

In the Matter of)	
)	
CORINA ROTELLA,)	
)	
Claimant,)	
)	
v.)	AHD No.: 01-372C
)	OWC No.: 557081, 625657 & 634206
GRAND HYATT WASHINGTON)	
)	
and)	
)	
GALLAGHER BASSETT SERVICES)	
)	
Employer/Carrier.)	

Appearances:

BENJAMIN T. BOSCOLO, ESQUIRE
For the Claimant

JOHN P. RUFÉ, ESQUIRE
For the Employer/Carrier

Before:

JOAN E. KNIGHT
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 full evidentiary hearing was

held on September 20, 2007, before Joan E. Knight, Administrative Law Judge. Corina Rotella (hereinafter, Claimant) appeared in person and by counsel. Grand Hyatt Washington/Gallagher Bassett Services (hereinafter, Employer) appeared by counsel. Claimant testified on her own behalf through a Spanish interpreter.¹ Employer

¹ Spanish interpreter services were provided by the Office of Hearings and Adjudication at Claimant's request.

produced no witnesses. Claimant Exhibit (CE) Nos. 1 - 6, and Employer Exhibit (EE) Nos. 1- 4, described in the Hearing Transcript (HT), were admitted into evidence. The record closed on October 9, 2007, the date the HT was filed.

BACKGROUND

Claimant, is 53 years old and has worked full-time as a housekeeper for the Employer since 1988. On July 13, 2000, Claimant suffered a twisting injury to her right knee. Claimant sought conservative medical treatment and was placed off work for a period. No improvement was reported by Claimant and her treating physician recommended diagnostic arthroscopy. Employer did not authorize the surgical procedure. Claimant petitioned for a Formal Hearing and a Compensation Order was issued on November 23, 2001 denying Claimant's request for the surgical intervention.

Claimant's right knee symptoms continued to progress over time. In 2002, a right knee arthroscopy and meniscus repair was performed. Employer made voluntary payments of temporary total disability for periods of wage loss since the date of the initial work injury up until February 2006. Claimant filed a claim for additional periods of wage loss disability and authorization for knee surgery.

CLAIM FOR RELIEF

Claimant seeks an award under the Act of temporary total disability from February 28, 2006 to May 1, 2006 and March 8, 2007 to May 6, 2007, temporary partial disability from May 2, 2006 to March 7, 2007 and authorization for knee replacement surgery.

ISSUES

1. Whether there is a medical causal relationship between Claimant's current physical condition and recommended surgery and the work injury that occurred on July 13, 2000.
2. The nature and extent of Claimant's disability, if any.

FINDINGS OF FACT

It has been previously determined Claimant sustained a work-related injury to her right knee on July 13, 2000. The findings set forth in the Compensation Order dated November 23, 2001 are incorporated herein, by reference, save for the previous findings regarding recommended arthroscopy surgery. *See, Corina Rotella v. Grand Hyatt Washington* OHA No. 01-372, OWC No. 557081 (2001).

Based on the record evidence, I make the following additional findings of fact:

I find Claimant to be a credible witness based upon her testimony and is consistent with and supported by the evidence of record.

I find predicated on Claimant's persistent symptomology in her right knee an MRI was authorized by Employer to be taken on February 8, 2002 to identify the source of continuing right knee pain. The MRI revealed a torn meniscus.

A right knee diagnostic arthroscopy was authorized by Employer and was performed on May 16, 2002 by treating physician, Rafik Muawwad, M.D., an orthopedic surgeon. The arthroscopic procedure confirmed a large flap tear in Claimant's right posterior horn medial meniscus, damage to the joint surface and mild

degenerative osteoarthritis in the lateral meniscus. As a result, Claimant underwent a resection and right meniscus repair, a partial synovectomy and excision of the chondromalacia of the patella and medial femoral condyle.²

I find, after a period of recovery and post-operative physical therapy, Claimant was released to light duty work with restrictions from bending, stooping and lifting and prolonged walking and standing. On January 9, 2004, Claimant was released to resume her normal work duties. Her employment tasks required her to bend, stoop, reach, lift in order to clean bathrooms, change towels and bed linen, empty trash, dust and vacuum.

Claimant complained of episodes of knee pain and was treated for symptoms of soft tissue swelling, crepitation and clicking in the right knee over the patellar area. Dr. Muawwad continued to treat Claimant's symptomology conservatively with a series of corticosteroid injections, drainage of fluid on the right knee joint and physical therapy.

