

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA MARÍA MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 13-116

**FRANCISCA LETREN,
Claimant–Petitioner,**

v.

**DISTRICT OF COLUMBIA CHILD AND FAMILY SERVICES,
Self-Insured Employer–Respondent.**

Appeal from a Compensation Order on Remand by
Administrative Law Judge Anand K. Verma
AHD No. PBL09-089A, DCP No. 30090951004-0001

Matthew J. Peffer, Esquire for Petitioner
Frank McDougald, Esquire for Respondent

Before MELISSA LIN JONES, HENRY W. MCCOY, and JEFFREY P. RUSSELL, *Administrative Appeals Judges*.

MELISSA LIN JONES for the Compensation Review Board.

DECISION AND REMAND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

The facts underlying this case and the credibility determinations leading to those facts are critical for assessing Ms. Francisca Letren’s entitlement to temporary total disability compensation benefits; therefore, consistent with the constraint that an appeal before the Compensation Review Board (“CRB”) is not a *de novo* proceeding, we refrain from setting forth a narration of facts which may have a bearing on the ultimate issue in this case. Nonetheless, an understanding of the procedural history of this matter is necessary to resolve this appeal.

On February 9, 2011, an administrative law judge (“ALJ”) issued a Compensation Order awarding Ms. Letren temporary total disability compensation benefits from September 11, 2009

to the date of the formal hearing and continuing.¹ An appeal focused on the ALJ's credibility finding.

On August 16, 2011, the CRB reversed and remanded the February 9, 2011 Compensation Order with specific instructions regarding resolution of the errors in that Compensation Order:

In the case *sub judice*, two different versions of the same event were presented via the testimony of the Claimant and the Employer's two witnesses. The Claimant testified Mr. Ward yelled and screamed at her on September 10, 2009, causing her to lose control. Mr. Ward testified he did not yell and scream at the Claimant and was always professional in his interactions with her. With two differing versions of the same event, a clear and unambiguous credibility finding of the Claimant and witnesses is necessary in ultimately determining whether or not the [Compensation Order] is supported by the substantial evidence in the record. Significantly, the ALJ must indicate what version of events she gives more weight to surrounding the incident of September 10, 2009. We find the credibility findings of the ALJ to be ambiguous at best.

As it pertains to the Claimant, the ALJ limits her credibility determination to the March 31, 2010 hearing. The ALJ appears to have excluded the record developed on July 13, 2010 and July 29, 2010 when determining the Claimant's credibility. By limiting her determination to just the Claimant's demeanor on one day and excluding evidence developed in the two subsequent hearings, it cannot be said that the credibility finding "hangs together" with other evidence of the record, including the testimony of the other witnesses.

Moreover, it is also questionable what the ALJ meant when she indicated that she found the "Employer's testimony credible with respect to the actions of management concerning Claimant." There were two witnesses presented by the Employer. We cannot discern whether or not the ALJ found both witness credible based upon their demeanor at the Formal Hearing and whether the ALJ credits the witness testimony surrounding the events of September 10, 2009 over that of the Claimant. The ALJ limited her credibility finding to the "actions of management" which we find to be vague and confusing as there were numerous actions presented by the Employer, many of which did not even occur on September 10, 2009. The ALJ seems to allude to personnel actions before the date in question as being the causative factor of the Claimant's psychological issues. The evidence presented by Employer reveals numerous meetings, emails, communications, and personnel actions with the Claimant before the events of September 10, 2009. Specifically, the ALJ states,

After all the meetings, emails, the use of LWOP for annual leave for unscheduled absences due to her

¹ *Letren v. D.C. Child and Family Services*, AHD No. PBL09-089A, DCP No. 30090951004-0001 (February 9, 2011).

work-related injury of January 13, 2009, and the use of AWOL while Claimant was not on leave restriction or AWOL had not [been] approved by the Director, Claimant reached her breaking point, and had to be released to a relative to be excused from duty. *Letren, supra* at 8.

Moreover, it is unclear if the ALJ found that only the September 10, 2009 event caused the psychological problems or if it was the cumulative workplace issues and the Employer's "actions." [Footnote omitted.] Such ambiguity constrains us to remand the case for the ALJ to clarify her credibility findings surrounding the events of September 10, 2009 and for a specific determination as to what event or events caused the Claimant's psychological problems.^[2]

The ALJ issued a Compensation Order on Remand on October 18, 2011.³ After reciting a portion of the CRB's August 16, 2011 Decision and Remand Order, the ALJ quoted *King v. D.C. Department of Employment Services*⁴ and without analysis stated Ms. Letren's version of the September 10, 2009 events is credible and the testimony of witnesses offered by D.C. Child and Family Services ("Employer") is not credible regarding the events of that date but is credible regarding Employer's actions prior to that date. Finally, the ALJ referenced some caselaw regarding cumulative injuries, the prior Compensation Order, and the claim for relief. The ALJ awarded Ms. Letren's claim for relief.

