

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Department of Employment Services

MURIEL BOWSER  
MAYOR



DEBORAH A. CARROLL  
ACTING DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 14-096

EARL W. JONES III,  
Claimant–Petitioner,

v.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY,  
Self-Insured Employer-Respondent.

Appeal from a July 14, 2014 Compensation Order on Remand  
by Administrative Law Judge Joan E. Knight,  
AHD No. 09-318, OWC No. 648010

DEPT. OF EMPLOYMENT  
SERVICES  
COMPENSATION REVIEW  
BOARD  
2015 FEB 18 PM 2 17

Krista N. DeSmyter for Claimant  
Donna Henderson for Employer

Before JEFFREY P. RUSSELL, MELISSA LIN JONES, *Administrative Appeals Judges*, and LAWRENCE D. TARR, *Chief Administrative Appeals Judge*.

JEFFREY P. RUSSELL on behalf of the Compensation Review Board:

**DECISION AND ORDER**

FACTS OF RECORD AND PROCEDURAL HISTORY<sup>1</sup>

This case has been the subject of several prior Compensation Orders from the Administrative Hearings Division (AHD) and Decisions and Remand Orders from the Compensation Review Board (CRB), all stemming from claims for a variety of benefits related to a work incident in which Claimant was injured on February 26, 2008 while working as a bus operator for Employer.<sup>2</sup>

---

<sup>1</sup> The scope of review by the CRB is generally 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 § 32-1501, *et seq.*, (the Act) at § 32-1521.01 (d)(2)(A), and *Marriott International v. DOES*, 834 A.2d 882 (D.C. 2003). Consistent with this standard of review, the CRB and this review panel must affirm 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 this panel might have reached a contrary conclusion. *Id.*, at 885.

<sup>2</sup> The compensation orders from AHD and decisions from CRB in this case are: the original Compensation Order of November 6, 2009; a Decision and Remand Order of March 10, 2011; a Compensation Order on Remand of October

The specific Compensation Order on Remand before us in this appeal was issued on July 14, 2014, and was issued in response to a Decision and Remand Order issued by the CRB on March 20, 2013.

After noting that there was no specific discussion in the Compensation Order on Remand concerning Claimant's work capacity for the period April 15, 2008 and December 18, 2008, the Decision and Remand Order read as follows:

Although the ... Compensation Order on Remand [under review therein] purports to adopt facts set forth in the prior Compensation Order and Compensation Order on Remand, it is beyond the CRB's authority to piece together findings from prior Compensation Orders to create a reasonable result, and this matter must be remanded.

A summary of medical treatment alone is not helpful to resolving the issue at hand; there must be specific findings regarding [Claimant's] ability to work from April 15, 2008 to December 18, 2008. Without such findings, there can be no conclusion regarding the nature and extent of his disability. Furthermore, those findings must be based upon a preponderance of the evidence without resort to the presumption of compensability; only then might those findings trigger the *Logan* [v. *DOES*, 805 A.2d 237 (D.C. 2002)] burden-shifting scheme.

*Jones v. WMATA*, CRB No. 12-027 (March 20, 2013), p. 4 (unnumbered).

In the resultant Compensation Order on Remand, issued July 14, 2014, the ALJ granted Claimant's claim for temporary total disability for that period. Despite the fact that this specific claim for relief was granted, Claimant filed a "Claimant's Application for Review". Given that the only action taken by the ALJ in the Compensation Order on Remand was fully favorable, his appeal is presumably for the purpose of exhausting administrative remedies in order to permit him to appeal certain prior findings and rulings of the ALJ and CRB in the earlier Compensation Orders and Decisions and Remand Orders.

Employer filed an "Opposition to Claimant's Application for Review of the Compensation Order on Remand", (Employer's Opposition), asserting that "[Employer] notes that the Compensation Order on Remand does not weigh the evidence in accord with the preponderance of the evidence standard but rather applies a 'prima facie' standard and requires [Employer] to rebut a presumption [and it] cannot be affirmed." Employer's Opposition, page 1.

