

**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. 07-007**

**GABRIEL EJIDE,**

**Claimant–Petitioner,**

**v.**

**DISTRICT OF COLUMBIA HOUSING AUTHORITY,**

**Employer/Carrier–Respondent.**

Appeal from a Compensation Order of  
Administrative Law Judge Henry W. McCoy  
AHD No. 06-026, ODC No. LT3-2-HCD000838

Harold Levi, Esquire, for the Petitioner

Ross Bucholz, Esquire, for the Respondent

Before E. COOPER BROWN, *Chief Administrative Appeals Judge*, JEFFREY P. RUSSELL and LINDA F. JORY, *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 29, 2006, the Administrative Law Judge (ALJ) granted Petitioner's claim for payment of causally related medical expenses, but denied Petitioner's claim for restoration of full disability benefits. Petitioner now seeks review of that Compensation Order.

## 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. *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.

Turning to the case under review herein, Petitioner sustained injuries to his low back and left knee<sup>2</sup> on June 13, 1996. Employer accepted Petitioner's claim for benefits for this injury on December 30, 1996, and commenced payment of disability compensation benefits sometime thereafter. On July 14, 2004, following an independent medical evaluation (IME) by Dr. Robert Gordon, and receipt of a labor market study (LMS) based upon Dr. Gordon's opinions regarding Petitioner's capacity to perform the jobs included in the LMS, Respondent notified Petitioner that his disability benefits would be reduced commensurate with the findings in the LMS and IME, which indicated that Petitioner had a loss of wage earning capacity that was less than total, and such reduction was implemented. Petitioner filed a request for reconsideration which was granted on February 9, 2006, but which reconsideration was rescinded by the Disability Compensation Program (DCP) by way of a "Correction" issued February 15, 2006.<sup>3</sup>

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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.

<sup>2</sup> The ALJ states that the stipulated work injury includes an injury to Petitioner's left knee, but states that no evidence was adduced on the subject beyond the fact that benefits have been provided in connection with that injury. No appeal of the finding of a left knee component to the work injury has been lodged. Therefore, it is established that Petitioner's left knee condition is causally related to the work injury.

<sup>3</sup> No issue concerning any procedural aspect of the claim has been raised.

Petitioner sought restoration of full disability benefits by filing an Application for Formal Hearing (AFH) with AHD on March 3, 2006, which resulted in a formal hearing on April 26, 2006, following which the instant Compensation Order was issued.

As grounds for this appeal, Petitioner asserts that the Compensation Order is in error because (1) the ALJ improperly accepted the opinion of an IME physician over that of a treating physician without adequate justification and explanation, in light of the preference to be accorded the opinion of a treating physician, (2) the ALJ improperly concluded that the IME opinion of Dr. Gordon was sufficient to find that Petitioner had a wage earning capacity as determined by the LMS because the doctor's opinion did not take into account Petitioner's physical limitations as they relate to his knee injury, and (3) the ALJ improperly admitted and considered evidence concerning a non-work related car accident in deciding this case, which evidence Petitioner asserts should have been excluded due to Respondent's failure to produce same in response to a Request for Production of Documents (RFPD) filed prior to the formal hearing.

Taking the final issue first, we respectfully reject Petitioner's complaint concerning the admission of the records obtained by Respondent by subpoena from an insurance company relating to the automobile accident. Without addressing the claim by Petitioner that the Compensation Order should be reversed because evidence was improperly admitted into the record, we note that, as argued by Respondent, the RFPD did not request these records. Rather, the RFPD appears to be limited to records relating to the work injury, not to other unrelated injuries or claims.

Regarding the first issue, we respectfully reject Petitioner's arguments as well. The Compensation Order includes the ALJ's express acknowledgement of the "treating physician preference", as well as specific, articulable reasons for accepting contrary opinion in this case. The ALJ noted, on page 8, that Dr. Gordon's opinions were consistent not only with the results of the objective studies that had been performed (including x-rays and MRI studies), but were also consistent with the mechanism of the accident (i.e., a seat-belt restrained individual in an auto accident). Further, he noted that Dr. Gordon's opinions were consistent with the examination findings of Dr. Warren Yu, to whom Petitioner had been referred by the physician whose opinion Petitioner urges the ALJ should have preferred, Dr. Rosita Dee. The ALJ noted that Dr. Yu found only "mild" tenderness, a full range of motion, and no "pathological" reflexes, all of which were consistent with Dr. Gordon's "soft tissue" diagnosis. The ALJ also noted that another treating physician, Dr. Pearson, expressed the opinion that Petitioner could perform "sedentary" work. Further, the ALJ cited the "extreme" nature of Dr. Dee's views, particularly the obviously hyperbolic description of the injury given by Dr. Dee, who asserted "his back was literally cut in half" and that this is a type of injury from which "one never recovers", and describing the injury as having left Petitioner's back "100% destroyed". Compensation Order, page 8 – 9.

Further, we note that Dr. Gordon actually testified at the formal hearing, permitting the ALJ the opportunity to evaluate his credibility in a fashion not usually available in cases that proceed to formal hearing, where the medical evidence is more frequently limited to written reports. Lastly, we note that the ALJ's conclusions rested in part upon a finding that Petitioner's credibility was suspect, in large part due to the misstatements and denials made, under oath, concerning the unrelated auto accident, about which Petitioner admitted only upon being confronted with the

subpoenaed records discussed above. Such credibility determinations are to accorded special deference by us upon appellate review.

In summary, the ALJ properly acknowledged the existence and scope of the treating physician preference in this jurisdiction, and adequately explained his reasons for departing from it in this case.

Lastly, regarding Petitioner's argument concerning the inadequacy of Dr. Gordon's medical opinion to support the LMS conclusion that Petitioner had the wage earning capacity sufficient to justify the reduction in disability benefits, we again respectfully disagree. Review of the testimony from the author of the LMS reveals that the knee limitations were considered in identifying potential employment opportunities (HT 64 – 65), which opportunities were sedentary and light in nature. Although the author admitted to not investigating explicitly how much of a strain on the knee each of the identified positions would produce, he testified that each position qualified under the standards developed by the United States Department of Labor and published in the "Dictionary of Occupational Titles", as "sedentary to light duty". HT 76, 82.

Generally speaking, Petitioner's complaints and arguments in this appeal amount to disagreements with the weight to be given to the evidence considered by the ALJ. While we might have reached a different conclusion based upon this same record, we are nonetheless constrained to affirm the decision of the ALJ where it is based upon substantial evidence, the legal conclusions flow rationally from that evidence, and are in accordance with the law. In this case, there is sufficient evidence to support the facts as found by the ALJ, and the conclusion that Petitioner has the residual earning capacity as found in the Compensation Order flows rationally therefrom.

#### CONCLUSION

The Compensation Order of September 29, 2006 is supported by substantial evidence and is in accordance with the law.

**ORDER**

The Compensation Order of September 29, 2006 is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

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JEFFREY P. RUSSELL  
Administrative Appeals Judge

January 9, 2007  
DATE