

**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. 03-134**

**RAYMOND BOWDLING,**

Claimant – Petitioner,

v.

**EDGLEY CONSTRUCTION GROUP AND ERIE INSURANCE GROUP,**

Employer/Carrier – Respondent.

Appeal from a Compensation Order of  
Administrative Law Judge Anand K. Verma  
OHA No. 02-369; OWC No. 576754

George E. Swegman, Esquire, for the Petitioner

Jeffrey W. Ochsman, Esquire, for the Respondent

Before: E. COOPER BROWN, *Acting Chief Administrative Law Judge*, FLOYD LEWIS and SHARMAN J. 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).<sup>1</sup>

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<sup>1</sup> 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 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 September 30, 2003, the Administrative Law Judge (ALJ) denied the relief requested by Claimant-Petitioner (Petitioner), concluding that Petitioner's low back pain was not causally related to the work incident of February 11, 2002. Petitioner now seeks review of that Compensation Order.

As grounds for this appeal, Petitioner alleges that ALJ committed procedural and substantive errors and that the Compensation Order should be reversed.

## 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)(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. Dist. of Columbia Dep't. of Employment Servs.*, 834 A.2d 882 (D.C. App. 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 specifically alleges that the ALJ's decision is erroneous because the ALJ, in issuing the Compensation Order simultaneously with the ruling on Petitioner's Motion to Reopen the Record for additional medical evidence, essentially precluded the submission and receipt of the medical evidence in question, except for the single medical report that accompanied the motion and was submitted only to establish the basis for the motion. Petitioner contends that additional medical evidence was at that time becoming available and was in fact available before the ALJ jointly issued the Compensation Order and ruled on the motion. Respondent argues that Petitioner received the benefit of a reopening of the record, as the ALJ considered the single medical report submitted with Petitioner's motion and contends that in the motion, Petitioner did not indicate that other medical reports were to be considered and submitted.

The record reveals that after the formal hearing in this matter, Petitioner filed a Motion to Reopen the Record, for consideration of a February 13, 2003 report of Dr. Marc A. Linson, which was attached to the motion. Respondent opposed the motion arguing that the material was not relevant or causally related to the work injury in February of 2002. In the Compensation Order, the ALJ granted Petitioner's motion and considered Dr. Linson's medical report. After considering Dr. Linson's report and evaluating the medical evidence, the ALJ rejected Dr. Linson's opinion in favor of the opinion of Dr. James Callan. The ALJ then ultimately concluded that the weight of Petitioner's evidence did not compel a conclusion that Petitioner's injuries were causally related to the work incident.

In the instant appeal, Petitioner argues that the ALJ erred by ruling on the Motion to Reopen the Record in the Compensation Order, as this precluded the submission and receipt of additional medical evidence. However, after closely reviewing the evidence of record, this Panel must reject Petitioner's arguments and conclude that there was no error committed by the ALJ on this issue.

The ALJ had the authority under 7 DCMR § 223.4 to reopen the record for the receipt of additional evidence and in this matter, the ALJ granted Petitioner's motion and considered the evidence submitted by Petitioner. In filing this appeal, Petitioner is essentially arguing that the ALJ's actions prevented any submission and consideration of other reports from Dr. Linson. However, Petitioner never submitted another motion seeking to reopen the record, identifying such records and attempting to submit the records into evidence.

All evidence that a party wishes to be considered should accompany the motion to reopen the record to enable the fact-finder to evaluate and consider the evidence to determine whether the evidence should be admitted into the record. This Panel must reject Petitioner's contention that the ALJ erred by ruling on Petitioner's motion in the Compensation Order or that the ALJ should have somehow inferred that there might be additional evidence that Petitioner desired to submit. No error was committed by the ALJ by failing to consider evidence which was not submitted by Petitioner at the hearing or in the post-hearing motion to reopen the record.

In this case, Petitioner only submitted the one report from Dr. Linson, which the ALJ determined should be received into evidence. Petitioner's motion was filed on March 10, 2003 and thus, under 7 DCMR § 223.4, Petitioner had until "any time prior to the filing of a Compensation Order" ( or until September 30, 2003), to file another motion seeking to submit additional evidence. However, Petitioner failed to file a subsequent motion for the ALJ to consider additional evidence. After closely reviewing the record, Petitioner's arguments that the ALJ erred in handling this matter are rejected and the Compensation Order should not be disturbed.

#### CONCLUSION

The Compensation Order of September 30, 2004 is supported by substantial evidence in the record and is in accordance with the law.

**ORDER**

The Compensation Order of September 30, 2004 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD;

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FLOYD LEWIS  
Administrative Appeals Judge

August, 8 2005  
DATE