

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services
Labor Standards Bureau**

**Office of Hearings and Adjudication
Compensation Review Board**

**(202) 671-1394 -Voice
(202) 673-6402 - Fax**



GWENDOLYN BECKWITH,

Claimant – Respondent,

v.

PROVIDENCE HOSPITAL,

Self-Insured Employer - Petitioner.

Appeal from a Compensation Order of
Administrative Law Judge Terri Thompson Mallett
AHD No. 06-139, OWC No. 615744

Jeffrey Ochsman, Esq., for the Petitioner

Jessica G. Bhagan, for the Respondent

Before E. COOPER BROWN, *Chief Administrative Appeals Judge*, SHARMAN J. MONROE and
JEFFREY P. RUSSELL, *Administrative Appeals Judges*.

SHARMAN J. MONROE, *Administrative Appeals Judge*, on behalf of the Review Panel:

DECISION AND ORDER

JURISDICTION

Jurisdiction is conferred upon the Compensation Review Board pursuant to D.C. Official Code §§ 32-1521.01 and 32-1522 (2004), 7 DCMR § 230, and the Department of Employment Services Director's Directive, Administrative Policy Issuance 05-01 (February 5, 2005).¹

¹ Pursuant to Administrative Policy Issuance No. 05-01, dated February 5, 2005, the Director of the Department of Employment Services realigned the Office of Hearings and Adjudication to include, *inter alia*, establishment of the Compensation Review Board (CRB) in implementation of the District of Columbia Fiscal Year 2005 Budget Support Act of 2004, Title J, the D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, sec. 1102 (Oct. 1, 1994), *codified at* D.C. Code Ann. § 32-1521.01 (2005). In accordance with the

BACKGROUND

This appeal follows the issuance of a Compensation Order from the Administrative Hearings Division (AHD) of the Office of Hearings and Adjudication (OHA) in the District of Columbia Department of Employment Services (DOES). In that Compensation Order, which was filed on June 13, 2006, the Administrative Law Judge (ALJ) granted the requested relief for temporary total disability benefits continuing from July 14, 2005 with interest thereon, causally related medical expenses, and authorization for medical treatment. The Self-Insured Employer/Petitioner (Petitioner) now seeks review of that Compensation Order.

As grounds for this appeal, the Petitioner alleges that the decision awarding benefits is erroneous as it is not supported by substantial evidence and failed to address all the issues presented for resolution.

ANALYSIS

As an initial matter, the standard of review by the Compensation Review Board (CRB) and this Review Panel, as established by the Act and as contained in the governing regulations, is limited to making a determination as to whether the factual findings of the 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. D.C. Official Code § 32-1521.01(d)(2)(A). “Substantial evidence,” as defined by the District of Columbia Court of Appeals, is such evidence as a reasonable person might accept to support a particular conclusion. *Marriott Int’l. v. District of Columbia Department of Employment Services*, 834 A.2d 882 (D.C. 2003). Consistent with this standard of review, the CRB and this Review Panel are constrained to uphold a Compensation Order that is supported by substantial evidence, even if there is also contained within the record under review substantial evidence to support a contrary conclusion, and even where the reviewing authority might have reached a contrary conclusion. *Marriott*, 834 A.2d at 885.

Turning to the case under review herein, the Petitioner alleges that the ALJ, in finding that the Respondent’s injury arose out of and in the course of her employment, did not consider all the record evidence. The Petitioner asserts that the emergency room record from Providence Hospital, the notes from Employee Health and the depositional testimony of Ms. Laurel Ann Renaud all show that the Respondent did not sustain an injury at work on July 14, 2005. The Petitioner argues that the ALJ’s statement that it failed to produce evidence of suitable alternative employment for the Respondent was erroneous. The Petitioner asserts Ms. Renaud testified that it had a dedicated program in the Employee Health department dedicated to placing injured employees back to light duty employment and that the Petitioner was not placed in light duty employment because she did not appear at the Employee Health office ready to return to

Director’s Policy Issuance, the CRB replaces the Office of the Director in providing administrative appellate review and disposition of workers’ and disability compensation claims arising under the D.C. Workers’ Compensation Act of 1979, as amended, D.C. Code Ann. §§ 32-1501 to 32-1545 (2005) and the D.C. Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Code Ann. §§ 1-623.1 to 1.643.7 (2005), including responsibility for administrative appeals filed prior to October 1, 2004, the effective date of the D.C. Workers’ Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004.

work. The Petitioner maintains that although the Respondent was aware of the program, she not seek reemployment through the program, but instead went to the Human Resources department to circumvent the re-employment process. The Petitioner maintains that there is no medical evidence supporting a disability continuing after November 28, 2005. Finally, the Petitioner argues that the ALJ failed to address its claim for a credit due to the Respondent's receipt of unemployment compensation benefits.²

After a review of the record in its entirety, the Petitioner's arguments, which center on a re-characterization of the evidence, are rejected. As the D.C. Court of Appeals stated in *Gary v. D. C. Department of Employment Services*, 723 A.2d 1205 (D.C. 1998):

[T]he relevant inquiry is whether the examiner's [ALJ] decision was supported by substantial evidence, not whether an alternative decision might also have been supported by substantial evidence. This court has frequently held that "where there is substantial evidence to support the Director's findings . . . then the mere existence of substantial evidence contrary to that finding does not allow this court to substitute its judgment for that of the Director." *McEvily, supra*, 500 A.2d at 1024 n.3 (citations omitted); *accord, e.g., Upper Georgia Avenue Planning Committee v. Alcoholic Beverage Control Board*, 500 A.2d 987, 992 (D.C. 1985) ("we must uphold the Board's decision so long as it is supported by substantial evidence, even though there may also be substantial evidence to support a contrary decision").

723 A.2d at 1209

Herein, the Panel determines that the ALJ reviewed all of the evidence submitted at the formal hearing and that the ALJ's factual findings are supported by substantial evidence on the record as a whole, and are conclusive. Additionally, the ALJ's legal conclusions are in accordance with the law. *Marriott Int'l., supra*; D.C. Workers' Compensation Act of 1979, as amended, D.C. Official Code § 32-1501 to 32-1545 (2005), at § 32-1521.01(d)(2)(A). The Panel also defers to and accepts the ALJ's credibility determinations as they are supported by substantial evidence. *See Marriott Int'l., supra* at 887; *Dell v. D.C. Department of Employment Services*, 499 A.2d 102 (1985). The record fully supports the ALJ's thorough, well reasoned decision, and the Panel, therefore, adopts the reasoning and legal analysis expressed by the ALJ in that decision in affirming the Compensation Order in all respects.³

CONCLUSION

The Compensation Order of June 13, 2006 is supported by substantial evidence in the record and is in accordance with the law.

² A review of the official record of this case reveals that the Respondent filed a Motion for Reconsideration with the ALJ addressing the lack of findings on the credit issue. On July 20, 2006, the ALJ issued a Supplemental Compensation Order disposing of the credit issue. Therefore, as the Respondent's argument on the credit issue is now moot, the Panel will not address it.

³ D.C. Workers' Compensation Act of 1979, as amended, D.C. Code Ann. §32-1501 to 32-1545 (2005), at §32-1521.01(d)(2)(B) requires a more detailed and thorough written order than the instant Decision and Order where there is a reversal of the Compensation Order.

ORDER

The Compensation Order of June 13, 2006 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

SHARMAN J. MONROE
Administrative Appeals Judge

December 8, 2006

DATE