In the Matter of,	)	
	)	
LAQUITA V. GREEN,	)	
	)	
Claimant,	)	
	)	
v.	)	AHD NO. 07-233
	)	OWC NO. 630890
GEORGETOWN UNIVERSITY HOSPITAL,	)	
	)	
and	)	
	)	
SEDGWICK CMS,	)	
	)	
Employer/Carrier.	)	

Appearances:

MATTHEW J. PEFFER, ESQUIRE
For the Claimant

WILLIAM S. SANDS, JR., ESQUIRE
For the Employer

Before:

ANAND K. VERMA
Administrative Law Judge

COMPENSATION ORDER

STATEMENT OF THE CASE

This proceeding arises out of a claim for workers' compensation benefits filed pursuant to the provisions of the District of Columbia Workers' Compensation Act of 1979, D.C. Code, as amended, §§32-1501 *et seq*., (hereinafter, the Act).

After timely notice, a formal hearing was held on July 3, 2007, before Anand K. Verma, Administrative Law Judge. Laquita R. Green, appeared in person and through counsel (hereinafter, claimant). Georgetown University Hospital/Sedgwick CMS (hereinafter, employer) appeared by counsel. Claimant testified on her own behalf. No testimony was adduced by employer. Claimant Exhibit (hereinafter, CE) No.1-6 (CE 2 & CE 5 withdrawn) and Employer Exhibit (hereinafter, EE) No.1- 6, described in

the Hearing Transcript, (hereinafter, HT) were admitted into evidence. The record closed upon the receipt of an official copy of Hearing Transcript (HT) on July 20, 2007.

BACKGROUND

Claimant, employed as a unit secretary for the last two and half years, fell on a wet floor on August 22, 2006, while getting a spoon for a patient. Claimant initially treated at Kaiser Permanente on August 23, 2006 where she was diagnosed with muscle strain of the low back and left lower extremity and prescribed Ketorolac Tromethamine 60 mg and Acetaminophen-Codeine 300 mg. After some time off from work, claimant was released to return to light duty work on September 4, 2006 with restrictions.

CLAIM FOR RELIEF

Claimant seeks an award under the Act of temporary total disability benefits from February 24, 2007 through June 3, 2007, along with interest on accrued benefits and causally related medical expenses.

ISSUE

Nature and extent of claimant's disability, if any.

FINDINGS OF FACT

The parties have stipulated, and I accordingly so find, an employer/employee relationship is present under the Act; jurisdiction is vested in the District of Columbia; claimant sustained an accidental injury on August 22, 2006, that arose out of and in the course of employment; claimant provided timely notice of the injury; the claim was timely filed; claimant's average weekly wage is $492.94; and employer has voluntarily paid temporary total disability benefits from August 23, 2006 to August 30, 2006; September 20, 2006 to October 6, 2006; October 18, 2006 to October 20, 2006; November 2, 2006 to November 13, 2006; November 30, 2006 to December 1, 2006; and December 29, 2006 to January 2, 2007.

Based on the review of the record as a whole, I make the following findings:

Claimant, employed as a unit secretary, was required to answer the incoming phone calls, store patients' information in the computer, and stock papers and nutritional supplies for patients. Claimant's job involving lifting of no more than 10 lbs. was sedentary in character. On August 22, 2006, while attempting to retrieve a spoon from the kitchen, claimant fell on a wet floor injuring her low back. On August 23, 2006, claimant sought medical treatment at Kaiser Permanente where she was diagnosed with low back muscle strain and placed in an off-work status from August 23 to August 30, 2006. In a follow up on August 31, 2006, the attending physician, Thu B. Nguyen, M.D., an internist, recommended heating pad for her back for three weeks, prescribed physical therapy and ultrasound, and released her to resume her usual work from September 4, 2006 to October 4, 2006 with 10 lbs. lifting, pushing and pulling restrictions.

