

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services
Labor Standards Bureau

Office of Hearings and Adjudication
Compensation Review Board

(202) 671-1394 -Voice
(202) 673-6402 - Fax



CRB No. 07-52

ELIZABETH MAYES,

Claimant – Respondent

v.

D.C. PUBLIC SCHOOLS,

Employer - Petitioner.

Appeal from a Compensation Order of
Administrative Law Judge Leslie A. Meek
AHD No. PBL06-064, DCP No. 7600006-0001-2005-0016

Thelma Chichester Brown, Esq., for the Petitioner

Erica Taylor-McKinley, Esq., for the Respondent

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

SHARMAN J. MONROE, *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).¹

¹ 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, sec. 1102 (Oct. 1, 1994), *codified at* D.C. Code Ann. § 32-1521.01 (2005). In accordance with the Director's Policy Issuance, the CRB replaces the Office of the Director in providing administrative appellate review

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 January 25, 2007, the Administrative Law Judge (ALJ) granted the requested relief by the Claimant-Respondent (Respondent) for temporary total disability benefits from August 11, 2005 to the present and continuing and reasonably related medical expenses. The Employer-Petitioner (Petitioner) now seeks review of that Compensation Order.

As grounds for this appeal, the Petitioner alleges as error that the decision below is not based upon substantial evidence in the record and the conclusions do not rationally flow from the findings. The Respondent filed an Opposition to the Application.²

ANALYSIS

As an initial matter, the standard 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) and § 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. *Marriott Int’l. v. District of Columbia Department of Employment Services*, 834 A.2d 882 (D.C. App. 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.

Turning to the case under review herein, the Petitioner alleges that the ALJ’s decision that a causal relationship exists between the Respondent’s current knee condition and her work injury of August 11, 2005 is based upon inconsistent evidence and cannot stand. The Petitioner argues that the Respondent’s current left knee condition is causally related to a car accident which occurred after the work injury. The Petitioner asserts that the Respondent’s testimony on when

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 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.

² The Respondent attached twenty-nine (29) numbered exhibits to her Opposition. Pursuant to 7 DCMR § 266.1, the CRB’s appellate jurisdiction is limited to a review of the record made before AHD or OWC, as applicable. It is not empowered to conduct a *de novo* review of matters appealed to it. Upon exercise of official notice, the Panel finds that these exhibits are part of the official record made before AHD which was transferred to the CRB as part of the appellate process. See 7 DCMR § 259. They were, therefore, considered in rendering this decision.

the car accident occurred, *i.e.*, either before or after the work incident, is inconsistent, as is the opinions of Dr. Marc Rankin, the Respondent's treating physician, on causation. The Petitioner argues that these inconsistencies cannot constitute substantial evidence upon which a finding of fact can be made. The Petitioner's arguments are rejected for the reasons stated below.

First, the ALJ found the Respondent to be a credible witness. *See* Compensation Order at p. 6. It is well-settled in this jurisdiction that the credibility findings of an adjudicator are entitled to deference given that the adjudicator is in a unique position to view the witness and assess her demeanor. *See Santos v. D.C. Department of Employment Services*, 536 A.2d 1085, 1089. (D.C. 1988). "The hearing examiner is allowed to draw any reasonable inference from the evidence presented." *See Landesberg v. D.C. Department of Employment Services*, 794 A.2d 607, 612 (D.C. 2002). The ALJ recognized that the Respondent was unable to remember the exact date of the car accident occurred, but was able to remember that it occurred before her left knee surgery and the August fall. *See* Compensation Order at p. 6; Hearing Transcript (HT) at pp. 29, 41, 44-45, 59. On review, the Panel detects no reason to set aside the ALJ's determination on credibility.

Second, the Petitioner's assertion that Dr. Rankin presented inconsistent opinions on the cause of the Respondent's left knee condition is a mischaracterization of the evidence. The Petitioner cites Dr. Rankin's October 10, 2005 operative report as support for its assertion. However, a review of that report reveals that Dr. Rankin merely stated that the Respondent was involved in a car accident. *See* Employer Exhibit No. 5. He does not render an opinion on causation therein. As the ALJ indicates, Dr. Rankin unequivocally opined during his deposition that the Respondent's current left knee condition was caused by the fall at work on August 11, 2005. *See* Compensation Order at p. 6; Claimant Exhibit No. 29 at p. 30.

After a review of the record evidence, the Panel determines that the ALJ's factual findings are supported by substantial evidence on the record as a whole, and are conclusive, and that the ALJ's legal conclusions are in accordance with the law. *Marriott Int'l., supra*; D.C. Workers' Compensation Act of 1979, as amended, D.C. Official Code § 32-1501 to 32-1545 (2005), at § 32-1521.01(d)(2)(A). The record fully supports the ALJ's thorough, well reasoned decision, and the Panel, therefore, adopts the reasoning and legal analysis expressed by the ALJ in that decision in affirming the Compensation Order in all respects.

CONCLUSION

The Compensation Order of January 25, 2007 is supported by substantial evidence in the record and is in accordance with the law.

ORDER

The Compensation Order of January 25, 2007 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

SHARMAN J. MONROE
Administrative Appeals Judge

May 29, 2007
DATE