

**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**

**CRB No. 06-74**

**MARILYN NICHOLAS-GRIFFITH,**

**Claimant – Respondent,**

**v.**

**HOSPITAL FOR SICK CHILDREN,**

**Employer/Carrier – Petitioner.**

Appeal from a Compensation Order of  
Administrative Law Judge Anand K. Verma  
OHA No. 03-453A, OWC No. 583290

Matthew J. Peffer, Esquire for the Respondent

Jeffrey W. Ochsman, Esquire for the Petitioner

Before LINDA F. JORY, AND FLOYD LEWIS, *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 REMAND 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 D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, D.C. Official Code §32-1521.01. In accordance with the Director's Directive, 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. Official Code §32-1501 *et seq.*, and the D.C. Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Official Code §1-623.1 *et seq.*, including responsibility for administrative appeals filed prior to October 1, 2004, the effective date of the D.C. Workers' Compensation Administrative Reform and Anti-

## 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 July 28, 2006, the Administrative Law Judge (ALJ), concluded that Claimant – Respondent’s (Respondent) carpal tunnel syndrome was causally related to Respondent’s injury of April 27, 2002 and that timely notice was provided to Employer- Petitioner (Petitioner). Accordingly Respondent’s claim for authorization for carpal tunnel surgery was granted.

Employer-Petitioner’s (Petitioner’s) Petition for Review alleges as grounds for its appeal that the ALJ’s findings and conclusion that Respondent “has established that a compensable neck and shoulder injury is a material contributing cause of her worsened carpal tunnel syndrome”, CO at 4, is not supported by substantial evidence of record. Claimant-Respondent has filed a response to Petitioner’s Memorandum of Points and Authorities and therein asserts that because neither of Petitioner’s IME physicians opined that the work accident of April 27, 2002 could not or did not aggravate or worsen the carpal tunnel syndrome, the ALJ’s conclusion that Petitioner did not present evidence to rebut the presumption is supported by substantial evidence in support of its Application for Review.

## 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. *See* D.C. Workers’ Compensation Act of 1979, as amended, D.C. Official Code §32-1501 *et seq.*, at §32-1522(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 scope of review, the CRB and this panel are bound 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, Petitioner asserts that evidence submitted by Petitioner plainly rebutted the presumption of compensability which should have led to the ALJ’s weighing of the evidence without the benefit of the presumption. In support of its position, Petitioner relies on the IME opinion rendered by Dr. Richard W. Barth on December 19, 2002 wherein Dr. Barth stated “in my opinion, and to a reasonable degree of medical certainty, her carpal tunnel syndrome is NOT causally related to the accident of April 27, 2002”. *See* RE 1 at 3 (emphasis included). Petitioner further relied on Dr. Barth’s supplemental report dated August

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Fraud Amendment Act of 2004.

28, 2003, wherein he repeated this opinion and further supported it with his findings that “there is no correlation between [Petitioner’s] job duties and her development of carpal tunnel syndrome”; “there is no repetitive data entry involved; she developed no symptoms of carpal tunnel syndrome until approximately 6 months after this injury to her neck and shoulder”; “the mechanism of injury is not consistent with an injury causing carpal tunnel syndrome”; and “the delay in onset of symptoms of carpal tunnel syndrome of 6 months proves within a reasonable degree of medical certainty there is absolutely no correlation between the injury and the symptoms of carpal tunnel syndrome”.

As Petitioner properly asserts, in the Compensation Order at issue, the ALJ conceded that Dr. Barth opined Petitioner’s carpal tunnel syndrome was not related to the April 27, 2002 work incident, and that he was of the opinion that Petitioner’s job duties did not predispose her to developing the carpal tunnel syndrome. However it is the ALJ’s quote of Dr. Barth and the ALJ’s subsequent conclusion that the Panel finds disturbing. The ALJ stated:

Although, Dr. Barth noted that to a reasonable degree of medical certainty, [Respondent’s] carpal tunnel syndrome was not causally related to the accident of April 27, 2002, in his opinion, [Respondent] had a ‘work-related exacerbation on April 27, 2002’. Dr. Barth’s conclusion, thus, fails to rebut the statutory presumption of compensability.

