

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

Department of Employment Services

MURIEL BOWSER  
MAYOR



DEBORAH A. CARROLL  
ACTING DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 14-103

**DILISIA DELAINES,**  
**Claimant-Petitioner,**

v.

**MARRIOTT INTERNATIONAL and**  
**MARRIOTT CLAIMS SERVICES,**  
**Employer/Third-Party Administrator-Respondent.**

Appeal from a June 13, 2014 Compensation Order by  
Administrative Law Judge Gerald D. Roberson  
AHD No. 14-097, OWC No. 669558

DEPT. OF EMPLOYMENT  
SERVICES  
COMPENSATION REVIEW  
BOARD  
2015 FEB 23 AM 11 48

Kasey K. Murray for Claimant

Joel E. Ogden for Employer/Third-Party Administrator<sup>1</sup>

Before JEFFREY P. RUSSELL, HEATHER C. LESLIE, *Administrative Appeals Judges*, and  
LAWRENCE D. TARR, *Chief Administrative Appeals Judge*.

JEFFREY P. RUSSELL for the Compensation Review Board.

**DECISION AND REMAND ORDER**

**FACTS OF RECORD AND PROCEDURAL HISTORY**

Claimant Dilisia DeLaines sustained injuries to her back while working as a housekeeper in Employer Marriott's hotel. She presented a claim for benefits under the Act, as is more fully described in the following Analysis, at a formal hearing before an Administrative Law Judge (ALJ) in the Administrative Hearings Division (AHD) of the Department of Employment Services (DOES) on May 13, 2014. In a Compensation Order that issued following the formal

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<sup>1</sup> Julie D. Murray appeared on behalf of the Employer/Third-Party Administrator at the formal hearing before the Administrative Hearings Division.

hearing, the ALJ awarded temporary total disability benefits from May 3, 2013 through September 4, 2013, and granted the request for additional medical care. In the Discussion portion of the Compensation Order, the ALJ found that Claimant had failed to adduce sufficient evidence that she had sustained a disability under the schedule. The ALJ did not, however, refer to that claim in the “Decision” portion thereof.

Following issuance of the Compensation Order, Claimant filed a “Consent Motion for Clarification”, in which she asserted that the ALJ had failed to address part of her temporary total disability claim, and did not rule on her claim for a schedule award.

In response to the Consent Motion for Clarification, the ALJ issued an Order dated July 31, 2014 in which he determined that the part of the temporary total disability claim that Claimant sought a ruling upon was not before him. He again did not refer to the schedule claim, reiterated the award of medical benefits, and denied any additional claim for temporary total disability benefits.

Claimant appealed the Compensation Order<sup>2</sup> to the Compensation Review Board, asserting that the denial of the additional claim for temporary total disability benefits is contrary to the record evidence and is unsupported by substantial evidence. In Claimant’s appeal, there is no reference to the ALJ’s failure to make a schedule award.

Employer filed an opposition, arguing that the Compensation Order is supported by substantial evidence and should be affirmed. Employer did not contest the awards made.

#### ANALYSIS

In the Compensation Order, the ALJ awarded temporary total disability benefits from May 3, 2013 to September 4, 2013. In the Consent Motion, Claimant requested that the ALJ address a claim for temporary total disability benefits from October 3, 2013 to the present and continuing, as well as the claim for the schedule award.

In the Joint Pre-hearing Statement and Stipulation (JPSS) form, the Claim for Relief is set forth as a claim for temporary total disability from May 3, 2013 to the present and continuing, an award of permanent partial disability in an unspecified amount from April 22, 2013 to the present and continuing, and a claim for “causally related medicals”. That is, the Stipulation form appears to be presenting two separate wage loss claims: a partial wage loss claim commencing April 22, 2013 and ongoing, and a total wage loss claim commencing the following month on May 3, 2013 and continuing.

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<sup>2</sup> We deem the Order of July 31, 2014 to be part of this appeal.

It is apparent that the claims as set forth in the JPSS were somewhat vague and in conflict. This conflict was apparently recognized by counsel and the ALJ at the time of the formal hearing. The transcript of the proceedings reads as follows:

Ms. J. Murray [Counsel for Employer]: I'm sorry. The Joint Prehearing Statement, I think the claims were - - we've just - - it needs to be - - the dates just need to be amended, right?

Ms. K. Murray [Counsel for Claimant]: Yes. So, your Honor, the claim for relief is actually temporary total disability benefits from May 13<sup>th</sup> - - May 3, 2013, through September 4, 2013.

And then picking up again PPD from 10/3/2013 to the present and continuing, as well as permanent partial disability benefits under the schedule to the left lower extremity, and authorization for pain management.

