

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. 06-05

CASSANDRA CALDWELL,

Claimant –Petitioner

v.

HOWARD UNIVERSITY HOSPITAL AND SEDGWICK MANAGEMENT SERVICES,

Employer/Carrier – Respondent.

Appeal from a Compensation Order of
Administrative Law Judge Anand K. Verma
AHD No. 05-237A, OWC No. 598986

Matthew Peffer, Esquire, for the Petitioner

William H. Schladt, Esquire, for the Respondent

Before: FLOYD LEWIS, SHARMAN J. MONROE 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 30, 2005, the Administrative Law Judge (ALJ) concluded that Claimant-Petitioner (Petitioner) is entitled to recover causally related medical expenses until June 23, 2004. Petitioner now seeks review of that Compensation Order.

As grounds for this appeal, Petitioner alleges as error that the Compensation Order is unsupported 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 alleges that the ALJ’s finding that Petitioner’s condition resolved on June 23, 2004 and she was entitled to causally related medical expenses until then is not supported by substantial evidence in the record. Respondent counters by arguing that the ALJ’s finding that Petitioner’s initial symptoms had resolved on June 23, 2004 and that she is entitled to causally related medical expenses until that date is supported by substantial evidence, is in accordance with the law and should be affirmed.²

At the hearing, Petitioner sought an award for causally related medical expenses. Petitioner was employed by Respondent as a histotechnologist in the pathology laboratory, where she was exposed to a variety of chemicals. She complained of and received treatment for exposure to these chemical beginning in July of 2003 and in February of 2004, Respondent removed Petitioner from the laboratory and relocated her to a cubicle inside the Office of Pathology, due

² Respondent also briefly argues that Petitioner’s Application for Review is untimely, noting that the Application for Review was filed on October 31, 2005 and the Compensation Order is dated September 30, 2005. Since an Application for Review must be filed within 30 days of the date on the Compensation Order, Respondent contends that the appeal is untimely. While Respondent is correct that 30 days from September 30, 2005 is October 30th, this Panel must emphasize since October 30, 2005 was a Sunday, Petitioner had until the next business day, October 31st, to file her appeal. As such, Petitioner’s Application for Review was timely filed.

to her exposure to chemicals. However, in January of 2004, Petitioner also took a part time job with Washington Adventist Hospital as a histotechnologist, working in a laboratory being exposed to chemicals. The ALJ noted that Petitioner testified that she quit her job with Respondent on September 27, 2004, as she began full-time work at Washington Adventist Hospital as a histotechnologist.

The ALJ found, and the record indicates, that Petitioner's treating physician, Dr. Ann Marie Gordon, in her report of July 7, 2004, opined that Petitioner's condition had effectively resolved and that she was able to return to her pre-injury employment as of June 23, 2004. Respondent's exh. 8. Respondent stresses that June 23, 2004 is four months after Respondent had relocated her from the laboratory into an office, where she was no longer exposed to chemicals

While Petitioner complains of current symptoms, Petitioner argues that since Respondent removed Petitioner from any chemical exposure in February of 2004, any problems that she continues to experience due to chemicals, if any, are related to her current employment at Washington Adventist Hospital and not Respondent's responsibility. Thus, it is Respondent's contention that it was correct for the ALJ to conclude that Petitioner's initial condition and symptoms resulting from chemical exposure in Respondent's workplace had resolved as of June 23, 2004.

After a close review of the record in this matter, this Panel agrees with Respondent that there is substantial evidence to support the ALJ's conclusion that Petitioner's condition and symptoms attributable to Respondent's laboratory environment had completely resolved as of June 23, 2004 and Respondent is responsible for Petitioner's medical expenses until that date. Accordingly, the ALJ's decision granting Petitioner causally related medical expenses until June 23, 2004 is supported by substantial evidence and is in accordance with the law.

CONCLUSION

The Compensation Order of September 30, 2005 is supported by substantial evidence in the record and is in accordance with the law.

ORDER

The Compensation Order of September 30, 2005 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

FLOYD LEWIS
Administrative Appeals Judge

December 27, 2005
DATE