

**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. 07-99**

**CHERYL BOYD,**

**Claimant – Petitioner**

**v.**

**D.C. DEPARTMENT OF CORRECTIONS,**

**Employer – Respondent.**

Appeal from a Compensation Order of  
Administrative Law Judge Henry W. McCoy.  
AHD No. PBL 06-068; DCP No. 761032-0001-1999-0054

Cheryl Boyd, *pro se* Petitioner

Frank McDougald, Esquire for the Respondent

Before: E. COOPER BROWN, *Chief Administrative Appeals Judge*, LINDA F. JORY and FLOYD LEWIS,  
*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 § 1-623.28, § 32-1521.01, 7 DCMR § 118, and DOES Director's Directive Administrative Policy Issuance No. 05-01 (Feb. 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 D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, D.C. Official Code § 32-1521.01. In accordance with the Director's Directive, 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. Official Code § 32-1501 *et seq.*, and the D.C. Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Official Code § 1-623.1 *et seq.*, 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 April 9, 2007, the Administrative Law Judge (ALJ) denied the claim for relief by Claimant-Petitioner (Petitioner), concluding that there was no causal relationship between Petitioner's condition and her former employment as a corrections officer. In addition, the ALJ concluded that the termination of Petitioner's benefits by Employer-Respondent (Respondent) was justified under the law. Petitioner now seeks review of that Compensation Order.

As grounds for this appeal, Petitioner alleges as that the ALJ's decision is not based upon substantial evidence and is not in accordance with the law.

## 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 § 1-623.28(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. Dist of Columbia Dep't. of Employment Servs.* 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.

Petitioner is a former corrections officer with Respondent and in 2000, she stopped working due to lung problems. Ultimately, Petitioner was diagnosed with idiopathic pulmonary fibrosis and she started receiving temporary total disability benefits and medical payments due to her lung disease on March 24, 2004. On April 24, 2006, the Disability Compensation Program sent Petitioner a Notice of Intent to Terminate Disability Compensation Payments based upon the March 1, 2006 independent medical examination (IME) of Dr. Ross S. Myerson. Dr. Myerson concluded that there was no evidence that Petitioner's condition was related to her previous employment as a corrections officer.

At the hearing, Petitioner sought an award reinstating her temporary total disability benefits retroactive to the date of termination, May 31, 2006 and payment of medical bills related to her lung disease, pulmonary fibrosis. The ALJ concluded that Petitioner suffers from interstitial pulmonary fibrosis of undetermined etiology and her disabling condition is not related to her employment as a corrections officer.

Turning to the case under review herein, Petitioner basically alleges that the Compensation Order is erroneous and should be reversed because Dr. Myerson provided false testimony, the ALJ

relied on evidence that was not correct and incomplete and the ALJ erred in not relying on the opinions of her treating physicians over the testimony of Dr. Myerson. Respondent counters that the ALJ explained why greater weight was given to the opinion of Dr. Myerson, the ALJ properly assessed the credibility of the witnesses and the Compensation Order is supported by substantial evidence and is in accordance with the law.

In analyzing this case, the ALJ properly noted that in this jurisdiction, it has been consistently held that once a claim has been accepted and disability benefits paid, the burden of proof rests with the employer to present substantial and recent medical evidence to justify a modification or termination of those benefits. *See Toomer v. D.C. Dep't. of Corrections*, CRB No. 05-202, OHA No. PBL. No. 98-048A, DCP No. LT5-DOC001603 (May 2, 2005); *Jones v. D.C. Dep't. of Corrections*, Dir. Dkt. No. 07-99, OHA No. PBL No. 97-14, ODC No. 312082 (December 19, 2000); *Robinson v. D.C. General Hospital*, ECAB No. 95-8, ODCVC No. 303585 (July 8, 1997).

In her appeal, Petitioner argues that Dr. Myerson committed perjury and provided false testimony and as such, it was erroneous for the ALJ to rely on the opinion of Dr. Myerson to terminate her benefits. It is well settled that the credibility determinations of a fact finder are entitled to great weight. *Dell v. Dist. of Columbia Dep't. of Employment Servs.*, 499 A.2d 102, 106 (D.C. 1985). In addition, credibility findings, as with other findings in a compensation order, must be supported by substantial evidence in the record. *See McDonnell v. Washington Gas Light Co.*, CRB No. 06-78, OHA No. 01-1868 (December 11, 2006) citing *Marriott, supra*, 834 A.2d at 887. As such, an ALJ's credibility findings may be rejected only if they are not supported by substantial evidence.

Petitioner contends that she contacted the Washington Hospital Center and that she obtained information concerning Dr. Myerson's expert qualifications that contradicted his sworn testimony on this point. However, Respondent points out that these are merely allegations by Petitioner and are not substantiated in any way, such as by sworn affidavits, etc. Respondent argues that these assertions do not constitute substantial evidence and should not be given any weight. This Panel must agree with Respondent, as these allegations by Petitioner do not establish that the ALJ's credibility determination concerning Dr. Myerson are unsupported by substantial evidence and as such, Petitioner's argument on this point must be rejected.

