessity of medical treatment was raised before the

⁴ § 32-1521(2) 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:

(2) That sufficient notice of such claim has been given.

⁵ *Brown v. Guest Services*, AHD No. 10-245, OWC Nos. 652301 & 652303 (October 17, 2011), p. 2.

⁶ *Howrey & Simon v. DOES*, 531 A.2d 254, 255 (D.C. 1987).

⁷ See, *Enser v. Corbett Technologies*, CRB No. 08-100, AHD No. 04-055D, OWC No. 585940 (June 13, 2008).

⁸ The credibility findings of an ALJ are entitled to great weight. *Dell v. DOES*, 499 A.2d 102, 106 (D.C. 1985).

⁹ *Safeway Stores, Inc. v. DOES*, 832 A.2d 1267 (D.C. 2003).

¹⁰ *Brown, supra*, at p. 2.

ALJ. Reasonableness and necessity of medical treatment is not listed as an issue for resolution in the Joint Pre-Hearing Statement or in the Compensation Order, but the following was offered during opening statements:

She hasn't worked for three years and the UR as you'll see found the treatment's not reasonable and necessary. It doesn't feel that the Claimant needs any treatment. Feels the Claimant's at maximum medical improvement. Thinks the current treatment plan is not reasonable and necessary.

The symptoms aren't causally related. The Claimant's been at MMI since February of 2009. It says the subjective complaints aren't causally related. The pain's not causally related. The treatment that the UR believes that would have been appropriate is physical therapy not to exceed 12 sessions, some bracing, anti-inflammatory medication, work duty modification, and [*sic*] injection, an x-ray, MRI, bilateral braces, and return to work.^[11]

Given that a utilization review report has been submitted into evidence, if reasonableness and necessity of medical treatment properly was raised as an issue, the ALJ may need to address that issue on remand as well.

CONCLUSION AND ORDER

Although the ALJ properly analyzed the issue of timely notice, it was error for her to rule on that issue alone. This matter is REMANDED for further consideration of whether or not Ms. Brown sustained an accidental injury arising out of and in the course of employment which would entitle her to medical benefits if her claim was timely filed.

FOR THE COMPENSATION REVIEW BOARD:

MELISSA LIN JONES
Administrative Appeals Judge

September 11, 2012
DATE

¹¹ Hearing Transcript, pp. 18-19.