

**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. 08-012**

**DOROTHY FAISON,**

**Claimant–Respondent,**

**v.**

**DISTRICT OF COLUMBIA DEPARTMENT OF CORRECTIONS,**

**Employer/Carrier–Petitioner.**

Appeal from a Compensation Order of  
Administrative Law Judge Nata K. Brown  
AHD No. PBL 07-061, DCP No. 761012-0004-2001-0003

Gail L. Elkins, Esquire, for the Petitioner

Kenneth A. Dalton, Esquire, for the Respondent

Before JEFFREY P. RUSSELL, LINDA F. JORY and SHARMAN J. MONROE, *Administrative Appeals Judges*.

JEFFREY P. RUSSELL, *Administrative Appeals Judge*, for the Compensation 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 District of Columbia Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, *codified at* 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 District of Columbia Workers' Compensation Act of 1979, as amended, D.C. Code Ann. §§ 32-1501 to 32-1545 (2005), and the District of Columbia Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Code Ann. §§ 1-623.1 to 1-643.7 (2005), including responsibility for

## 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 18, 2007, the Administrative Law Judge (ALJ) granted Respondent's request for reinstatement of disability compensation benefits sought under the provisions of D.C. Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Official Code § 1-623.1 *et seq.* (the Act). Petitioner filed an Application for Review (AFR) on October 16, 2007, seeking review of that Compensation Order.

As grounds for this appeal, Petitioner alleges as error that the Compensation Order is unsupported by substantial evidence and is not in accordance with the law, because (1) the evidence as Petitioner views it does not support the factual finding that Respondent remains physically incapable of returning to her pre-injury employment as a corrections officer, (2) the ALJ failed to give adequate weight to the opinion of the independent medical evaluation (IME) report of Dr. Mohammed Zamani, including the argument that the ALJ somehow erred in finding that Petitioner had not "met its burden" and (3) the ALJ improperly failed to consider the IME report of Dr. Robert Smith.

Because the record contains substantial evidence to support the findings of the ALJ, and because the ALJ did not abuse her discretion by declining to accept into the record the IME report of Dr. Smith, and because the ALJ properly considered the evidence before her proffered by Petitioner and Respondent, and weighed it consistent with the law, the Compensation Order is affirmed.

## 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. *See* 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). "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. *See, Marriott International v. District of Columbia Dep't. of Employment Serv's.*, 834 A.2d 882 (D.C. 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. *See also*, D.C. Code §§ 1-623.28 (a) and 32-1521.01 (d)(2)(A).

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administrative appeals filed prior to October 1, 2004, the effective date of the District of Columbia Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004.

Turning to the case under review herein, Petitioner alleges that the ALJ's decision is unsupported by substantial evidence, because in Petitioner's view, in evaluating the conflicting medical opinions of a treating physician, Dr. Hampton Jackson, and an IME opinion contained in a report from Dr. Mohammad Zamani, the ALJ improperly applied the standard of comparative review of medical evidence by applying the standards enunciated in *Washington Post v. District of Columbia Department of Employment Services*, 852 A.2d 909 (2004), which in Petitioner's view are not applicable to these proceedings due to the existence and contents of 7 DCMR § 3160, which establish minimum requirements for medical reports submitted in support of claims for disability benefits under the Act.

First, the contents of the cited regulations and the standards set forth in *Washington Post, supra*, are not in conflict, and that regulation does not speak to the question of what standards an ALJ is to apply in evaluating competing and conflicting reports. The regulation merely establishes minimum content requirements in medical reports submitted to the Office of Risk Management (ORM) in support of a claim for disability benefits, and in fact does not require the exclusion or rejection of reports failing to meet those requirements; rather, the regulation appears to permit such exclusion or rejection if the evaluator of the claim so chooses. Thus, the language reads "Medical reports that fail to meet the requirements of this section *may* be deemed to be invalid and compensation claims based thereon *may* be denied", 7 DCMR § 3160.2. Similarly, the provisions of § 3132.9 governing the evaluation of competing medical reports provides that the evaluator "shall give great weight to the opinion(s) of the treating physician, unless there are compelling reasons ... [which] *may* include (a) Sketchiness, vagueness, and imprecision in the reports of the treating physician; (b) The fact that the opinion(s) of the treating physician is not supported by medically acceptable clinical and laboratory diagnostic techniques" (emphasis added).

