

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



F. THOMAS LUPARELLO
ACTING DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 14-033

**SARAH C. COLLINS,
Claimant-Respondent,**

v.

**LIBRARY OF CONGRESS FEDERAL CREDIT UNION and
LIBERTY MUTUAL INSURANCE COMPANY,
Employer/Insurer-Petitioner.**

Appeal from a February 26, 2014 Compensation Order by
Administrative Law Judge Amelia G. Govan
AHD No. 13-068A, OWC No. 693522

Christopher R. Costabile for the Petitioner
David M. Snyder for the Respondent

Before MELISSA LIN JONES, HEATHER C. LESLIE, and JEFFREY P. RUSSELL, *Administrative Appeals Judges.*

MELISSA LIN JONES for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

Ms. Sarah C. Collins has worked for the Library of Congress Federal Credit Union (“Credit Union”) since 2004 as a member services teller. Ms. Collins has had right hip arthritis since 2009, and as a result of striking her right knee on her metal, work-station cabinets in May 2011 and April 2012, Ms. Collins was reassigned to a different work station. Her new station included a desk with a metal cabinet on the left side only.

On June 15, 2012, Ms. Collins struck her left knee on the metal cabinet at her work station. Ms. Collins initially reported striking her right knee; however, she corrected that report to indicate she had struck her left knee.

Ms. Collins continued working until July 2, 2012. She sought medical treatment with Kaiser Permanente and was certified as unable to work until a formal ergonomic evaluation of her work

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station was conducted. She returned to work on February 4, 2013 after the ergonomic evaluation was completed.

On October 18, 2013, Dr. Donald Saltzman examined Ms. Collins at the Credit Union's request. Dr. Saltzman evaluated Ms. Collins for an April 5, 2012 accident and was unable to "relate [Ms. Collins'] right hip, left knee, or ... lower back problems to this accident."¹

Ms. Collins filed a claim for temporary total disability benefits from July 2, 2012 to February 4, 2013, authorization for medical treatment, and payment of causally-related medical expenses. Following a formal hearing, an administrative law judge ("ALJ") granted Ms. Collins' claim for relief in its entirety because the Credit Union had not rebutted the presumption of compensability regarding Ms. Collins' left knee injury and Ms. Collins had proven entitlement to wage loss benefits and medical benefits. The ALJ ruled Ms. Collins' right hip symptoms and low back symptoms are not causally related to her June 15, 2012 on-the-job accident.²

The Credit Union appeals the portions of the ALJ's February 26, 2014 Compensation Order which find Ms. Collins left knee injury compensable and grant her wage loss benefits and medical benefits. The Credit Union argues Ms. Collins did not offer sufficient evidence to invoke the presumption of compensability; the details of this argument are set forth below. In the alternative, the Credit Union argues the evidence of record is sufficient to rebut the presumption of compensability; again, the details of this argument are set forth below. Finally, the Credit Union argues no doctor has indicated Ms. Collins was unable to work as a result of a left knee injury. The Credit Union requests the Compensation Review Board ("CRB") reverse the Compensation Order.

In response, Ms. Collins asserts the Credit Union is asking the CRB to reweigh the evidence which is not appropriate because the Compensation Order is supported by substantial evidence in the record. Ms. Collins contends that despite inconsistencies in the record she invoked the presumption of compensability and that the Credit Union's evidence is insufficient to rebut this statutory presumption because none of that evidence disputes Ms. Collins injured her left knee on June 15, 2012. Finally, Ms. Collins contends the opinion of her treating physician justifies the ALJ's ruling that Ms. Collins is entitled to wage loss benefits and medical benefits. Ms. Collins requests the CRB affirm the Compensation Order.

ISSUES ON APPEAL

1. Did Ms. Collins present sufficient evidence to invoke the presumption of compensability?
2. Did the Credit Union present sufficient evidence to rebut the presumption of compensability?
3. Did Ms. Collins prove her entitlement to wage loss benefits and medical benefits by a preponderance of the evidence?

¹ Employer's Exhibit 12.

² *Collins v. Library of Congress Federal Credit Union*, AHD No. 13-068A, OWC No. 693522 (February 26, 2014).

ANALYSIS³

Pursuant to §32-1521(1) of the Act, a claimant may be entitled to a presumption of compensability (“Presumption”).⁴ In order to benefit from the Presumption, the claimant initially must show some evidence of a disability and the existence of a work-related event, activity, or requirement which has the potential to cause or to contribute to the disability.⁵ “[O]nce an employee offers evidence demonstrating that an injury was potentially caused or aggravated by work-related activity, a presumption arises that the injury is work-related and therefore compensable under the Act.”⁶

On appeal, the Credit Union argues that

in order to avail herself of the presumption, claimant must show a disability and an event that had the potential to cause that disability. Here the medical evidence from claimant’s treating physicians, specifically the treatment records from Kaiser, Drs. Yeldell and Beard, combined with the deposition of Dr. Beard, fail to establish any disability due to a left knee injury arising contemporaneous with the event. Disability is defined in the statute as: “physical or mental incapacity because of injury which results in the loss of wages.” [sic] DC Code Ann. Section 32-1501(8). Applying that definition to the presumption, claimant has to establish that hitting her left knee on a desk on June 15, 2012 could have caused her to miss work from July 2, 2012 – Feb. 4 2012. [sic]^[7]