Judge Roberson: Okay, thank you. Opening statements?

HT, p. 9.

Later, in her opening statement, Claimant's counsel reiterated the claim for relief:

[Ms. K. Murray:] ... The only thing that is at issue today is the nature and extent of her injury, specifically as it relates to her entitlement for *ongoing* temporary total disability, PPD benefits under the schedule for disability to the left lower extremity, and additional medical treatment in the form of pain management. In support of these claims, we are relying on two Functional Capacity Evaluations, both of which have restricted Ms. DeLaines as to light-duty work.

For the PPD we are going to be relying on Claimant's Exhibit No. 4, which is a medical report from Dr. John Bruno, which gives her a 27 percent partial disability rating to her left lower extremity as a result of these injuries.

HT, p. 11 (emphasis added).

Then, in her opening statement, counsel for Employer stated:

[Ms. J. Murray:] We will also rely upon the fact that the Claimant subsequently did *return to work for a period of time* and eventually underwent a second IME with Dr. Danziger dated April 2<sup>nd</sup> of 2013.

HT, p. 14 (emphasis added).

Although not borne out by the quoted words in HT, Claimant, in her Consent Motion for Clarification, asserted that “The claims before Judge Roberson were temporary total disability from May 3, 2013 to September 4, 2013, temporary total disability from October 3, 2013 to the present and continuing ....” Consent Motion for Clarification, p. 1, par. 2.

Further, Claimant testified:

[Ms. J. Murray:]        *After that, in April of 2013, you went to see Dr. Danziger. Do you recall that?*

[Claimant:]                Yes.

Q        Do you recall what Dr. Danziger’s opinion was with respect to your ability to work?

A        All I remember is that when I went to see him, he saw me and said, oh, you’re okay, there’s no problem, you’re too young to retire.

Q        And after that, did you try to return to the Marriott in any capacity?

A        I did try to return to Marriott. I got - - *I went back. I did - - I tried housekeeping again, but I couldn’t do it.*

HT, p. 20 (emphasis added).

From all these materials, it is apparent that Claimant intended to put forth a claim for two periods of temporary total disability, a closed period, followed by an attempt to return to work during which she was presumably paid wages, followed by an off work status which continued until the date of the hearing and perhaps thereafter.

We infer from all these circumstances that either the court reporter made a transcription error, stenographically reporting “PPD” instead of “TTD”, or counsel for Claimant misspoke in stating the claim for relief, making the same error.

Procedurally, as the matter now stands, Claimant appears by all reasonable inferences to have raised the following claims: two periods of temporary total disability, one closed and the other continuing through the date of the hearing; a claim for additional pain management; and a claim for a schedule award to the leg.

The combined effect of the Compensation Order and the July 31, 2014 Order issued in response to the Consent Motion for Clarification is that (1) the ALJ granted the closed period of temporary total disability and the pain management, (2) denied the claim for the schedule award, and (3) has not ruled upon the second, open period of temporary total disability.

Further, Employer does not appeal either the awards for the closed period of temporary total disability or for pain management. In addition, Claimant has not appealed the failure to make an award for schedule claim. Thus, those determinations are final.

However, in order to conform to the requirements of the D.C. Administrative Procedures Act (1) the agency's decision must state findings of fact on each material, contested factual issue; (2) those findings must be based on substantial evidence; and (3) the conclusions of law must flow rationally from the findings. D.C. Code § 2-501 *et seq.*, as amended; *Perkins v. DOES*, 482 A.2d 401, 402 (D.C. 1984). Thus, when an ALJ fails to make factual findings on each materially contested issue, an appellate body is not permitted to make its own finding on the issue; it must remand the case for the proper factual findings. *King v. DOES*, 742 A.2d. 460, 465 (D.C. 1999).

Therefore, while we recognize that the ALJ was not adequately apprised by counsel of the claim in the Joint Prehearing Statement or the opening and closing statements, it is apparent that the claims were raised in sufficient detail, particularly in the Consent Motion for Clarification, that the second claim for an open period of temporary total disability needs to be addressed, in order that Claimant obtain resolution of all the claims raised. Accordingly, a remand is necessary.

#### CONCLUSION AND ORDER

The failure to address the claim for an open period of temporary total disability benefits is not supported by substantial evidence and is not in accordance with the law. The matter is remanded for further findings of fact and conclusions of law on the remainder of Claimant's claim for temporary total disability.

FOR THE COMPENSATION REVIEW BOARD:

*/s/ Jeffrey P. Russell*

JEFFREY P. RUSSELL

*Administrative Appeals Judge*

February 23, 2015

DATE