

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. 06-63

CECIL THOMAS,

Claimant – Petitioner,

v.

MARRIOTT CORPORATION,

Self-Insured Employer – Respondent.

Appeal from a Compensation Order of
Administrative Law Judge Fred D. Carney
AHD No. 05-116A, OWC No. 579550

Alan Toppelberg, Esq., for the Petitioner

Todd S. Sapiro, Esq.

Jeffrey P. Ochsman, Esq., for the Respondent

Before FLOYD LEWIS, SHARMAN J. MONROE and JEFFREY P. RUSSELL, *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 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

BACKGROUND

This appeal follows the issuance of a Compensation Order from the Administrative Hearings Division (AHD) of the Office of Hearings and Adjudication (OHA), District of Columbia Department of Employment Services (DOES). In that Compensation Order, which was filed on June 6, 2006, the Administrative Law Judge (ALJ) denied the relief requested by the Claimant-Petitioner (Petitioner) for temporary total disability benefits and interest thereon, causally related medical expenses and vocational rehabilitation. The Petitioner now seeks review of that Compensation Order.

As grounds for this appeal, the Petitioner alleges as error that the Compensation Order is not supported by substantial evidence and is not in accordance with the law.

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 not based upon substantial evidence and should be reversed. Specifically, he asserts that the ALJ’s finding that he suffered a congenital bilateral foot deformity prior to his June 7, 2002 is not based upon facts in evidence. In support of this assertion, the Petitioner cites the findings made in a Compensation Order dated April 11, 2005, which was issued by another ALJ, as well as the opinion of Dr. Marc Danziger, the independent medical examiner. The Petitioner also asserts that the Respondent failed to produce evidence specific and comprehensive enough to sever the connection between his June 7, 2002 ankle injury and his current complaints. The Petitioner maintains that the opinion of Dr. Danziger, upon whom the ALJ relied, is not persuasive because Dr. Danziger reversed his opinion about the Petitioner’s condition and because there were several factual errors in his reports. The Petitioner argues that the opinion of Dr. William Launder, his treating physician, coupled with the results of his MRI scan and functional capacity evaluation support his claim for ongoing benefits. The Respondent asserts that the

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 is supported by substantial evidence, in accordance with the law and should be affirmed.

In rendering the decision, the ALJ found that the Petitioner suffered from congenital bilateral foot deformity prior to the work injury of June 7, 2002 which was asymptomatic. Although the Petitioner asserts the finding is unsubstantiated, the Panel finds that it is supported by substantial evidence in the record. In his October 5, 2005 report, Dr. Danziger opined, based upon his examination of the Petitioner and his review of the Petitioner's medical records, that the Petitioner had flatfoot deformity which was congenital in both of his feet. *See* Employer Exhibit No. 3. That the Petitioner did not know he had such a condition is not a basis for setting aside the finding. In fact, the Petitioner's testimony that he never received treatment for the condition buttresses the ALJ's finding that it was asymptomatic.

It is well-settled in this jurisdiction that to grant a preference to and accept the opinion of the treating physician due to that physician's familiarity with a claimant's injury and treatment. *See Harris v. D.C. Department of Employment Services*, 746 A.2d 297 (D.C. 2000). This preference, however, is not absolute and an ALJ may reject the opinion of the treating physician so as long as the ALJ provides reasons for not according the treating physician's opinion great weight. *See Clark v. D.C. Department of Employment Services*, 772 A.2d 198, 202 (D.C., 2001). In deciding against the Petitioner below, the ALJ rejected the medical opinion of Dr. Launder that the Petitioner had some limitations on his physical activities and impaired gait due to his June 7, 2002 work injury because Dr. Launder's opinion "lack clinical support" and contained "inherent inconsistencies". *See* Compensation Order at p. 8.

The record in this case was reviewed in its entirety. 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 Int'l, supra*; D.C. Official Code § 32-1501 to 32-1545 (2005), at § 32-1521.01(d)(2)(A). The record 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 June 6, 2006 is supported by substantial evidence in the record the law and is in accordance with the law.

ORDER

The Compensation Order of June 6, 2006 is hereby AFFIRMED.

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.

FOR THE COMPENSATION REVIEW BOARD:

SHARMAN J. MONROE
Administrative Appeals Judge

September 8, 2006
DATE