

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 (Dir.Dkt.) No. 05-27

MICHAEL CATHER,

Claimant - Petitioner

v.

U.S. ELEVATOR AND CRAWFORD & COMPANY,

Employer/Carrier – Respondent.

Appeal from an Order of
Claims Examiner Shelby J. Stephens
OWC No. 253603

David M. Schloss, Esquire, for the Petitioner

Sarah O. Rollman, Esquire, for the Respondent

Before LINDA F. JORY, JEFFREY P. RUSSELL, FLOYD LEWIS, *Administrative Appeals Judges*.

LINDA F. JORY, *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 (1994), and the Department of Employment Services Director's Directive, Administrative Policy Issuance 05-01 (February 5, 2005)¹.

¹Pursuant 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 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. Official Code §§ 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.

Pursuant to § 230.04, the authority of the Compensation Review Board extends over appeals from compensation orders including final decisions or orders granting or denying benefits by the Administrative Hearings Division (AHD) or the Office of Workers' Compensation (OWC) under the public and private sector Acts.

BACKGROUND

This appeal follows the issuance by the Office of Workers' Compensation (OWC) in the District of Columbia Department of Employment Services (DOES) of a Disfigurement Award Denial Order filed on November 9, 2004. In that Order, the Claims Examiner denied Petitioner disfigurement benefits pursuant to D.C. Code § 32-1508 (T).

Petitioner has appealed OWC's Order contending the Order denying benefits fails to specify any grounds in support of the denial

ANALYSIS

In the review of an appeal from OWC, the Board must affirm the order under review unless it is determined to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. *See* 6 Stein, Mitchell & Mezones, ADMINISTRATIVE LAW, §51.93 (2001). For the reasons set forth herein, the Board concludes herein, that the Claims Examiner's November 9, 2004 order denying disfigurement benefits is in accordance with the law, and neither arbitrary, an abuse of discretion, or capricious.

Petitioner has attached photos of his affected shoulder and asks that the photos be considered in connection with its request for review. Respondent has filed an opposition to Petitioner's Application for Review asserting correctly that the D.C. Workers' Compensation Act provides for compensation for disfigurement under limited circumstances. Pursuant to §32-1508(3)(T) of the Act, an award for disfigurement can be made only where the disfigurement is to the face, head, neck or other normally exposed bodily areas. Respondent asserts and the Panel agrees the disfigurement is to Petitioner's shoulder, which is not a normally exposed bodily area. In further support of its position, Respondent asserts that Petitioner conceded in his Application for Review that exposure of Petitioner's shoulder occurs under very limited circumstances – in the summer months when the Petitioner does not wear a shirt.

The Panel agrees a body part that is infrequently exposed cannot be said to be a normally exposed body part, thus Petitioner's argument that he is entitled to benefits for a shoulder disfigurement must fail as it is contrary to the Act. The claims examiner's explicit reference to §32-1508(3)(T) is sufficient to permit the inference that the award was denied because the claimed disfigurement was to a body part not normally exposed, a determination that Petitioner does not appear to dispute, and one with which we do not disagree. As the denial is in accordance with the plain meaning of the language of the Act, the Claims Examiner was not required to provide any further grounds for the denial.

CONCLUSION

The OWC Order of November 9, 2004, denying disfigurement benefits for a shoulder, is in accordance with the law pursuant to D. C. Official Code §32-1508(3)(T).

ORDER

The Disfigurement Award Denial Order issued on November 9, 2004 is hereby AFFIRMED

FOR THE COMPENSATION REVIEW BOARD:

LINDA F. JORY
Administrative Appeals Judge

December 4, 2005
DATE