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. 05-206

BRADLEY BROADUS,

Claimant–Petitioner,

v.

THE CATHOLIC UNIVERSITY OF AMERICA AND TRAVELERS INSURANCE,

Employer/Carrier–Respondent.

Appeal from a Compensation Order of
Administrative Law Judge Linda F. Jory
OHA/AHD No. 00-467C, OWC No. 546408

Donald A. Clower, Esquire, for the Petitioner

Amy L. Epstein, Esquire, for the Respondent

Before: JEFFREY P. RUSSELL, *Administrative Appeals Judge*, E. COOPER BROWN, *Acting Chief Administrative Appeals Judge*, and FLOYD LEWIS, *Acting Administrative Appeals Judge*.

JEFFREY P. RUSSELL, *Administrative Appeals Judge*, for the Compensation 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 D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, D.C. Official Code §32-1521.01. In accordance with the Director's Directive, 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. Official Code §32-1501 *et seq*., and the D.C. Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Official Code §1-623.1 *et seq*., including responsibility for administrative appeals filed

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 January 24, 2005, the Administrative Law Judge (ALJ) granted Petitioner's claim for causally related medical care, and denied the claim for disability compensation benefits, having found that Petitioner had failed to give timely notice of injury to Respondent. Petitioner now seeks review of the denial of those disability benefits.

As grounds for this appeal, Petitioner alleges as error that (1) the finding that Petitioner had failed to give timely notice of the injury is unsupported by substantial evidence, because there was insufficient evidence to support the ALJ's finding that Petitioner knew or should have reasonably known of the relationship between the injury and his employment with Respondent on April 27, 1999, the date that he first sought medical treatment for the injury, (2) because there was insufficient evidence to support the finding that the date of injury was prior to September 17, 1999, thereby rendering the notice given to Respondent three days later timely, and (3) the denial of the claimed disability benefits is not in accordance with the law due to Respondent's failure to demonstrate that it was prejudiced by the late giving of notice that the ALJ found.

For the reasons set forth below, we affirm the Compensation Order.

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. *See* D.C. Workers' Compensation Act of 1979, as amended, D.C. Official Code §32-1501 *et seq.*, at §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. 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.

Turning to the case under review herein, Petitioner first alleges that the ALJ's decision to deny the claim for disability compensation benefits must be reversed, because there is insufficient evidence to support the finding that Petitioner knew or should reasonably have been aware of the relationship between his work as a landscape laborer and the pain and associated numbness in his

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prior to October 1, 2004, the effective date of the D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004.

neck for which he sought treatment at the Providence Hospital emergency room on April 27, 1999.

We disagree with this contention. The ALJ identified the record evidence upon which her conclusion was based multiple times in the Compensation Order. That evidence included: the testimony of Petitioner himself, found at HT 55 - 56, to the effect that he began to experience neck pain in March or April, 1999, quoting the testimony that "during the spring after, of course the work that we do, I would think it was just a matter of just after a lot of work we do after the course of the day, it would just, 'Oh, I'm just a little sore from this work today'" and that "it was sore and it was stiff at the beginning. During the course of working, I would like to take a hot shower to relieve it later, maybe with some Icy Hot. And I'd go back to work", Compensation Order, page 3; HT 57, where Petitioner, in response to his own counsel's question, stated that his symptoms in April 1999 included burning and tingling sensations (Compensation Order, page 8); that same transcript page, where in response to another question from his own counsel, Petitioner testified that he told Dr. Vernon Smith[2], one of his treating physicians how he "was feeling and that the pain. And [the doctor] prescribed some pain pills and he gave me a day or two off at the time. So [I] would rest and feel a little better, and I'd go back to work", (Compensation Order, page 8); Petitioner's testimony at HT 60 that he thought he remembered being told by the doctor at that time that he simply had an acute muscle spasm, then adding "But then again, that's what I think was coming from just being working, just working", (Compensation Order, page 9); and Petitioner's testimony under cross examination, at HT 85, that he knew his work was having some kind of effect on the way his neck was feeling, saying "Well yeah, I knew it. But I didn't know what it was" and that he experienced the neck symptoms as "an every day part of you know, just at work", (Compensation Order, page 9).

