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. 03-121

MICHEL BAGBONON,

Claimant – Petitioner

v.

AFRICARE AND FEDERAL INSURANCE COMPANY,

Employer/Carrier – Respondent.

Appeal from a Compensation Order of
Administrative Law Judge Karen R. Calmeise
OHA No. 03-340, OWC No. 579350

Michel Bagbonon, *Pro Se*, for the Petitioner[1]

Michael D. Dobbs, Esq., for the Respondent

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

SHARMAN J. MONROE, *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).[2]

[1] At the formal hearing the Petitioner was represented by Mark Schaffer, Esq.

[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 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 (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 29, 2003, the Administrative Law Judge (ALJ) denied the request for temporary total disability benefits plus interest due to untimely notice pursuant to D.C. Official Code § 32-1513.[3] The Claimant-Petitioner now seeks review of that Compensation Order.

As grounds for this appeal, Petitioner alleges as error the ALJ's selection of the date he first sought medical treatment for his symptoms as the date from which to calculated the 30-day notice of injury period.

ANALYSIS

As an initial matter, the standard 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 § 32-1521.01 (d)(2)(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. App. 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.

Turning to the case under review herein, Petitioner alleges that the ALJ's decision is erroneous. The Petitioner, an international development worker for the Respondent, admits that in February 2001 he was experiencing some pain in his lower back and that he went to a hospital in Burkina-Faso, West Africa, where he was assigned. He states that Burkina-Faso is not like the United States and that the medical attention he received was "nothing beside alleviate pain", that he was not aware of his condition and had no clear diagnosis of his condition. He indicates that communication with his headquarters in Washington, D.C. was mostly for project issues and that it is customary to submit medical expenses once or twice a year. The Petitioner asserts when he returned to the U.S. in September 2001, he began receiving treatment for his back pain from Dr. Jeffrey Sherman who declared him disabled. He further asserts that the Respondent knew of Dr. Sherman's treatment, having received Dr. Sherman's medical report by October 2001. Given his circumstances, the Petitioner argues that the date of disability as enunciated of the *Franklin v. Blake*

[3] The ALJ granted the request for the payment of reasonably related medical expenses.

Realty Company, H&AS No. 84-26, OWC No. 25856 (Director Decision, August 18, 1985) should be applied to his case.[4]

In its opposition, the Respondent maintains that under D.C. Official Code § 32-1513, the Petitioner had 30 days after he knew or should have known of the relationship between his injury and his employment to so notify it either orally or in writing. The Respondent asserts that the Petitioner knew or should have known of the work-relatedness of his injury after he saw Dr. Capaore about his back pain February 2001. To support its assertion, the Respondent points to the Petitioner admission that he failed to inform it of his injury within 30 days because he did not want to appear "wimpy". As to the award of medical benefits, the Respondent argues that, based upon a careful reading of the Act, the ruling of *Tolliver v, Thrifty Paper Boxes, Inc.*, Dir.Dkt.No. 95-15, H&AS No. 93-448, OWC No. 250694 (February 27, 1997), which permits the payment of medical benefits in an untimely notice case, is erroneous and must be overruled.

D.C. Official Code § 32-1513 provides that an injured worker must provide written notice of a work injury to his employer within thirty (30) days after the date of the injury occurs or within thirty (30) days after the worker knew or should have known through the exercise of reasonable of the work-relatedness of his injury. The failure to provide written notice will not bar a claim if the employer had actual knowledge of the injury within the requisite 30-day period and the employer is not prejudiced by not receiving written notice, or the injured worker provides a satisfactory reason for not giving the written notice.

In order to determine from which date the 30-day notice period begins to run, the date of injury must be fixed. When an injury occurs as a result of a specific, discrete trauma, the date of injury is, of course, the date of occurrence. However when an injury results from a repetitive or cumulative trauma, the date of injury is fixed at the date the injury becomes manifest. A cumulative traumatic injury manifests itself on either the date on which the employee first seeks medical treatment for his symptoms, regardless of whether he stops working, or the day on which the employee stops working due to his symptoms, whichever occurs first. *Franklin v. Blake Realty Company*, H&AS No. 84-26, OWC No. 25856 (Director Decision, August 18, 1985).