---

20, 2011; a Decision and Remand Order of December 11, 2011; a Compensation Order on Remand of February 17, 2012; a Decision and Remand Order of March 20, 2013 and a Compensation Order on Remand of July 14, 2014, which is the Compensation and Remand Order presently under review. The February 17, 2012 Compensation Order on Remand was inadvertently referred to as having been issued in 2011 in the Decision and Remand Order of March 20, 2013.

## ANALYSIS

In the Compensation Order on Remand (COR) under review, the ALJ analyzed the evidence in accordance with *Logan v. DOES*, 805 A.2d 237 (D. C. D002):

The analysis of this Compensation Order on Remand is limited to Claimant's ability to work as a bus driver from April 15, 2008 to December 18, 2008. Within that time frame, Claimant's testimony and medical records provide a *prima facie* showing that he was unable to perform his pre-injury employment duties as a bus driver and was temporarily and totally disabled from April 15, 2008 to December 18, 2008. The burden now shifts to Employer. See *Logan v. District of Columbia Dep't of Employment Servs.*, 804 [sic] A.2d 237 (D.C. 2002). Employer argues that Claimant's injury was minor and that he did not suffer wage loss during the time period. Employer has not met its burden. *Logan v. District of Columbia Dep't of Employment Servs.*, 804 A.2d 237 (D.C. 2002).

The ALJ compared the medical evidence from Claimant's treating physicians to that of the two IME doctors and the doctors who treated Claimant at Kaiser, and relied on Claimant's testimony which she deemed credible, determined that Claimant met his burden of proof in establishing that while Claimant is capable of doing some work, he was unable to work as a bus driver during the period in question:

Claimant has shown by a preponderance of the evidence that he was unable to return to work from April 15, 2008 to December 18, 2008 because of a temporary and total disability caused by his work-related injury. This conclusion is based off of his testimony at the hearing, which I found credible, and the medical reports of his treating physicians, which I found reliable and trustworthy. The opinions of the Kaiser doctors, Dr. Draper, and Dr. Conant are unpersuasive and do not rebut the evidence presented by Claimant.

The ALJ's decision is internally inconsistent with respect to the issue before her. In the statement section of the COR, the ALJ (correctly) said she was directed to determine the claimant's ability to work from April 15, 2008 to December 18, 2008. However, the ALJ's analysis section stated her decision was "limited to Claimant's ability to work as a bus driver from April 15, 2008 to December 18, 2008."

The distinction between deciding whether the claimant cannot do any work and whether claimant can work but cannot do his pre-injury job, is a significant one because different legal standards apply. If the preponderance of the evidence proves the claimant is unable to work, he is entitled to temporary total disability benefits. *Diaz v. Clark Concrete Construction*, CRB No. 14-030, AHD No. 14-039, OWC No. 705928 (December 3, 2014). If the claimant is capable of performing some work but not his pre-injury job, then the case must be analyzed in accordance with *Logan*.

The ALJ's conclusion that the claimant "has shown by a preponderance of the evidence that he was unable to work form April 15, 2008 to December 18 2008 because of a temporary and total

disability caused by his work-related injury” is, at best, ambiguous. However, we will not remand this case because we find that it is reasonable to infer that the ALJ found Claimant was unable to perform any work.

We find this is a fair interpretation of the ALJ’s decision, despite her reference to *Logan*, because the ALJ supported her conclusion by citing Claimant’s credible testimony and the medical reports of his treating physicians. Drs. Meyer and Salter both found claimant unfit for work during the 8 months in question.

We further note that even if the ALJ found Claimant was released to light duty, he would be entitled to compensation benefits since the evidence showed the employer did not make employment available that was consistent with his limitations.

**CONCLUSION AND ORDER**

The ALJ’s determination that Claimant was temporarily totally disabled for the period claimed is supported by substantial evidence and is affirmed.

FOR THE COMPENSATION REVIEW BOARD:



\_\_\_\_\_  
JEFFREY P. RUSSELL  
*Administrative Appeals Judge*

\_\_\_\_\_  
February 18, 2015

Date