

**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 (Dir.Dkt.) No. 05-260**

**LOUISE GRAY,**

Claimant – Petitioner

v.

**ROCK CREEK MANOR NURSING HOME AND PMA INSURANCE GROUP,**

Employer/Carrier – Respondent.

Appeal from a Compensation Order of  
Administrative Law Judge Anand K. Verma  
OHA No. 05-228, OWC No. 242672

Alan S. Toppelberg, Esquire, for the Petitioner

Jane J. Gerbes, Esquire, for the Respondent

Before: E. Cooper Brown, *Chief Administrative Appeals Judge*, FLOYD LEWIS and SHARMAN J. MONROE, *Administrative Appeals Judges*.

FLOYD LEWIS, *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).<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 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, 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. 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.

## 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 July 27, 2005, the Administrative Law Judge (ALJ) concluded that Claimant Petitioner (Petitioner) sustained an injury which arose out of and in the course of her employment and that Employer-Respondent (Respondent) is liable for a penalty of 10% under D.C. Official Code § 32-1515(e). Petitioner now seeks review of that Compensation Order.

As grounds for this appeal, Petitioner alleges as error that the ALJ failed to address the issue of bad faith pursuant to D.C. Official Code § 32-1528.

## 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. D.C. Official Code §32-1522(d)(2). “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 scope 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’s sole challenge to the Compensation Order is that the ALJ’s decision does not address the issue of Respondent’s delay of the payment of compensation in bad faith, which she raised at the hearing. As such, Petitioner requests that the CRB issue a finding on the matter of bad faith or issue a remand ordering the ALJ to address this issue. Respondent did not file an opposition to Petitioner’s appeal.

A review close of the record reveals that Petitioner clearly raised the issue of Respondent’s bad faith before the ALJ, and that the ALJ understood that the issue had been raised. At the beginning of the hearing, after having counsel introduce themselves for the record, the ALJ stated, “Counsel prior to the opening of the record, it is my understanding that the issues to be resolved at the hearing are . . . penalties for the untimely controversion within the meaning of Section 32-1515, as well as penalties for unreasonable delay under the meaning of § 32-1528 . . . .” Hearing Transcript at 5. As argued by Petitioner in this appeal, a review of the Compensation Order indicates that the ALJ failed to address this issue.

As such, this matter must be remanded to the ALJ for findings of fact and conclusions of law on the issue of Respondent’s bad faith pursuant to D.C. Official Code § 32-1528. All other

findings of fact and conclusions of law in the Compensation Order of July 27, 2005 are not affected by this Order.

CONCLUSION

The Compensation Order of July 27, 2005 must be remanded to the ALJ for the sole purpose of findings of fact and conclusions of law on the issue of penalties for unreasonable delay under D.C. Official Code § 32-1528, which was raised at the hearing, but not addressed by the ALJ. Otherwise, the Compensation Order of July 27, 2005 is not disturbed in any manner.

ORDER

The Compensation Order of July 27, 2005 is hereby REMANDED to the Administrative Hearings Division for further proceedings consistent with the above discussion.

FOR THE COMPENSATION REVIEW BOARD:

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Floyd Lewis  
Administrative Appeals Judge

December 16, 2005 \_\_\_\_\_  
DATE