

**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 No. 06-90**

**JEREMIAH BRUMFIELD,**

**Claimant – Petitioner,**

**v.**

**GREYHOUND LINES, INC. AND ACE USA,**

**Employer/Carrier – Respondent.**

Appeal from a Compensation Order on Remand of  
Administrative Law Judge, Anand K. Verma  
AHD No. 03-442A, OWC No. 585744

Matthew Peffer, Esquire for the Petitioner

Kathryn S. McAleer, Esquire for the Respondent

Before LINDA F. JORY, SHARMAN MONROE, *Administrative Appeals Judges* and E. COOPER BROWN, *Chief Administrative Appeals Judge*.

LINDA F. JORY, *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 Support Act of 20024, Title J, the 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, 32-1522 (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. Official Code §§ 1-623.1 to 1.643.7 (2005),

## BACKGROUND

This appeal follows the issuance of a Compensation Order on Remand 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 on Remand, which was filed on August 30, 2006, the Administrative Law Judge (ALJ) concluded Claimant-Petitioner (Petitioner) had failed to meet the necessary threshold level of proof and denied Petitioner's claim for relief.

The Compensation Order on Remand followed a Decision and Order issued by the Compensation Review Board (the CRB) on June 2, 2006. *See Jeremiah Brumfield v. Greyhound Lines, Inc. and ACE USA*, CRB No. 06-43 (June 2, 2006) In that Decision and Order, the CRB determined the ALJ's conclusion that Petitioner's lower back symptoms were not causally related to his work injury was not supported by substantial evidence in the record. The CRB remanded the matter to AHD for further proceedings, if necessary, and to reconsider the record as a whole to make further findings of fact and conclusions of law on the causal relationship issue.

The Petition for Review alleges as grounds for Petitioner's appeal that the ALJ made multiple findings of fact that have no relevance to the case; failed to consider Petitioner's evidence as ordered by the CRB; and failed to "apply the laws of District of Columbia".

Respondent has filed an opposition to the Application for Review, asserting the ALJ did reconsider the evidence presented at the Formal Hearing and did make further findings of fact but decided again to deny the claim for relief. Respondent further asserts the ALJ based his decision on substantial evidence as he had severely discounted the probative value of Petitioner's evidence. Respondent asserts, therefore, that "taking into consideration the previously mentioned evidence and the lack of probative value of the Petitioner's evidence-- there was such evidence that a reasonable person might accept to support denial of the [Petitioner's] claim".

## ANALYSIS

As an initial matter, the scope of review by the Compensation Review Board (CRB) and this Review Panel (hereafter, the 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. App. 2003). Consistent with this scope of review, the CRB and this panel are bound to uphold a

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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.

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 Panel finds Petitioner has a valid argument that the ALJ failed to apply the proper law of the District of Columbia as it pertains to the causal relationship of Petitioner's claim to his work injury of December 19, 2002.

As the Court of Appeals has held in *Charles Whittaker v. District of Columbia Department of Employment Services*, 668 A.2d 844 (D.C. 1995) and re-stated in *Davis-Dodson v. District of Columbia Department of Employment Services*, 697 A.2d 1214 (D.C.App.1997) and is well settled in this jurisdiction:

**Once a causal connection is shown between a disability and a work-related event, a claimant is entitled to a continuing presumption that the ongoing manifestation of such a disability remains the result of the prior job-related injury until rebutted by substantial evidence presented by the employer.**

The statutory presumption is invoked upon a showing by the claimant of an injury or disease and a work place incident, condition or event that has the potential of causing the injury or disease. *Ferreira v. District of Columbia Department of Employment Services*, 531 A.2d 651 (D.C. App 1987)(*Ferriera*). Where employer has presented evidence "specific and comprehensive" on the question of causality, the presumption falls from the matter and the conflicting evidence is weighed without reference thereto. *Ferreira*, *supra* at 655.

Review of the CRB's Decision and Order in CRB No. 06-43 reveals that the deciding Panel did not find any error in the ALJ's invocation of the presumption pursuant to §32-1521, nor did the Panel find that the ALJ's determination that Respondent had rebutted the presumption was improper. However, the Panel concluded that when weighing the conflicting evidence without reference to the presumption pursuant to *Ferreira*, the ALJ relied on evidence that pertained to Petitioner's ability to work and/or need for surgery as opposed to any medical opinions which address the causal relationship of Petitioner's disability to the work injury.<sup>2</sup> In determining that the ALJ did not properly weigh the conflicting evidence, the Panel cited specifically to the ALJ's statement that " 'even without recourse to' Respondent's evidence or considering Dr. Gordon's report, the ALJ denied Petitioner's request for benefits" D&O at 3.

