

**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. 06-56

ARTHUR SHIPKEY,

Claimant – Petitioner,

v.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY,

Self-Insured Employer – Respondent.

Appeal from a Compensation Order of
Administrative Law Judge E. Cooper Brown
OHA No. 03-180A, OWC No. 581641

Eric M. May, Esq., for the Petitioner

Donna J. Henderson, Esq., for the Respondent

Before LINDA F. JORY, FLOYD LEWIS, 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).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

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 May 26, 2006, the Administrative Law Judge (ALJ) denied the relief requested on the basis that jurisdiction pursuant to D.C. Official Code § 32-1503(a) was not present. The Claimant-Petitioner's (Petitioner) now seeks review of that Compensation Order.

As grounds for this appeal, the Petitioner alleges that the decision below is erroneous and not in accordance with the controlling law in this jurisdiction.

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's decision must be reversed. The Petitioner maintains that while the ALJ was correct in using the three-prong test of *Hughes v. D.C. Department of Employment Services*, 498 A.2d 567 (1985) to determine whether his employment was "principally localized" in the District of Columbia, the ALJ's analysis was incorrect. The Petitioner states that, according to the daily logs showing his work at the Respondent's various facilities over the twenty-six week period prior to his injury, he worked 391.5 hours, or 47.86 %, in the District of Columbia, 233.5 hours, or 28.55 %, in Virginia and 193 hours, or 23.59 %, in Maryland. He argues that based upon the first prong of the test, he performed his job duties at the Respondent's facilities located within the District of Columbia almost half of the time, thus fixing jurisdiction in the District. The Petitioner asserts that if the first prong is inapplicable, under the second prong, his contract for hire and his initial assignment

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.

were in the District of Columbia, thus again fixing jurisdiction in the District. Finally, as to the third prong, the Petitioner argues that the ALJ's assertion there is no dispute that his base of operations was Greenbelt, Maryland is erroneous as the evidence shows he worked more in the District of Columbia. Moreover, the Petitioner argues that the ALJ should never have reached the third prong since all the elements of the first prong were present.

In its opposition memorandum, the Respondent argues that the third prong of the Hughes test is applicable in this case as the Petitioner does not principally perform his work in any single jurisdiction (1st prong), and as the Petitioner is a Maryland resident and could not recall where he entered into his contract of employment (2nd prong). The Respondent argues that the Petitioner's base of operations is Greenbelt, Maryland and, therefore, the Compensation Order should be affirmed.

The record in this case was reviewed in its entirety. The Panel determines that the ALJ correctly concluded that D.C. Official Code § 1503(a)(2) was applicable as the Petitioner's injury occurred outside the District of Columbia, and that the three-prong test enunciated in *Hughes, supra* was the appropriate mechanism to determine whether the Petitioner's employment was "principally localized" in the District of Columbia. The ALJ found, and the finding is supported by substantial evidence, that the Petitioner's employment was not principally localized in the District of Columbia.

The evidence shows that the Petitioner worked for the Respondent as a plumber at various of the Respondent's facilities in the District of Columbia, Maryland and Virginia. Each day, he reported to the Respondent's facility in Greenbelt, Maryland where he loaded his equipment into a truck and waited to be dispatched to assignments. At the end of the day, the Petitioner returned to the Greenbelt, Maryland facility. On July 23, 2003, he sustained a work-related injury while in Maryland.

In finding no jurisdiction, the ALJ relied primarily on the first prong and secondarily on the third prong of the *Hughes* test. The Panel can discern no error in the ALJ's legal analysis of the *Hughes* test to the facts of this case. The Panel specifically rejects the Petitioner's argument that his base of operations was the District of Columbia. The ALJ properly found that the Petitioner's base of operations was Greenbelt, Maryland as the evidence demonstrated that the Petitioner began his workday at the Greenbelt, Maryland facility, that he was dispatched from there to job sites where he worked and that he returned there at the end of his workday. *See generally Guglielme v. U.S. Air*, H&AS No 87-424, OWC No. 0114951 (December 8, 1987)(Prong three of the *Hughes* test found applicable for a flight attendant who performed his work aboard an aircraft while it is in flight. Since his flights originated at Reagan National Airport, which is located in Virginia, his employment was found not principally localized in the District of Columbia)

In sum, the Panel determines that the ALJ's factual findings are supported by substantial evidence on the record as a whole, and that 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. Code Ann. § 32-1501 to 32-1545 (2005), at § 32-1521.01(d)(2)(A). 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.²

CONCLUSION

The Compensation Order of May 26, 2006 is supported by substantial evidence in the record and is in accordance with the law

ORDER

The Compensation Order of May 26, 2006 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

SHARMAN J. MONROE
Administrative Appeals Judge

October 17, 2006 _____
DATE

² 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.