

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. 04-02

BIBIANA BORROTO,

Claimant – Respondent,

v.

THE PHILIP COLLECTION AND FEDERAL INSURANCE COMPANY,

Employer/Carrier – Petitioner.

Appeal from a Compensation Order of
Administrative Law Judge Amelia G. Govan
OHA No. 03-486, OWC No. 583427

Robert C. Baker, Jr., Esq., for the Petitioner

Mark L. Schaffer, Esq., for the Respondent

Before FLOYD LEWIS, SHARMAN J. MONROE and JEFFREY P. RUSSELL, *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).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 (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

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 December 17, 2003, the Administrative Law Judge (ALJ) awarded temporary total disability benefits continuing from March 3, 2003, along with related medical benefits, based upon finding that the Claimant-Respondent (Respondent) sustained an accidental work injury on September 25, 2002 and that her current condition was causally related thereto. The Employer/Carrier-Petitioner (Petitioner) now seeks review of that Compensation Order.

As grounds for this appeal, the Petitioner alleges as errors that the ALJ did not make findings of fact on each material issue, that the ALJ's conclusions do not rationally flow from the findings of fact and that the Compensation Order is not supported by substantial evidence.

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. 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, the Petitioner alleges that the ALJ erred in not making findings on the issue of the Respondent's credibility given that the surveillance video showed the Respondent performing activities which contradicted her testimony about the activities she is able and unable to perform after her September 25, 2002 work-related back injury. The Petitioner maintains that the video constitutes specific and comprehensive evidence establishing that the Respondent is not disabled. Further, the Petitioner alleges that the record medical evidence, specifically the reports of Drs. Melissa Neiman, Charles Lancelotta and Norman Horwitz, demonstrates that the Respondent is not disabled.

The Panel thoroughly reviewed the record in this case and the Panel finds that the ALJ's factual findings are supported by substantial evidence on the record as a whole, and are,

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.

therefore, conclusive. *Marriott Int'l. v. Dist. of Columbia Department of Employment Services*, 834 A.2d 882 (D.C. 2003); D.C. Workers' Compensation Act of 1979, as amended, D.C. Code Ann. § 32-1501 to 32-1545 (2005), at § 32-1521.01(d)(2)(A). Further, the ALJ's conclusions of law are in accordance with the law. Although the Petitioner argues that the ALJ erred in not making credibility findings given the surveillance video, the Petitioner does not cite, nor is the Panel aware of, a requirement that an ALJ make affirmative credibility findings in order for a decision to meet the standard of containing findings of fact and conclusion of law on each materially contested issue.² With respect to the surveillance video, the ALJ listed the activities which the Respondent was performing, but then indicated that none of them reflected the physical requirements of the Respondent's work over extended periods of time. Compensation Order at pp. 5-6. Thus, it was clear that the ALJ carefully considered the video and did not consider it persuasive evidence.

The record fully supports the ALJ's thorough, well reasoned decision, and the Panel, therefore, adopts the reasoning and legal analysis expressed by the ALJ in that decision in affirming the Compensation Order in all respects.³

CONCLUSION

The Compensation Order of December 17, 2003 is supported by substantial evidence in the record and is in accordance with the law.

ORDER

The Compensation Order of December 17, 2003 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

SHARMAN J. MONROE
Administrative Appeals Judge

April 12, 2006

DATE

² See *Muhammad v. D.C. Department of Employment Services*, 774 A.2d 1107, 1111 (D.C. 2001); D.C. Official Code § 2-509(e).

³ D.C. Workers' Compensation Act of 1979, as amended, D.C. Code Ann. §32-1501 to 32-1545 (2005), at §32-1521.01(d)(2)(B) requires a more detailed and thorough written order than the instant Decision and Order where there is a reversal of the Compensation Order.