At the same time, the Credit Union concedes, “There is no dispute that claimant reported an incident that occurred at work in which she struck her knee on a desk.”⁸ This concession coupled with Ms. Collins’ evidence of a disability is sufficient to invoke the Presumption; however, the ALJ relied upon Ms. Collins’ testimony as well as her medical evidence:

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 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 District of Columbia Workers’ Compensation Act of 1979, D.C. Code, as amended, §32-1501 *et seq.* (“Act”) Consistent with this standard of review, the CRB is constrained to uphold a Compensation Order 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).

⁴ Section 32-1521(1) 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: (1) That the claim comes within the provisions of this chapter.”

⁵ *Ferreira v. DOES*, 531 A.2d 651 (D.C. 1987).

⁶ *Washington Hospital Center v. DOES*, 744 A.2d 992, 996 (D.C. 2000).

⁷ Application for Review at unnumbered page 3.

⁸ *Id.*

Claimant has made an initial showing of the existence of a work-related event, activity, or requirement which had the potential to cause or to contribute to her left knee impairment; she has provided credible evidence that her left knee symptoms arose out of and in the course of her employment. Claimant has also shown a disability, i.e., that because of her work accident in June of 2012, she developed left knee symptoms which resulted in her being medically restricted from performing her usual work duties for Employer herein. She has also shown that on June 15, 2012 she struck her left knee as she performed work-related activities which had the potential to contribute to said symptoms. It cannot be concluded that, due to inconsistencies in the recollection and/or documentation of whether a specific left knee incident occurred on that date, Claimant has failed to invoke the presumption of compensability regarding her claim.

It is noted that because, on June 15, 2012, Claimant was performing her work duties at a desk where she could only have struck her left, rather than her right knee, it is reasonable to infer that the sticky note Claimant gave Ms. Cohen mistakenly referred to the right knee. Ms. Cohen's testimony that a follow-up conversation referred to the left, rather than the right knee is consistent with that conclusion.

There are omissions, as well as significant discrepancies, in the treatment records and physicians' reports, which contradict Claimant's version of the origin, severity and onset of her low back, right hip and left lower extremity symptoms. However, there is no break in the chain of causation linking Claimant's work activities, the left knee symptoms which became acutely symptomatic on June 15, 2012, her pursuit of medical treatment for those symptoms, and her period of wage loss beginning July 2, 2012. The record evidence is sufficient to invoke the statutory presumption that Claimant suffered an accidental injury that arose out of and in the course of her employment on June 15, 2012.^[9]

The Credit Union's argument that "[w]hile it has some superficial appeal to say that the checklist opinion [of Dr. Beard] is 'some' evidence, it cannot serve to establish a connection to a left knee injury of June 15, 2012 in light of Dr. Beard's deposition testimony that she treated claimant for right knee pain on July 18"¹⁰ is misplaced. At this stage of the Presumption analysis, Ms. Collins' burden is to show a disability and the existence of a work-related event, activity, or requirement which has the potential to cause or to contribute to the disability,¹¹ which she did. Then, the Presumption creates the causal relationship between the event and the disability unless the Credit Union comes forth with substantial evidence "specific and comprehensive enough to sever the potential connection between a particular injury and a job-related event."¹² Consequently, there is no error in the invocation of the Presumption.

⁹ *Collins, supra*, at pp. 5-6.

¹⁰ Application for Review at unnumbered page 4.

¹¹ *Ferreira, supra*.

¹² *Waugh v. DOES*, 786 A.2d 595, 600 (D.C. 2001) (citations omitted).

The Credit Union argues that the same evidence that refutes invoking the Presumption is sufficient to rebut the Presumption, namely

- Dr. Yeldell's July 2, 2012 medical treatment does not mention a June 15, 2012 accident or treatment for a left knee injury;
- Dr. Beard's July 18, 2012 treatment record pertains to a right knee injury; and
- Ms. Collins' complaints and treatment are unrelated to "an alleged June 15, 2012 accident."¹³

There may be evidence in the record to support a conclusion contrary to the one reached by the ALJ, but so long as there is sufficient evidence in the record to support the ALJ's conclusion, the CRB must affirm it.¹⁴ Moreover, none of this evidence is legally sufficient to sever the potential connection between an injury and a job-related event.