However, in the next follow up on September 19, 2006, Dr. Nguyen diagnosed her with back and leg pains and ordered her off work from September 20, 2006 to October 6, 2006. Claimant underwent physical therapy sessions on September 21, October 10, 16, and 27, 2006.

Thereafter, upon claimant's follow up examination on October 4, 2006, Dr. Nguyen released her to her regular work from October 9,

2006 with 10 lbs. lifting, pushing and pulling restrictions combined with back stretches every 3-5 minutes. Further, in a subsequent follow up, Dr. Nguyen placed claimant in an off-work status on November 2, 3, 5 and 6, 2006, releasing her to resume work for no longer than eight (8) hours a day from November 13, 2006 to December 13, 2006. Claimant received additional follow up care from Dr. Nguyen on December 1 and 29, 2006, January 30 and February 15, 2007, and was placed in an off-work status from November 30 to December 1, 2006; December 29 to December 31, 2006; December 29, 2006 to January 2, 2007; and from February 13 to February 15, 2007.

A lumbar spine MRI scan taken on November 5, 2006was normal in all respects. Thereafter, claimant underwent an independent medical evaluation (IME) on November 17, 2006 by Ross S. Myerson, M.D., an occupational and environmental medicine specialist, who opined she had no residual injury to the left groin. His IME disclosed, *inter alia*, claimant was hypersensitive to light touch and palpation over the lumbar spine and paralumbar musculature. Her active range of motion was limited to 59 degrees of forward flexion, 0 to 5 degrees of extension. Right and left lateral flexion was normal and axial compression sign was negative. Seated straight leg raising test was negative and lying straight leg raising test was positive on the right and left with manifested pain behaviors on elevation of either leg to -25 degrees. Neurologically, claimant was alert, her motor sensory and cerebellar functions were intact and deep tendon reflexes were +2 and bilaterally symmetrical.

In the last follow up of March 9, 2007, Dr. Nguyen placed 15 lbs. lifting, pushing and pulling restrictions through April 13, 2007 in claimant's continued eight (8) hour per day light duty work. On March 23 and April 5, 2007, claimant underwent additional physical therapy sessions.

For the first time, on May 30, 2007, employer through its counsel communicated to claimant via facsimile through her counsel an offer of modified duty employment with no diminution in her wages. The offered employment comported with her physical limitations. As directed in the May 30, 2007 letter, claimant was to report to modified duty on June 4, 2007, or otherwise inform employer of her inability to do so. Claimant advised employer that she would not report to the proffered work until June 15, 2007 because of her unresolved childcare issues.

DISCUSSION

I have reviewed the arguments of counsel with respect to the issue presented herein. To the extent an argument is consistent with the findings and conclusions, it is accepted; to the extent an argument is inconsistent therewith, it is rejected.

The Workers' Compensation Act does not afford a claimant with a presumption regarding the nature and extent of her disability; instead, the claimant maintains the burden of proving the nature and extent of her disability. See *Washington Hospital Center v. District of Columbia Department of Employment Services*, 744 A. 2d 623 (D.C. 2001).

Buttressing her claim for disability benefits from February 24, 2007 to June 3, 2007, claimant relies on the various treatment and disability notes from her treating physician, Dr. Nguyen who treated her from August 23, 2006 to March 9, 2007. Dr. Nguyen's follow up treatment note dated February 8, 2007 reflects her continued ability to perform an eight (8) hour light duty work until March 8, 2007 with restrictions of

lifting, pushing and pulling of 10 lbs. The last follow up in the form of verification of treatment is dated March 9, 2007, wherein, the above-noted physical restrictions were further extended until April 13, 2007. Indeed, these follow up notes do not reference claimant's total inability to resume her work; they merely set some physical parameters in the performance of the light duty work. Furthermore, the proffered evidence discloses no continuance of restrictions after April 13, 2007.

