

**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. 06-78**

**MARTIN McDONELL,**

**Claimant – Petitioner**

v.

**WASHINGTON GAS LIGHT COMPANY,**

**Self-Insured Employer– Respondent.**

Appeal from a Compensation Order of  
Administrative Law Judge E. Cooper Brown  
OHA No. 01-186B, OWC No. 283130

Martin McDonnell, pro se Petitioner

Henry Krautwarst, Esquire, for the Respondent

Before: FLOYD LEWIS, LINDA F. JORY and SHARMAN P. MONROE, *Administrative Appeals Judges*.

FLOYD LEWIS, *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).<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 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, 32-1522 (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.

## 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 7, 2006, the Administrative Law Judge (ALJ) denied the relief requested by Claimant-Petitioner (Petitioner), concluding that Petitioner's right foot condition and subsequent medical care provided by Dulles Pain Management Center were not causally related to the work injury of February 28, 1995. Petitioner now appeals that Compensation Order.

As grounds for this appeal, Petitioner alleges as error that the ALJ's decision is not supported by substantial evidence and is not in accordance with the law. While Petitioner was represented by counsel at the Formal Hearing, the instant appeal was filed pro se.

## ANALYSIS

As an initial matter, the scope 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 §32-1522(d)(2). "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. App. 2003). Consistent with this scope 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, Petitioner alleges that the ALJ's decision is erroneous, contending that the ALJ makes several incorrect inferences in the Compensation Order that are not supported by testimony or evidence. As such, Petitioner requests that this matter be reversed and/or remanded.

In the instant matter, the ALJ noted that in resolving Petitioner's claim that his disability is causally related to his work injury of February 28, 1995, the issue turned primarily on the medical opinions in evidence, as the ALJ found that Petitioner's testimony was not credible. The ALJ rejected the opinion of Dr. Statkus, of the Dulles Clinic, in favor of the findings and conclusions of Dr. David Johnson, Petitioner's treating physician.

In January of 1999, Petitioner visited the Dulles Clinic reporting that he had been experiencing pain in his right foot without relief since he stepped into a hole in 1995. The ALJ noted that

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Petitioner claimed that he visited this pain clinic because his treating physicians had tried numerous pain medications, with no relief and than none of his physicians were willing to provide him with additional pain medications. However, on this specific point, the ALJ stressed that “none of the medical records or reports from any of his treating or examining physicians corroborate Claimant’s allegations that the physicians had declined to provide Claimant with pain medication, nor do they even contain indication that claimant had requested such medication or that the issue had even been discussed.” Compensation Order at 5.

In rejecting the opinion of Dr. Statkus of the Dulles Clinic, the ALJ emphasized that none of the physicians at the Dulles Clinic had any expertise in orthopaedic medicine, Petitioner had never treated at the Dulles Clinic before January of 1999, none of the records from the Dulles Clinic reference any awareness that Petitioner had sustained a work related injury on April 4, 1998 or that he had obtained medical treatment for that injury, none of the records from the Dulles Clinic refer to causation in any meaningful way and the report from Dr. Statkus relating the treatment to the 1995 incident and his deposition testimony, are acknowledged by Dr. Statkus to be dependent on what he was told by Petitioner.

It must be emphasized that the ALJ found that Petitioner “is not a credible or reliable witness, not do I find him to be a credible or reliable historian concerning his medical history” and the ALJ explained in great detail the reasons for making this specific finding. Compensation Order at 2-3. As the finder of fact, the ALJ is charged with making credibility determinations and those findings are entitled to special weight. *Dell v. Dist. of Columbia Dep’t. of Employment Servs.*, 499 A.2d 102, 106 (D.C. 1985). In addition, credibility findings must be supported by substantial evidence and this Panel concludes that the ALJ’s credibility findings are supported by substantial evidence in this matter. *See Marriott Int’l. v. Dep’t. of Employment Servs.*, 834 A.2d 882, 887 (D.C. 2003)

The ALJ noted, and the record reveals, that Dr. Johnson never opined that the Dulles Pain Center treatment was causally related to the work injury of February 28, 1995 and in fact, the care at the Dulles Clinic did not begin until after Dr. Johnson’s care had concluded. In accepting Dr. Johnson’s opinion, the ALJ stressed that he was Petitioner’s treating authorizing physician, and as a result, his opinion was entitled to great weight, as there is a preference for the opinion of a treating physician over a competing opinion of a non-treating physician. *Short v. Dep’t. of Employment Servs.*, 723 A2d 845 (D.C. 1985).

Thus, the ALJ, after weighing the evidence of record, including the medical evidence, accepted the opinion of the treating physician, Dr. Johnson, that the current complaints and condition of Petitioner’s right foot and the medical treatment and care by the Dulles Clinic were not causally related to Petitioner’s February 28, 1995 work injury.

After completely reviewing the evidence of record, this Panel can find no error in the conclusions reached by the ALJ in this matter, as they are supported by substantial evidence and are in accordance with the law.

#### CONCLUSION

The Compensation Order of August 7, 2006 is supported by substantial evidence in the record and is in accordance with the law

**ORDER**

The Compensation Order of August 7, 2006 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

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FLOYD LEWIS  
Administrative Appeals Judge

December 11, 2006  
DATE