

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA M. MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 12-089

HATTIE BAKER,

Claimant–Respondent,

v.

SODEXO,

Self-Insured Employer–Petitioner.

Appeal from a Compensation Order on Remand of
Administrative Law Judge Linda F. Jory
AHD No. 09-340A, OWC No. 656633

Michael S. Levin, Esquire, for the Petitioner

Matthew J. Pepper, Esquire, for the Respondent

Before JEFFREY P. RUSSELL,¹ LAWRENCE D. TARR, AND HENRY W. MCCOY, *Administrative Appeals Judges*.

JEFFREY P. RUSSELL, for the Compensation Review Board.

DECISION AND ORDER

OVERVIEW

This appeal deals with a Compensation Order on Remand (COR), which was issued on May 18, 2012² by an Administrative Law Judge ALJ in the hearings division of DOES following an earlier reversal of that ALJ's denial of a claim for disability and medical benefits in connection with Respondent's left wrist, elbow and shoulder. The earlier remand was premised upon the Compensation Review Board's (CRB) determination that the ALJ erred in finding that Petitioner's independent medical evaluation (IME) was sufficiently comprehensive to meet the standard

¹ Judge Russell is appointed by the Director of the D.C. Department of Employment Services (DOES) as a Board Member pursuant to DOES Administrative Policy Issuances No. 12-01 (June 20, 2012).

² The Certificate of Service on the COR is erroneously dated May 18, 2010. However, the date on the signature page is correct.

established by the District of Columbia Court of Appeals (DCCA) as set forth in *Washington Post v. DOES and Raymond Reynolds, Intervenor*, 852 A.2d 909 (D.C. 2004) (*Reynolds*) and *Washington Metropolitan Area Transit Authority v. DOES and Harold Spencer, Intervenor*, 827 A.2d 35 (D.C. 2003) (*Spencer*). The CRB directed that on remand, the ALJ proceed to consider the remaining issues that had not been reached, being the nature and extent of Respondent's disability.

On remand, the ALJ considered the claim further, and awarded the relief requested, finding that Respondent was disabled for the period claimed.

Petitioner appealed the COR. In the appeal, Petitioner does not challenge any aspect of the award contained in the COR, except to the extent that it contends that the CRB erred in the original remand, and that the ALJ's original denial of the claim based upon the now-reversed finding that Respondent failed to establish that her injuries arose out of and occurred in the course of her employment should have been affirmed. Indeed, in its appeal, Petitioner seeks nothing more than that the COR be summarily affirmed or that the CRB do nothing, in order that it may appeal the issue of the CRB's original reversal to the DCCA.

STANDARD OF REVIEW

The scope of review by the CRB, as established by the Act and as contained in the governing regulations, is generally 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. Workers' Compensation Act of 1979, as amended, D.C. Official Code § 32-1501, *et seq.*, at § 32-1521.01 (d)(2)(A), (the Act), and *Marriott International v. DOES*, 834 A.2d 882 (D.C. 2003). Consistent with this standard of review, the CRB and this review panel must affirm 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 this panel might have reached a contrary conclusion. *Id.*, at 885.

DISCUSSION AND ANALYSIS

The ALJ did as the CRB directed in the Decision and Remand Order. Petitioner does not dispute the propriety of the award, if one assumes compensability of the claim. Respondent requests that the COR be affirmed.³ The ALJ considered the claim for relief, and the fact of Respondent's temporary

³ In the COR, the ALJ erroneously characterized the nature of the original CRB decision when she wrote "In other words, the CRB has made its own conclusion of law that claimant's left shoulder and wrist problem are in fact causally related to claimant's employment [...]." COR, page 2. What the CRB actually did was reverse the ALJ's conclusion that Petitioner's IME met the legal standards set by the DCCA for rebutting or overcoming the presumption of compensability that the ALJ had found had been invoked by Respondent's evidence, and which invocation was not challenged in the earlier appeal. It was the ALJ, not the CRB, who decided that the presumption had been invoked. It was the lack of reference in the IME report to the conditions of claimant's employment that the ALJ had found to exist and which conditions were the fundamental underpinning of Respondent's treating physician's opinion concerning causation that rendered the IME report insufficiently comprehensive under *Reynolds* to overcome the presumption, rendering the IME report more akin to a "mere statement of a physician's opinion in opposition to the presumed relationship", which is insufficient under *Spencer* to overcome the causal relationship presumption.

total disability status is not contested in this appeal. There is nothing further for the CRB to consider at this time.

CONCLUSION

The COR is supported by substantial evidence and is in accordance with the law.

ORDER

The Compensation Order on Remand of May 18, 2012 is affirmed.

FOR THE COMPENSATION REVIEW BOARD:

JEFFREY P. RUSSELL
Administrative Appeals Judge

August 14, 2012
DATE