

**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. 07-56**

**DORIS OLOYEDE,**

**Claimant – Petitioner**

**v.**

**D.C. PUBLIC SCHOOLS,**

**Employer – Respondent.**

Appeal from a Compensation Order of  
Administrative Law Judge Amelia G. Govan.  
AHD No. PBL 06-041; DCP No. ITUNK 000931

Doris S. Ololyede, *pro se* Petitioner

Kevin Turner, Esquire for the Respondent

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

FLOYD LEWIS, *Administrative Appeals Judge*, on behalf of the Review Panel:

**DECISION AND REMAND ORDER**

**JURISDICTION**

Jurisdiction is conferred upon the Compensation Review Board pursuant to D.C. Official Code § 1-623.28, § 32-1521.01, 7 DCMR § 118, and DOES Director's Directive Administrative Policy Issuance No. 05-01 (Feb. 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 D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, D.C. Official Code § 32-1521.01. In accordance with the Director's Directive, 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. Official Code § 32-1501 *et seq.*, and the D.C. Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Official Code § 1-623.1 *et seq.*, 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.

## 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 February 26, 2007, the Administrative Law Judge (ALJ) denied the claim for relief by Claimant-Petitioner (Petitioner), concluding that Petitioner is able to return to her usual employment and that no further medical treatment is reasonable or necessary to the course of Petitioner's recovery from her work-related lower back and right shoulder symptoms. Petitioner now seeks review of that Compensation Order.

As grounds for this appeal, Petitioner alleges as that the ALJ's decision is not based upon 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 § 1-623.28(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. App. 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 alleges that the Compensation Order is erroneous and should be reversed. Petitioner asserts that she still has chronic back pain, is unable to work and should be awarded temporary total disability benefits. Petitioner contends that the factual and medical evidence or record supports her claim for benefits and that the medical opinion of Dr. Steven Hughes should be rejected.

Petitioner worked for Employer-Respondent (Respondent) as an art teacher and in October of 1995, she tripped over a child's cane and injured her back. After returning to work, she was injured again in March of 1997 when two children ran into her and her elbow struck a table, and her claim for disability compensation benefits was accepted in August of 1997. Petitioner's disability compensation benefits for wage loss were terminated in June of 2004 and a Final Decision on Reconsideration was issued on March 17, 2006.

In rejecting Petitioner's claim for relief, the ALJ noted that the opinions of treating physicians are ordinarily preferred over those doctors who have been retained to examine an employee solely for purposes of litigation. *Kralik v. Dist. of Columbia Dep't. of Employment Servs.*, 842 A.2d 705, 712 (2004). Notwithstanding this preference for the testimony of a treating physician over that of a

physician hired to evaluate a workers' compensation claim, an administrative law judge may reject the testimony of the treating physician and credit the opinion of another physician when there is conflicting evidence. In doing so, the fact-finder must give reasons for rejecting the testimony of the treating physician. *Canlas v. District of Columbia Department of Employment Services*, 723 A.2d 1210, 1211-12 (D.C. 1995).

While noting that the record contained reports from Petitioner's physicians Drs. Easton Manderson and Martin McLaren, the ALJ relied on the findings, diagnosis and conclusions of Respondent's physician, Dr. Hughes, to ultimately reject Petitioner's claim for relief. However, in reviewing this matter, this Panel must note that since Petitioner's claim had been accepted, she was receiving benefits and then her benefits were terminated, the ALJ initially was obligated to use the proper test and standard to evaluate the termination.

In this jurisdiction, it has been consistently held that once a claim has been accepted and disability benefits paid, the burden of proof rests with the employer to present substantial and recent medical evidence to justify a modification or termination of those benefits. See *Toomer v. D.C. Dep't. of Corrections*, CRB No. 05-202, OHA No. PBL. No. 98-048A, DCP No. LT5-DOC001603 (May 2, 2005); *Jones v. D.C. Dep't. of Corrections*, Dir. Dkt. No. 07-99, OHA No. PBL No. 97-14, ODC No. 312082 (December 19, 2000); *Robinson v. D.C. General Hospital*, ECAB No. 95-8, ODCVC No. 303585 (July 8, 1997).

Thus, in this matter, the ALJ should have noted the proper standard and initially placed the burden on Respondent to justify the termination of Petitioner's benefits, prior to weighing the evidence. As such, since this was not done, it is necessary to remand this matter for the ALJ to apply the proper test and standard in evaluating Respondent's termination of Petitioner's disability benefits.

Finally, this Panel also notes that in the findings of fact section on page 3 of the Compensation Order, the ALJ seemingly makes findings such as "Claimant currently has back symptoms which limit her ability to sit, stand, or walk for extended periods; to consistently alternate between sitting down/standing up; to write for extended periods or to use scissors . . ." which appear to be somewhat inconsistent with the ALJ's ultimate conclusion that Petitioner is able to return to her employment as an art teacher.

#### CONCLUSION

The Compensation Order of February 26, 2007 is not supported by substantial evidence and is not in accordance with the law.

**ORDER**

The Compensation Order of February 26, 2007 is hereby REVERSED and REMANDED for further proceedings consistent with the above discussion.

FOR THE COMPENSATION REVIEW BOARD:

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FLOYD LEWIS  
Administrative Appeals Judge

April 27, 2007  
DATE