

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. 09-04

ALICE ANAMALECHE-OLADOKUN,

Claimant–Petitioner,

v.

DISTRICT OF COLUMBIA PUBLIC SCHOOLS,

Employer– Respondent.

Appeal from a Compensation Order of
Administrative Law Judge Robert R. Middleton
OHA/AHD No. PBL 04-002A, DCP Nos. LT7-BOEdu004741

Jude C. Iweanoge, Esquire, for Claimant- Petitioner

Pamela L. Smith, Esq., for Employer- Respondent¹

Before E. COOPER BROWN, *Chief Administrative Appeals Judge*, JEFFREY P. RUSSELL, and FLOYD LEWIS, *Administrative Appeals Judges*.

JEFFREY P. RUSSELL, *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).²

¹ While Ms. Smith represented Respondent at the formal hearing, no one appeared on behalf of Respondent in these proceedings.

² 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

BACKGROUND

This appeal follows the issuance of a Final Compensation Order by the Assistant Director for Labor Standards of the District of Columbia Department of Employment Services, approving and adopting a Recommended Compensation Order from the former Office of Hearings and Adjudication, currently the Administrative Hearings Division (AHD) of the Office of Hearings and Adjudication (OHA). In that Recommended Compensation Order (the Compensation Order), which was filed on August 13, 2004, the Administrative Law Judge (ALJ) found that Petitioner had suffered an accidental injury on February 25, 2003, when she experienced an adverse reaction to work place conditions, in the nature of an asthmatic reaction, that she had given timely notice of the injury to Respondent, and that she was entitled to causally related medical care in connection with the accident, but denied her request for disability compensation in connection therewith.

Petitioner's Petition for Review requests that the denial of disability compensation benefits be reversed, and that she be awarded such benefits from the date of the injury through November 28, 2003.³

In her Petition for Review, Petitioner asserts that the denial of the disability benefits claimed was not supported by substantial evidence and is not in accordance with the law. Respondent, although it contested the claim at the formal hearing, on both accidental injury grounds and timely notice grounds, did not participate in this appeal.

ANALYSIS

As an initial matter, the scope of review by the Compensation Review Board (CRB) and this Compensation 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. *See*, D.C. Comprehensive Merit Personnel Act of 1978, as amended, D.C. Official Code § 1-623.01, *et seq.*, at § 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. District of Columbia Department of Employment Services*, 834 A.2d 882 (D.C. 2003). Consistent with this standard 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.

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.

³ The significance of the end date of the claim is nowhere revealed in the record before us. The claim for relief as described by Petitioner's counsel is likewise not precise. Although it could be interpreted to exclude the period from June 30, 2003 through August 28, 2003 (see, HT 15), we can not be certain, and will therefore be guided by the claim as described in the Compensation Order.

Turning to the case under review herein, Petitioner alleges that (1) the Compensation Order is inconsistent in that it found that Petitioner had sustained a work injury and given timely notice thereof, yet failed to award benefits for that injury, (2) denied said benefits by erroneously concluding that there was no “persuasive medical evidence of record that claimant was disabled for more than a few days (Petitioner’s Memorandum of Points and Authorities, unnumbered page 4) despite the record containing CE 12, a written note from Dr. John Bedeau, authorizing an August 28, 2003 return to work, and (3) that the evidence was un rebutted that Respondent never provided a work place free from conditions that result in recurrences of Petitioner’s asthmatic condition, beyond the date of her authorization to return to work August 28, 2003, which authorization prescribed that such a return was conditioned upon Petitioner being returned to a pollutant free, air conditioned environment.

Before addressing the arguments of Petitioner, we will address the law as it relates to this claim, which involves a claim for benefits premised upon Petitioner’s adverse reaction to work place conditions, stemming from her pre-existent long-standing asthmatic condition. Under the law of this jurisdiction, disabling asthmatic or other allergic type reactions to workplace exposures are compensable as injuries, and a claimant is entitled to disability benefits for the duration of the acute episodes caused by the workplace exposure, until such episode has resolved. Thereafter, the claimant is entitled to disability benefits only if the workplace exposure was either the cause of the initial allergic condition (that is, if the claimant did not have a pre-existent condition, but rather developed one as a result of the workplace exposure), or if the exposure to the work place irritants or conditions caused a permanent worsening of a pre-existent condition (such as where a claimant’s pre-existent allergy to a single substance becomes a poly-substance allergic condition as a result of work place exposure, and the employer fails to provide a work place free of the offending substances and conditions.

