

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

Department of Employment Services

VINCENT C. GRAY  
MAYOR



LISA MARÍA MALLORY  
DIRECTOR

**COMPENSATION REVIEW BOARD**

**CRB No. 13-031**

**MCCLEVELAND BAILEY,  
Claimant–Petitioner,**

**v.**

**DISTRICT OF COLUMBIA DEPARTMENT OF CORRECTIONS,  
Self-Insured Employer-Respondent.**

Appeal from a February 21, 2013 Compensation Order by  
Administrative Law Judge Karen R. Calmeise  
AHD No. PBL 12-026, DCP No. 30111191638-0001

Harold L. Levi, Esquire, for the Petitioner  
Corey P. Argust<sup>1</sup>, Esquire, for the Respondent

Before: HENRY W. MCCOY, MELISSA LIN JONES, and HEATHER C. LESLIE, *Administrative Appeals Judges*.

HENRY W. MCCOY, *Administrative Appeals Judge*, for the Compensation Review Board.

**DECISION AND ORDER**

**BACKGROUND AND FACTS OF RECORD**

This appeal follows the issuance on February 21, 2013 of a Compensation Order (CO) from the Hearings and Adjudication Section in the District of Columbia Department of Employment Services (DOES). In that CO, the Administrative Law Judge (ALJ) denied Claimant temporary total disability benefits from November 12, 2011 through June 19, 2012 and payment of medical expenses.<sup>2</sup>

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<sup>1</sup> While Assistant Attorney General Justin Zimmerman represented Employer at the formal hearing, Assistant Attorney General Corey P. Argust filed *Employer's Opposition to Application for Review*.

<sup>2</sup> *Bailey v. D.C. Department of Corrections*, AHD No. PBL 12-026, DCP No. 30111191638-0001 (February 21, 2013).

Claimant worked as a correctional officer and had a medical history of hypertension and high cholesterol and took medication for both. It was not uncommon for Claimant to experience symptoms of right arm tingling and weakness and right-sided vision problems, but as these episodes usually resolved quickly, he did not seek medical treatment. There is no evidence or findings that any of these episodes ever prevented Claimant from performing his duties as a correctional officer.

Claimant's work assignment on the morning of November 12, 2011 was to report to Howard University Hospital (HUH) where he was tasked with guarding a paralyzed inmate who was receiving treatment. After witnessing the inmate experience a series of seizures, Claimant inquired as to his condition. During the course of inquiring about the inmate's condition, Claimant began slurring his speech, experienced upper extremity weakness, and an accelerated heart rate that was noticed by hospital personnel.

Claimant was admitted to the hospital where a CT scan and an MRI were performed and later transferred to the Washington Hospital Center (WHC), with both confirming that he had a stroke. Following his discharge from WHC, Claimant received outpatient care at Kaiser Permanente. A report by Dr. Ella Popeliansky, a neurologist at Kaiser, opined that the chief risk factors associated with Claimant's stroke included hypertension, hyperlipidemia, and smoking.

Claimant filed a claim for work loss benefits which was denied on March 15, 2012 by the Office of Risk Management (ORM) on the basis that the stroke suffered did not arise out of and in the scope of employment. The notice of denial referenced numerous previous occasions when Claimant had experienced similar symptoms. Claimant filed for a formal hearing which was held on September 28, 2012.

In a February 21, 2013 Compensation Order (CO), the presiding administrative law judge (ALJ) determined that the medical evidence did not support Claimant's claim that his work duties exacerbated his pre-existing condition and therefore Claimant failed to show by a preponderance of the evidence that he sustained a work-related injury. Claimant has filed the instant timely appeal, with Employer filing in opposition.

On appeal, Claimant argues that the CO failed to make appropriate findings on the material facts in dispute and that he met his burden of proof to entitle him to the benefits he requested. Employer argues to the contrary. We affirm.

#### ANALYSIS

The scope of review by the Compensation Review Board (CRB) is limited to making a determination as to whether the factual findings of the Order are based upon substantial evidence in the record and whether the legal conclusions drawn from those facts are in accordance with the applicable law.<sup>3</sup> Section 1-623.28(a) of the District of Columbia Government Merit

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<sup>3</sup> "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 International v. DOES*, 834 A.2d 882 (D.C. 2003).

Personnel Act of 1978, as amended, D.C. Code § 1-623.1 *et seq.* (“Act”). Consistent with this standard of review, the CRB must uphold a Compensation Order that is supported by substantial evidence, even if there is substantial evidence in the record to support a contrary conclusion, and even where the CRB might have reached a contrary conclusion. *Marriott*, 834 A.2d at 885.

In the instant appeal, Claimant argues that while he bears the burden of proving by a preponderance of the evidence that his current disability resulted from an injury sustained in the performance of his duties, the ALJ erred in denying his claim without making appropriate and well-reasoned findings on this material issue.<sup>4</sup> Claimant argues that his pre-existing medical conditions did not prevent him from performing his work duties, he was found to be a credible witness, and Employer presented no evidence to rebut his testimony that the workplace conditions he witnessed were responsible for him becoming agitated and suffering a stroke. We disagree.

As Claimant’s claim for disability benefits was denied by the ORM/Public Sector Workers’ Compensation Program (PSWCP), the ALJ correctly prefaced her analysis by stating that Claimant had the burden of proving by a preponderance of the evidence his entitlement to the requested benefits.<sup>5</sup> In addition, the presentation of substantial evidence would not be sufficient to meet that burden.

