

**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. 05-238**

**TERRY HEDGEPEETH,**

**Claimant–Petitioner**

**v.**

**SODEXHO MARRIOTT SERVICES AND CRAWFORD & COMPANY,**

**Employer/Carrier–Respondent**

Appeal from a Compensation Order of  
Administrative Law Judge Anand K. Verma  
AHD No. 03-579A, OWC No. 543273

Benjamin T. Boscolo, Esquire, for the Petitioner

Anthony J. Zaccagnini, Esquire, for the Respondent

Before JEFFREY P. RUSSELL, SHARMAN J. MONROE, *Administrative Appeals Judges*, and FLOYD LEWIS, *Acting Administrative Appeals Judge*.

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

## 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 April 28, 2005, the Administrative Law Judge (ALJ) granted Petitioner's claim for temporary total disability benefits from December 15, 2002 to April 25, 2003, and denied Petitioner's claim for temporary total disability benefits from that date through December 23, 2003. Petitioner now seeks review of that portion of the Compensation Order denying said temporary total disability claim.

As grounds for this appeal, Petitioner alleges as error that: (1) the ALJ impermissibly "substituted his judgment" for that of Petitioner's proffered medical expert relating to the "significance" of medical evidence, and relied upon that "substituted judgment" to support a finding of fact; (2) the Compensation Order "misstates the evidence" and is therefore unsupported by substantial evidence, in that the ALJ allegedly concluded that Petitioner had sought no medical treatment between April 16, 2002 and October 9, 2002, and concluded that Petitioner's symptoms had "totally resolved" after April 25, 2003, and were not causally related to the uncontested work injury; (3) the Compensation Order "erroneously characterizes" the opinions of Respondent's independent medical evaluator (IME) and Petitioner's treating physician as being "identical", when in fact the treating physician diagnosed a partial tear of the Achilles tendon, while the IME physician diagnosed tendonitis; and (4) the Compensation Order is "internally inconsistent" and is "therefore not supported by substantial evidence", because, despite the IME physician opining as to the existence of a 7% permanent partial disability from the work injury, the ALJ found that Petitioner's symptoms had resolved "without residuals", and the ALJ found that Petitioner had presented "no substantial evidence of continuing disability" after April 25, 2003, despite the record including physician authored disability slips for the period October 19, 2002 through December 23, 2003.

## 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 Int'l. v. Dist. of Columbia Dep't. of Employment Servs.*, 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

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responsibility for 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.

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, regarding the first allegation of error, that the ALJ impermissibly “substituted his judgment” for that of Petitioner’s proffered medical expert relating to the “significance” of medical evidence, and relied upon that “substituted judgment” to support a finding of fact, although as will be discussed later we detect error in the ALJ’s analysis, we do not find that the ALJ exceeded his authority in evaluating evidence as a legal matter. To the extent that the ALJ chose to accept IME opinion in preference to the opinion of a treating physician, and chose to reject a conclusion of a treating physician because it was in his view faulty for some specific, identified and persuasive reason, such choices in making findings of fact are properly within the ALJ’s province. In evaluating conflicting medical testimony, as in weighing evidence generally, the ALJ has wide latitude. The ALJ is “entitled to draw reasonable inferences from the evidence presented.” *George Hyman Constr. Co. v. District of Columbia Dep’t of Employment Servs.*, 498 A.2d 563, 566 (D.C. 1985). Ordinarily, moreover, the examiner is not required to explain why she credited one expert over another. *See, Ferreira v. District of Columbia Dep’t of Employment Servs.*, 667 A.2d 310, 312, 314 n.5 (D.C. 1995). The ALJ is reminded, however, that if on remand the determination is made to reject a treating physician’s opinions as contained in the record, he must acknowledge the existence and specifics of those opinions, and identify the reasons why they are rejected. *See, Butler v. Boatman & Magnani*, OWC No. 044699, H&AS No. 84-348 (December 31, 1986), *Short v. District of Columbia Department of Employment Services*, 723 A.2d 845 (D.C. 1998), and *Stewart v. District of Columbia Department of Employment Services*, 606 A.2d 1350 (D.C. 1992).