Furthermore, the ALJ's ruling that Dr. Saltzman's opinion "does not negate the occurrence or character of Claimant's June 2012 left knee work accident [and] is insufficient for rebut[ing] Claimant's presumption"¹⁵ is reasonable. The Presumption is rebutted when the record demonstrates a physician has performed a personal examination of the claimant, has reviewed the relevant medical records, and has stated an unambiguous opinion contrary to the causal relationship presumption.¹⁶ On October 18, 2013, after reviewing Ms. Collins' medical records, Dr. Saltzman physically examined Ms. Collins regarding an April 5, 2012 accident before offering the opinion that

[b]ased upon the records I have reviewed and my history and physical examination of Ms. Collins, she contused the right knee in this work injury. There is no evidence that rolling into a desk cabinet caused any specific problem to the lower back, the left knee, or the right hip. [Ms. Collins] did not, by her own discussion, contact the left knee in this accident of 04/05/12. The records reflect that she has had ongoing problems with the right knee with arthritic changes. She has some arthritic changes in the lower back and the right hip. I cannot relate the right hip, left knee or the lower back problems to this accident.¹⁷

Pursuant to the *Reynolds* standard, Dr. Saltzman's opinion is insufficient to rebut the Presumption because his causation opinion relates to an April 5, 2012 accident, not the June 15, 2012 accident in this case. Dr. Saltzman later writes

There is no medical treatment needed to the left knee. Apparently, she struck the left knee on 06/05/2012, but the left knee moves through a full range of motion

¹³ Application for Review at unnumbered page 5.

¹⁴ *Marriott, supra*.

¹⁵ *Collins, supra*, at p. 6.

¹⁶ *Washington Post v. DOES*, 852 A.2d 909 (D.C. 2004).

¹⁷ Employer's Exhibit 12. (Emphasis added.)

and she only has mild discomfort. I see no impairment of the left knee that requires any treatment at this time, either.

This injury did not disable Ms. Collins from performing her duties as a teller from July 2012 through February 2013. It is my understanding that she attended her son's wedding in Jamaica during this period. Anything could have happened in Jamaica, therefore it is difficult to say whether or not she could have aggravated her condition then but regardless of that, the work injury of 06/05/12 did not preclude her ability to work.^[18]

This opinion regarding impairment, treatment, and ability to work, also, is not an opinion that severs the potential connection between Ms. Collins' June 5, 2012 accident and her left knee injury. The Presumption is not rebutted.

Finally, the Credit Union seems to coningle a nature-and-extent argument that Ms. Collins is not entitled to wage loss benefits with its presumption argument that Ms. Collins did not prove a disability sufficient to invoke the Presumption. Ms. Collins' treating physicians at Kaiser Permanente assert that as a result of a left knee injury sustained on June 15, 2012, Ms. Collins was unable to work from July 2, 2012 "until she is provided... ergonomic chair/work station."¹⁹ Based upon this opinion from Ms. Collins' treating physicians, the ALJ granted Ms. Collins' claim for relief:

In assessing the weight of competing medical testimony in workers' compensation cases, attending physicians are ordinarily preferred as witnesses to those doctors who have been retained to examine claimant solely for purposes of litigation. *Stewart, v. D.C. Dep't of Emp't Servs.*, 606 A.2d 1350, 1353 n.5 (D.C. 1992). The medical conclusions of treating physicians are given a preference; a decision to credit another physician must be explained. *See Velasquez v. D.C. Dep't of Emp't Servs.*, 723 A.2d 401, 405 (D.C. 1999) and *Stewart, supra*. The rationale for this preference for the testimony of treating physicians is two-fold, in part, because the treating physician, unlike the IME physician, was not involved solely for the purposes of litigation and thus, less apt, even if subconsciously, to be biased in making a diagnosis, and in part because of the typically greater amount of time the doctor has worked with the patient. *Kralick v. DC Dep't of Emp't Servs.*, 842 A.2d 705 (D.C. 2004).

The medical opinion of Claimant's treating physician is entitled to significant weight in light of the preference accorded the treating physician's opinion under the law of the District of Columbia. *Short v. D.C. Dep't of Emp't Servs.*, 723 A.2d 845 (D.C. 1998); *Stewart, supra*. Treating physicians are ordinarily preferred as witnesses to those doctors who have been retained to examine the claimant solely for the

¹⁸ Employer's Exhibit 12.

¹⁹ Claimant's Exhibit 1.

purposes of litigation. Claimant's treating physicians at Kaiser document and support her claim.

Claimant has met the burden of proving entitlement to the requested level of benefits. The opinions of Claimant's treating physicians were coherent and consistent with the other record evidence. From July 2, 2012 to February 4, 2013, Claimant was medically restricted from performing the duties of her usual employment because she could no longer sit, for prolonged periods, in the work environment. Because Claimant was not able to perform the duties of her usual employment from July 2, 2012 until February 4, 2013 and did not earn income from other employment, Employer is responsible for Claimant's wage loss during that time period. *Washington Post (Mukhtar), supra; Joyner, supra.*

The claim for payment for medical treatment and causally related medical bills is supported by the record evidence. Review of the medical records provides an evidentiary basis for the determination that prescribed medical protocols are necessary to the course of Claimant's recovery from the June 15, 2012 work injury.^[20]

There is no legal justification for the CRB to reverse this decision.

CONCLUSION AND ORDER

The presumption of compensability was invoked and was not rebutted, and Ms. Collins proved her entitlement to wage loss benefits and medical benefits by a preponderance of the evidence. The February 26, 2014 Compensation Order on Remand is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:



MELISSA LIN JONES
Administrative Appeals Judge

May 29, 2014

DATE

²⁰ *Collins, supra*, at pp. 7-8.