In April 2004, Dr. Muawwad opined Claimant's condition had progressed with her work and daily activities. He recommended more aggressive treatment consisting of knee replacement surgery. Claimant was referred to Dr. Peter Trent, M.D., an orthopedist, for consultation and surgical intervention assessment. Claimant treated with Dr. Trent from April 3, 2004 to February 1, 2005.

² Synovectomy is the surgical removal of the joint lining. Chondromalacia of the patella is the wearing away of or softening of the articular cartilage. The articular cartilage is a connective tissue that covers and protects the underside of the patella, the bottom end of the femur and top of the tibia.

An x-ray view taken on May 26, 2004 interpreted by Dr. Trent confirmed signs of joint disease of the right knee. Dr. Trent's clinical impression was of post-traumatic and degenerative joint disease involving the right knee injury. Dr. Trent opined Claimant would be a candidate for knee replacement surgery as recommended by Dr. Muawwad.

A second MRI performed on August 11, 2004 revealed extensive changes consisting of significant joint disease with moderate effusion and synovitis. Claimant continued with the prescribed course of medical treatment to manage her symptoms.

On February 15, 2005, Claimant reported her right leg gave out while at work and filed a second claim.³ She presented to Dr. Muawwad with symptoms of pain in her right knee and back. After a period of treatment, Claimant returned to work on light duty with continued right knee symptomology. I find, Dr. Muawwad recommended Claimant remain off work, but she continued her employ for financial reasons and tolerated acute knee pain and discomfort.

On January 27, 2006, Dr. Muawwad noted considerable changes of findings from the 2002 arthroscopy consisting of progressive damage to the articular surface of the knee joint and joint disease. On April 14, 2006, Dr. Muawwad ordered right knee replacement surgery. The surgical procedure was not approved by Employer.

On July 12, 2006, Claimant fell at work when her right knee gave out. Claimant filed a third claim and was placed off work until August 18,

³ OWC No. 625657.

2006.⁴ Dr. Muawwad opined that episodes of Claimant's knee giving way were symptomatic of her condition caused by the July 2000 work injury.

Dr. Muawwad's impression of a right knee x-ray view taken on July 14, 2006 was that Claimant suffered from progressive damage, articular surface damage and a narrowing of the medial compartment. He opined the delay of definitive surgical treatment had contributed to the progression of the work injury and underlying arthritis creating a more traumatic condition.

At the request of Employer, Claimant underwent several independent medical evaluations (hereinafter, IME) by Marc B. Danziger, M.D., an orthopedic surgeon. In a March 21, 2006 IME report, Dr. Danziger found normal objective findings and good range of motion on physical examination. He opined Claimant's degenerative arthritis condition was purely and solely pre-existing and was not caused by or progressed by her work injury. In a supplemental IME report dated August 1, 2006, Dr. Danziger noted no change in his earlier assessment and recommendation.

On April 26, 2007 and June 7, 2007, Dr. Muawwad evaluated Claimant. He found no reported improvement of Claimant's right knee condition and maintained the need for right knee replacement surgery. As of the date of the Formal Hearing, Employer has not authorized the knee surgery and has not paid additional wage loss benefits.

DISCUSSION

The evidence and arguments of the parties were

reviewed and considered.⁵ To the extent an argument of a party is inconsistent with the decision herein, the argument is rejected.

The Claimant has requested authorization for right knee replacement surgery as recommended by her treating physician to correct her current right knee impairment. Claimant also requests temporary total and temporary partial disability benefits. The Employer contends there is no causal connection between the Claimant's current right knee condition and the injuries sustained in the work accident on July 13, 2000.

It is well established in the District of Columbia that once a claimant demonstrates a work-related injury and a subsequent disability, the claim comes within the provisions of Act. *Ferreira v. D.C. Dep't of Empl. Servs.*, 531 A.2d 651 (1987). In such cases a rebuttable presumption applies and establishes a "causal connection between the disability and the work related event or activity" and every normal consequence that flows from the injury. *Georgetown Univ. v. D.C. Dep't of Empl. Servs.*, 830 A.2d 865 (2003); citing *Ferreira*.

As stated in the previous Order, a causal connection has been established between the Claimant's disability and the work injury sustained on July 13, 2000. To resolve the claim for authorization for surgery, the undersigned must determine whether the Claimant's current medical condition and recommend treatment is causally related to a work injury or event. Where there is a dispute as to whether a current medical condition is causally related the work related injury, the presumption applies and the

⁴ OWC No. 634206.

