GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR

ODIE DONALD II
ACTING DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 17-007

MICHAEL GRAHAM,
Claimant-Respondent,

v.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY,
Employer-Petitioner.

Appeal from a December 20, 2016 Compensation Order
by Administrative Law Judge Joan E. Knight
AHD No. 16-509, OWC No. 744047

(Decided April 10, 2017)

Daniel P. Moloney for Claimant
Sarah Rollman for Employer

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

LINDA F. JORY for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

Michael Graham ("Claimant") worked as a bus services operation manager for Washington Metropolitan Area Transit Authority ("Employer"). On March 30, 2016, Claimant was investigating a bus accident that involved property damage which required him to get onto the bus to interview the bus operator. As Claimant stepped down off of the bus, he twisted his left knee. He felt discomfort but was able to work. On April 4, 2016, Claimant reported to work and advised Linda Pinkard, an assistant superintendent, that he hurt his knee and was unable to work. Claimant sought medical treatment for his left knee from Kaiser Permanente on April 4, 2016. On April 5, 2016, Claimant called assistant superintendent for bus operations, Rudolph Purvis. Mr. Purvis filled out an electronic "Report of Absence Report" indicating Claimant had an "off-duty injury" to his left leg.

On April 24, 2016, Claimant reported to Ms. Pinkard that he wanted to report he had a work injury. Ms. Pinkard completed Employer's First Report of Injury on April 26, 2016, indicating Claimant "states when stepping off a bus, his left knee buckled causing slight pain at that time and in the following days the pain worsened."

On May 3, 2016, Claimant sought treatment from orthopedic surgeon Dr. Andrew Siekanowicz and advised him that he twisted his left knee stepping off of a bus. Dr. Siekanowicz provided him a knee brace and ordered a magnetic resonance imaging test ("MRI"). The MRI was performed on May 24, 2016, which revealed a complex tear of the medial meniscus.

Claimant remains off of work and under the care of Dr. Siekanowicz and would like to undergo surgery to his left knee.

The parties attended a formal hearing at the Administrative Hearings Division ("AHD") on November 16, 2016. Claimant sought authorization for a left knee arthroscopy, payment of causally related medical expenses and temporary total disability ("TTD") from April 1, 2016 to the present and continuing. The only issue listed by the administrative law judge ("ALJ") was:

> Did Claimant sustain an accidental injury on March 30, 2016, arising out of and in the course of his employment?

Graham v. WMATA, AHD No. 16-509, OWC 744047 (December 20, 2016) ("CO") at 2. (footnote omitted)

The ALJ concluded Claimant did meet his burden of establishing that he sustained an accidental injury arising out of and in the course of his employment on March 30, 2016 and granted Claimant's claim for relief in its entirety.

Employer timely appealed the CO to the Compensation Review Board ("CRB") by filing Employer's Application for Review and Memorandum of Points and Authorities in Support of Application for Review ("Employer's Brief"). In its appeal, Employer asserts that the CO is not supported by substantial evidence and is not in accordance with the law and must be reversed.

Claimant opposed the appeal by filing a Memorandum in Opposition to Employer's Application for Review. ("Claimant's Brief"). In its opposition, Claimant requests an affirmation of the CO and asserts that the CO is in accordance with prevailing law and is supported by substantial evidence.

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.

The ALJ determined, and Employer has not challenged, the determination that Claimant invoked the presumption with Claimant's testimony and a report of Dr. Siekanowicz. Employer asserts instead that in weighing the evidence "The ALJ misstated the medical evidence and failed to acknowledge and address evidence presented by WMATA in opposition to Claimant's claim".

Specifically, Employer asserts:

> Starting with the medical evidence, the ALJ states that Claimant was initially evaluated by Kaiser on April 4, 2016 for left knee joint pain and swelling and that he "believed he twisted his knee stepping off a bus . . . has difficulty getting out of a car and climbing stairs . . " This not [sic] what the Kaiser records state.
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> The record of Claimant's first visit to Kaiser on April 4, 2016 states as follows. "Patient presents to clinic with pain in his left knee since last Thursday. Has difficulty walking and climbing stairs. He is a supervisor at Metro and is unsure whether getting in and out of a car and climbing stairs caused this. Patient has gout, but this does not feel like a gout flare up. States that it has been slightly swelling . . ." Per this record, the problems started on Thursday, not Wednesday as alleged by Claimant. Further, contrary to the finding of the ALJ, Kaiser does not report that Claimant believed he twisted his knee stepping of a bus. Kaiser does not conclude that anything that happened at work caused the injury. Finally, Claimant did not report "believing that he twisted his knee stepping off a bus" at any Kaiser appointments. Rather, he consistently reported that he had no trauma.

Employer's Brief at 11, 12.

We agree that the ALJ stated in her findings:

> On April 4 2016, Claimant was evaluated at Kaiser Permanente for left knee joint pain and swelling. Claimant has no history of left knee problems and informed the attending physician's assistant that he believed he twisted his knee stepping off a bus. Nursing notes from Wendy Coronado-Perez, stated Claimant presented with "left knee pain since last Thursday . . . he has difficulty getting out of car and climbing stairs. . . He is a supervisor at Metro and is unsure whether getting in and out of a car and climbing stairs cause this." CE 1, pp. 7-8; EE 2; HT pp. 35-37.

CO at 3.