In rejecting Petitioner's claim for relief, the ALJ correctly noted that the opinions of treating physicians are ordinarily preferred over those doctors who have been retained to examine an employee solely for purposes of litigation. *Kralick v. Dist. of Columbia Dep't. of Employment Servs.*, 842 A.2d 705, 712 (D.C. 2004). Notwithstanding this preference for the opinion of a treating physician over that of a physician hired to evaluate a workers' compensation claim, an administrative law judge may reject the opinion of the treating physician and credit the opinion of another physician when there is conflicting evidence. In doing so, the fact-finder must give reasons for rejecting the opinion of the treating physician. *Canlas v. District of Columbia Department of Employment Services*, 723 A.2d 1210, 1211-12 (D.C. 1995).

The ALJ relied on Dr. Myerson's opinion that there was no evidence that Petitioner's condition was related to her previous job as a corrections officer. After examining Petitioner, Dr. Myerson concluded that Petitioner had progressive interstitial fibrosis of unknown etiology and he opined

that there was nothing in the medical records related to Petitioner's condition that would lead to a diagnosis of asbestos-induced lung disease. Thus, Dr. Myerson opined that the medical documentation did not support a causal connection to her employment.

It should be stressed that the ALJ specifically addressed the opinions of Petitioner's treating physicians, Drs. Chun-Ming Tseung, A. Fred Guerra, Henry R. Herbert and Phong Nguen and the ALJ, in great detail, explained the reasons for not relying on their opinions. Compensation Order at 5-8. In generally summarizing the opinions of Petitioner's treating physicians, the ALJ stated:

It is unfortunate, given Claimant's condition, that the physicians she relies upon do not state with greater authority or even a greater degree of certainty an opinion on the cause of her lung disease or when stated do not provide supporting documentation or narrative justification. A reading of the statements provided by Claimant's supporting physicians provides the impression that to the extent some type of occupational causal connection is made, it is only done after Claimant plants the suggestion. Otherwise, it is clear that these doctors do not have an independent basis as to the cause of Claimant's lung disease, as evidenced by a consistent diagnosis of interstitial lung disease of unknown cause.

Compensation Order at 7.

The ALJ then clearly explained the reasons for relying on the opinion of Dr. Myerson and denying Petitioner's request for relief, stating:

The weight of the evidence, with specific reference to the well-reasoned medical reports of Dr. Myerson, which are not refuted by Claimant's treating physicians, support the proposition that there is no medical evidence of a causal relationship between Claimant's lung disease and work as a corrections officer at the former Lorton Correctional Complex. As outlined by Dr. Myerson, while there is evidence of asbestos in some of the Lorton buildings and a course of remediation was done, there is no evidence of Claimant's level of exposure, nor any air quality studies upon which to even infer her level of exposure. . . In addition, Claimant's lung biopsy found no asbestos bodies in her lungs. Further, her chest x-rays did not show any of the other typical asbestos findings such as pleural thickening or pleural plaque. There was also no evidence of any other occupational exposures, such as hazardous toxic chemicals, that could have lead to the development of her lung disease.

Unfortunately for Claimant, the prevailing diagnosis she has encountered has been idiopathic pulmonary fibrosis or interstitial fibrosis of undermined etiology or cause . . .

*Id* at 8-9.

After reviewing the evidence of record, this Panel can find no error in the ALJ's reliance on the opinion of Dr. Myerson in concluding that there is no causal connection between Petitioner's current condition and her former employment as a corrections officer.

Finally, it should be noted that Petitioner also seems to argue that it was erroneous for the ALJ to not expressly comment on or refer to several specified exhibits and documents, which were submitted into evidence by Petitioner. However, Petitioner's argument on this point must be rejected, as the ALJ "is not required to inventory the evidence and explain in detail why a particular part of it is accepted or rejected." *Landesberg v. Dist. of Columbia Dep't. of Employment Servs.*, 794 A.2d 607, 616. n.7 (D.C. 2002) *quoting Sturgis v. Dist. of Columbia Dep't. of Employment Servs.*, 629 A.2d 547, 555 (D.C.1993).

After reviewing, the record as a whole, this Panel concludes that there is more than ample evidence in the record to support Dr. Myerson's opinion that there was no causal relationship between Petitioner's current condition and her former employment as a corrections officer. The ALJ clearly explained the reasons for relying on Dr. Myerson and rejecting Petitioner's medical evidence. Accordingly, the ALJ's conclusion that there is no causal connection between Petitioner's condition and her employment is supported by substantial evidence, is in accordance with the law and should not be disturbed.

#### CONCLUSION

The Compensation Order of April 9, 2007 is supported by substantial evidence in the record and is in accordance with the law.

#### ORDER

The Compensation Order of April 9, 2007 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

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FLOYD LEWIS  
Administrative Appeals Judge

August 6, 2007  
DATE