

**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. 05-03**

**JEFFREY DECEDER,**

**Claimant – Respondent**

**v.**

**LINCOLN HOCKEY, LLC AND FEDERAL INSURANCE COMPANY,**

**Employer/Carrier – Petitioner.**

Appeal from a Compensation Order of  
Administrative Law Judge Amelia G. Govan  
OHA No. 04-145; OWC No. 590711

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

Frank R. Kearney, Esquire, for the Respondent

Before: LINDA F. JORY, SHARMAN J. MONROE, *Administrative Appeals Judges* and FLOYD LEWIS, *Acting Administrative Appeals Judge*.

FLOYD LEWIS, *Acting 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).<sup>1</sup>

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<sup>1</sup> 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, § 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

## 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 16, 2004, the Administrative Law Judge (ALJ) awarded Claimant-Respondent (Respondent) payment of causally related medical costs, including the cost of recommended back surgery, as the ALJ concluded that Respondent's debilitating lumbar symptoms and need for lumbar surgery were causally related to his work injury of June 4, 2003. Employer-Petitioner (Petitioner) now seeks review of that Compensation Order.

As grounds for this appeal, Petitioner alleges an error that the Compensation Order 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)(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. Dist. of Columbia Dep't. of Employment Servs.*, 834 A.2d 882 (D.C. 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 specifically alleges that the ALJ's finding that there was a causal relationship between the need for back surgery and the work injury is not supported by substantial evidence. Petitioner argues that the ALJ's reliance on the reports of Respondent's treating physicians is erroneous because Respondent had prior medical problems and their medical opinions are based on the assumption that Respondent's present condition is completely related to the work injury. Petitioner also alleges that the ALJ completely ignores the independent medical opinion of Dr. Ian M. Wattenmaker that more testing was needed. Respondent counters by arguing that Dr. Wattenmaker's opinion was not specific and comprehensive enough to rebut the presumption and the Compensation Order should be affirmed, as it is supported by substantial evidence and is in accordance with the law.

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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.

An employee's claim is presumed to come within the provisions of the Act. D.C. Code Ann. § 32-1521(1). Upon presentation of credible evidence of an injury and a work-related event or activity that has the potential of resulting in or contributing to the injury, a claimant invokes the protection of the presumption. *Ferriera v. Dist. of Columbia Dep't. of Employment Servs.*, 531 A.2d 651, 655 (D.C. 1987). The focus then shifts to the employer to produce evidence specific and comprehensive enough to sever the presumed connection between the employment-related event and the injury. Without this production by an employer, the claim will be presumed to fall within the scope of the Act. *Parodi v. Dist. of Columbia Dep't. of Employment Servs.*, 560 A.2d 524, 526 (D.C. 1989). In addition, the scope of the application for the presumption has been expanded to include the causal relationship between the current disabling condition and the injury. *Whittaker v. Dist. of Columbia Dep't. of Employment Servs.*, 668 A.2d 844, 846-847 (D.C. 1995).

In this matter, Respondent argued at the hearing that his current disabling back symptoms were medically causally related to his June 4, 2003 injury suffered when he was injured in the course and scope of his employment as "Slapshot", the Washington Capitals' mascot, after two students jumped on his back and rode him while he was performing at a school. Respondent relied on the medical opinions of Dr. John Starr and Dr. Benjamin Shaffer to support his position. The ALJ found that Respondent's uncontradicted testimony indicated that his back problems began on the date of the work injury, worsened after the accident and have continued. In addition, the ALJ found that there was persuasive medical evidence indicating that Respondent had debilitating lumbar and extremity problems related to the work injury. Both orthopedic surgeons, Drs. Shaffer and Starr, recommended surgery for Claimant's lumbar symptoms and indicated that Claimant's symptoms were causally related to the work accident. As such, the ALJ found that Respondent produced credible evidence to invoke the presumption and this Panel concludes that there is substantial evidence to support this determination.

Thus, the burden shifted to Petitioner to present evidence specific and comprehensive enough to sever the presumed connection between the work incident and Respondent's back problems. Petitioner relied on a video film to demonstrate Respondent's lack of credibility concerning his back problems and the IME examination reports of Dr. Wattenmaker to support its view that Respondent's has no residual physical limitations or need for the recommended surgery related to the work injury. At the hearing, it was revealed that the surveillance tape of "Charm", the Washington Mystics' mascot, filmed by Petitioner's investigators supposedly showing Respondent, was not Respondent, as Zoltan Berencsi testified that he was the performer in the "Charm" costume on the film. Hearing transcript at 71. Concerning the film, the ALJ noted:

It is clear that the person in the "Charm" bunny suit is not claimant, it is also clear that the various activities reflected in the other videotaped evidence submitted by employer (claimant walking, driving to the hospital and descending stairs to chase employer's investigator) do not exceed his medical restrictions.

Compensation Order at 5.

After reviewing Petitioner's evidence, the ALJ found that there was no expert medical opinion to contradict the opinions of Drs. Shaffer and Starr. As to Dr. Wattenmaker's medical evidence, the record reveals that in his October 20, 2003 report, this physician found that Respondent's main complaint of right lower extremity pain along the S1 root nerve root had been present for a long time without improvement, a myelogram was needed and depending on the findings of a myelogram, "it would be reasonable to treat this surgically with right S1 root decompression."<sup>2</sup> Moreover, the ALJ emphasized that Dr. Wattenmaker did not opine that Respondent's lumbar problems, or need for surgery were unrelated to Respondent's June 4, 2003 work incident.

Also, Petitioner's argument that the Compensation Order did not take into account the possible back problems that Respondent had prior to the work injury is rejected. The ALJ concluded that Petitioner's evidence was not sufficient to rebut the presumption that Respondent's work injury had the potential of causing or contributing to Respondent's back problems. Notwithstanding any possible previous back problems that Petitioner asserts Respondent may have had, Petitioner did not present specific and comprehensive medical evidence that Respondent's symptoms were unrelated to the work injury or that the surgery was not necessary and reasonable. Furthermore, the ALJ found that there was no factual evidence to indicate that Respondent was faking his symptoms or was capable of performing his normal gymnastic duties as a mascot for Petitioner

As a result, the ALJ ultimately determined that Respondent's debilitating lumbar symptoms and his need for lumbar surgery are medically causally related to his June 4, 2003 work injury. After carefully reviewing the record as a whole, it is concluded that the Compensation Order is supported by substantial evidence and is in accordance with the law.

#### CONCLUSION

The Compensation Order of September 16, 2004 is supported by substantial evidence in the record and is in accordance with the law.

#### ORDER

The Compensation Order of September 16, 2004 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

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FLOYD LEWIS  
Acting Administrative Appeals Judge

\_\_\_\_\_  
June 16, 2005

DATE

<sup>2</sup> In his response to Petitioner's appeal, Respondent states that Petitioner never authorized the myelogram.