

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 15-AA-318

ALLEN LOVE, PETITIONER,

v.

DISTRICT OF COLUMBIA
DEPARTMENT OF EMPLOYMENT SERVICES, RESPONDENT,

and

WASHINGTON METROPOLITAN
AREA TRANSIT AUTHORITY, INTERVENOR.

Petition for Review of a Decision and Order
of the District of Columbia Compensation Review Board
(CRB-116-14)

(Argued April 7, 2016)

Decided April 26, 2016)

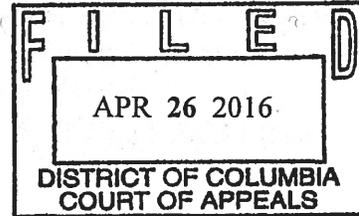
Before THOMPSON and MCLEESE, *Associate Judges*, and KING, *Senior Judge*.

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: Petitioner Allen Love challenges the Compensation Review Board's affirmance of a Compensation Order denying his claim for permanent partial disability benefits. For the reasons stated below, we affirm.

I.

On October 2, 1999, Love sustained a lower back injury while working as a mechanic for the Washington Metropolitan Area Transit Authority ("WMATA"). He then filed a claim for benefits alleging 20% permanent partial disability in his left leg. His claim was denied in a Compensation Order in 2002, in which the Administrative Law Judge ("ALJ") determined Love's permanent partial disability from his work injury was attributable to his back and whole body, not his left leg; more specifically, the ALJ found "the evidence in the record is inconsistent with



and does not support the claimant's testimony that he has a permanent partial disability of his left leg which limits his ability to function, affects his endurance, and in turn his ability to perform the duties of his employment." *Love v. Washington Metro. Area Transit Auth.*, OHA No. 01-078, OWC No. 550539 (Apr. 29, 2002).

Nearly ten years later, on October 21, 2011, Love filed another permanent partial disability benefits claim for the same leg. This time, he claimed 40% disability to his left leg based on an Independent Medical Evaluation conducted in July 2011 by Dr. Michael Franchetti. In 2014, after holding a full evidentiary hearing, the ALJ held that the claim was barred as an untimely request for modification, citing D.C. Code § 32-1524 (2012 Repl.).¹ The Board held that the ALJ's decision was proper because the 2011 claim constituted the same claim as the one that was denied in 2002; therefore, his claim was subject to and barred by the one-year limitations period under § 32-1524. We affirm.

II.

We review the Board's decision that affirmed the ALJ's compensation

¹ Section 32-1524 states in relevant part:

- (a) At any time prior to 1 year after the date of the last payment of compensation or at any time prior to 1 year after the rejection of a claim, provided, however, that in the case of a claim filed pursuant to § 32-1508 (a)(3)(V) the time period shall be at any time prior to 3 years after the date of the last payment of compensation or at any time prior to 3 years after the rejection of a claim, the Mayor may, upon his own initiative or upon application of a party in interest, order a review of a compensation case pursuant to the procedures provided in § 32-1520 where there is reason to believe that a change of conditions has occurred which raises issues concerning:
- (1) The fact or the degree of disability or the amount of compensation payable pursuant thereto; or
 - (2) The fact of eligibility or the amount of compensation payable pursuant to § 32-1509.

order—we do not directly review the ALJ’s determination on appeal. *Jones v. District of Columbia Dep’t of Emp’t Servs.*, 41 A.3d 1219, 1221 (D.C. 2012). “We will affirm the [Board’s] decision unless it was ‘[a]rbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.’” *Id.* (quoting D.C. Code § 2-510 (a)(3)(A) (2001)).

The record reveals that the only difference between Love’s claim in 2002 and the claim before us is the degree of alleged disability in his left leg. Love’s reliance on *Cherrydale Heating & Air Conditioning v. District of Columbia Dep’t of Emp’t Servs.*, 722 A.2d 31 (D.C. 1998), is misplaced. In that case, this court held that, without an extreme change in subsequent condition, once a claimant has reached maximum medical improvement and received a schedule award, he is no longer entitled to renewed temporary total disability benefits for the same injury. *Id.* at 32-36. Love’s claim here is for permanent partial disability benefits for his left leg following a denial of permanent partial disability benefits for the same leg. As the Board correctly pointed out, *Cherrydale* is not applicable.

Similarly, Love’s reliance on *Capitol Hill Hosp. v. District of Columbia Dep’t of Emp’t Servs.*, 726 A.2d 682 (D.C. 1999), is also misplaced. In that case, we held that the one-year limitations period for modifying workers’ compensation awards did not bar a claim for permanent partial disability benefits where the issue of permanency was not considered in the prior compensation claim and award for temporary total disability wage loss benefits. *Id.* at 683. Here, Love’s previous claim for permanent partial disability was fully adjudicated and decided in 2002. His subsequent claim for the same type of disability benefits based on the same injury is thus subject to the one-year limitations period under § 32-1524.

Lastly, we reject the argument that § 32-1524 is inapplicable because WMATA made voluntary temporary total disability payments following the 2002 Compensation Order. First, pursuant to *Cherrydale*, the Board was correct in concluding that WMATA was under no obligation to make temporary total disability payments to Love. Second, the Board’s decision in *Levy v. Washington Metro. Area Transit Auth.*, CRB No. 11-151, 2014 D.C. Wrk. Comp. LEXIS 436 (Oct. 8, 2014), is not applicable here. In *Levy*, WMATA and the claimant entered into a stipulation in which WMATA agreed to pay the claimant permanent partial disability benefits. The stipulation was approved by the Office of Workers’ Compensation (“OWC”). The Board held that § 32-1524 was not applicable in that case because an OWC-approved stipulation was not a “Compensation Order or

an award within the meaning [of] the Act, and therefore the passage of time from the date of last payment pursuant thereto [did] not affect [the claimant's] entitlement to seek additional wage loss benefits." *Id.* at *16–17 (quotation marks omitted). Here, Love's claim was fully litigated and determined in the 2002 Compensation Order. WMATA's obligation was not determined by an OWC-approved stipulation. Therefore, *Levy* has no bearing on this case and the Board did not err in holding that § 32-1524 applied to bar Love's claim.

Accordingly, we affirm the Board's decision.

So ordered.

ENTERED BY DIRECTION OF THE COURT:

A handwritten signature in black ink that reads "Julio A. Castillo". The signature is written in a cursive style with a large initial 'J'.

JULIO A. CASTILLO
Clerk of the Court