

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. 06-36

JESSE D. BURKE,

Claimant–Respondent,

v.

D.C. WATER AND SEWER AUTHORITY,

Employer/Carrier–Petitioner.

Appeal from a Compensation Order of
Administrative Law Judge Linda F. Jory
AHD No. 05-110, OWC No. 604043

Douglas Datt, Esquire, for the Petitioner

Matthew Pepper, Esquire, for the Respondent

Before JEFFREY P. RUSSELL, SHARMAN J. MONROE, and FLOYD LEWIS, *Administrative Appeals Judges*.

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 District of Columbia Fiscal Year 2005 Budget Support Act of 2004, Title J, the District of Columbia Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, *codified at* 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 District of Columbia Workers' Compensation Act of 1979, as amended, D.C. Code Ann. §§ 32-1501 to 32-1545 (2005), and the District of Columbia 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 District of Columbia Workers'

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 followed a formal hearing conducted on March 10, 2005, was filed on February 28, 2006, the Administrative Law Judge (ALJ) granted the claim for compensation benefits sought by Respondent, being temporary total disability benefits and causally related medical care. Petitioner now seeks review of that Compensation Order.

ANALYSIS

The record has been reviewed and we find that the ALJ's factual findings are supported by substantial evidence on the record as a whole, and are therefore conclusive. *Marriott Int'l. v. Dist. of Columbia Dep't. of Employment Servs.*, 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). We defer to and accept the ALJ's credibility determinations as well, as they are supported by substantial evidence. *See Teal v. D.C. Department of Employment Services*, 580 A.2d 647 (D.C. 1990); *Cohen v. A&A Hardware*, Dir. Dkt. No. 88-93, H&AS No. 86-272A, OWC No. 0075694, n.2 (July 2, 1990). The record fully supports the ALJ's thorough, well reasoned decision, and we therefore adopt the reasoning and legal analysis expressed by the ALJ in that decision in affirming the Compensation Order in all respects.

Beyond this we note that Petitioner's entire appeal appears to be based upon the assertion that the ALJ's credibility determinations were erroneous. Such determinations are for the ALJ, and not this body on appeal, and will not be disturbed by us.

Further, Petitioner appears to be arguing for the creation of a special rule denying compensation benefits for claimants who, although injured while in the course of their employment, tell an untruth to an employer's agents about some aspect of the incident. "In effect" Petitioner writes, "the ALJ has ruled that it is acceptable for a claimant to lie to an insurance claims representative and investigating officer from D.C. WASA, and that such action does not effect the claimant's credibility with respect to claimant's entitlement to benefits, as long as the claimant lied on behalf of a fellow-employee as opposed to lying to advance his own claim". Memorandum of Points and Authorities in Support of Employer and Third Party Administrator's Application for Review, page 22.

Petitioner misconstrues what the ALJ did in this case. Even assuming that Petitioner is correct that the evidence established beyond cavil that Respondent assisted a co-worker in order to help the co-worker avoid punishment for misconduct, by untruthfully corroborating the co-worker's story that the accident was caused by the co-worker's attempt to avoid striking a goose or geese, the Act provides for no such exclusion from coverage, and such an exclusion would be inconsistent with the humanitarian purposes of the Act. This is particularly apparent where, as here, any proven lack of candor with an employer's investigators was not for the purpose of fraudulently advancing the

claimant's claim. Petitioner's assertion that the ALJ ruled that "it is acceptable for claimant to lie" is not correct. If Respondent lied to Petitioner's investigating employees or agents, there may be other adverse consequences beyond the narrow confines of his entitlement to benefits under the Act. Unless, however, a claimant's supposed lies lead an ALJ to conclude that the claimant was not injured in the course of his employment, or they lead an ALJ to conclude that a claimant has failed to establish that an injury occurred in the course of employment, denial of compensation benefits is not one of the adverse consequences of such an irrelevant (irrelevant, that is, to entitlement to compensation benefits) untruth. And, the assertion by Petitioner that the ALJ in this case ruled that a claimant's lie "does not affect his credibility so long as" the lie is not to advance his own claim, is also incorrect. The ALJ did no such thing. Rather, the ALJ, in this instance, determined that any participation that the Respondent may have had regarding the "geese story" did not cause the ALJ to disbelieve the other relevant aspects of his testimony, which were that he was injured when a motorcycle driven by a co-worker went out of control and struck him, all while he, the cyclist, and other co-workers were awaiting the assignment of additional work from Petitioner. While the ALJ was free to have concluded otherwise, and could have denied the claim because she was not satisfied that claimant was truthful in the other, more relevant testimony, she was not, as a matter of law, obliged to do so.

ORDER

The Compensation Order of February 28, 2006, is hereby affirmed.

FOR THE COMPENSATION REVIEW BOARD:

JEFFREY P. RUSSELL
Administrative Appeals Judge

April 20, 2006

DATE