Our review of the April 4, 2016 Kaiser Permanente record reveals no mention by an "attending physician's assistant" that Claimant believed he twisted his knee stepping off a bus. We further agree with Employer that Claimant reported at Kaiser visits that he had not had any trauma.

However, we find the ALJ's error does not amount to reversible error as the ALJ explained in her analysis that the Kaiser records support the Claimant's testimony that Claimant did not think he had done anything that he thought would incapacitate him.

We disagree, however, with Employer's assertion that the ALJ failed to acknowledge and address evidence presented by WMATA in opposition to Claimant's claim:

> The ALJ weighed Claimant's evidence, which included his testimony and medical records, against the testimony of WMATA's witness, Mr. Purvis, who stated that Claimant informed him that the injury was an off duty injury. After weighing only this evidence, the ALJ was more persuaded by Claimant's evidence and awarded Claimant benefits. She based this determination that Mr. Purvis' testimony that Claimant reported that his left leg injury took place off the job was elicited through leading questions and because Mr. Purvis did not elaborate any further on the reason he was given for the absence when questioned from the bench. This is not supported by substantial evidence in the record. For reasons discussed below, this decision is also not in accordance with applicable law because the ALJ failed to acknowledge and discuss other evidence presented by WMATA in opposition to the claim and also misstated the evidence in the record and relied on her own misstatements.

Employer's Brief at 6 (citation omitted).

Employer challenged the ALJ's description of Mr. Purvis' testimony as "elicited through leading questions" by providing the legal definition of a "leading question" and discussing in detail many questions asked of Mr. Purvis as well as his answers. While we agree with Employer that the questions presented to Employer's witness were not asked in a leading manner, we nevertheless find that the nature of Employer's counsel's questioning is not the sole basis of the ALJ's determination of the weight afforded Mr. Purvis's testimony.

In weighing the evidence the ALJ stated:

> Claimant testified consistently, that he just thought he only "tweaked" his knee on March 30, 2016 after he stepped off of the transit bus and did not initially fell [sic] like he was injured. Claimant's testimony is supported by medical records dated April 5, 2016, from Kaiser Permanente that states Claimant had "left knee pain since last Thursday . . . he has difficulty getting out of car [sic] and climbing stairs . . . He is a supervisor at Metro and is unsure whether getting in and out of a car and climbing stairs caused this." Also Dr. Siekanowicz's treating notes indicate that while at work, the patient twisted [sic] left knee stepping off of the bus.
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> Claimant's testimony that he initially thought when he stepped off of the bus his left knee discomfort was just a "strain" and was no big deal. This evidence is weighed against the opposing testimony from Mr. Purvis who testified that Claimant specifically called out from work stating on April 5, 2016, stating he

had a left leg injury that took place off duty. Mr. Purvis' testimony was that he entered Claimant's absence into employer's database and a Report of Absence Due to Illness or Injury was electronically generated. Under the comment section of the Report it states "operator stated that he had a left leg injury that took place off the job. Operator was reminded of the sick policy." It is noted that Mr. Purvis's testimony that Claimant called out from work for an "off-the–job-injury" to his left knee was elicited by leading questions from Employer's counsel. When questioned from the bench about the telephone conversation with Claimant Mr. Purvis testified he asked Claimant if it was an on-duty or off-duty injury and Claimant gave him a reason why he wouldn't be in and he did not elaborate any further as to the reason he said he was given.

In weighing the competing evidence, the undersigned is not persuaded by the testimony of Mr. Purvis to find it reliable against Claimant's testimony that is supported by his treatment notes. Upon consideration and review of the record evidence in its entirety, Mr. Purvis' version of events cannot be credited.

CO at 6, 7.

We disagree that the ALJ disregarded any of the evidence of record. While it is unfortunate the ALJ did not elaborate on the testimony provided with regard to the form that Mr. Purvis completed electronically, we find it pertinent to note that the form incorrectly calls Claimant an "operator" and his title is "bus services operation manager". *See* EE 1; HT at 37-39. Further the form does not identify Claimant's injury as to his left knee but instead to his left leg. Thus, we find it has no probative value and the ALJ's failure to refer to the form is also not reversible error.

That the ALJ found Claimant's testimony to be more credible and reliable than that of Employer's witness is within the ALJ's discretion and we can find no reason to disturb her ultimate conclusion that Claimant suffered an injury to his left knee on March 30, 2016, that arose out of and in the course of his employment. An ALJ's credibility determination is given great deference, due to the ALJ's opportunity to observe the nature and character of a witness's demeanor. *Dell v. DOES*, 499 A.2d 102, 106 (D.C. 1985); *Georgetown University v. DOES*, 830 A.2d 865, 870 (D.C. 2003).

The record has been reviewed and we find that the ALJ's factual findings are supported by substantial evidence on the record as a whole, and are therefore conclusive. *Marriott, supra*; D.C. Workers' Compensation Act of 1979, as amended, D.C. Code Ann. §32-1501 to 32-1545, at §32-1521.01(d)(2)(A). We further find Employer is requesting that we reweigh the evidence, which is an undertaking beyond our authority, because the CRB's authority is limited to determining whether a Compensation Order is supported by substantial evidence. *Marriott, supra.*

CONCLUSION AND ORDER

The Administrative Law Judge's conclusion that Claimant sustained an accidental injury to his left knee on March 30, 2016 that arose out of and in the course of his employment is supported by substantial evidence and in accordance with the law. The Compensation Order awarding Claimant's claim for relief is therefore AFFIRMED.

So ordered.