

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services
Labor Standards Bureau

Office of Hearings and Adjudication
COMPENSATION REVIEW BOARD



(202) 671-1394-Voice
(202) 673-6402 - Fax

CRB No. 06-003

BUSTER SINES, JR.,

Claimant – Petitioner

v.

APCOM POWER, INC. AND GALLAHER BASSETT SERVICES, INC.,

Employer/Carrier – Respondent.

Appeal from a Compensation Order of
Administrative Law Judge Henry W. McCoy
OHA No. 05-083A, OWC No. 603690

Charles Krikawa, IV, Esquire, for the Petitioner

Anjuma D. Goswami, Esquire, for the Respondent

Before LINDA F. JORY, FLOYD LEWIS and JEFFREY P. RUSSELL, *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).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, 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 28, 2005, the Administrative Law Judge (ALJ) concluded that Claimant-Petitioner (Petitioner) is not entitled to wage loss benefits as a result of the May 20, 2004 work injury, but is entitled to causally related medical expenses. Petitioner now seeks review of that Compensation Order.

As grounds for this appeal, Petitioner alleges as error that the portion of the Compensation Order that concluded that Petitioner did not suffer a wage loss from January 27, 2005 to the present and continuing is not supported by substantial evidence and is not in accordance with the law.

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). “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 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 challenges the ALJ’s decision that Petitioner was laid off for economic reasons for lack of work and as such, his wage loss was unrelated to his work injury and not compensable under the Act. Employer-Respondent (Respondent) counters that the ALJ’s decision that Petitioner did not suffer a wage loss because he was laid off for economic reasons and that any failure of Petitioner to obtain similar employment was beyond the scope of the Act, should be affirmed.

On March 30, 2004, Petitioner was hired out of a union hall, as a boiler maker, to work for Respondent on rehabilitating one of the steam generating boilers at the Pepco power plant. On May 20, 2004, Petitioner slipped and fell while at work. Petitioner completed his shift, returned to work the next day without seeking medical treatment and he continued working until May 26, 2004. The ALJ found, and the record indicates that when that portion of the job was completed,

Petitioner admitted that he and the other boiler makers were laid off by Respondent on May 26, 2004. Hearing Transcript at 45, 46; Employer's exh. 3.

Moreover, the ALJ specifically noted that:

Claimant admitted under cross-examination that upon being laid off he made no effort to contact the union hall to inquire about the availability of a new job because he knew there was no work available after he left APCom Power. HT 74. Claimant also acknowledged that the availability of work for boiler makers was limited because electrical power plants were the major source of work and they only shut down when the seasonal demand for power lessened . . . In fact, after he was laid off, Claimant was carrying out his usual practice of taking a rest to restore his body and to apply for and collect unemployment benefits. . . In addition, he has not demonstrated that his injury prevented him from accepting available employment. Thus, Claimant is not entitled to wage-loss benefits.

Compensation Order at 8-9.

In concluding that Petitioner was not entitled to wage loss benefits, the ALJ cited *White v. American Elevator Service*, Dir. Dkt. No. 89-140, H&AS No. 88-431 (March 2, 1995), wherein the Director affirmed the ruling that disability benefits were not available when the loss of employment was due to economic reasons and not the work injury. In *White*, it was emphasized that the Act does not impose a duty on employers to insure claimants for economic or non-injury facts such as (1) the loss of employment due to an employer's lack of financial solvency; (2) the termination of a contract for an employer's services; (3) the lack of demand for claimant's skills; or (4) a claimant's decision to specialize in a particular area of discipline that renders him or her less employable.

After a careful review of the record, this Panel can find no reason to disturb the ALJ's conclusion that Petitioner is not entitled to wage loss benefits because he was laid off for economic reasons

CONCLUSION

The Compensation Order of September 28, 2005 is supported by substantial evidence in the record and is in accordance with the law

\

ORDER

The Compensation Order of September 28, 2005 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

FLOYD LEWIS
Administrative Appeals Judge

January 18, 2006
DATE