

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**Department of Employment Services**

VINCENT C. GRAY  
MAYOR



F. THOMAS LUPARELLO  
INTERIM DIRECTOR

**CRB No. 13-135**

**ANA M. TORRICO,  
Claimant–Petitioner,**

**v.**

**GRAND HYATT HOTEL and GALLAGHER BASSETT SERVICES,  
Employer/Insurer–Respondent.**

Appeal from an October 21, 2013 Final Order on Remand  
by Claims Examiner Karen Bivins and  
Claims Supervisor Jevan Edwards  
OWC No. 700052

David J. Kapson for Petitioner  
John P. Rufe for Respondent

Before MELISSA LIN JONES and HEATHER C. LESLIE, *Administrative Appeals Judges*, and  
LAWRENCE D. TARR, *Chief Administrative Appeals Judge*.

MELISSA LIN JONES, *Administrative Appeals Judge*, for the Compensation Review Board

**DECISION AND ORDER**

**FACTS OF RECORD AND PROCEDURAL HISTORY**

Ms. Ana M. Torrico injured her right hand while working at Starbucks inside the Grand Hyatt Hotel. On August 6, 2013, the parties attended an informal conference before Claims Examiner Karen Bivins because Ms. Torrico was dissatisfied with the quality of service she was receiving from Dr. Frank Seinsheimer; she requested authorization to change physicians from Dr. Seinsheimer to Dr. Mustafa A. Haque. The Grand Hyatt Hotel took the position that Ms. Torrico's work-related injury has reached maximum medical improvement and requires no more treatment and that Ms. Torrico's arthritis is not causally related to her compensable right hand sprain.

On August 7, 2013, Claims Examiner Bivins issued a Final Order denying Ms. Torrico's request to change physicians because Ms. Torrico has reached maximum medical improvement and

further treatment is not needed for her work-related injury.<sup>1</sup> Ms. Torrico appealed the Final Order, and on October 10, 2013, the Compensation Review Board (“CRB”) remanded the matter to the claims examiner to apply the presumption of compensability to the issue of causal relationship.<sup>2</sup>

On remand, the claims examiner denied Ms. Torrico’s request to change physicians. The claims examiner determined the presumption of compensability had been invoked and had been rebutted; when weighing the evidence, the claims examiner determined Ms. Torrico had not met her burden to prove by a preponderance of the evidence that her current symptoms are medically related to her February 8, 2012 accident.<sup>3</sup>

Ms. Torrico appeals the October 21, 2013 Final Order on Remand. Ms. Torrico argues Grand Hyatt Hotel did not present evidence sufficient to rebut the presumption of compensability, the claims examiner “fail[ed] to demonstrate any meaningful analysis on the issue of authorization for switch of physicians,”<sup>4</sup> and the claims examiner failed to “explain why the switch is, is not, [sic] in the best interest of the claimant.”<sup>5</sup> For these reasons, Ms. Torrico requests the CRB reverse the Final Order on Remand and authorize her to change physicians.

In response, Grand Hyatt Hotel argues that Ms. Torrico’s current malady is not causally related to her accidental injury and that she has requested the CRB substitute its own fact finding for that of the claims examiner. Because Ms. Torrico’s work-related injuries have healed, Grand Hyatt Hotel asserts that she is not entitled to change physicians and that the Final Order on Remand is supported by substantial evidence and must be affirmed.

#### ISSUES ON APPEAL

1. Did the claims examiner properly apply the presumption of compensability?
2. Is the October 21, 2013 Final Order arbitrary and capricious or not in accordance with the law?

---

<sup>1</sup> *Torrico v. Grand Hyatt Hotel*, OWC No. 652933 (August 7, 2013).

<sup>2</sup> *Torrico v. Grand Hyatt Hotel*, CRB No. 13-107, OWC No. 700052 (October 10, 2013).

<sup>3</sup> *Torrico v. Grand Hyatt Hotel*, OWC No. 700052 (October 21, 2013).

<sup>4</sup> Memorandum of Points and Authorities in Support of Claimants’ [sic] Application for Review, p. 6.

<sup>5</sup> *Id.*

## ANALYSIS<sup>6</sup>

An employer is not a guarantor of a claimant's health. Pursuant to the District of Columbia Workers' Compensation Act of 1979, D.C. Code, as amended, §32-1501 *et seq.* ("Act"), an employer only is responsible for reasonable and necessary medical expenses causally related to the industrial accident and its resulting injuries and disabilities;<sup>7</sup> therefore, a determination that a change of physician is not warranted because a claimant is seeking the change in order to obtain care for symptoms unrelated to the work-related injury is proper.

