

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. 06-93

BETTY STEWARD,

Claimant – Petitioner,

v.

Children’s National Medical Center and Royal & Sun Alliance Insurance,

Employer/Carrier – Respondent.

Appeal from a Compensation Order of
Administrative Law Judge Anand K. Verma
AHD No. 04-206, OWC No. 591395

Betty Steward, for the Petitioner *Pro Se*¹

Jeffrey P. Ochsman, 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).²

¹ While the Petitioner was represented by Matthew Peffer, Esq. at the formal hearing, she is appearing *pro se* in this appeal.

² 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

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 August 30, 2006, the Administrative Law Judge (ALJ) denied the Claimant-Petitioner's request for relief on finding that she did not sustain an accidental injury on October 7, 2003. The Claimant-Petitioner (Petitioner) now seeks review of that Compensation Order.

As grounds for this appeal, the Petitioner alleges as error that the Compensation Order is erroneous.

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 is erroneous and that she is entitled to compensation. She asserts that on October 7, 2003, she had been diagnosed with Achilles tendonitis which was about to erupt and that she was, consequently, wearing a boot covering her right leg from the foot to the knee. The Petitioner asserts that it was awkward to walk in the boot. She asserts that although she should have been on light duty work, her work load was not reduced accordingly. The Petitioner asserts that on October 7, 2003, as she was going up the stairs at work to the third floor to attend to a student, the boot "hit the steps and hung up thus causing [her] to fall against the railing twisting [her] body and [her] leg on the left side and the pain radiated from [her] hip all the way to my foot."

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 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.

Letter of October 5, 2006 at p. 2. She maintains that she went straight to Kaiser for treatment and then reported the injury to people at work. She maintains that Dr. McGhee advised her not to return to work and that she has not been able to work since October 7, 2003. Accordingly, the Petitioner asserts that she is entitled to workers' compensation benefits.

In ultimately finding that the Petitioner did not sustain an accidental injury on October 7, 2003, the ALJ found that the Petitioner was not a credible witness. In support of this finding, the ALJ detailed, pursuant to *Cohen v. A&A Hardware*, Dir.Dkt. No. 88-93, H&AS No. 86-272A, OWC No. 0075694, n. 2 (July 2, 1990), the inconsistencies in the Petitioner's testimony and the lack of corroboration with the documentary evidence. After reviewing the record, the Panel determines that the ALJ's findings on the Petitioner's credibility, or lack thereof, is supported by substantial evidence in the record and the Panel is bound by the finding. *See Georgetown University v. D.C. Department of Employment Services*, 862 A.2d 387, 392-393 (D.C. 2004).

The ALJ also rejected Dr. Christopher Magee's opinion as a support for the occurrence of an accidental injury on October 7, 2003. After reviewing the evidence, the ALJ found that the medical opinion of Dr. Magee, upon whom the Petitioner relied, was unsupported by medical documentation, diagnostic test results or objective findings, and was not based on the Petitioner's complete medical history. The ALJ determined that Dr. Magee's opinion could not change that there was "no evidence of a new symptom or of an aggravation of an existing symptom." Compensation Order at p. 6.

The ALJ relied upon the opinion of Dr. James Tozzi, who had treated the Petitioner for more than a year prior to the October 7, 2003 incident. Dr. Tozzi opined that the Petitioner suffered from nerve compression from spondylolisthesis which causes pain in the trochanter³ region and pain down the leg.

Under the Act, an accidental injury means that "something unexpectedly goes wrong within the human frame." *Washington Metropolitan Area Transit Authority v. D.C. Department of Employment Services*, 506 A.2d 1127, 1129-1130 (D.C. 1986) (hereinafter, *Dorchy*). The injured employee bears the burden of proving that a work incident is, in fact, an accidental injury and the burden can only be satisfied with credible evidence. *See Dorchy* at 1128. The ALJ found that the Petitioner failed to produce credible evidence that she sustained an accidental injury within the meaning of the Act at work. After reviewing the totality of the evidence, the Panel determines that the ALJ's factual findings are supported by substantial evidence on the record as a whole, and are conclusive, and that the ALJ's legal conclusions are in accordance with the law. *Marriott*, 834 A.2d at 885.

In her appeal, the Petitioner reiterated her medical history as it pertained to her knee problems which were set forth in the Compensation Order. *See* Compensation Order at pp. 2-3. She also stated what happened to her at work on October 7, 2003 and what she did subsequently. The Petitioner, however, did not put forth any reason (s) that would persuade the Panel to determine that the decision below was not based upon substantial evidence in the record.

³ Trochanter is defined as either of the two bony processes below the neck of the femur. The femur is the thigh bone and extends from the hip to the knee. *See* TABERS CYCLOPEDIA MEDICAL DICTIONARY (2002).

CONCLUSION

The Compensation Order of August 30, 2006 is supported by substantial evidence in the record and is in accordance with the law.

ORDER

The Compensation Order of August 30, 2006 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

SHARMAN J. MONROE
Administrative Appeals Judge

November 8, 2006
DATE