The Panel has thoroughly reviewed both the December 19, 2002 and the August 28, 2003 reports of Dr. Barth and have found that the only time Dr. Barth included “work – related exacerbation on April 27, 2002” was in his “Impression” section with reference to “pre-existing cervical spondylosis” although the ALJ does not reference where the quoted language appeared. Dr. Barth listed his 4 impressions as:

#### IMPRESSION

1. Preexisting cervical spondylosis with work-related exacerbation on April 27, 2002.
2. Normal RIGHT shoulder.
3. RIGHT carpal tunnel syndrome. NOT work related.
4. Basilar joint arthritis, RIGHT thumb. NOT work related.

Emphasis included. RE 1 at 3.

It is unclear to this Panel how the ALJ interpreted Dr. Barth’s first impression to mean that the April 27, 2002 accident exacerbated Respondent’s carpal tunnel problems. We agree with Petitioner that when read in its entirety, the comments of Dr. Barth regarding the work-related exacerbation clearly apply only to the claimant’s cervical spondylosis, a medical condition which is not at issue in this matter. The Panel further agrees that by selectively quoting Dr. Barth’s report the ALJ’s conclusion that Dr. Barth would agree that Respondent’s neck and shoulder injury caused the carpal tunnel syndrome to become symptomatic is not supported by the full text of Dr. Barth’s report. Thus, we conclude that the ALJ’s statement that Dr. Barth’s conclusion fails to rebut the statutory presumption is erroneous.

Contrary to Respondent's assertion on appeal Dr. Barth fully explained his rationale for reaching his conclusion that Respondent's right carpal tunnel syndrome is not related to the April 27, 2002 accident. In keeping with the Court of Appeals guidance in *Washington Post v. District of Columbia Dep't of Employment Services and Raymond Reynolds, Intervenor*, 852 A.2d 909 (D.C. 2004), the Panel finds by proffering a qualified independent medical expert who, having examined Respondent and reviewed her medical records, rendered what the Panel finds to be an unambiguous opinion that the work injury did not contribute to the disability, Petitioner has met its burden to rebut the presumption. Otherwise said, the Panel concludes that Dr. Barth's report is specific and comprehensive evidence sufficient to rebut the causal relationship between Respondent's alleged carpal tunnel syndrome and the work injury to his neck and shoulder on April 27, 2002. *See, e.g., Safeway Stores Inc .v. District of Columbia Dep't of Employment Servs.*, 806 A.2d 1214, 1219-20 (D.C. 2002)<sup>2</sup>.

The presumption having found to have been rebutted, the matter must be remanded to the ALJ to weigh the evidence of record to determine if there is substantial evidence to conclude a causal relationship exists between Respondent's carpal tunnel syndrome and the neck injury she sustained on April 27, 2002. *Washington Post v. D. O.E.S and Raymond Reynolds, Intervenor*, 852 A.2d 909, at 916, *citing Safeway Stores, Inc.*, 806 A.2d at 1220.

#### CONCLUSION

The ALJ's conclusion in the July 28, 2006 Compensation Order that employer failed to rebut the statutory presumption of compensability is not supported by substantial evidence of record and must be reversed.

#### ORDER

The Compensation Order of July 28, 2006 is hereby reversed and remanded for the Administrative Law Judge to weigh the conflicting evidence of causation without relying on the statutory presumption.

FOR THE COMPENSATION REVIEW BOARD:

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LINDA F. JORY  
Administrative Appeals Judge

October 10, 2006  
DATE

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<sup>2</sup> The employer's evidence simply needs to be "specific and comprehensive enough," that "a reasonable mind might accept [it] as adequate" to contradict the presumed causal connection between the event at work and the employee's subsequent disability. *Ferreira v. District of Columbia Dep't of Employment Servs.*, 531 A.2d 651 (D.C. 1987).