The matter was remanded by the previous panel for the sole purpose of considering all of the evidence of record to determine if there exists credible substantial evidence to support a finding of causal relationship between Petitioner's injury and the ongoing residuals. In the Compensation Order on Remand, the ALJ, for reasons not clear to this Panel, initially engaged in a discussion with regard to the Court of Appeals' review authority when reviewing decisions made by the CRB. The ALJ also offered his opinion with regard to the CRB's determination that Dr. Muawwad's determination of MMI and Dr. Gargour's opinion that Petitioner was not a

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<sup>2</sup> It appears that in lieu of weighing the evidence with regard to causal relationship, the ALJ substituted the evidentiary analysis more appropriate to a determination of the nature and extent of Petitioner's disability.

candidate for surgery, did not amount to substantial evidence of no causal relationship, or in the Panel's words, "Petitioner was not entitled to benefits during the period in question".

The ALJ, however, failed to mention that although Dr. Gargour felt Petitioner was not a surgical candidate, his myofascial pain injuries *were* related to the December 19, 2002 injury or that Dr. Muawwad never indicated that he was revoking his statement "for conditions caused by work injury of December 19, 2002" made repeatedly on every office note from the date of his initial evaluation on January 7, 2003 through June 15, 2004. Moreover, although he referred to Dr. Muawwad's deposition in his original Compensation Order, he does not refer to it at all in the Compensation Order on Remand nor does he acknowledge Dr. Muawwad's opinion rendered on the causal relationship of Petitioner's condition to the work injury. *See* CE 1 at 11. Thus the Panel finds the ALJ's conclusion is based upon a selective amount of evidence as opposed to substantial evidence as a whole; but more importantly the ALJ again engages in the type of evidentiary analysis appropriate to a determination of the nature and extent of Petitioner's disability.

This Panel concludes that "weighing the evidence" to conclude whatever symptoms Petitioner was suffering were not causally related to the work injury, (contrary to the reports of the treating physician), without the presumption pursuant to §32-1521, warrants more than a finding that MMI was reached and surgery was not recommended. *Whittaker, supra; Davis-Dodson, supra,*

Nevertheless, what is most troubling to the instant Panel is the ALJ's summary statement rendered prior to his conclusion:

Thus, upon reconsideration of the evidence of record, the undersigned cannot conclude that claimant received any palliative treatment after January 19, 2004 for his complained of low back symptoms, which, when viewed in light of the entirety of objective findings, abated on January 19, 2004. Accordingly, any of claimant's subsequent complaints cannot be deemed medically causally related to the work injury of December 19, 2002.

Compensation Order on Remand at 5,6.

The current Panel is of the opinion that based upon this summary statement, the ALJ did not understand that the previous Panel was remanding the matter for a reconsideration of the evidence in total to determine if substantial evidence exists to warrant a finding of causal relationship between the work injury and Petitioner's ongoing problems.

As such, this Panel is of the opinion that the ALJ's conclusion upon reconsideration of the evidence as a whole, that Petitioner's evidence "fails to meet the necessary threshold of proof" is neither supported by substantial evidence nor in accordance with the law.

Accordingly, we have determined that the matter should be reversed and remanded to the ALJ for further consideration of the entire evidentiary record. In the Compensation Order on Remand, the ALJ must identify what evidence the Petitioner presented in support of the claim, identify what evidence exists in contravention of that claim, and since the presumption of

compensability has found to be rebutted, *weigh* that evidence in light of (1) the established rules concerning acceptance or rejection of treating physician opinion and (2) the humanitarian purposes of the Act. In the event that the ALJ finds that a causal relationship exists between claimant's alleged ongoing disability he shall then review the evidence to determine if Petitioner has met his burden of establishing entitlement to wage loss benefits. *See Otis Dunston v. District of Columbia Department of Employment Services*, 509 A.2d 109 (D.C. 1986); *Thomas Logan v. District of Columbia Dept. of Employment Services*, 805 A.2d 237 D.C. App. (August 22, 2002), (hereinafter *Logan*), *citing Dunston, supra*.

#### CONCLUSION

The Compensation Order on Remand of June 2, 2006 does not comport with the direction given by the CRB in its initial Decision and Order as the ALJ failed to consider the evidence as a whole and failed to apply the prevailing case law to determine if a causal relationship exists before determining if Petitioner has prevailed on the nature and extent issue.

#### ORDER

The Compensation Order on Remand of June 2, 2006 is hereby **VACATED** and the matter is **REMANDED** to AHD for further proceedings consistent with the foregoing Decision and Order.

FOR THE COMPENSATION REVIEW BOARD:

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LINDA F. JORY  
Administrative Appeals Judge

November 30, 2006  
Date