Regarding the second alleged error, that the Compensation Order “misstates the evidence” and is therefore unsupported by substantial evidence, in that the ALJ allegedly concluded that Petitioner had sought no medical treatment between April 16, 2002 and October 9, 2002, and concluded that Petitioner’s symptoms had “totally resolved” after April 25, 2003, and were not causally related to the uncontested work injury, Petitioner does not provide any reference to record evidence to contradict the implied finding, contained on page 4 of the Compensation Order, that there was no medical treatment between April 16, 2002 and October 9, 2002, and even if there had been such medical treatment demonstrated, Petitioner does not assert in any specific way how such an error is germane or significant. Thus, that alleged ground for error is rejected as being unsupported by reference to the record, and being *de minimis* in any event.

However, we agree that, the finding that Petitioner’s symptoms had “totally resolved” after April 25, 2003 is inconsistent with the IME evidence that Petitioner has a 7% permanent partial impairment to the injured foot. Further, we note that continuing symptoms are certainly inferable from the fact that the record contains disability slips authored by Dr. Linehan, the treating physician, covering October 9, 2002 through September 17, 2003, and continuing thereafter for an “undetermined” period thereafter (CE 2), which period explicitly includes the period between October 9, 2002 and September 17, 2003, and arguably includes through December 23, 2003. Because of the noted inconsistency and the existence of these disability slips, as will be discussed later, a remand is in order so that the ALJ can identify what evidence in the record he

relied upon to reach the conclusion that the Petitioner's symptoms or injury had "resolved" by the date in the Compensation Order.

Regarding the third alleged error, that the Compensation Order "erroneously characterizes" the opinions of Respondent's independent medical evaluator (IME) and Petitioner's treating physician as being "identical", when in fact the treating physician diagnosed a partial tear of the Achilles tendon, while the IME physician diagnosed tendonitis, Petitioner misconstrues the ALJ's findings in this regard. What the ALJ wrote was not that the treating surgical physician and the IME physician were in agreement about whether Petitioner had sustained a partial tear versus a strain or inflammation of the Achilles tendon, but rather the ALJ found that their opinions concerning a "recovery from his work-related injury and his subsequent ability to return to his regular employment" were "essentially identical". Compensation Order, page 4 – 5. The ALJ pointed out that the treating physician opined in his report to Petitioner's counsel that Petitioner would likely have recovered from the effects of surgery about two months post-operatively (from February 25, 2003). This is not inconsistent with the opinion of the IME physician to the effect that Petitioner could return to work.

Regarding the fourth assignment of alleged error, that the Compensation Order is "internally inconsistent" and is "therefore not supported by substantial evidence", because, despite the IME physician opining as to the existence of a 7% permanent partial disability from the work injury, the ALJ found that Petitioner's symptoms had resolved "without residuals", and the ALJ found that Petitioner had presented "no substantial evidence of continuing disability" after April 25, 2003, despite the record including physician authored disability slips for the periods described above, we agree that the Compensation Order contains evidence which a reasonable person might accept as supporting a claim for "continuing disability" after April 25, 2003. The record appears to support a finding that the author of these slips is a "treating" physician under the Act, yet the Compensation Order contains no discussion of why these slips did not support an award of temporary total disability benefits. We agree further that a finding of "no residual" impairment does not appear to be supported by any evidence in the record, and is indeed contrary to the IME findings of a "mild loss of right ankle mobility" yielding a 7% permanent partial foot impairment from the work injury.

These errors require a remand to the ALJ for further consideration of the evidence and discussion and analysis of the question of Petitioner's entitlement to temporary total disability benefits beyond April 25, 2003. In the Compensation Order on Remand, the ALJ must identify what evidence the Petitioner presented in support of that claim, identify what evidence exists in contravention of that claim, and then weigh that evidence in light of (1) the established rules concerning acceptance or rejection of treating physician opinion, and (2) the humanitarian purposes of the Act.

#### CONCLUSION

The Compensation Order of April 28, 2005 is not sufficiently supported by substantial evidence in the record and, as described above is not in accordance with the law.

**ORDER**

The Compensation Order of April 28, 2005 is hereby REVERSED and REMANDED with instructions to reconsider the claim for temporary total disability benefits from April 25, 2003 through and including December 23, 2003, in a manner consistent with the foregoing Decision and Order.

FOR THE COMPENSATION REVIEW BOARD

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JEFFREY. P. RUSSELL  
Administrative Appeals Judge

July 13, 2005  
DATE