GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR

DEBORAH A. CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD

CRB NO. 16-070

DEDE FOLLY DJINDO,
Claimant–Petitioner,

v.

JW MARRIOTT HOTEL and
MARRIOTT CLAIMS SERVICES,
Self-Insured Employer/Respondent.

Appeal from an April 22, 2016 Compensation Order on Remand
by Administrative Law Judge Gregory P. Lambert
AHD No. 13-259A, OWC No. 694310

(Decided October 20, 2016)

David M. Snyder for Claimant
Sarah M. Burton for Employer

Before GENNET PURCELL, LINDA F. JORY and HEATHER C. LESLIE, *Administrative Appeals Judges*

GENNET PURCELL for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

The procedural history pertinent to the current appeal is described by the Compensation Review Board ("CRB") in a prior Decision and Remand Order ("DRO"):

> Dede Folly Djindo ("Claimant") worked for employer as a housekeeper. On June 21, 2012, Claimant complained of shock-like symptoms in her knees while pushing a housekeeping cart. She continued to work for a few hours until a mid-morning fire drill. Thereafter, she took a cab from work to INOVA Mount Vernon Hospital. She reported that her right knee gave out on her while at work. X-rays of both knees and the left ankle were negative. She followed up with Dr. Hugo Davalos, orthopaedic surgeon on June 25, 2012 who advised Claimant to stay off work through July 5, 2012. She saw two primary care physicians and was referred

to Dr. William F. Postma, an orthopedic surgeon on March 5, 2013. She reported she fell while pushing a cart. Dr. Postma referred Claimant to pain management specialist, Dr. Rommaan Ahmad.

Djindo v. JW Marriott Hotel, AHD No. 13-259A, OWC No. 694310 (August 12, 2015).

Claimant saw several physicians over the course of her treatment and received a Magnetic Resonance Imaging ("MRI") of her lumbar spine in February 2014 which was unremarkable, and her right and left knee on November of 2012, which was negative for any right knee conditions.

Claimant also saw Drs. Marc Danziger and Gary London for independent medical evaluations related to her claim. On August 10, 2012, Claimant's neurologist, Dr. Sanjiv Sahoo, determined that her exam was not consistent with myelopathy referred her for further evaluation to include labs for Lyme disease. Claimant tested positive for Lyme disease[1] and Sjögren's syndrome,[2] and has not worked since June 21, 2012.

Following a hearing for benefits held by an Administrative Law Judge ("ALJ") at the Administrative Hearings Division ("AHD"), on August 12, 2015, the ALJ issued a Compensation Order ("CO") which found Claimant did not suffer an injury that arose out of and in the course of her employment. *Djindo v. JW Marriott Hotel*, AHD No. 13-259A, OWC No. 694310 (August 12, 2015). Claimant appealed.

On January 29, 2016, the Compensation Review Board ("CRB") issued a Decision and Remand Order ("DRO") reversing the ALJ's determination that Employer met its burden of proof rebutting the presumption that Claimant sustained a work-related injury, vacating the CO and remanding the matter for further consideration. *Djindo v. JW Marriott Hotel*, CRB No. 15-146 (January 29, 2016)

On February 12, 2016, an ALJ issued a Compensation Order on Remand ("COR"). In that COR the ALJ concluded that Employer met the burden of proof necessary to justify termination of Claimant's benefits and that Claimant did not prove by a preponderance of the evidence that there was a medical causal relationship between her complaints and the alleged workplace injury. *Djindo v. JW Marriott Hotel, AHD No. 13-259A, OWC No. 694310* (February 12, 2016).

Claimant timely appealed the COR to the CRB by filing Claimant's Application for Review and Memorandum in Support of Application for Review ("Claimant's Brief"). In her appeal Claimant asserts that the COR finding that Claimant's work injury was not causally related to the work injury is not supported by substantial evidence and must be reversed. Claimant's Brief, page 11.

