

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. 04-97

HORACE HENSLEY,

Claimant – Petitioner

v.

CHEECHI & COMPANY AND ATLANTIC MUTUAL INSURANCE COMPANY,

Employer/Carrier – Respondent.

Appeal from a Compensation Order of  
Administrative Law Judge Anand K. Verma  
OHA No. 92-359G, OWC No. 115568

Horace Hensley, *Pro Se* Petitioner,

Alan Carlo, Esq., for the Respondent

Before LINDA F. JORY, FLOYD LEWIS and SHARMAN J. MONROE, *Administrative Appeals Judges*.

SHARMAN J. MONROE, *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 (2005). In accordance with the Director's Policy Issuance, the CRB replaces the

## 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 August 12, 2004, the Administrative Law Judge (ALJ) denied the request for relief on the basis that he lacked jurisdiction to proceed since the issues presented to him were not severable from the issues pending appeal at the D.C. Court of Appeals. The Claimant-Petitioner (Petitioner) now seeks review of that Compensation Order.<sup>2</sup>

As grounds for this appeal, the Petitioner alleges as error that the ALJ made findings of fact relating to a case other than the instant case, failed to make basic findings of fact on all material issues, failed to consider all the record evidence with the appropriate weight as a matter of law, failed to accord the proper weight to the opinion of the treating physician, inappropriately applied *sub judice* and failed to apply the humanitarian purposes of the Act to this matter.<sup>3</sup>

## ANALYSIS

As an initial matter, the standard 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 § 32-1521.01 (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. App. 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

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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.

<sup>2</sup> As part of this appeal, the Petitioner requested that this matter be consolidated with his appeal of the Compensation Order issued in H&AS No. 92-359F. A review of CRB records indicates that a Decision and Order was issued on that appeal on August 16, 2006. See *Hensley v. Cheechi & Company*, CRB No. 04-67, OHA No. 92-359F, OWC No. 11568 (August 16, 2006). Since the appeal has been decided, the Petitioner’s request for consolidation is denied.

<sup>3</sup> On June 5, 2006, the Petitioner submitted medical reports and other documents which he wanted the Panel to review as part of his appeal. Pursuant to 7 DCMR § 266.1, the Panel’s review is limited to the record made in AHD. Therefore, any documents that were not submitted to the ALJ in AHD were not considered in rendering this decision.

reviewing authority might have reached a contrary conclusion. *Marriott*, 834 A.2d at 885.

Turning to the case under review, the Petitioner makes the following allegations of error:

1. the Background contains a misstatement of fact since his ankylosing spondylitis was ruled a work-related aggravation in a prior Compensation Order;
2. the stated Claim for Relief, determination of reasonableness and necessity of transportation expenses, is inaccurate as it did not include the determination of expenses for snow removal, shaving, podiatry services, medical tests and x-rays;
3. the Findings of Fact should have also incorporated the findings from the decisions rendered in Dir. Dkt. No. 02-71 and OHA No. 92-359F;
4. the findings concerning his physical abilities were made without consideration of his physician's response to the utilization review report; and
5. the ALJ's determination that the issue before him, *i.e.* reimbursement for payments made to the Petitioner's wife and daughter for driving the Petitioner to various places, was not severable and distinct from the issue of reasonableness and necessity of housekeeping services which is pending before the D.C. Court of Appeals is incorrect. The Petitioner maintains that severability is warranted because the case on appeal, OHA 92-359E,<sup>4</sup> addresses payment for services for home attendant care and Respondent-provided medical transportation services was initiated in the OHA No. 92-359E. The Petitioner asserts that the Respondent ended transportation services without cause on May 12, 2003 in violation of the decision in OHA 92-359E.

The Petitioner requests that the findings of fact on daily activities and severability of medical transportation be reversed and that "all other pending issues be able to move forward without delay." Application for Review at p. 6. The Panel will address each of the alleged errors individually.

With respect to Error 1, the Background reads "[c]laimant suffers from ankylosing spondylitis, diagnosed in 1986-87, allegedly contracted while employed by employer from May 1986 through December 11, 1986." Compensation Order at p. 2. The Background section of a compensation order merely sets the stage for a matter before an ALJ for adjudication. It does not contain information governing the merits of a matter. As such, the Panel determines that the use of the word "allegedly" is of no consequence. This is particularly so since the ALJ later stated that the Petitioner's ankylosing spondylitis was causally related to his original work injury. *See* Compensation Order at p. 3. At best, the use of the word "allegedly" is harmless error, not requiring a reversal of the Compensation Order.

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<sup>4</sup>*See Hensley v. Cheechi & Company*, Dir. Dkt. No. 02-71, OHA No. 92-359E, OWC No. 115568 (March 18, 2003).