With the required burden of proof in mind, the ALJ made findings as to Claimant’s prior medical history and stroke-like symptoms, stating

[Claimant] had a medical history of hypertension (or high blood pressure), and high cholesterol for which he was taking medication. (HT 23) Prior to November 2011, Claimant had several episodes of symptoms of right arm tingling and weakness and right-sided vision difficulties for which he did not seek medical treatment. (EE 2)<sup>6</sup>

The ALJ also found that Claimant reported to work at 8:00 a.m. at the hospital and was on duty guarding a paralyzed inmate when he observed the inmate “experiencing physical seizures”. It was further found that while Claimant was talking with the inmate’s physician, he began exhibiting slurred speech and right limb weakness that resulted in hospital personnel taking him to the emergency room. The ALJ specifically and significantly found that Claimant had reported suffering these stroke-like symptoms earlier in the morning and thus prior to the 10:00 a.m. work incident.<sup>7</sup>

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<sup>4</sup> *Claimant-Petitioner’s Memorandum in Support of Petition for Review*, p. 6.

<sup>5</sup> *D.C. Dep’t of Mental Health Services v. DOES*, 15 A.3d 692, 698 (D.C. 2011).

<sup>6</sup> CO, p. 2.

<sup>7</sup> The ALJ references a November 18, 2011 report by Dr. Nguyen (i.e., CE 4, pg 1of 5) to support this finding. However, a review of the evidence finds the November 12, 2011 Howard University Hospital report (CE 3) to be more definitive, as it states in the “History of Present Illness”:

Based on these findings, the ALJ reasoned:

All of the medical records state that the Claimant had the stroke symptoms while at work on November 12, 2011. However, upon review of all the records submitted, not one record repeats the narrative that Claimant witnessed the inmate's seizures or that he was agitated by the inmate's treatment. If in fact the conversations with the physician treating the paralyzed inmate at HUH occurred, and Claimant was concerned for the inmate's wellbeing on that morning, I find that the Claimant did not report the patient seizure episode to the treating physicians at Howard University Hospital or Washington Hospital Center. I further find that none of the treating and referral physicians documented or noted that Claimant's observation of the inmate patient[.]

Assuming the Claimant did express his concerns about the paralyzed inmate's seizures to the HUH physician on the morning of November 12, 2011, and the incident caused Claimant to become alarmed or anxious; none of the medical opinions identified that incident as the cause of his stroke. Furthermore, the medical records do not state the opinion that the incident was significant enough to aggravate the Claimant's pre-existing high cholesterol and high blood pressure medical condition. Although the medical reports reference that the Claimant was "at work" and/or "on duty at the hospital" when he had the stroke, Claimant's claim that the work duties on the morning of November 12, 2011 exacerbated his pre-existing medical condition is not supported by the medical evidence.<sup>8</sup>

It is apparent from the ALJ's reasoning and later notation that while she found Claimant's testimony "sympathetic and possibly factual", the absence of any of his narrative elements being repeated in the history taken in any of the medical reports proved persuasive. While the ALJ found Claimant observed the inmate having seizures, she did not find that this caused him to become agitated and she specifically found that he did not report witnessing these seizures to the physicians treating him at HUH or WHC.

Claimant's argument that Employer presented no evidence in opposition also fails. In fact, the ALJ's findings noted in the above quoted passage are further supported the November

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On taking a little more detail it was revealed that the symptoms actually started today, earlier morning at around 7:00. He had woken up around 5:30 in the morning and was OK until about 7:00 when he experienced similar problems, that is right upper limb weakness. He felt as if the slurring of the speech might be coming in. It did not last long. It lasted about 15 to 20 minutes. He also revealed that he has had similar episodes of right-sided tingling and weakness limited to the arm since July of this year. He says that each episode lasted about 15 to 20 minutes and it is transient. It comes in with[out] any particular pattern and resolved spontaneously. According to him he had a total of 12 such episodes so far including 2 episodes today.

<sup>8</sup> CO, p. 5.

21, 2011 neurology consult report by Dr. Ella Popeliansky, on referral from Dr. Nguyen, wherein Claimant's history is reported as:

Patient had a stroke on 11/12/2011 while he was at work as a correctional officer. He noted right arm weakness, but did not make much of it, and it resolved over the course of 30 minutes to an hours [sic]. Then, as he was transporting a prisoner to the hospital around 10:30 am that day, he had sudden onset of dysarthria and right hand weakness.<sup>9</sup>

This report and the other medical evidence of record support the ALJ's findings and conclusion that Claimant started having these stroke-like symptoms as early as July 2011, that he experienced 12 previous episodes, and that on November 12, 2011, Claimant started experiencing these symptoms before he reported to work. In addition, there is nothing in the record to support Claimant's testimony that witnessing an inmate's seizures caused the onset of his symptoms. Rather, as found by the ALJ, the hospital reports identifying "high blood pressure and high cholesterol (hyperlipidemia) as the risk factors precipitating the stroke" and Claimant's treating physician listing the cause as "undetermined".

Claimant also argues that he met his burden of proof, that being by a preponderance of the evidence that his disability was caused by a work-related injury. Contrary to Claimant's assertion, the medical evidence does not make a causal connection between his disability and his employment. It is not sufficient as Claimant argues that he merely show that he suffered a stroke while at work. The ALJ reasoned based on the evidence in the record that while the medical reports stated that Claimant suffered a stroke on the morning of November 12, 2011 while performing his work duties, none of those reports related the cause of the stroke to the performance of Claimant's work duties. In fact, Claimant had a previous history of the stroke-like symptoms experienced that morning and also starting experiencing those symptoms on the morning of November 12, 2011 before even reporting for work. The ALJ's findings are supported by substantial evidence and will not be disturbed.

#### CONCLUSION AND ORDER

The February 21, 2013 Compensation Order is supported by substantial evidence in the record and is in accordance with the law and therefore is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

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HENRY W. MCCOY  
*Administrative Appeals Judge*

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November 26, 2013

DATE

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<sup>9</sup> EE 4, p. 1 of 5.