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[1] Lyme disease is caused by the bacterium *Borrelia burgdorferi* and is transmitted to humans through the bite of infected blacklegged ticks. Typical symptoms include fever, headache, fatigue, and a characteristic skin rash called erythema migrans. If left untreated, infection can spread to joints, the heart, and the nervous system. www.cdc.gov/lyme/index.html

[2] Sjögren's syndrome is an autoimmune disease that affects the glands that make moisture. It most often causes dryness in the mouth and eyes. It can also lead to dryness in other places that need moisture, such as the nose, throat, and skin. The immune system is supposed to fight disease by killing off harmful viruses and bacteria. But with autoimmune diseases, your immune system attacks parts of your own body by mistake. http://www.niams.nih.gov

Employer opposed the appeal by filing Employer's Opposition to Claimant's Application for Review ("Employer's Brief"). In its opposition, Employer asserts the COR is supported by substantial evidence and should be affirmed. We affirm.

ANALYSIS[3]

Claimant's first argument on appeal asserted that the COR contained errors of fact and law. Specifically, Claimant argues that the COR erred as a matter of law by relying on the opinion of Dr. London for the proposition that Claimant's right knee condition was not causally related to the work injury of June 21, 2012, as the CRB, in its DRO, held Dr. London's opinon was not evidence specific and comprehensive enough to sever the presumption of causation. We disagree with this argument and reject Claimant's understanding of our DRO remand provisions.

Claimant's assertion that we previously held that Dr. London's opinion was insufficient to serve as evidence severing the presumption of compensability is misguided. Claimant has indeed misread the DRO at issue in this matter. To be clear, the CO in this case was remanded due to the ALJ's failure to acknowledge, and apply, the standard enunciated by the DCCA in *Washington Post v. DOES and Raymond Reynolds,* 852 A.2d 909 (D.C. 2004), governing IME reports relied upon to rebut the presumption. The CRB made no determination in the DRO as to the adequacy or reliability of Dr. London's opinion.

Indeed, the DRO plainly stated:

> Nevertheless, we are precluded from making our own determination from the record and offer no opinion now as to whether Employer has met its burden.

DRO at 3.

Turning now to the COR, Claimant asserts Employer failed to rebut the presumption that Claimant's injury arose in the course of her employment and the COR relied upon evidence that was neither specific, nor comprehensive enough in accordance with the governing law.

As Claimant argues, the parties do not dispute that Claimant was properly afforded the presumption that she sustained an accidental injury on June 21, 2012. Once afforded however, a presumption survives only in the absence of substantial evidence to the contrary showing that a claimant's disability did not arise out of an in the course of, her employment. *See Fereirra v. DOES*, 531 A.2d 651, 655 (D.C. 1987). The presumption then operates to establish a causal connection between the disability and the work-related event, activity, or requirement." *Clark v.*

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[3] The scope of review by the CRB as established by the District of Columbia Workers' Compensation Act ("Act") and as contained in the governing regulations is limited to making a determination as to whether the factual findings of a Compensation Order on appeal are based upon substantial evidence in the record, and whether the legal conclusions drawn from those facts flow rationally from those facts and are otherwise in accordance with applicable law. D.C. Code §32-1521.01(d)(2)(A). "Substantial evidence" as defined by the District of Columbia Court of Appeals ("DCCA"), is such evidence as a reasonable person might accept to support a particular conclusion. *Marriott Int'l. v. DOES*, 834 A.2d 882 (D.C. 2003) ("*Marriott*"). Consistent with this scope of review, the CRB is also bound to uphold a Compensation Order that is supported by substantial evidence, even if there is also contained within the record under review substantial evidence to support a contrary conclusion, and even where the members of the CRB review panel considering the appeal might have reached a contrary conclusion. *Marriott*, 834 A.2d at 885.

DOES, 743 A.2d 722, 728 (D.C. 2000) (*quoting Ferreira, supra,* 531 A.2d at 655). If the employer proffers substantial evidence to rebut the presumption, then the presumption drops out of the case entirely, and the burden reverts to the claimant to prove his entitlement to benefits by the preponderance of the evidence. *McNeal v. DOES*, 917 A.2d 652, 658 (D.C. 2007); *Washington Post v. DOES*, 852 A.2d 909, 911 (D.C. 2004).

In rebuttal of the presumption afforded to Claimant, Employer offered Dr. Danziger's IME opinion stating that Claimant suffered from the idiopathic condition of Lyme disease. The prevailing law of this jurisdiction defines an idiopathic condition as "a [condition] due solely to the physical or mental condition of the Claimant and not due to any hazard attributable the conditions of employment." *Georgetown Univ. v. DOES*, 971 A.2d 909, 916 (D.C. 2009). As the COR notes, idiopathic conditions are not covered by the Act. Moreover, as was held in *Georgetown*, and as the COR correctly discussed, the question in this case is not, however, whether the aggravation of a pre-existing injury is compensable...but rather whether the aggravating incident can be deemed to have arisen out of and in the course of employment. *Id* at 919. This is not the case in the instant matter.

