

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

Labor Standards Bureau

**Office of Hearings and Adjudication
COMPENSATION REVIEW BOARD**



**(202) 671-1394-Voice
(202) 673-6402-Fax**

CRB No. 03-31

JEANNISE PROCTOR,

Claimant – Respondent

v.

GEORGETOWN UNIVERSITY HOSPITAL,

Self-Insured Employer – Petitioner

Appeal from a Compensation Order of
Administrative Law Judge Linda F. Jory
OHA No. 02-281, OWC No. 569076

William S. Hopkins, Esq., for the Petitioner

Matthew Peffer, Esq., for the Respondent

Before E. COOPER BROWN, *Acting Chief Administrative Appeals Judge*, and SHARMAN J. MONROE, and JEFFREY P. RUSSELL, *Administrative Appeals Judges*.

SHARMAN J. MONROE, *Administrative Appeals Judge*, on behalf of the Review Panel:

DECISION AND ORDER

JURISDICTION

Jurisdiction is conferred upon the Compensation Review Board pursuant to D.C. Official Code §§ 32-1521.01 and 32-1522 (2004), 7 DCMR § 230, and the Department of Employment Services Director's Directive, Administrative Policy Issuance 05-01 (February 5, 2005).¹

¹ Pursuant to Administrative Policy Issuance No. 05-01, dated February 5, 2005, the Director of the Department of Employment Services realigned the Office of Hearings and Adjudication to include, *inter alia*, establishment of the Compensation Review Board (CRB) in implementation of the District of Columbia Fiscal Year 2005 Budget Support Act of 2004, Title J, the D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, sec. 1102 (Oct. 1, 1994), *codified at* D.C. Code Ann. § 32-1521.01 (2005). In accordance with the Director's Policy Issuance, the CRB replaces the Office of the Director in providing administrative appellate review and disposition of workers' and disability compensation claims arising under the D.C. Workers' Compensation Act of 1979, as amended, D.C. Code Ann. §§ 32-1501 to 32-1545 (2005) and the D.C. Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Code Ann. §§ 1-623.1 to 1.643.7 (2005), including responsibility for

BACKGROUND

This appeal follows the issuance of a Compensation Order from the Administrative Hearings Division (AHD) of the Office of Hearings and Adjudication (OHA) in the District of Columbia Department of Employment Services (DOES). In that Compensation Order, which was filed on February 6, 2003, the Administrative Law Judge (ALJ) awarded the requested temporary total disability benefits from February 18, 2002 to April 1, 2002, interest, authorization for medical treatment and reasonably related medical expenses. The Self-Insured Employer (Petitioner) now seeks review of that Compensation Order.

As grounds for this appeal, Petitioner alleges as error that the Compensation Order is not based upon substantial evidence in the record.

ANALYSIS

As an initial matter, the standard of review by the Compensation Review Board (CRB) and this Review Panel, as established by the Act and as contained in the governing regulations, is limited to making a determination as to whether the factual findings of the Compensation Order are based upon substantial evidence in the record, and whether the legal conclusions drawn from those facts are in accordance with applicable law. D.C. Official Code § 32-1521.01(d)(2)(A). “Substantial evidence,” as defined by the District of Columbia Court of Appeals, is such evidence as a reasonable person might accept to support a particular conclusion. *Marriott Int’l. v. District of Columbia Department of Employment Services*, 834 A.2d 882 (D.C. App. 2003). Consistent with this standard of review, the CRB and this Review Panel are constrained 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 reviewing authority might have reached a contrary conclusion. *Marriott*, 834 A.2d at 885.

Turning to the case under review herein, Petitioner alleges that the ALJ’s decision finding a medical causal relationship between the Respondent’s current right knee condition and the May 29, 2001 is not grounded in substantial evidence. The Petitioner asserts that the opinion of the independent medical examiner, Dr. Robert O. Gordon, is more specific and comprehensive than the opinion of the treating physician, Dr. John Klimkiewicz on whose opinion the ALJ relied in making her decision. Dr. Gordon opined that the Respondent’s right knee medial meniscal tear was not causally related to the May 29, 2001 work incident, but was related to her March 4, 2001 knee aspiration. The Respondent counters that the ALJ’s decision is supported by substantial evidence and that ALJ properly accorded more weight to the opinion of the treating physician.

In the instant case, the ALJ found, and the finding is supported by substantial evidence, that the Respondent invoked, and the Petitioner rebutted, the presumption of compensability. Without the presumption, the Respondent was required to prove that her right knee disability was

administrative appeals filed prior to October 1, 2004, the effective date of the D.C. Workers’ Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004.

causally related to her May 29, 2001 work injury. From an analytical standpoint, the ALJ was required to weigh the parties' respective evidence to determine whether the Respondent's current right knee disability was causally related to her May 29, 2001 work injury. *See Washington Hospital Center v. District of Columbia Department of Employment Services*, 746 A.2d 278, 282 (D.C., 2000).

In deciding that a causal relationship existed, the ALJ rejected the Petitioner's contention that the door of the soda container could not have hit both of the Respondent's knees as alleged and thereby causing her right knee injury. The ALJ specifically rejected the opinion of Dr. Robert Gordon, the independent medical examiner, that the Respondent's torn meniscus pre-existed the May work injury, labeling it as speculative. Rather, the ALJ relied upon the opinion of Dr. Klimkiewicz, coupled with the consistency in information found in the employee health, physical therapy and emergency room triage reports concerning the Respondent's history and complaints relative to the May 29, 2001 work injury. A review of the record shows that the Petitioner has had consistent complaints of right knee pain since the May 29, 2001 work injury despite treatment with medication and physical therapy. The record also shows that the MRI scan of the Petitioner's right knee revealed a tear over the posterior horn of the medial meniscus which is consistent with her of complaints of pain. Dr. Klimkiewicz opined that it was not "unreasonable to suppose" that the work incident caused the tear or that the incident may have been "an acute on chronic phenomenon as far as the tear was concerned." Claimant Exhibit No. 1. Assuming arguendo, as the ALJ noted, that the Petitioner's current right knee complaints were not directly caused by the May 2001 work incident, in this jurisdiction, a work injury that causes an asymptomatic condition to become symptomatic is compensable. *See Compensation Order at p. 7, n. 4*

CONCLUSION

The Compensation Order of February 6, 2003 is supported by substantial evidence in the record and is in accordance with the law.

ORDER

The Compensation Order of February 6, 2003 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

SHARMAN J. MONROE
Administrative Appeals Judge

June 29, 2005
DATE