When assessing the causal relationship between current symptoms and a compensable accident, a claimant may be entitled to a presumption of compensability ("Presumption").<sup>8</sup> In order to benefit from this Presumption, a 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.<sup>9</sup> In this case, there is no dispute the Presumption properly was invoked.

Once the Presumption was invoked, it was Grand Hyatt Hotel's burden to come forth with substantial evidence "specific and comprehensive enough to sever the potential connection between a particular injury and a job-related event."<sup>10</sup> Only upon a successful showing by Grand Hyatt Hotel would the burden return to Ms. Torrico to prove by a preponderance of the evidence, without the benefit of the Presumption, her current symptoms arose out of and in the course of employment.<sup>11</sup>

Ms. Torrico disputes Grand Hyatt Hotel rebutted the Presumption:

The Employer presented the IME of Dr. Louis Levitt from January 22, 2013. Dr. Levitt stated his opinion that Ms. Torrico had be [*sic*] adequately treated for the injury that occurred on February 8, 2012 and can return to full duty work without restrictions. This is an opinion with respect to the nature and extent of Ms. Torrico's disability, if any, not whether the condition she continues to experience [in] her right hand is related to the work-accident. The claims

---

<sup>6</sup> The CRB must affirm the order under review unless it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. See 6 Stein, Mitchell & Mezines, ADMINISTRATIVE LAW, §51.93 (2001).

<sup>7</sup> See *Swinson v. Gal Tex Hotel*, CRB No. 10-010, AHD No. 07-091B, OWC No. 628287 (March 10, 2011).

<sup>8</sup> 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."

<sup>9</sup> *Ferreira v. DOES*, 531 A.2d 651 (D.C. 1987).

<sup>10</sup> *Waugh v. DOES*, 786 A.2d 595, 600 (D.C. 2001). (Citations omitted.)

<sup>11</sup> See *Washington Hospital Center v. DOES*, 821 A.2d 898 (D.C. 2003).

examiner's reliance on this opinion to find that the Employer has rebutted the presumption is in error and warrants reversal.<sup>[12]</sup>

Ms. Torrico's argument fails to consider the portions of Dr. Levitt's report the claims examiner gave considerable weight:

The MRI report of the right wrist described cystic changes consistent with inflammatory arthritis. The arthritis is not causally related to the original injury[.]

\* \* \*

The claimant has been more than adequately treated for any injury that occurred on February 8, 2012. She has recovered from the work injury and can return to full duty without restrictions. She no longer requires any further care as it relates to the original work trauma.<sup>[13]</sup>

Dr. Levitt performed a physical examination of Ms. Torrico, reviewed the relevant medical records, and stated an unambiguous opinion contrary to the Presumption. As the claims examiner determined, Dr. Levitt's opinion suffices to rebut the Presumption.<sup>14</sup>

With the Presumption rebutted, the burden returned to Ms. Torrico to prove by a preponderance of the evidence that her current symptoms are related to her compensable accident.<sup>15</sup> Crediting Dr. Levitt's opinion that Ms. Torrico's physical examination by her own physician shows no evidence of acute inflammatory arthritis and that her current deficits are more consistent with "system exaggeration" as opposed to "any objective measure of pathology or organic disease," the claims examiner accepted Grand Hyatt Hotel's evidence (also including the normal impression from the MRI scan) outweighs Ms. Torrico's evidence.<sup>16</sup> Thus, Ms. Torrico's argument that the Final Order on Remand lacks meaningful analysis of the issue of medical causal relationship is not persuasive; the claims examiner's determination that Ms. Torrico failed to meet her burden is adequately explained given this case's record and posture.

---

<sup>12</sup> Memorandum of Points and Authorities in Support of Claimants' [sic] Application for Review, p. 8-9.

<sup>13</sup> *Torrico v. Grand Hyatt Hotel*, OWC No. 700052 (October 21, 2013), unnumbered p. 3.

<sup>14</sup> The Presumption is rebutted when a physician (even a physician retained for purposes of litigation) performs a personal examination of a claimant, reviews the relevant medical records, and states an unambiguous opinion contrary to the Presumption. *Washington Post v. DOES*, 852 A.2d 909 (D.C. 2004).

<sup>15</sup> *Washington Hospital Center v. DOES*, 744 A.2d 922 (D.C. 2000).

<sup>16</sup> *Torrico v. Grand Hyatt Hotel*, OWC No. 700052 (October 21, 2013), unnumbered p. 3.

CONCLUSION AND ORDER

The claims examiner properly applied the presumption of compensability, and the October 21, 2013 Final Order on Remand is not arbitrary and capricious, is in accordance with the law, and is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

---

MELISSA LIN JONES  
*Administrative Appeals Judge*

---

January 27, 2014  
DATE