

**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 (Dir.Dkt.) No. 01-46

JEFFREY WATSON,

Claimant – Respondent,

v.

SAFEWAY STORES, INC.,

Self-Insured Employer – Petitioner.

Appeal from a Compensation Order of
Administrative Law Judge David L. Boddie
in

OHA No. 99-148A, OWC No. 533161

UPON REMAND ORDER OF THE D.C. COURT OF APPEALS, No. 01-AA-117

Alexander Francuzenko, Esq., for the Petitioner

Steven Rohan, 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:

ORDER OF REMAND

JURISDICTION

In a decision dated September 26, 2002, the D.C. Court of Appeals (DCCA) affirmed in part, and reversed and remanded in part the Director's decision in this matter.¹ The

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

Employer/Petitioner (Petitioner) appealed the July 25, 2001 Decision of the Director, which affirmed the March 21, 2001 Compensation Order awarding temporary total and schedule permanent partial benefits to the Claimant-Respondent (Respondent). In its appeal, the Petitioner argued that both the ALJ and the Director erred in concluding that it had failed to produce sufficient evidence to overcome the presumption of compensability and in concluding that the Respondent sustained an eighty percent (80%) permanent partial impairment to the left lower extremity. After reviewing the case law in this jurisdiction and the evidence submitted at the formal hearing, the DCCA affirmed the schedule permanent partial benefits award. However, the DCCA determined that the ALJ and the Director had placed a “too high” burden on the Petitioner as it related to rebutting the presumption. The DCCA found that the Petitioner had presented substantial medical evidence to overcome the presumption, and reversed and remanded this matter “to proceed to the second step in the consideration of all evidence, giving due weight to the opinion of the treating physician.”

On August 3, 2006, the CRB issued an Order Establishing Supplemental Briefing Schedule. Therein, the parties were ordered to submit supplemental memoranda of points and authorities in furtherance of the remand of the DCCA should either party such a filing deemed necessary. On August 16, 2006, the parties filed a Joint Motion to Remand Matter to an Administrative Law Judge. The Joint Motion was signed by both parties. Therefore, it is hereby

ORDERED, that this matter be REMANDED to the Administrative Hearings Division (AHD) for further proceedings, including but not limited to additional evidentiary proceedings, as necessary, consistent with the decision of the D.C. Court of Appeals, a copy of which is attached.

FOR THE COMPENSATION REVIEW BOARD:

SHARMAN J. MONROE
Administrative Appeals Judge

December 19, 2006
DATE

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.