In rendering the decision against the Petitioner below, the ALJ found that the Petitioner sustained a cumulative traumatic injury to his low back, that he received medical treatment from Dr. Compaore in February 2001 for low back pain, that Dr. Compaore told the Petitioner the pain was related to his work-related driving or prolonged sitting, that the Petitioner did not advise the Respondent of his injury within 30-days thereafter and that his reasons for not so advising the Respondent were not satisfactory under the Act. The ALJ's findings are supported by substantial

[4] The Petitioner filed several medical reports along with his Application for Review for the Panel to consider as part of his appeal. By law, the CRB is authorized to only review matters brought before it; it cannot consider matters *de novo* or anew. Accordingly, the rules governing the operation of the CRB prevent the CRB from considering evidence, documentary or otherwise, that was not submitted to the claims examiner or the administrative law judge. *See* 7 DCMR §§ 251.2, 266.1 (Notice of Emergency and Proposed Rulemaking (August 19, 2005)). Consequently, the documents submitted by the Petitioner will not be considered as part of his appeal. Assuming arguendo that the Petitioner filed the documents under 7 DCMR § 264 (Notice of Emergency and Proposed Rulemaking (August 19, 2005)), on cursory review, the Panel determines that the documents are not material to the question of whether the Petitioner timely provided notice of his work injury to the Respondent.

evidence in the record, specifically, the Petitioner's own testimony. Transcript at pp. 39-40, 42, 70-71, 73-74-76.

The Petitioner's argument that his 30-day period should begin to run when Dr. Sherman pronounced him disabled is not persuasive. As enunciated in *Franklin*, the manifestation date for a cumulative traumatic injury, as between the two stated events, is the date of the event which occurs first. In this case, the Petitioner sought medical treatment for his low back pain first; he was secondarily declared disabled. The Petitioner's assertion that the medical attention he received from Dr. Compaore "was nothing beside alleviate [sic] pain" is not dispositive. The fact remains that the Petitioner sought medical treatment for his low back pain in February 2001. The Act does not require that the medical treatment cure the work-related injury as a condition precedent for the running of the 30-day period begins. Likewise, the Act does not require a "clear diagnosis" of the work-related injury as a condition precedent for the running of the 30-day period begins. It is sufficient if an injured employee knows or should have known that his injury was work related. *See Mitchell v. Children's Hospital National Medical Center*, H&AS No. 92-538, OWC No. 228648 (May 21, 1993). *See also Teal v. D.C. Department of Employment Services*, 580 A.2d 647, 651 (D.C. 1990).

The Panel rejects the Respondent's argument that the payment of medical benefits in an untimely notice case is erroneous and must be overruled. Indeed, the D.C. Court of Appeals addressed the issue in *Safeway Stores, Inc. v. D.C. Department of Employment Services,* 832 A.2d 1267 (October 2, 2003) wherein it determined that a failure to timely notify an employer of an injury does not bar a request for causally related medical expenses. The court indicated that such a determination was consistent with construction of medical benefits under the Longshore and Harbor Workers' Compensation Act, the predecessor to the current Act, consistent with its holding in *Santos v. D.C. Department of Employment Services*, 536 A.2d 1085, 1089 n.6 (D.C. 1988), consistent with the principles set forth in the multi-volume treatise, A. Larson, The Law of Workmen's Compensation (2001), and consistent with the principle that the Act "is to be construed liberally for the benefit of employees and their dependents". *Ferreira v. D.C. Department of Employment Services,* 531 A.2d 651, 655 (D.C. 1987). *See also Georgetown University v. D.C. Department of Employment Services*, 862 A.2d 387, 389 (D.C. 2004).

CONCLUSION

The Compensation Order of August 29, 2003 is supported by substantial evidence in the record and is in accordance with the law.

ORDER

The Compensation Order of August 29, 2003 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

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SHARMAN J. MONROE
Administrative Appeals Judge

November 1, 2005
DATE