Another appeal ensued, and because the Compensation Order on Remand lacked explanation or support for the findings that Ms. Letren is credible and the other witnesses are not, the CRB remanded matter for "an appropriate credibility analysis as the *Ramey* test requires."⁵ Additional findings regarding whether Ms. Letren's injury was discrete or cumulative also were necessary on remand.

The ALJ issued a second Compensation Order on Remand on July 9, 2012. The ALJ, again, ruled Ms. Letren is entitled to temporary total disability compensation benefits from September 11, 2009 to the date of the formal hearing and continuing. This time, the ALJ determined

Upon the arrival of Employer witness Ward to work on September 10, 2009, Claimant was informed by him that her request to leave her work station to get some coffee would require [her] to use her first 15-minute break to do so.

² *Letren v. D.C. Child and Family Services*, CRB No. 11-021, AHD No. PBL09-089A, DCP No. 30090951004-0001 (August 16, 2011), pp. 3-4.

³ *Letren v. D.C. Child and Family Services*, AHD No. PBL09-089A, DCP No. 30090951004-0001 (October 18, 2011), p. 2.

⁴ *King v. DOES*, 560 A.2d 1067 (D.C. 1989).

⁵ *Letren v. D.C. Child and Family Services*, CRB No. 11-129, AHD No. PBL09-089A, DCP No. 30090951004-0001 (March 28, 2012), p. 4.

Claimant began screaming and lost control while Employer witness Ward was standing at Tammy Hagins' cubicle. The single event of being informed to use her first 15-minute break to get coffee led to Claimant's losing control and suffering a psychological injury.

Claimant has established with substantial, credible evidence, through her testimony and evidence on record that the events upon which the harm is predicated are factual, and that the harm caused her work-related psychological injury.^[6]

On appeal, the CRB vacated the July 9, 2012 Compensation Order on Remand.⁷ In this public sector workers' compensation case, the ALJ had stated "[i]n the instant matter, a review of the record determines that the events upon which Claimant bases her claim did occur. The *Ramey* test does not require Claimant to show unusually stressful conditions in order to establish a *prima facie* case."⁸ In addition, after evaluating Employer's testimonial and medical evidence, the ALJ had ruled "Employer has not provided substantial, credible evidence to overcome Claimant's *prima facie* case."⁹ In other words, the ALJ improperly had applied the private sector presumption of compensability to this public sector case.

On August 29, 2013, an ALJ¹⁰ issued the Compensation Order on Remand that is the subject of this appeal. The ALJ denied Ms. Letren's claim for temporary total disability compensation benefits from September 11, 2009 to the date of the formal hearing and continuing because "Claimant's work environment did not present any stressor which could cause a discrete or cumulative psychological injury."¹¹

Ms. Letren appeals the August 29, 2013 Compensation Order on Remand on the grounds that it

contains an error of law insofar as it concludes, "Review of the adduced evidence, however, fails to uncover any *unusual or extraordinary event*, claimant experienced at work, which could be characterized as a stressor." COR III at 4 (emphasis added). *Ramey* does not [*sic*] require a finding of any "unusual or extraordinary event" which gives rise to the psychological injury; in fact, *Ramey* explicitly overruled prior cases which required that some objectively unusual or

⁶ *Letren v. D.C. Child and Family Services*, AHD No. PBL09-089A, DCP No. 30090951004-0001 (July 9, 2012).

⁷ *Letren v. D.C. Child and Family Services*, CRB No. 12-127, AHD No. PBL09-089A, DCP No. 30090951004-0001 (July 25, 2013).

⁸ *Letren v. D.C. Child and Family Services*, AHD No. PBL09-089A, DCP No. 30090951004-0001 (July 9, 2012), p. 3.

⁹ *Id.* at 4.

¹⁰ Because the original, presiding ALJ had retired, this matter was reassigned to a different ALJ.

¹¹ *Letren v. D.C. Child and Family Services*, AHD No. PBL09-089A, DCP No. 30090951004-0001 (August 29, 2013).

extraordinary event give rise to the psychological injury. Because the COR III applied an incorrect legal standard, it must be vacated and reversed.^[12]

Ms. Letren also argues the CRB's last remand was improper because the prior Compensation Orders on Remand complied with its directives, particularly with regard to the requisite credibility determination which the current ALJ was not free to reject based upon additional findings of fact. Ms. Letren requests the CRB vacate the August 29, 2013 Compensation Order on Remand.