The evidence adduced by employer shows a suitable alternate employment commensurate with her physical limitations was made available to claimant from June 4, 2007. (EE 7). Claimant's testimony at the hearing revealed she first learned of the available light duty employment in the beginning of June 2007. (HT 20). She also testified she earned no wages from February 24, 2007 to June 3, 2007. Nevertheless, notwithstanding the loss of wages through June 3, 2007, as claimed, claimant's medical evidence falls short of corroborating her continued inability to resume work after April 13, 2007.

It has been held that in order to be found disabled, claimant must establish an inability to return to her usual employment. Once claimant has made [this] showing, a *prima facie* case of total disability is established and the burden shifts to the employer to establish suitable alternate employment opportunities available to claimant considering her age, education and work experience. See *Logan v. District of Columbia Department of Employment Services,* 805 A. 2d 237 (D.C. 2002). Clearly, gleaning at the record in the instant case does not demonstrate claimant's disability beyond April 13, 2007.[1] It is noteworthy that the disability noted in Dr. Nguyen's follow up notes was not total in character, because he consistently allowed claimant to perform light duty work until April 13, 2007 with 10 lbs. lifting, pushing, and pulling restrictions. Accordingly, inasmuch as claimant has failed to establish her disability to return to her usual employment, albeit with some restrictions, beyond April 13, 2007, the burden does not shift to employer to identify an available suitable employment thereafter.

CONCLUSION OF LAW

Based upon a review of the record evidence as a whole, I find and conclude claimant has not met her burden of establishing her disability in resuming her usual employment after April 13, 2007.

[1]Dr. Nguyen's last follow up examination dated March 9, 2007 references claimant's restrictions through April 13, 2007.

ORDER

It is **ORDERED** employer pay claimant temporary total disability benefits from February 24, 2007 to April 13, 2007, as well as causally related medical expenses.

ANAND K. VERMA
Administrative Law Judge

December 20, 2007
Date

Whether claimant's injury arose out of and in the course of her employment.

With respect to whether a claimant sustained an accidental injury arising out of and in the course of her employment, the Act mandates that it be presumed, in the absence of evidence to the contrary, that a claim comes within the purview of the Act. D.C. Code §32-1521(1) (2001)(as amended)); *Ferreira v. District of Columbia Department of Employment Services*, 531 A.2d 651, 655 (D.C. 1987). The presumption is designed to effectuate the important humanitarian purposes of the statute and reflects a "strong legislative policy favoring awards in arguable cases." *Ferreira, supra*, at 655. To invoke this presumption, claimant must make some "initial demonstration" of (1) an injury; and (2) a work related event, activity, or requirement which has the potential of resulting in or contributing to the injury. *Id*. Thus, to establish a right to compensation, claimant must introduce evidence of both an injury and a relationship between that injury and the employment. See, e.g., *Whittaker v. District of Columbia Department of Employment Services*, 668 A.2d 844 (D.C. 1995).

When the preliminary evidence has satisfied this threshold requirement, the burden of production shifts to the employer to present substantial evidence which is "specific and comprehensive enough to sever the potential connection between a particular injury and a job-related event." *Parodi v. District of Columbia Department of Employment Services*, 560 A.2d 524, 526 (D.C. 1989). Absent such evidence, the claim will be deemed to fall within the scope of the Act, *Id*. at 526, and a causal relationship will also be presumed. *Ferreira, supra*, at 655. When evidence is presented that is sufficient to sever the injury from the work and overcome the presumption that a claimant's injury stems from any work-related event, activity or requirement, the presumption falls from consideration and all evidence submitted must be weighed without recourse to the presumption. Conversely, where employer fails to rebut the prima facie case, the presumption of compensability supplies the legally sufficient nexus between claimant's condition and her injury as well as the causal relationship between the injury and her employment. *Parodi, supra*, at 526.

The first stage of the analysis is whether an "initial demonstration" was made that was sufficient to invoke the Act's presumption of compensability of the claim. Claimant's job as a histo-technologist in the lab wherein she worked from June 2001 to July 2003 unarguably