

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 No. 03-07

HORACE BALL,

Claimant – Petitioner

v.

MWM PROPERTIES and WAUSAU INSURANCE CO.,

Employer/Carrier – Respondent.

Appeal from an Order of
Administrative Law Judge Jeffrey P. Russell
OHA No. 00-74A, OWC No. 266664

Kirk D. Williams, Esquire, for the Petitioner

Jeffrey W. Ochsman, Esquire, for the Respondent

Before: E. COOPER BROWN, *Chief Administrative Appeals Judge*, FLOYD LEWIS and SHARMAN P. MONROE, *Administrative Appeals Judges*.

FLOYD LEWIS, *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).¹

¹ 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, 32-1522 (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

BACKGROUND

This appeal follows the issuance of an 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 Order, which was filed on January 25, 2001, the Administrative Law Judge (ALJ) granted the Motion to Dismiss filed by Employer-Respondent (Respondent), determining that the matter presented in the Application for Formal Hearing was inseparable from the matters currently pending before the Director. Claimant-Petitioner (Petitioner) now seeks review of that Order.

As grounds for this appeal, Petitioner alleges as error that ALJ's decision is arbitrary, capricious, unsupported by substantial evidence and is not in accordance with the law.

ANALYSIS

As an initial matter, the scope 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 §32-1522(d)(2). "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 scope 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, contending that the ALJ improperly declined to conduct an evidentiary hearing on the issues presented and determining that OHA lacked jurisdiction to hear the issues raised by Petitioner. Respondent counters that the ALJ correctly declined to conduct an evidentiary hearing and that the ALJ did not err by concluding that OHA lacked jurisdiction to decide issues raised by Petitioner.

In a May 31, 2000 Compensation Order, the ALJ made conclusions on the causal connection of Petitioner's alleged disability to his work injury and the nature and extent of Petitioner's disability from his accidental work injury of March 11, 1994. The ALJ ultimately concluded that Petitioner's alleged disability was unrelated to his March 11, 1994 work injury. Petitioner filed an Application for Review with the Director, which was finally decided by the Director in June of 2002 and no further appeal was taken.

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.

While his appeal was pending before the Director, Petitioner filed an Application for Formal Hearing, requesting modification of the existing Compensation Order, seeking an award of permanent partial disability to his left lower extremity. Respondent filed a Motion to Dismiss and Petitioner filed an objection. In the January 25, 2001 Order which is the subject of this appeal, the ALJ found that the matter presented in the Application for Formal Hearing was inseparable from the matters before the Director. Thus, the ALJ granted the Motion to Dismiss.

Petitioner argues that the ALJ erred by failing to reach findings of fact in support of the Order dismissing the Application for Formal Hearing and in declining to schedule an evidentiary hearing on this matter. However, in the May 31, 2000 Compensation Order, the ALJ concluded that “any disability claimant alleges has occurred since July 1995 is not causally related to his work related injury.” Compensation Order at 9. As Respondent stresses, this finding that Petitioner’s disability is not causally related to the employment injury precludes a subsequent finding that Petitioner nevertheless is entitled to disability benefits, as at that time, that issue was pending on appeal before the Director.

As such, this Panel determines that it was well within the ALJ’s discretion and legally appropriate to issue an Order dismissing the Application for Formal Hearing in light of the procedural record that was before him. As Respondent points out, at the time it was presented to the ALJ, the matter pursued by Petitioner presented the potential for contradictory findings. Thus, the ALJ did not err in concluding not to hear this matter while it was pending before the Director.

Petitioner also argues that the ALJ committed error by concluding that the issues presented in this claim were not severable from those issues pending on appeal and concluding that OHA lacked jurisdiction to consider this matter. Respondent notes that Petitioner refers to several cases, which he contends supports his position on this matter, such as *Richardson-Smith v. Capitol Hill Hospital*, Dir. Dkt. No. 95-84 (Decision of the Director, October 31, 1997, *affirmed sub. nom Capitol Hill Hospital v. Dist. of Columbia Dep’t. of Employment Servs.* 726 A.2d 682 (D.C. 1999)). However, as Respondent emphasizes, these cases do not address the severability of an issue from other issues on appeal, as these cases involve the application of the one year time limitation in the Act for filing for a request for modification. Moreover, in these cases cited by Petitioner, there had not been an earlier finding that the claimant’s disability was causally unrelated to the work injury, as is the case in the instant matter.

Respondent also refers to *Georgetown University Hospital v. Dist. of Columbia Dep’t. of Employment Servs.*, 658 A.2d 832, 833 (D.C. 1995), in which the Court concluded that OHA did not have jurisdiction to consider issues and matters while a case is on appeal at the Director’s level, unless the issues are completely severable from the issues on appeal. The Court noted the problem and concern that inconsistent rulings could result for OHA, if the issues were not completely severable and stressed, “. . . ‘judicial’ economy is best served by allowing the Director to resolve a pending Application for Review before the Hearing Examiner proceeds on an application for modification.” *Jones v. George Hyman Construction Company*, Dir. Dkt. No. 87-17 (September 18, 1987) at 8-9, *cited in Georgetown University*, at 836.

In the instant matter, this Panel concludes that the issues before the ALJ were not entirely severable from the issues pending on appeal before the Director and therefore, the ALJ did not

abuse his discretion and did not err in declining to consider this matter, while the appeal of the initial Compensation Order was pending before the Director.

Accordingly, the Order of January 25, 2001, which granted the Motion to Dismiss Petitioner's Application for Formal Hearing because the matters presented the Application for Formal Hearing were inseparable from the matters pending before the Director, should be affirmed.

CONCLUSION

The Order of January 25, 2001 is supported by substantial evidence in the record and is in accordance with the law.

ORDER

The Order of January 25, 2001, is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

FLOYD LEWIS
Administrative Appeals Judge

April 27, 2006
DATE