Not only are the standards discussed in the regulations permissive rather than mandatory, it is also evident that they establish guidelines for rejecting *treating* physician opinion, and have no bearing upon how to assess IME opinion evidence. The *Washington Post* standards deal with the evaluation of competing opinion evidence, and are applicable in this instance.

Lastly, and perhaps most significantly, the cited regulations govern ORM in its administration of the disability compensation program, and do not purport to govern evidentiary issues related to the hearing process before this agency. Thus, 7 DCMR § 3100 provides:

3100.1 The provisions of Chapter 31 are applicable to the District of Columbia's (District) Disability Compensation Program (Program), administered by the Office of Risk Management (ORM). To the extent that there is a conflict between the rules set forth herein and other rules in Chapter 1 of this title, the rules in Chapter 31 shall control with respect to any matter that is within the jurisdiction of the ORM.

Accordingly, we reject Petitioner's arguments that the regulations in any way restricted the ability of the ALJ to act as she did with respect to the medical evidence before her.

Regarding the second argument, that Dr. Zamani's report should have been accepted as conclusive in this case, and that the ALJ determined that "Employer failed to meet its burden", we first note that Petitioner does not explain what it means by "burden", and secondly we note that there is no

discussion in the Compensation Order of a “burden” that Petitioner failed to meet. The closest language that we have found to this phraseology is in the penultimate paragraph of the body of the Compensation Order, where the ALJ stated that “Dr. Zamani’s failure to review all of Claimant’s pertinent medical records and the inconsistencies in his reasoning in reaching his ultimate opinion render his IME report insufficient to demonstrate a change in Claimant’s condition”.

It is clear to us that the ALJ was merely stating that, upon weighing the competing medical evidence, she concluded that the IME reports were unpersuasive and were therefore insufficient to justify the termination of benefits previously paid as a result of the uncontested work injury and the cessation of which requires a showing by Petitioner that there has been some change of condition sufficient warrant their termination, under established agency precedent, including *Toomer v. District of Columbia Department of Employment Services*, CRB No. 05-202, OHA PBL No. 98-048A, DCP No. LT5-DOC 001603 (May 2, 2005), and other cases. We do not agree that the ALJ placed any improper “burden” upon the Petitioner in this case, the only “burden” imposed being that of demonstrating by a preponderance of the evidence, considered in light of the preferences accorded to treating physician opinion, that there has been a change in Respondent’s condition subsequent to the initial grant of benefits to warrant termination thereof. We detect no error in the ALJ’s analysis.

Beyond this, Petitioner’s remaining arguments concerning the ALJ’s consideration of the evidence in this case amount to nothing more than disagreement with the weight and interpretation of the medical evidence presented in the case. Those considerations are for the ALJ alone, and we may not substitute our judgment for that of the ALJ in such matters.

Regarding the final matter, the acceptance or rejection of untimely evidence is a matter within the sound discretion of the ALJ, and absent an abuse thereof we will not intervene. We note in this regard that the ALJ specifically acknowledged that the report of Dr. Zamani, which she did consider and review, contains Dr. Zamani’s summarization of Dr. Smith’s report (see, Compensation Order, page 3), which summarization Petitioner itself acknowledges is “the full text of Dr. Smith’s report” (Employer-Petitioner’s Memorandum of Points and Authorities, page 18), rendering any alleged error in excluding the proffered exhibit harmless.

#### CONCLUSION

The Compensation Order of September 18, 2007 is supported by substantial evidence in the record and is in accordance with the law.

**ORDER**

The Compensation Order of September 18, 2007 is affirmed.

FOR THE COMPENSATION REVIEW BOARD:

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JEFFREY P. RUSSELL  
Administrative Appeals Judge

November 21, 2007  
DATE