In opposition, Employer contends the August 29, 2013 Compensation Order on Remand is supported by substantial evidence and is in accordance with the law. Employer finds no error in the ALJ's ruling that there is no evidence that qualifies as a stressor sufficient to cause Ms. Letren's psychological injury; Employer disagrees that the ALJ required evidence of an unusual or extraordinary event when denying Ms. Letren's claim for relief. Employer also disagrees that the ALJ erred by not making credibility findings because credibility findings pursuant to *Ramey* are only necessary when invoking the presumption of compensability which does not apply to public sector cases. Finally, Employer asserts the ALJ was required to make additional findings of fact in order to comply with the instructions in the July 25, 2013 Decision and Remand Order. For these reasons, Employer requests the CRB affirm the August 29, 2013 Compensation Order on Remand.

ISSUES ON APPEAL

1. Does the *Ramey* test require an unusual or extraordinary event as a prerequisite for compensability?
2. Does the *Ramey* test require credibility rulings to determine compensability?
3. Is the August 29, 2013 Compensation Order on Remand supported by substantial evidence and in accordance with the law?

PRELIMINARY MATTER

The CRB lacks authority to resolve appeals of its own orders; that role is reserved for the D.C. Court of Appeals.¹³ The only Compensation Order on Remand under review at this time is the August 29, 2013 Compensation Order on Remand.

¹² Memorandum of Points and Authorities in Support of Claimant's Application for Review, p. 10.

¹³ 7 DCMR §270.1 applicable to public sector cases pursuant to 7 DCMR §135.1.

ANALYSIS¹⁴

On July 25, 2013, the CRB remanded this matter for proper application of the *Ramey* test:

[an] injured worker alleging a mental-mental claim invokes the statutory presumption of compensability by showing a psychological injury and actual workplace conditions or events which could have caused or aggravated the psychological injury. The injured worker's showing must be supported by competent medical evidence. The [administrative law judge], in determining whether the injured worker invoked the presumption, must make findings that the workplace conditions or events existed or occurred, and must make findings on credibility. If the presumption is invoked, the burden shifts to the employer to show, through substantial evidence, the psychological injury was not caused or aggravated by workplace conditions or events. If the employer succeeds, the statutory presumption drops out of the case entirely and the burden reverts to the injured worker to prove by a preponderance of the evidence that the workplace conditions or events caused or aggravated the psychological injury.^[15]

Although *Ramey* requires the workplace conditions or events causing the psychological injury must be "actual," there is no requirement the stressors be unusual. Even so, the ALJ found

Claimant did not suffer a discrete or cumulative psychological injury. Employer by reminding Claimant of her usual job responsibilities and placing her under observation did not create an unusually stressful work environment. Claimant's testimony insofar as "the factual reality of stressors in the workplace environment," under *Ramey* is deemed subjective and exaggerated.

* * *

The totality of evidence adduced in this case, including the Unusual Incident Reports of January 16, 2008 and September 10, 2009, as well as Claimant's supervisor's numerous emails involving her time and attendance did not constitute the requisite work-place environment stressors which resulted in Claimant's psychological breakdown.

¹⁴ The scope of review by the CRB is limited to making a determination as to whether the factual findings of the appealed Compensation Order on Remand 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. Comprehensive Merit Personnel Act of 1978, as amended. D.C. Code §1-623.01 et seq., at §1-623.28(a). Consistent with this standard of review, the CRB is constrained to uphold a Compensation Order on Remand that is supported by substantial evidence, even if there also is contained within the record under review substantial evidence to support a contrary conclusion and even if the CRB might have reached a contrary conclusion. *Marriott International v. DOES*, 834 A.2d 882, 885 (D.C. 2003).

¹⁵ *Ramey v. Potomac Electric Power Company*, CRB No. 06-38(R), AHD No. 05-318, OWC No. 576531 (July 24, 2008). Of course, in public sector workers' compensation cases, there is no presumption of compensability, and if the claim has not been accepted, it is the claimant's burden of proof to show by a preponderance of the evidence that the alleged disability was caused by a work-related injury. *McCamey v. DOES*, 947 A.2d 1191, 1199 n.6 (D.C. 2008) (*en banc*) (citing *Washington Hospital Center v. DOES*, 744 A.2d 992, 998 (D.C. 2000)).

Most of the factors that cause stress fall into the category of everyday events. These mainly come from an employee's family, workplace and the work she does on a daily basis. Majority of people find the work they do and the relationships they have with their supervisors and coworkers to be the most stressful. These stress factors can have a detrimental effect on the employee's health if she does not learn to cope with them and de-stress whenever she finds the time. Some stress is normal. In fact, it is often what provides us with the energy and motivation to meet our daily challenges both at home and at the workplace. Stress in these situations is the kind that helps you rise to a challenge and meet your goals, such as, deadlines or production targets. Most employees would not consider these challenges a type of stress because, having met the challenge, they feel accomplished and happy. However, as with most things, there are some who would find these challenges at work too demanding and feel distressed psychologically.

