

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA M. MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 11-100

WILLIAM L. NEWMAN,
Claimant–Respondent,

v.

C & E SERVICES and CHARTIS INSURANCE COMPANY,
Employer–Petitioner.

Appeal from a Compensation Order by
The Honorable Amelia G. Govan
AHD No. 11-077, OWC No. 673112

Joseph C. Tarpine, Esquire for the Petitioner
Robert C. Baker, Esquire for the Respondent

Before MELISSA LIN JONES, JEFFREY P. RUSSELL,¹ and HENRY W. MCCOY *Administrative Appeals Judges.*

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

DECISION AND ORDER

JURISDICTION

Jurisdiction is conferred upon the Compensation Review Board (“CRB”) pursuant to §§32-1521.01 and 32-1522 of the District of Columbia Workers’ Compensation Act of 1979, D.C. Code, as amended, §32-1501 *et seq.*, (“Act”), 7 DCMR §250, *et seq.*, and the Department of Employment Services Director’s Administrative Policy Issuance 05-01 (February 5, 2005).

FACTS OF RECORD AND PROCEDURAL HISTORY

Mr. William L. Newman injured his left hip at work on August 18, 2003; he sought no medical treatment or wage loss benefits as a result of his injury. He was able to perform his work duties with no difficulty.

¹ Judge Russell has been appointed by the Director of the DOES as a Compensation Review Board (“CRB”) member pursuant to DOES Administrative Policy Issuance No. 11-01 (June 23, 2011).

On August 17, 2010, Mr. Newman fell at work. He heard a cracking, popping sound in his left hip and groin area, felt a sharp pain in that area, and felt his left side/groin/thigh area go numb.

At a formal hearing, Mr. Newman's employer, C & E Services, disputed the causal relationship between Mr. Newman's left hip complaints and his work-related accident. In a Compensation Order dated August 31, 2011, an administrative law judge ("ALJ") ruled Mr. Newman's left hip complaints are related to his on-the-job accident and awarded causally related medical expenses.

On appeal, C & E Services asserts Mr. Newman's left hip complaints are not causally related to his compensable accident. C & E Services also asserts authorization for left hip treatment and surgery (if necessary) is not supported by substantial evidence.

In support of its position, C & E Services contends Mr. Newman is not entitled to the presumption of compensability because his left hip complaints are not due to his work-related accident. C & E Services goes on to argue it "introduced substantial evidence to overcome the presumption of compensability and the Claimant simply cannot meet his burden of showing that the left hip complaints, need for treatment, and consultation are causally related to the subject accident."² C & E Services requests we reverse the August 31, 2011 Compensation Order.

Mr. Newman responds by asserting the ALJ properly weighed the evidence in giving more weight to the treating physician's opinion and by arguing C & E Services is asking the CRB to reweigh the evidence. Mr. Newman requests we affirm the August 31, 2011 Compensation Order.

ISSUE ON APPEAL

1. Is the August 31, 2011 Compensation Order supported by substantial evidence and in accordance with the law?

ANALYSIS³

Pursuant to §32-1521(1) of the Act, a claimant is 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

² Employer/Insurer's Memorandum of Points and Authorities in Support of Application for Review, p. 5.

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 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).

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

The ALJ ruled the ample medical evidence connecting Mr. Newman’s current left hip symptoms to his August 17, 2010 work accident and Mr. Newman’s credible testimony⁷ was sufficient to invoke the Presumption. The medical evidence and testimony supports the ruling that Mr. Newman’s left hip condition potentially was caused or aggravated by a work-related event.

Once the Presumption was invoked, it was C & E Service’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.”⁸ Only upon a successful showing by C & E Services would the burden return to Mr. Newman to prove by a preponderance of the evidence, without the benefit of the Presumption, his left hip injuries arose out of and in the course of employment.⁹

The ALJ found C & E Services had submitted sufficient evidence to rebut the Presumption. Specifically, the ALJ relied upon Dr. John Parkerson’s opinion that Mr. Newman’s current condition primarily is related to his pre-existing condition, and because Dr. Parkerson performed a personal examination, reviewed the relevant medical records, and stated an unambiguous opinion contrary to the causal-relationship presumption,¹⁰ substantial evidence supports that his opinion is sufficient to rebut the Presumption.

On appeal, C & E Services emphasizes Mr. Newman’s pre-existing condition and particular elements of Dr. Parkerson’s opinion, but the ALJ addressed C & E Service’s arguments in the Compensation Order and relied upon that evidence to rebut the Presumption. The ALJ then permissibly discounted that evidence in favor of the opinions of Mr. Newman’s treating physician when weighing the evidence in its totality.¹¹

The essence of C & E Service’s argument is that there is evidence in the record that if weighed in its favor is sufficient to support a finding that Mr. Newman is not entitled to the benefits he has requested. The role of this tribunal, however, is not a *de novo* review of the evidence; so long as the Compensation Order 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

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

⁷ A determination of credibility, like all other findings of fact, must be supported by substantial evidence in the record when reviewed as a whole. See *Davis v. Western Union Telegraph*, Dir. Dkt. 88-84, H&AS No. 87-751, OWC No. 098216 (March 4, 1992). When properly supported, the credibility findings of an ALJ are entitled to great weight. *Dell v. DOES*, 499 A.2d 102, 106 (D.C. 1985).

⁸ *Waugh v. DOES*, 786 A.2d 595, 600 (D.C. 2001) (Citations omitted).

⁹ See *Washington Hospital Center v. DOES*, 821 A.2d 898 (D.C. 2003).

¹⁰ *Washington Post v. DOES*, 852 A.2d 909 (D.C. 2004).

¹¹ *Kralick v. DOES*, 842 A.2d 705, 712 (D.C. 2004) (In private sector workers’ compensation cases, there is a preference for the opinions of a treating physician.)

might have reached a contrary conclusion, the CRB is constrained to affirm the Compensation Order.¹²

Regarding authorization for left hip surgery, Mr. Newman did seek authorization for left hip replacement surgery by Dr. Michael Mont,¹³ but the only issue for resolution at the formal hearing was the causal relationship between Mr. Newman's current left hip condition and his August 17, 2010 work-related accident.¹⁴ Reasonableness and necessity of surgery was not at issue and could not have been at issue because neither party submitted a utilization review report. Thus, the ALJ's award of causally related medical benefits "including left hip surgery if necessary"¹⁵ merely reflects the ruling is restricted to causal relationship, not reasonableness and necessity; any broader reading of the award would be contrived given the actual issue for resolution at the formal hearing.

CONCLUSION AND ORDER

The August 31, 2011 Compensation Order is supported by substantial evidence and is in accordance with the law. The Compensation Order is AFFIRMED; however, to avoid even the possibility of a misunderstanding, we amend the Compensation Order so as to delete the words "including hip surgery, if necessary."¹⁶

FOR THE COMPENSATION REVIEW BOARD:

MELISSA LIN JONES
Administrative Appeals Judge

May 23, 2012
DATE

¹² *Marriott, supra*.

¹³ *Newman v. C & E Services*, AHD No. 11-077, OWC No. 673112 (August 31, 2011), p. 2.

¹⁴ *Id.*

¹⁵ *Newman, supra*, at p. 6.

¹⁶ See, D.C. Code §32-1521.01(d)(2).