

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. 04-45

WILLIAM FURTICK,

Claimant – Petitioner,

v.

**AGRICULTURE COOPERATIVE DEVELOPMENT INTERNATIONAL AND
AIG WORLD SOURCE INSURANCE,**

Employer – Respondent.

Appeal from a Compensation Order of
Administrative Law Judge Jeffrey P. Russell
OHA No. 04-057, OWC No. 590189

David M. Schloss, Lisa M. Re, Esquire for the Petitioner

Joseph C. Veith III, Esquire, for the Respondent

Before E. COOPER BROWN, *Chief Administrative Appeals Judge*, LINDA F. JORY and SHARMAN J. MONROE, *Administrative Appeals Judges*.

LINDA F. JORY, *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 (1994), and the Department of Employment Services Director's Directive, Administrative Policy Issuance 05-01 (February 5, 2005).¹ Pursuant

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 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, 32-1522 (2005). In accordance with the Director's Policy Issuance, 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. Code Ann. §§ 32-1501 to 32-1545 (2005) and the D.C. Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Official Code §§ 1-623.1 to 1.643.7 (2005), including responsibility for administrative

to 7 D.C.M.R § 230.04, the authority of the Compensation Review Board extends over appeals from compensation orders including final decisions or orders granting or denying benefits by the Administrative Hearings Division (AHD) or the Office of Workers' Compensation (OWC) under the public and private sector Acts.

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 27, 2004, the Administrative Law Judge (ALJ), concluded Petitioner's right shoulder injury and claim for disability benefits does not fall within the jurisdiction of the D.C. Workers' Compensation Act.

As grounds for this appeal, Petitioner alleges the ALJ's finding that D.C. Code §32-1503)(a)(2) precludes a finding of District of Columbia jurisdiction is neither supported by substantial evidence nor in accordance with the Law. Respondent has not participated in this appeal.

ANALYSIS

As an initial matter, the scope of review by the Compensation Review Board (CRB) and this Review Panel (hereafter, the 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 § 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. 2003). Consistent with this scope of review, the CRB and this panel are bound 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.

In support of his position, Petitioner relies on the analysis of the United States Court of Appeals for the District of Columbia Circuit in *Gustafson v. International Progress Enterprises*, 832 F.2d 637 (D.C. Cir. 1987) (*Gustafson*). In *Gustafson*, a Longshore and Harbor Workers' Compensation Act (LHWCA) case, the Court found a foreign employer who solicits an employee's services through the District of Columbia facilities and uses those facilities to obtain personnel jurisdiction and material essential to its business forms a "legitimate" and substantial tie between this nation and the District sufficient to come within the jurisdiction of the LHWCA.

In the very detailed and thorough analysis of the rationale in *Gustafson* vs. the plain meaning of our Act, the ALJ first reiterated that D.C. Code §32-1503(a)(2) provides jurisdiction for an "injury or

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.

death of an employee that occurs outside the District of Columbia if, at the time of the injury or death, the employment is localized principally in the District of Columbia". CO at 4. Contrary to Petitioner's allegation on appeal the Court of Appeals has set forth a standard for determining if the employment is principally localized in *Hughes v. District of Columbia Department of Employment Services*, 498 A.2d 567 (D.C. 1985). Applying the Act and the case precedence to the circumstances of the instant matter, (*i.e.*, Petitioner entered into a contract with Respondent while staying in the state of California to work entirely in Tblisi in the Republic of Georgia, the former Soviet Union, where he injured his right shoulder) the ALJ determined that since the only location where Petitioner "operated" was in Tblisi, his employment could not be principally localized in the District of Columbia.²

In so concluding, the ALJ acknowledged the Court's holding in *Gustafson* that the place of the injury or death is not controlling and found the Court's analysis and discussion compelling and added that if we still operated under the LHCWA such as the Court analyzed, "I have no doubt that Claimant's claim would be subject to the Act". Referring the D.C. City Council's adoption of the *Hughes* tests in its amendment to the Act, the ALJ differentiated *Gustafson* from the instant facts and explained that:

In order to find jurisdiction on these facts, one would have to ignore not only the well recognized and judicially acknowledged intent of the Council to contract rather than to expand the reach of the Act, but also the plain meaning of the language of D.C. Code §32-1503(a) which provides coverage **only** where the extraterritorial injury occurs in the course of an employment that is principally localized in the District of Columbia.

CO at 6 (emphasis added).

Having thoroughly reviewed the evidence of record, the Panel concludes the ALJ's finding that Petitioner carried out all of his duties while physically located in and around Tblisi, Republic of Georgia and therefore his employment was not principally located in the District of Columbia supported by substantial evidence.³

CONCLUSION

The Panel agrees the Findings of Fact and Conclusions of Law contained in the Compensation Order are supported by substantial evidence of record and the ALJ committed no error of law.

² The presumption provided in §32-1521 does not extend to issues such as whether the employment is principally located in the District. See *George Donohoe v. Metropolitan Fireproofing*, Dir. Dkt. 93-16, OHA No. 91739 (Oct. 5, 1995).

³ See also *Bret S. Hart v. D. C. Dept. of Employment Services*, 843 A.2d 746 (D.C. App. March 4, 2004), which also involved an extraterritorial injury with the Court of Appeals affirming the Director's focus on the extent of the claimant's actual physical presence at work in the District of Columbia finding it consistent as well with past precedent construing (a)(2) and citing to *Adjei v. District of Columbia Dep't of Employment Services*, 817 A.2d 179, 180 (D.C. 2003)

ORDER

The Compensation Order issued on February 27, 2004 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

LINDA F. JORY
Administrative Appeals Judge

March 14, 2006

DATE