⁵While each of the parties' exhibits is not specifically referenced in this discussion, each was reviewed, considered, and weighed during the course of this deliberation.

employer bears the burden of establishing an intervening cause to sever the chain of causation. *The Washington Post v. D.C. Dept. of Empl. Servs.*, 852 A.2d 909 (2004).

In the matter under consideration, the Employer contends the Claimant has recovered from the July 2000 work injury and the condition requiring right knee replacement surgery is not causally related to the work-related injury. The Employer relies on IME reports issued by Dr. Danziger, an orthopedic surgeon. (EE No.1)

In a March 21, 2006 IME report, Dr. Danziger opined the Claimant's post-arthroscopy MRI scans failed to show any significant pathology. His medical assessment was that the work injury has resolved. He also opined that the Claimant's current knee condition is "solely related to underlying arthritis with no clinical correlation to the work injury."

In an IME report issued in August 2006 Dr. Danziger maintained Claimant's complained of right knee condition is "purely and solely based on preexisting degenerative arthritis." Dr. Danziger opined that a physical examination of the Claimant on August 1, 2006, disclosed "no evidence of anterior or posterior knee instability, effusion or patellofemoral pain with grind" that could be connected to the initial work injury. The Employer specifically relies on Dr. Danziger's opinion that the recommended right knee replacement surgery is not causally related to the work injury. (EE No. 5 at 9).

In support of her claim for authorization for surgical treatment, the Claimant presents the medical reports of her treating physician, Dr. Muawwad, who maintains knee replacement surgery is necessary to treat the progression of the Claimant's work injury. In his treatment notes, Dr. Muawwad's indicates his surgical

recommendation stems from the arthroscopic findings in May 2002, MRI and x-ray results that revealed 1) narrowing of the medial compartment, 2) progressive articular joint damage in the form of extensive chondromalacia of the medial femoral condyle (cartilage), 3) chronic effusion and 4) traumatic arthritis. (CE No. 3 at 29-31, EE No.5) The Claimant also presented the treatment records of Dr. Peter Trent, a consulting orthopedic surgeon who opined Claimant would be a candidate for said surgery. (CE No.1 at 1- 30)

This matter presents conflicting medical opinions in which the parties rely upon in making their respective arguments. Here the undersigned must weigh the evidence as a whole under established principles governing the resolution of conflicting medical opinions as to whether a causal connection exists between Claimant's condition and the work injury. The law in the District of Columbia entitles a treating physician's opinion to greater weight than a conflicting opinion of a non-treating physician, unless there are persuasive reasons to find otherwise. *Short v. D.C. Dep't of Employment Servs.*, 723 A.2d 845 (1998).

Upon weighing the two competing medical opinions in the case, *sub judice*, and extending the traditional preference to the opinion of the treating physician in this jurisdiction, the conclusions of Dr. Muawwad are more compelling on the issue of whether Claimant's condition that warrants knee replacement surgery is causally related to the July 20 work injury. Dr. Danziger's opinion is that the Claimant's work injury has resolved. He further opines that there was no causal relationship between the Claimant's degenerative right knee condition and the injury she suffered at work, which is inconsistent with Dr. Muawwad's diagnostic findings and recommended course of

surgical treatment. The Employer has failed to present specific and comprehensive evidence to sever the causal connection between the Claimant's progressive condition and her work related injury. *See, Washington Metro. Area Transit Auth. (WMATA) v. D. C. Dep't of Empl. Serv.*, 827 A.2d 35 (2003).

Finally, the Act does not provide a claimant with a presumption regarding the nature and extent of disability. A claimant therefore has the affirmative duty to present substantial credible evidence of a disability entitling her to level of benefits requested. *Dunston v. D.C. Dep't of Employment Servs.*, 509 A.2d 109, 111 (1986). In that regard, disability is an "economic concept rather than a medical condition." *The Washington Post v. D.C. Dep't of Employment Servs.*, 853 A.2d 704, 7070 (2004); *Upchurch v. D.C. Dep't of Employment Servs.*, 783 A. 2d 623 (2001).

Here, the Claimant has the burden of producing substantial credible evidence that her wage loss results from her work injury. Since disability is an economic concept whose existence depends on the realities of the marketplace, a claimant must prove that the injury prevented him or her from engaging in the only type of gainful employment for which he or is qualified. *See, The Washington Post v. D.C. Dep't of Employment Servs.*, 675 A.2d 37 (1996).