In his determination that Employer's evidence was sufficient to rebut Claimant's presumption of causation, the ALJ discussed:

> Based upon a re-review of the evidentiary record and the law, I again conclude that Marriott rebutted the presumption that [Claimant] alleged injury arose of out of her employment. [Claimant] had Lyme Disease. [. . .] "Her Lyme Disease," wrote Dr. Danziger, "is a more reasonable and plausible explanation for the symptomatology and the constellation of issues she had... If I were to pick one issue that might be some source of the pain, Lyme Disease far and away outweighs any of the issues that might have occurred on 6/21/12, which really seem to be somewhat of a non-entity."

COR at 6.

Claimant asserts Dr. Danziger's opinon is neither specific nor comprehensive enough to break the presumption that Claimant's injury arose out of her employment and speaks only to her "present state of being, but not her injury that occurred in 2012 and its causal relationship to her employment." Further, that while her knee condition may have occurred concurrently with her contraction of Lyme disease, "the aggravation rule requires that for purposes of resolving the arising out of employment prong" the evidence supports Claimant suffered a work injury because her work duties were capable of causing a knee strain or sprain. We disagree. The preponderance of the evidence supports the conclusion that Claimant's condition throughout the tenure of her pain and symptomology is most attributable to her Lyme disease, as diagnosed in 2012.

Claimant also argues that the finding that Claimant's work injury did not arise out of employment is not supported by substantial evidence because the ALJ's finding relied on a medical evaluation that opined to a June 21, 2012, knee strain injury suffered by Claimant.

With regard to Dr. Danziger's opinon regarding Claimant's knee strain, the ALJ wrote:

> "[Claimant has," wrote Dr. Danziger, "normal knees that never sustained any significant injury. There was no trauma, twist or anything that would account for the claims of an ACL injury or other injury whatsoever." EE 1 at 5. Even so, because the insidious development of an injury can be compensable , some language used by Dr. Danziger supports Ms. Djindo's claim. EE 1 at 4 ("There was no fall, twist, striking incident or any type of definable 'injury.' It sounds like she was just pushing the car and felt overuse."). And years later, he opines that there could have been a "mild strain" that might have required treatment, but that opinion is couched in a larger discussion directed toward challenging her "hyperreactive pain response" and perpetuated "illness behavior." EE 16 at 47. His opinions are not the only evidence relied upon by [Employer].

COR at 8.

While the ALJ indeed discussed Dr. Danziger's medical evaluation of Claimant, including his opinion suggesting a "mild strain" may have occurred due to overuse, the ALJ explained that his opinion was couched in a larger discussion directed toward his challenging of her hyperactive pain response, symptomatic magnification and illness behavior. Dr. Danziger also noted a discrepancy between Claimant's complaints which focused on her right knee and MRI findings noting degeneration in her left knee. Dr. Danziger thus concluded his evaluation by stating that 'there is absolutely no indication of any injury that occurred on June 21, 2012." Dr. Danziger's opinion did not, as Claimant argued, support any finding of legal causation of the left knee condition to the work injury.

Moreover, in weighing the preponderance of the evidence in this matter, the ALJ relied primarily on Dr. London's IME which clarified that, in his opinon, Claimant's treating physicians merely responded to Claimant's subjective complaints "without any objective data by examination, x-rays, EMG/NCV or MRI scans" to support her claim of injury. The COR outlined Dr. London's opinion emphasizing that Claimant's exaggerations were "pronounced" stating "she essentially drags the right leg and does not put pressure on the right foot." COR at 8.

Indeed, Claimant's own medical records are replete with support for the ALJ's finding that Claimant suffered from an idiopathic condition. Claimant's assertions that the COR improperly concluded that Employer rebutted the presumption that there was an injury that arose out of and in the course of Claimant's employment are not supported by substantial evidence in this case.

CONCLUSION AND ORDER

The conclusion that Claimant did not prove by a preponderance of the evidence that there was a medical-causal relationship between her complaints and the alleged workplace injury is supported by substantial evidence and is AFFIRMED.

So ordered.