Where the condition was pre-existent and was not made worse as a baseline condition by the work place exposure, the mere fact that the employer does not provide an irritant free work place to which the claimant can return does not result in a claimant’s entitlement to ongoing disability benefits. In other words, the fact that someone who is unsuited to a particular work environment due to a pre-existent condition has a bad reaction to such an environment does not mean that an employer is responsible for providing a work place for that claimant in the future, beyond the time that the acute reaction has resolved. Such responsibility only arises where the condition itself was caused by the work place exposure, or was made worse by it such that the claimant’s employment capacity has been compromised by the exposure itself, due to being made worse. See, *Washington Post v. District of Columbia Dep’t. of Employment Serv’s. and Monique Berthault, Intervenor*, 853 A.2d 704 (2004), at 707; *Howard University Hospital v. District of Columbia Dep’t. of Employment Serv’s. and Jacqueline Binns, Intervenor*, 881 A.2d 567 (2004); *Roberson v. A.T. & T., Inc.*, H & AS No. 87-402, OWC No. 101267 (February 18, 1988); *Smith v. Georgetown University*, H & AS No. 85-335, OWC No. 057348 (February 5, 1986); *Cotton v. Sallie Mae Student Loan Mktg. Ass’n.*, H & AS No. 84-25, OWC No. 029867 (October 4, 1984); *Barran v. American Symphony Orchestra League*, Dir. Dkt. No. 88-53, H & AS No. 86-414, OWC No. 039003 (September 28, 1989).

In the case under review herein, the finding that Petitioner suffered an adverse and disabling reaction related to her pre-existent asthmatic condition due to work place irritants or pollutants is supported by substantial evidence, and is not challenged on appeal by Respondent. However, no

award was made for any period of disability, despite the ALJ's acknowledgement that Petitioner was disabled for at least "a few days." Compensation Order, page 5. This failure to make any award is based upon the ALJ's conclusion that "On this record, claimant has simply failed to carry her burden of adducing supportive medical evidence verifying the length of her asthma related disability." Compensation Order, page 5.

The record contains the testimony of Petitioner to the effect that she was treated for the asthmatic reaction by Dr. John Bedeau, and also contains medical records from Dr. Bedeau relating to that treatment. Among those records is CE 12, a handwritten report/note on Dr. Bedeau's letterhead, which reads as follows:

This is to certify that the above named patient may return to work on 8/28/03. Because of her asthma she will need a well ventilated air conditioned room with low to moderate temp[erature] and [with] no pollutants.

CE 12, Report of August 27, 2003. Contrary to the assessment of the ALJ, this document constitutes medical evidence of the fact that Petitioner had an acute asthmatic reaction for which she sought treatment from Dr. Bedeau, which condition was disabling for a period of time, and from which Petitioner had recovered sufficiently to resume work by August 28, 2003. We have reviewed the record, including the testimony of Petitioner, and, while Petitioner admits generally that her condition improves when she leaves the building, we have found nothing establishing a date earlier than August 28, 2003 as a date upon which the acute reaction had resolved sufficiently for a return to work. We note that Respondent produced no exhibits relevant to issue at the formal hearing.

The ALJ's assertion that the record contains no medical evidence of the length of time that Petitioner was disabled as a result of the asthmatic reaction of February 25, 2003 is inaccurate, in light of the evidence discussed. While better evidence might have been available, and while Petitioner's testimony could have been more specifically directed towards this question, the only evidence produced which addresses the question is the testimony of Petitioner as to the date of the onset and the report from Dr. Bedeau authorizing a return to work commencing the day following his August 27, 2003 examination. And, that evidence is such that a reasonable person could conclude, based thereon, that Petitioner was disabled from the onset of the reaction until cleared to return to work by her physician; in other words, this evidence is substantial evidence of the time period for which Petitioner was disabled as a result of the acute asthmatic reaction to work place conditions. Accordingly, the uncontradicted evidence of record is that Petitioner suffered an acute and disabling asthmatic reaction on February 25, 2003 from which she had recovered by August 28, 2003. She is therefore entitled to compensation benefits during that period as a matter of law.⁴

Beyond this time, however, there is no medical or other evidence in the record that supports a conclusion that Petitioner's baseline asthmatic condition was worsened by the exposure on February

⁴ One of the problems presented in review of this Compensation Order is the fact that the ALJ decided it in conjunction with a "companion case" relating to an unrelated physical injury for which Petitioner also claimed disability benefits, and which claim overlapped some or all of the period at issue in this case. The outcome of that companion case is not a part of the record in the case before us. Any award that results from this decision does not, of course, result in Petitioner's being entitled to double payment of benefits for any time that she might have also been awarded benefits in that companion case, nor does the terminating date of the benefits awarded herein effect the entitlement to benefits in the companion case.

25, 2003, or by any of the other subsequent exposures that the record demonstrates. Thus, regardless of whether Respondent failed to provide an irritant free work place thereafter, the ALJ's denial of benefits beyond the August 28, 2003 date is in accordance with the law.

CONCLUSION

The Compensation Order of August 13, 2004 is in part supported by substantial evidence and is in part in accordance with the law, to the extent that it granted Petitioner's claim for causally related medical benefits, but denied Petitioner's claim for disability benefits beyond August 28, 2003. It is not supported by substantial evidence and is not in accordance with the law to the extent that it denied disability benefits from February 25, 2003 through August 27, 2003.

ORDER

The Compensation Order of August 13, 2004 is AFFIRMED IN PART AND IS REVERSED AND AMENDED IN PART. The Compensation Order is hereby amended to award disability compensation benefits to Petitioner from February 25, 2003 through and including August 27, 2003. The remainder of the Compensation Order is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

JEFFREY P. RUSSELL
Administrative Appeals Judge

March 14, 2006
DATE