

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

Department of Employment Services

MURIEL BOWSER  
MAYOR



ODIE DONALD II  
ACTING DIRECTOR

COMPENSATION REVIEW BOARD

**CRB No. 17-001**

**KEIBA WILLIAMS,  
Claimant-Respondent**

v.

**SODEXHO, INC. and  
GALLAGHER BASSETT SERVICES,  
Employer/Third-Party Administrator-Petitioner.**

Appeal from a December 9, 2016 Compensation Order  
by Administrative Law Judge Amelia G. Govan  
AHD No. 16-466, OWC No. 733313

DEPT. OF EMPLOYMENT  
SERVICES  
COMPENSATION REVIEW  
BOARD  
2017 MAR 27 PM 12 22

(Decided March 27, 2017)

William J. Inman for Claimant  
Jason A. Heller for Employer

Before LINDA F. JORY, GENNET PURCELL, and JEFFREY P. RUSSELL, *Administrative Appeals Judges.*

LINDA F. JORY for the Compensation Review Board.

**DECISION AND ORDER**

**FACTS OF RECORD AND PROCEDURAL HISTORY**

Keiba Williams (“Claimant”) worked as a food preparer at a cafeteria operated by (“Employer”). Claimant sustained injury to her left knee on September 6, 2015, when she slipped and fell on a wet floor in the course of her employment. Claimant was treated at the Howard University Hospital Emergency Room on the same day for complaints of left knee pain. On September 7, 2015, Claimant went to the Shady Grove Adventist Hospital where she reported slipping on water and catching herself with her arms the day before. She complained of pain and swelling of the left leg and right arm.

The following week, Claimant sought treatment from her primary care physicians at Medical Access. She reported bilateral knee pain with the left knee pain greater than her right knee pain as a result of slipping on a wet floor and both knees were x-rayed. By December 28, 2015, the Medical Access physicians provided work restrictions of standing no more than 15 minutes per hour, no lifting more than ten pounds, and no kneeling, squatting or climbing.

Dr. Dipa Raval of Medical Access referred Claimant to orthopedic specialist, Joseph Hanna, MD who first examined Claimant in January 2016. Claimant underwent magnetic resonance imaging (“MRI”) of her left knee on January 7, 2016, which revealed a horizontal tear of the left knee medical meniscus. Dr. Hanna performed a repair of the torn meniscus on March 28, 2016

Dr. Hanna reported on August 4, 2016, that Claimant’s right knee was hurting more than the left one and he recommended physical therapy for the right knee and continued the prescription for physical therapy for the left knee. Dr. Hanna continued to recommend physical therapy for both knees and restricted her from returning to work through October 28, 2016.

At Employer’s request, Claimant was examined on November 30, 2015, and July 8, 2016, by orthopedic specialist Clifford Hinkes, MD. Dr. Hinkes reported that the first reference to the right knee was on September 14, 2015 and that medical testing or treatment for the right knee was not causally connected to Claimant’s September 6, 2015 work accident.

Claimant requested a formal hearing seeking temporary total disability (“TTD”), from July 16, 2016 to the present and continuing and authorization of medical treatment prescribed by Dr. Hanna. A formal hearing was held before an administrative law judge (“ALJ”) in the Administrative Hearings Division (“AHD”) of the Department of Employment Services (“DOES”).

A Compensation Order (“CO”) issued on December 9, 2016, wherein the ALJ concluded Claimant had proven by a preponderance of the evidence, that her right knee symptoms requiring treatment are causally related to her employment and that Claimant was entitled to the requested TTD benefits and ongoing medical treatment including physical therapy as prescribed by Dr. Hanna.

Employer timely appealed the CO to the Compensation Review Board (“CRB”) by filing Employer and Insurer’s Application for Review and Memorandum of Points and Authorities in Support of Application for Review (“Employer’s Brief”). Claimant filed Claimant’s Opposition to the Application for Review (“Claimant’s Brief”).

#### ANALYSIS

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.

At the outset, Employer asserts that the ALJ's findings that the Claimant's testimony was uncontradicted is not supported by substantial evidence. Specifically, Employer asserts:

. . . in making a finding for causal relationship of the right knee, Judge Govan went so far as to say that the Claimant's "uncontradicted testimony indicates her right knee problems became symptomatic within days of the work accident, were exacerbated by her favoring the left knee . . ." Judge Govan's conclusions are not based on the substantial evidence before her. In fact, in some areas of the Compensation Order, Judge Govan attempts to explain the Claimant's inconsistencies by suggesting the Claimant's injury came about by favoring the injured knee, despite the Claimants' testimony at the hearing that she injured it on September 6, 2015 when she struck it during the fall. In other areas of the Order, Judge Govan suggests the lack of mention of the initial right knee injury is due to the fact that the left knee was so much more severe, and points out with emphasis that swelling was noted in the right knee early on. In other areas of the Compensation Order, Judge Govan simply just calls the Claimant's testimony "uncontradicted" without acknowledging her recorded interview at least three days after the injury with the Insurer and her denial of any injury other than her left knee.

