

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

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

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**CRB (Dir.Dkt.) No. 01-07**

**FRED BLAGMON,**

**Claimant – Petitioner,**

**v.**

**D.C. DEPARTMENT OF EMPLOYMENT SERVICES,**

**Employer – Respondent.**

Appeal from a Compensation Order of  
Administrative Law Judge Robert R. Middleton  
OHA No. 99-49, OWC No. 001926

Kirk D. Williams, Esq., for the Petitioner

Kevin J. Turner, Esq., for the Respondent

Before E. COOPER BROWN, *Chief Administrative Appeals Judge*, LINDA F. JORY and SHARMAN J. MONROE, *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).<sup>1</sup>

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<sup>1</sup> 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

## BACKGROUND

This appeal follows the issuance of a Final Compensation Order by the Assistant Director for Labor Standards of the District of Columbia Department of Employment Services, approving and adopting a Recommended Decision from the Office of Hearings and Adjudication (OHA).<sup>2</sup> In that Recommended Decision, which was filed on August 31, 2000, the Administrative Law Judge (ALJ) denied the further benefits to the Claimant-Petitioner (Petitioner) and awarded a credit the Employer-Respondent (Respondent) for overpayments made since 1984. The Petitioner filed a timely appeal and on February 9, 2001, the Director, DOES remanded the matter stating that the incorrect legal standard was applied in the case. On March 26, 2001, the Assistant Director for Labor Standards adopting a Recommended Decision on Remand as the Final Compensation Order wherein the Petitioner was again denied benefits. The Petitioner timely filed an appeal to the D.C. Court of Appeals (DCCA).

On January 13, 2003, the Respondent filed a Motion for Remand with the DCCA requesting that this matter be remanded for “further explication . . . on the issue of whether the Petitioner’s disability compensation benefits were underpaid or overpaid during the period from May 1989 to May 1999.” The Petitioner consented to the Motion. On January 29, 2003, the DCCA ordered that the matter be remanded to DOES for further “proceedings consistent with the . . . motion.” Both parties submitted memoranda subsequent to the remand.

## 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 §§ 1-623.28(a) and 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,

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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 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.

<sup>2</sup> Pursuant to the Director’s Directive, Administrative Policy Issuance 05-01, the functions of the Office of Hearings and Adjudication have been assigned to the Administrative Hearings Division (AHD). Throughout this decision, the new office names, CRB and AHD, will be used.

and even where the reviewing authority might have reached a contrary conclusion. *Marriott*, 834 A.2d at 885.

At the initial hearing in this case, the Respondent requested as relief a credit for overpayment of disability benefits made prior to the effective date of the July 8, 1999 Final Order of Denial. Although two decisions have issued in this case, in neither did the ALJ make findings of fact on the amount of the wages the Petitioner earned during the period from May 1989 to May 1999 and the effect his earnings had on the amount of temporary partial disability to which he may have been entitled. Accordingly, this matter must be remanded to the Administrative Hearings Division for a resolution in the first instance of the issue posed by the Court of Appeals.

**ORDER**

This matter is REMANDED to the Administrative Hearings Division, OHA, for such further proceedings as may be necessary to address and resolve the issue posed by the D.C. Court of Appeals Remand Order, a copy of which is attached hereto and incorporated herein as a part of this Decision and Order.

FOR THE COMPENSATION REVIEW BOARD:

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SHARMAN J. MONROE  
Administrative Appeals Judge

\_\_\_\_\_  
September 29, 2006  
DATE