The record evidence shows that Dr. Muawwad has limited Claimant's work activities due to the right knee instability. Specifically, the Claimant has been restricted from prolonged standing, and walking, avoid climbing steps, heavy lifting and reduced the number of hotel guest rooms cleaned during a shift. (CE No. 1 at 9) Dr. Muawwad also advised Claimant that her right knee may "have a tendency to give out every once in a while" as a result of her untreated condition. (CE No.3 at 202) In fact, since the 2000 work injury,

the Claimant has fallen on two occasions during the course of her employment and was placed off work. (HT at 38)

The persuasive evidence demonstrates the Claimant's symptoms have progressed along with increased difficulty performing her employment duties. The record evidence established the Claimant has been placed off work for periods of flare ups. The Claimant proffered credible and unrebutted testimony as to periods of being placed off work as a result of right knee pain. The Claimant's testimony is supported by the record evidence. (HT 44-45) In reviewing the record evidence, there is a reasonable basis to conclude that as a result of the work injury and ongoing treatment, Claimant has suffered a loss of wages. Accordingly, the Claimant has met her burden of showing that her current wage loss for which relief is claimed resulted from her work injury.

CONCLUSIONS OF LAW

Based upon a review of the evidence in the record

as a whole, I conclude that there is a medical causal relationship between Claimant's current right knee condition and the July 13, 2000 work injury. I also conclude that Claimant was temporary totally disabled for the period February 28, 2006 to May 1, 2006 and from March 8, 2007 to May 6, 2007 and temporary partially disabled from May 2, 2006 to March 7, 2007. I further conclude that Claimant is entitled to the medical treatment and services recommended by her treating physician including and not limited to the knee replacement surgery.

ORDER

It is **ORDERED** Claimant's claim for relief be, and hereby is **GRANTED**.

JOAN E. KNIGHT
ADMINISTRATIVE LAW JUDGE

November 21, 2007

DATE

RE: ***Corina Rotella v. Grand Hyatt Washington and Gallagher Bassett Services,***
OWC No. 557081, 625657 & 634206, AHD No. 01-372C.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent this _____ day of _____,
2007 to the following:

Mohammad R. Sheikh, Acting Assistant Director
Labor Standards
Department of Employment Services
64 New York Ave., N.E., Suite 3923
Washington, D.C. 20002

Hand Delivery

Charles Green, Associate Director
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Certified

TERRI THOMPSON MALLET, CHIEF ALJ
ADMINISTRATIVE HEARING DIVISION

RE: ***Corina Rotella v. Grand Hyatt Washington and Gallagher Bassett Services,***
OWC No. 557081, 625657 & 634206, AHD No. 01-372C.

APPEAL RIGHTS

This order is effective upon filing with the Mayor pursuant to §21 of the Act, D.C. Code, as amended, §32-1520. 7 DCMR §230.12; §23a of the Act, D.C. Code, as amended, 2001, §32-1522a. Any party aggrieved by this Order may file an application for review with the Chief Judge Compensation Order Review Board⁶, Labor Standards Bureau, Department of Employment Services.

Send Application for Review to:

**Compensation Review Board/Chief Judge
Department of Employment Services
Labor Standards Bureau
64 New York Ave., N.E.
Third Floor
Washington, D.C. 20002**

The Application for Review must be filed within 30 days of the date of the filing of this Order with the Mayor as provided in §23a(a) of the Act, D.C. Code, as amended, §32-1522a(a). An Application for Review is perfected by filing with the Chief Judge, Compensation Review Board, Labor Standards Bureau,

1. one (1) original and two (2) copies of an Application for Review,
2. one (1) original and two (2) copies of a Memorandum of Points and Authorities in support of the Application, and
3. certification that copies of the Application and Memorandum have been served by mail or delivery

7 DCMR §§230.1, 230.2; §23a of the Act, D.C. Code, 2001, §32-1522a. A complete copy of the foregoing documents should be filed with the Office of Hearings and Adjudication Administrative Hearings Division at 64 New York Avenue, N.E., Second Floor, Washington, D.C. 20002.

⁶D.C. Code Ann. § 32-1521.01 (2001) and Title 7 of the District of Columbia Municipal Regulations, Chapter 1, section 118, and Chapter 2, sections 250 *et seq.*, established a Compensation Order Review Board and set forth the authority and responsibilities thereof. The letterhead used for decisions and orders refer to the entity as the "Compensation Review Board", which is the shorter-form designation the Director of the Department of Employment Services used in Administrative Policy Issuance No. 05-01 (February 5, 2005).