In the instant case, Claimant, who had difficulty interacting with her supervisor and addressing his time and attendance concerns, internalized his reminders thereto and felt depressed. Claimant felt her work environment caused her depression and adjustment disorder. Review of the adduced evidence, however, fails to uncover any unusual or extraordinary event, Claimant experienced at work, which could be characterized as a stressor.^[16]

By requiring Ms. Letren prove "an unusually stressful work environment," the ALJ reinstated the *Dailey* test which was overruled by *McCamey*. This error requires the August 29, 2013 Compensation Order on Remand be vacated.

Furthermore, the ALJ errs in his "plain reading of the Court's decision in *Ramey*":

A plain reading of the Court's decision in *Ramey* discloses no requirement that a credibility determination of Claimant as well as Employer's witness be made in addressing Claimant's psychological injury. The Court merely emphasized that if the Board (CORB) decides that a special test for mental-mental claims remains desirable, it must be "one focused purely on verifying the factual reality of stressors in the work-place environment, rather than one requiring claimant to prove that he or she was predisposed to psychological injury or illness"^[17]

Although the *Ramey* test specifically refers to a credibility finding in regards to invoking the presumption of compensability in a private sector case, when assessing the compensability of a

¹⁶ *Letren v. D.C. Child and Family Services*, AHD No. PBL09-089A, DCP No. 30090951004-0001 (August 29, 2013), pp. 3, 4.

¹⁷ *Id.* at 4.

mental-mental injury in either the private sector or the public sector, the D.C. Court of Appeals in *McCamey* underscored the importance of a credibility finding in mental-mental claims:

[O]ur analysis in this case necessarily affects the scope of the objective standard in mental-mental cases as well. The reason that the objective test is unnecessary in the physical-mental context -- that the physical accident supplies the necessary work-connection -- flows back to *Dailey's* conflation of the desire for objective verification of a work-related event with the Director's concern that an employee's predisposition to mental injury would make the determination that the disability was caused by workplace stress more difficult. In some mental-mental claims, this objectively verifiable work connection may be far less apparent; thus, the imposition of a carefully crafted test to establish the necessary connection between mental injury and work may be appropriate for such cases. We do not purport to say here what such a test should be. However, any test that prevents persons predisposed to psychological injury from recovering in all cases is inconsistent with the legislative history and humanitarian purpose of the [private sector workers' compensation act] and [the public sector workers' compensation act]. Accordingly, if the Board decides that a special test for mental-mental claims remains desirable, it must be one focused purely on verifying the factual reality of stressors in the work-place environment, rather than one requiring the claimant to prove that he or she was not predisposed to psychological injury or illness, or that a hypothetical average or healthy person would have suffered a similar psychological injury, before recovery is authorized.^[18]

Thus, a credibility finding is necessary to verify the workplace conditions or events causing the injury are actual or real, and in this case, the testimony between Ms. Letren and Employer's witnesses is contradictory. Although an ALJ ordinarily is not required to "inventory the evidence and explain in detail why a particular part of it was accepted or rejected,"¹⁹ "when evidence is contradictory, the contradiction must be addressed."²⁰ The failure to make the appropriate credibility rulings, too, requires we vacate the August 29, 2013 Compensation Order on Remand.

Finally, Ms. Letren cites no caselaw for her proposition that on remand the ALJ was not free to make additional findings of fact which were not included in any prior orders, and we are unaware of any. In fact, in order to comply with remand instructions ALJ's frequently are required to make additional findings of fact, and in the absence of any specific authority to the contrary, the CRB cannot impose such a restriction.

¹⁸ *McCamey, supra.*

¹⁹ *Sturgis v. DOES*, 629 A.2d 547, 554 (D.C. 1993).

²⁰ *Braxton v. Marty's Restaurant*, CRB No. 09-032, AHD No. 06-092, OWC No. 6180296 (January 29, 2009).

CONCLUSION AND ORDER

The *Ramey* test does not require an unusual or extraordinary event in order for a mental-mental claim to be compensable; the *Ramey* test does require credibility findings necessary to verify the workplace conditions or events causing the injury are actual or real. Because the ALJ did not properly apply the *Ramey* test, the August 29, 2013 Compensation Order on Remand is VACATED. This matter is REMANDED for findings of fact supported by the record and conclusions of law that rationally flow from an analytical application of the proper law to those facts.

FOR THE COMPENSATION REVIEW BOARD:

MELISSA LIN JONES
Administrative Appeals Judge

November 26, 2013
DATE