

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 15-AA-314

SAMUEL WOODS, PETITIONER,

v.

DISTRICT OF COLUMBIA DEPARTMENT OF EMPLOYMENT SERVICES, RESPONDENT

and

OMNI ELEVATOR, *et al.*, INTERVENORS.

On Petition for Review of a Decision of the District of Columbia Department of
Employment Services Compensation Review Board
(CRB-111-14)

(Submitted March 8, 2016

Decided July 21, 2016)

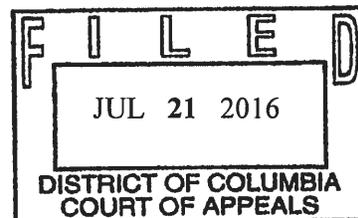
Before FISHER, EASTERLY, and MCLEESE, *Associate Judges*.

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: Petitioner Samuel Woods challenges a Compensation Review Board (CRB) decision affirming a compensation order that denied his claim for disability benefits under the District's Workers' Compensation Act.¹ We reverse and remand.

Mr. Woods's claim arose from a back injury that developed progressively over the years he worked as an elevator mechanic, most recently for intervenor Omni Elevator. On December 3, 2013, Mr. Woods met with a physician who, according to Mr. Woods, informed him for the first time that his job was causing his back problems and advised him that, if he kept working as an elevator mechanic, he was "going to be in a wheelchair." Mr. Woods stopped working soon thereafter and sought disability benefits. The parties stipulated that Mr. Woods's employer at the time, Omni Elevator, received notice of the injury on

¹ D.C. Code §§ 32-1501 to -1545 (2013 Repl.).



December 19, 2013.

An administrative law judge (ALJ) at the Department of Employment Services concluded that there was a causal connection between Mr. Woods's back injury and his job but denied his claim for disability benefits, concluding that it was time-barred.² The ALJ found that Mr. Woods had failed to comply with D.C. Code § 32-1513 (a) (requiring an employee to give his employer notice within thirty days of actual or constructive knowledge of "the relationship between the injury . . . and the employment"), because he was aware or should have been aware, approximately two years before he gave his employer notice, that his back issues were work-related. The CRB affirmed.

In this court, Mr. Woods challenges the CRB's ruling, arguing that it erred by affirming a compensation order in which the finding of untimely notice is not supported by substantial evidence.³ "Our review of administrative agency decisions is limited, and we must affirm an agency decision unless it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." *Asylum Co. v. District of Columbia Dep't of Emp't Servs.*, 10 A.3d 619, 624 (D.C. 2010); *see* D.C. Code § 2-510 (a)(3)(A) (2013 Repl.). Under this "well-established deferential standard," we determine whether the CRB's conclusions conform to applicable law and "flow rationally from [factual] findings" that are "supported by substantial evidence in the record." *Reynolds v. District of Columbia Dep't of Emp't Servs.*, 86 A.3d 1157, 1160 (D.C. 2014). "Although our review in a

² The ALJ granted Mr. Woods's claim for causally related medical expenses, *see Safeway Stores, Inc. v. District of Columbia Dep't of Emp't Servs.*, 832 A.2d 1267, 1269, 1271 (D.C. 2003) ("[C]laims for causally related medical expenses are not barred by the failure of the employee to give the notice required by D.C. Code § 32-1513"), and that ruling is not before this court.

³ Mr. Woods makes two additional arguments in his brief: (1) that the compensation order was defective for failing to apply the presumption of timely notice in favor of Mr. Woods; and (2) that "a balancing test should be applied, in recognition of the remedial and humanitarian purposes of the Act," to determine whether notice to an employer of a workers' compensation claim was timely. Mr. Woods did not make either of these arguments before the CRB, however, and thus we decline to address them. *See Oris Telecomms. Inc. v. District of Columbia Dep't of Emp't Servs.*, 857 A.2d 1061, 1067-68 (D.C. 2004).

workers' compensation case is of the decision of the CRB, not that of the ALJ, we cannot ignore the compensation order which is the subject of the CRB's review." *Placido v. District of Columbia Dep't of Emp't Servs.*, 92 A.3d 323, 326 (D.C. 2014).

In support of his argument that the CRB's determination of untimely notice was not supported by substantial evidence in the record, Mr. Woods points to evidence that supports his account that it was not until the December 3, 2013, appointment that Mr. Woods learned, or could have learned, that: (1) his work as an elevator mechanic was the cause of his back pain;⁴ and (2) his ability to work and earn wages in this profession would be impaired. *See Poole v. District of Columbia Dep't of Emp't Servs.*, 77 A.3d 460, 468 (D.C. 2013) (explaining that in order to trigger notice obligations, the employee must "reasonably be aware of an injury that is compensable because of its disabling nature *and* its work-relatedness").

Regarding the CRB's affirmance of the ALJ's decision that Mr. Woods knew or should have known his back issues were work-related, examining whether "there may . . . be substantial evidence to support a contrary decision" is not the proper inquiry. *See Acott Ventures, LLC v. District of Columbia Alcoholic Beverage Control Bd.*, 135 A.3d 80, 88 (D.C. 2016). Rather, this court examines the record only to determine if the agency's determination is supported by substantial evidence. *See id.* As noted above, Omni Elevator put into evidence Mr. Woods's medical records from December 2011 onwards,⁵ which were replete with references to exacerbation of his back pain due to work conditions. These

⁴ Mr. Woods's testimony is the only record evidence supporting his contention that he was not and could not have been aware, prior to December 2013, of the causal connection between his injury and employment. The ALJ rejected that testimony, the CRB did not question that determination, and this court defers to the agency's credibility assessments, *Marriott at Wardman Park v. District of Columbia Dep't of Emp't Servs.*, 85 A.3d 1272, 1276 (D.C. 2014).

⁵ The ALJ's compensation order mistakenly cites to doctor's notes from December 17, 2011; there is no medical record with this date in the record. The only doctor's notes from December 2011 are dated December 27, 2011. The December 27, 2011, notes state that Mr. Woods "reports that he has had increase in pain because of new job."

records constitute substantial evidence supporting the CRB's affirmance of the ALJ's conclusion that Mr. Woods was "aware or in the exercise of reasonable diligence should have been aware . . . prior to December 3, 2013," that his back pain was related to his job.

But the ALJ and the CRB, in turn, never considered whether Mr. Woods also knew or should have known, at a point in time earlier than December 2013, that his back injury was disabling, i.e., an impediment to his continued employment as an elevator mechanic. Because the timeliness of a claimant's notice turns on both his knowledge that he had a work-related injury and his knowledge that the injury was disabling, *see Poole*, 77 A.3d at 467-68, the analysis of the CRB and the ALJ was incomplete.

For the foregoing reasons, we remand for further proceedings consistent with this opinion.

So ordered.

ENTERED BY DIRECTION OF THE COURT:



JULIO A. CASTILLO
Clerk of the Court