Employer's Brief at 8, 9. (citations omitted).

The CRB's appellate review duty is not to determine whether there is contrary evidence in the record to reach a different conclusion than that reached by the ALJ. The CRB's responsibility is to judge whether the ALJ's factual findings and legal conclusions are supported by substantial evidence and in accordance with the law.

As the evidentiary record is devoid of a recorded interview of Claimant we are not persuaded by Employer's argument. Nevertheless with regard to Employer's limited argument, we have reviewed the evidence and conclude the ALJ's determination that Claimant's testimony that her right knee problem became symptomatic within days of the work accident is indeed supported by the September 14, 2015 record of Dr. Dipa Raval who provided the following history:

The patient is a 46 year old female who presents with a knee injury. The patient sustained an injury to the left knee and right knee. This occurred 9 day(s) ago at work. The injury resulted from a fall (Patient was @ work & went into the bathroom. She slipped & fell because of a slippery, wet floor.) Previous presentation included knee pain and swelling. Past evaluation has included x-rays of the knee (Patient went to ER & had an xray of her left knee performed. Her right knee was not hurting @ the time.) Past treatment has included nonsteroidal anti-inflammatory drugs. Symptoms include pain and swelling. Symptoms are located in the bilateral knees. The pain radiates to the hip. The patient describes

the pain as sharp. Onset was immediately after the injury. The patient describes symptoms as severe and worsening. Associated symptoms do not include lower extremity weakness, lower extremity numbness or injury to other areas.

CE 1 at 1.

Employer further asserts the ALJ erred in finding Claimant met her burden of establishing by a preponderance of the evidence that there was a causal relationship between her right knee complaints and the September 6, 2015 fall. Specifically, Employer asserts:

. . . . Once the Employer rebutted the presumption with the opinions of Dr. Hinkes, the burden was then on the Claimant to establish her claim for relief with a medical causal relationship opinion. None can be found in the record. Therefore, Judge Govan's "reliance on Dr. Hanna's opinion" in determining there is a causal connection between the Claimant's right knee condition is not based on the substantial evidence in the record.

The Administrative Law Judge has great discretion in assessing the credibility of the physicians, including the treating physician but at no time can an Administrative Law Judge enhance the written position of the treating physician to support a causal relationship finding. There is no opinion causally relating the Claimant's right knee that Judge Govan can rely on to support the Compensation Order finding of a causal relationship. Judge Govan's legal conclusions are not based on substantial evidence, and in some cases, and in some cases, in direct contradiction with the evidence presented in the record.

Employer's Brief at 10, 11. (citations omitted)

We disagree with Employer's position. We do not find the ALJ attempted to enhance the opinion of Claimant's treating surgeon Dr. Hanna and we also disagree that the ALJ's conclusion is in direct contradiction with the evidence presented in the record. We further disagree with Employer's assertion that Dr. Hanna's opinion is not valid because he did not actually provide treatment to Claimant's right knee. Dr. Hanna provided a legitimate explanation for not initially treating Claimant's right knee complaints of pain even at his initial office visit:

She does state that her right knee has been hurting since then, but we are only seeing her for the left knee since that is what has been approved with Workers Comp. She has pain and swelling in the knee. The injury happened in September. She stated that she had no pain prior to the injury and has never been treated for knee pain beforehand.

CE 3.

This Panel finds it reasonable that had treatment been approved by the carrier, Dr. Hanna would have provided treatment to Claimant's right knee if not initially, but subsequently, as Dr.

Hanna's reports definitely indicated Claimant complained of right knee pain while receiving treatment for her left knee.

We reject Employer's argument and conclude the ALJ, while she was not required to, has adequately explained why she did not reject the opinion of the treating physicians in favor of the IME physician with regard to the relationship between Claimant's right knee pain and the September 6, 2015 work related fall.

Inasmuch as Employer has not challenged the CO's remaining conclusions or the award of benefits, the CO is affirmed in total.

#### CONCLUSION AND ORDER

The CO's conclusion that Claimant's current right knee symptoms and her need for medical treatment are causally related to her September 6, 2015 work injury is supported by substantial evidence, is in accordance with the law and is **AFFIRMED**.

*So ordered.*