

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD

CRB 12-189 (R)

**CASSANDRA ROSS,
Claimant,**

v.

**DISTRICT OF COLUMBIA DEPARTMENT OF CORRECTIONS,
Employer.**

On Remand from the District of Columbia Court of Appeals
DCCA No. 13-AA-200 (October 29, 2015)
AHD No. PBL 96-013C, DCP No. 7610320001999-0006

(Issued November 30, 2015)

Cassandra Ross, *pro se*
Ross Buchholz for Employer

LAWRENCE D. TARR for the Compensation Review Board.

REMAND ORDER

In a Compensation Order (CO) issued on November 8, 2012, an Administrative Law Judge (ALJ) denied the Claimant's request for reinstatement of disability payments and medical benefits from 2001 to the present and continuing *Ross v District of Columbia Department of Corrections*, AHD No. PBL96-013C, DCP No. 7610320001999-0006 (November 8, 2012). On January 13, 2013, the Compensation Review Board (CRB) affirmed the CO. *Ross v District of Columbia Department of Corrections*, CRB No. 12-189, AHD No. PBL96-013C, DCP No. 7610320001999-0006 (January 13, 2013).

Claimant appealed the CRB's decision to the District of Columbia Court of Appeals (DCCA). While that appeal was pending, the CRB issued an *en banc* Decision and Remand Order in *Mahoney v D.C. Public Schools*, CRB No. 14-067 (November 12, 2014) (*Mahoney*).

On October 29, 2015, the DCCA affirmed in part and reversed in part, the CRB's January 13, 2013 Decision and Order in *Ross v District of Columbia Department of Corrections*. The DCCA remanded *Ross* with instructions to the CRB to remand the matter to the ALJ, so that the ALJ

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could reconsider the evidence in accordance with the burden shifting analysis stated by the CRB in *Mahoney*.

The DCCA held:

Mahoney clarified the procedure to be followed when a District agency-employer has accepted a claim for workers compensation and paid workers benefits, but later moves to modify or terminate those benefits. ... *Mahoney* established a burden shifting framework to be applied by DOES ALJs when considering whether benefits may be terminated or modified. Under the new framework, the agency bears the initial burden of production, by presenting “current and probative evidence” that the claimant’s condition has “sufficiently changed to warrant a modification or termination of benefits”. If the agency-employer does so, the burden of production shifts to the claimant, who may rebut that evidence by presenting reliable and relevant evidence that his or her condition has not changed to warrant modification or termination. If the claimant presents such evidence, the ALJ then considers the totality of the evidence to determine whether the agency has proved, by a preponderance of the evidence, that the claimant’s benefits should be modified or terminated.

Ross v DOES, DCCA No. 13-AA-200 (October 29, 2015).

Accordingly, this matter is remanded to AHD for further consideration consistent with the October 29, 2015 DCCA opinion in *Ross*.

So ordered.