

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. 04-78

SUSAN DAMEGREENE,

Claimant – Respondent

v.

AMERICAN RED CROSS AND CRAWFORD AND COMPANY,

Employer/Carrier – Petitioner.

Appeal from a Compensation Order of
Administrative Law Judge Linda F. Jory
AHD/OHA No. 97-411E, OWC No. 522826

Robert C. Baker, Jr., Esq., for the Petitioner

Benjamin T. Boscolo, Esq., for the Respondent

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

SHARMAN J. MONROE, *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 (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

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 July 2, 2004, the Administrative Law Judge (ALJ) awarded permanent partial disability benefits pursuant to D.C. Official Code § 32-1508(3)(V)(ii). The Employer/Carrier-Petitioner (Petitioner) now seeks review of that Compensation Order.

As grounds for this appeal, the Petitioner alleges as error that the ALJ did not make findings on each material issue of fact, that the decision is not supported by substantial evidence and that the conclusions made do not rationally flow from the findings of fact.

ANALYSIS

As an initial matter, the standard 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 § 32-1521.01 (d)(2)(A). “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 standard 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, the Petitioner alleges that the Respondent is not credible given the numerous inconsistencies and contradictions in her testimony at the hearing, in her prior statements and in her medical records. It asserts that the ALJ’s finding that the Respondent is credible did not address these contradictions and is, therefore, not reasonable and not based upon substantial evidence. The Petitioner argues that, as the medical opinion of Dr. Howard Hu on the Respondent’s inability to work is based entirely upon statements from the Respondent, it did not rise to the level of substantial evidence in support of the Respondent’s request for benefits. The Petitioner maintains that medical opinion of Dr. Milo Pulde is clear and reasonable and should have been relied upon in this case. Finally, the Petitioner asserts that there is no medical evidence in the record to support the finding that the Respondent has reached maximum medical improvement, thereby entitling her to permanent partial disability benefits.

prior to October 1, 2004, the effective date of the D.C. Workers’ Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004.

The Panel reviewed the record in this case in its entirety. The Panel determines that the ALJ's factual findings are supported by substantial evidence on the record as a whole, and are conclusive, and that the ALJ's legal conclusions are in accordance with the law. *Marriott Int'l. v. D.C. of Employment Services*, 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). It is well-settled in this jurisdiction that credibility findings are accorded special deference and decisions based thereon are especially weighty. See *Teal v. D.C. Department of Employment Services*, 580 A.2d 647 (1990); *Dell v. D.C. Department of Employment Services*, 499 A.2d 102, 106 (D.C. 1985). The Panel defers to and accepts the ALJ's credibility determinations as well. See *Mohamed Nasser v. Moran Limousine Services*, Dir. Dkt. No. 91-80, H&AS No. 90-818 (September 9, 1992). The record fully supports the ALJ's thorough, well reasoned decision, and the Panel, therefore, adopts the reasoning and legal analysis expressed by the ALJ in that decision in affirming the Compensation Order in all respects.²

As part of rendering this decision, the Panel especially notes the Petitioner's argument that "there is no medical evidence, opinion or even a suggestion that claimant's condition has reached maximum medical improvement" to support the award of permanent partial disability benefits. Employer Memorandum of Points and Authorities at p. 24. In the decision below, the ALJ found "[i]t is clear claimant remains unable to return to her pre-injury duties and it is further concluded that claimant's condition has stabilized 'as much as it ever will', therefore claimant's wage loss is permanent in nature." Compensation Order at p. 6. The D.C. Court of Appeals recently indicated in *Logan v. D.C. Department of Employment Services*, 805 A.2d 237, 241 (2002), that maximum medical improvement is reached when a disability 'has continued for a lengthy period, and it appears to be of lasting or indefinite duration, as distinguished from one in which recovery merely awaits a normal healing period'" and cited, in support, *Smith v. D.C. Department of Employment Services*, 548 A.2d 95, 98 n.7 (D.C. 1988). Herein, the evidence shows that the Respondent's condition has persisted since 1997 and that Dr. Hu, upon whom the ALJ relied, opined that the Petitioner must be restricted from environments which increase her symptoms and also continue to take the inhalers and pills prescribed for her condition. Employer Exhibit No. 3 at pp. 32, 42. Thus, the ALJ's award is supported by substantial evidence and is in accordance with the law.

CONCLUSION

The Compensation Order of July 2, 2004 is supported by substantial evidence in the record and is in accordance with the law.

ORDER

The Compensation Order of July 2, 2004 is hereby AFFIRMED.

² 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)(B) requires a more detailed and thorough written order than the instant Decision and Order where there is a reversal of the Compensation Order.

FOR THE COMPENSATION REVIEW BOARD:

SHARMAN J. MONROE
Administrative Appeals Judge

May 25, 2006
DATE