

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. 06-45

BRIDGETT R. BROWN,

Claimant – Petitioner

v.

BLOOMBERG, L.P. AND CHUBB GROUP INSURANCE COMPANIES,

Employer/Carrier – Respondent.

Appeal from a Compensation Order of
Administrative Law Judge Terri Thompson Mallett
OHA No. 02-392, OWC No. 208443

Bridgett Brown, for the Petitioner *Pro Se*

Robert C. Baker, Jr., 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

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 on Remand, which was filed on March 30, 2006, the Administrative Law Judge (ALJ) denied the relief requested on finding that the Claimant-Petitioner's (Petitioner) asserted stress injury did not arise out of and in the course of her employment. The Petitioner now seeks review of that Compensation Order on Remand.

As grounds for this appeal, the Petitioner alleges as error that the decision below is not supported by substantial evidence and is not in accordance with the law.

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. App. 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.

As an initial matter, the motions filed by the parties and the Order issued by the CRB must be addressed. On or about June 21, 2006, the Respondent filed a Motion to Dismiss Application for Review on the basis that the Petitioner had not submitted any pleadings beyond her April 31, 2006 Application for Review. On October 11, 2006, the counsel for the Petitioner filed a Motion to Withdraw Appearance indicating that Petitioner intended to pursue her appeal *pro se* or through alternate counsel. On January 19, 2007, the CRB issued an Order to Show Cause why this matter should not be dismissed for failure to prosecute. In response thereto, the Respondent re-filed its earlier Motion to Dismiss.

After reviewing the file, the Panel denies the Respondent's Motion to Dismiss. A timely filed Application for Review vests the CRB with jurisdiction under the Act to conduct

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.

administrative review and the failure to file additional pleadings, *ex.*, a Memorandum of Points and Authorities, does not divest that jurisdiction.² *See generally Short v. D.C. Department of Employment Services*, 723 A.2d 845, 849 (D.C. 1998)(Court ruled that failure to file a memorandum of points and authorities did not automatically require a dismissal of the case and the Director, DOES could choose review a case without the memorandum). With respect to the Motion to Withdraw Appearance, the Petitioner's counsel indicated the basis for the Motion and that the Petitioner was sent a copy of the Motion.³ The Motion to Withdraw Appearance is granted. Finally, as of the date of this decision, the CRB has not received a response from the Order to Show Cause from the Petitioner. Absent such response, the Panel is with authority to dismiss the Application for Review. However, *assuming arguendo*, that the Petitioner's response to the Order to Show Cause was mis-filed, the Panel will review the Compensation Order to determine whether it is supported by substantial evidence and is in accord with the law.⁴

As indicated in the Compensation Order on Remand, this matter was previously before the CRB. The Petitioner herein had appealed a September 30, 2003 Compensation Order wherein it was found that the Petitioner's psychological or psychiatric injury did not arise out of and in the course of her employment. On January 10, 2006, the CRB had vacated and remanded this matter to AHD after determining that the legal conclusion in the Compensation Order that the Petitioner did not present sufficient evidence to invoke the presumption of compensability was not supported by the evidence of record.

In examining this case on remand, the ALJ recognized that, while an injured employee is entitled to a rebuttable presumption that an injury is compensable upon a showing of an injury and a work-related event with the potential of causing the injury, when the injury is a psychological or mental injury, the injured employee must make an additional showing that the actual working conditions could have caused a similar injury in a person not predisposed to a psychological condition, pursuant to *Dailey v. 3M Company*, H&AS No. 85-259, OWC No. 66512 (May 19, 1988) and *West v. Washington Hospital Center*, CRB No. 99-97, OHA No. 99-276A, OWC No. 281079 (August 5, 2005) in order to gain the presumption. The ALJ found, and that finding is supported by substantial evidence, that the Petitioner's alleged psychological condition did not arise out of and in the course of her employment. The Petitioner's medical evidence consisted of the reports of Dr. Joseph Marnell, psychiatrist, and Valerie Fortune, licensed clinical social worker. As the ALJ indicated, aside from setting forth the Petitioner's subjective complaints about her work conditions, neither individual opined that the Petitioner's work conditions would have caused a person not predisposed to a psychological condition to experience the same reaction as the Petitioner. Thus, the Panel discerns no reason to disturb the ALJ's conclusion that the Petitioner presented insufficient evidence that the alleged work place

² The Compensation Order on Remand was issued on March 30, 2006 and the Petitioner's Application for Review was on April 31, 2006, within the thirty day timeframe of D.C. Official Code § 32-1522(a).

³ The Panel accepts counsel's representation in his Motion that the Petitioner was sent a copy of the Motion as counsel is an officer of the Court. However, while not casting any dispersions on counsel's representation, the Panel notes that the better course of action would have been to formally serve the Petitioner and to indicate so on the Certificate of Service for the Motion.

⁴ *See generally Covington v. Metro Pet Pals, LLC*, CRB No. 03-97, OHA No. 02-448A, OWC No. 583242 (Order Denying Motion to Dismiss, March 18, 2005)(Employer's Application for Review was filed within the statutory 30-day timeframe. However, the filing was made to the then Office of Hearings and Adjudication, instead of with the then Office of the Director as required. The CRB ruled the filing timely on the premise that the filing period was requirement subject to waiver when equity so required.)

incidents would have caused a person not predisposed to a psychological condition. 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.

CONCLUSION

The Compensation Order on Remand of March 30, 2006 is supported by substantial evidence in the record and is in accordance with the law.

ORDER

The Compensation Order on Remand of March 30, 2006 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

SHARMAN J. MONROE
Administrative Appeals Judge

March 14, 2007
DATE