The ALJ, after reciting and describing these matters of record evidence, correctly noted that "It is not a requirement of the Act that claimant be able to inform employer of the intricacies of a final diagnosis prior to disclosure, merely that certain symptoms presently exist and that said symptoms may be related to a work-related event or activity", citing *Teal v. District of Columbia Department of Employment Services*, 58 A.2d 647 (D.C. App. 1990). The ALJ concluded that Petitioner's testimony supported a finding that Petitioner knew, or in the exercise of reasonable diligence should have known, that his work activity was causing or contributing to his neck symptoms of pain, numbness, burning and tingling long prior to the ultimate diagnosis of disc herniations at C5-C6 and at C4-C5, due to an MRI performed September 17, 1999, when he first reported the symptoms to the physicians at the emergency room on April 27, 1999. Specifically, the ALJ concluded that Petitioner "was aware that something unexpectedly went wrong within the human frame which in this jurisdiction equates with the term 'injury' as used in §32-1513(a) [of the Act], when he felt pain in his neck while working during the spring to which he testified 'I would think it was just a matter of just after a lot of work we do after the course of the day'". Compensation Order, page 9. It is apparent that the ALJ made a decision that was based upon Petitioner's own testimony and acknowledgement that his symptoms, for which he first treated on April 27, 1999 in a hospital emergency room, were related to working as a landscape laborer; that conclusion is clearly one that a reasonable person might make based upon the identified record evidence, and hence it is based upon substantial evidence.

[2] Although not specifically stated in the Compensation Order where this conversation is discussed, CE 3, the reports of Dr. Smith, reveal that he saw Petitioner on August 23 and 24, 1999.

Petitioner next asserts a legal error in the ALJ's finding that the date of injury was April 27, 1999; from Petitioner's point of view, the injury did not "manifest itself" until the date of the MRI, September 17, 1999. Memorandum of Points and Authorities in Support of Claimant's Application for review of Compensation Order, paragraph 2. The legal basis of this contention is not explicitly made clear, except that, by referencing the fact that a CT scan was performed and interpreted as being normal on August 27, 1999, while the MRI performed 20 days later revealed the disc herniations, Petitioner appears to be arguing that something discrete and identifiably different from the exertions of employment that had already led to Petitioner's seeking emergency room care, then care from Dr. Smith and the CT scan, must have occurred between the date of the CT scan and the MRI. While it is possible that this is true, it is by no means the only reasonable interpretation of the evidence, nor is it necessarily the most reasonable. Nothing in the record of these proceedings mandates a conclusion, as a matter of law, that a positive finding of the disc herniations on MRI is anything other than the result of a different imaging technique being employed than was used previously, being CT scan.

In a subsequent filing, Petitioner posits alternatively that even if the date of injury is considered to be April 27, 1999, there is insufficient evidence for the ALJ to have concluded that Petitioner was aware of the work connection until the date of the MRI. Memorandum of Points and Authorities in Reply to Employer/Insurer's Opposition to Claimant's Amended Application for Review, page 1 – 2. The gist of Petitioner's argument is that, even if Petitioner sustained a repetitive trauma injury which manifested in April, he had no knowledge that was work related at that time, primarily because "on no occasion did the doctor suggest that he had sustained a work-related injury *or any injury*" *id.* page 2, (emphasis supplied).

Petitioner's argument fails on two counts: first, Petitioner points to nothing in the record to suggest that the referenced doctor had been told what the ALJ was told in the hearing, concerning the symptoms and their relationship to Petitioner's employment, and second, "injury" is a legal term under the Act which may well differ from how a given physician might employ the term, and it is not self-evident that a physician would have any reason to explicitly advise a patient that his work activities were causing or aggravating his condition, beyond doing what the doctor in fact did, which was to advise the patient to take time off work, which Petitioner admits his doctor did.

Regarding the third assignment of error, Petitioner misreads the Act in suggesting that Respondent has the burden of demonstrating that the failure to provide timely notice of injury has prejudiced the Respondent. The notice provision of the Act has numerous technical requirements, in addition to timeliness, including that the notice be in writing, that it describe the nature and cause of the injury, as well as the date, place and time that it occurred, among other things. The provision goes on to excuse the failure to comply with these technical requirements, where the employer, despite the technical failures, has actual notice of the injury and its work relationship, where the technical failures are shown to be non-prejudicial. D.C. Official Code §32-1513(d)(1). Petitioner makes no contention in this appeal that Respondent had the requisite actual notice of injury and relationship to employment, nor is there any evidence of Respondent's having actual notice of the injury and its relationship to Petitioner's employment,

prior to the stipulated date of notice, September 20, 1999. Petitioner's argument therefore fails on this point as well.

CONCLUSION

The Compensation Order of January 24, 2005 is supported by substantial evidence in the record and is in accordance with the law.

ORDER

The Compensation Order of January 24, 2005 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

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JEFFREY. P. RUSSELL
Administrative Appeals Judge

April 21, 2005
DATE