With respect to alleged Error 2, a review of the transcript reveals that the ALJ read the requested relief into the record as “reimbursement of causally related medical expenses or rather transportation expenses”. See Hearing Transcript (HT) at p. 5. Later, the ALJ identified the relief as solely “causally related transportation expenses”. See HT at p. 3. A review of the Petitioner’s written opening statement<sup>5</sup> reveals that the Petitioner requested that the Respondent be ordered to pay “all current medical transportation cost; doctor prescribed medical cost; and refrain in [sic] denying doctor prescribed medications, future medical transportation and prescribed medical treatment.” See Claimant’s Presentation, November 6, 2003 before Judge Verma at p. 6. Although the Petitioner referenced that the Respondent refused to reimburse him for snow removal and shaving costs, and submitted exhibits in support thereof, he did not request reimbursement for these expenses as part of his claim for relief. In his closing statement, the Petitioner pointed to un-reimbursed medical expenses. See HT at pp. 54-57.

Although not clearly and definitively stated, a review of the entire record indicates that the Petitioner was seeking both medical and transportation expenses.<sup>6</sup> However, given the disposition of this case, which is affirmed for reasons stated below, the ALJ’s failure to state the claim for relief to include medical expenses is a harmless error.

With respect to alleged Error 3, the decisions of the Director, DOES do not contain findings of fact. Indeed, the Director, as well as the CRB, is precluded by law from making findings of fact. The Director, as well as the CRB, conducts a substantial evidence review of a compensation order, *i.e.*, to determine whether the findings of fact are supported by substantial evidence and whether the conclusions follow rationally from the findings and are in accordance with the law. See *Marriott Int’l, supra*; *Landesburg v. D.C. Department of Employment Services*, 794 A.2d 607 (2002); D.C. Official Code § 32-1522(b)(2). As to the findings in OHA No. 92-329F, the findings therein related solely to acupuncture treatments, massage therapy treatments and a motorized wheelchair, matters which are not at issue in the instant proceeding. Therefore, the failure to incorporate the findings in OHA No. 92-329F is of no consequence. At best, it is a harmless error, not requiring a reversal of the Compensation Order.

With respect to alleged Error 4, the ALJ made findings of fact on the Petitioner’s physical abilities. Although, the ALJ did not state the basis for his findings, a review of the record indicates that the findings were based upon the utilization report submitted by the Respondent. See Employer Exhibit No. 7. While the Petitioner asserts that his physician’s response was not considered and references an exhibit that was submitted in a March 13, 2003 proceeding between the parties.<sup>7</sup> In order for information to be

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<sup>5</sup> The Petitioner appeared at the formal hearing *pro se* and submitted a written opening statement in lieu of an oral opening statement. HT at p. 13.

<sup>6</sup> The Panel recognizes that the Petitioner is pursuing his case *pro se*. Nevertheless, it is the Petitioner’s responsibility, as it is the responsibility of any person or entity seeking relief from an adjudicatory body, to make sure that the decision-maker, in this case the ALJ, accurately understands what relief is being sought. Such a responsibility is not beyond the abilities of a reasonable person appearing *pro se*. A decision-maker is not, and is not expected to be, clairvoyant. More importantly, the type of relief being sought determines the kind of evidence that must be presented to the decision-maker by the person seeking relief.

<sup>7</sup> The March 13, 2003 formal hearing between the parties proceeded under OHA No. 92-329F.

considered by an ALJ in a given proceeding, the information must be offered into evidence, subjected to any objections by the opposing party and then admitted into evidence by the ALJ. A review of the instant record fails to reveal that the referenced exhibit was not admitted into evidence.<sup>8</sup>

With respect to alleged Error 5, the ALJ was correct in his assertion that the question on reimbursement for transportation that was before him was not severable from issues pending appeal. In a prior formal hearing between the same parties, which proceeded under OHA No. 92-359E, the Petitioner requested “reimbursement for payments made by claimant to Tammy Richards and Lisa Yesbek since January 26, 2002.” *See* Compensation Order of August 14, 2002 at p. 2. Further reading of the Compensation Order revealed that the reimbursement pertained to payments for transportation. The ALJ rendering that decision addressed the transportation payments, in addition to reimbursement for home health care services, throughout the Compensation Order, making findings of fact and conclusions of law on the transportation payments. The Petitioner argues that since the issue herein is restricted to medical transportation, presumably as opposed to generalized transportation, “based upon a standard/flat ‘pick up’ fee without regard to time consumed”, it is severable from his earlier request. However, both requests for transportation reimbursement center on transportation allegedly necessary because of his work-related injury. The instant request for transportation reimbursement is synonymous with the earlier request that was pending final resolution and the two are not severable.

The Panel notes that in the prior formal hearing, which proceeded under OHA No. 92-359E, the Petitioner requested that the Respondent pay to hire an individual who could shovel snow, could assist the Petitioner with shaving, and could perform or provide assistance with other various home health care activities. *See* Compensation Order of August 14, 2002 at pp. 2-3. The ALJ found the request for home health care assistance not reasonable or necessary, which decision was pending appeal. The Petitioner’s current request for reimbursement for home care assistance is, as his request for transportation expenses, synonymous with the earlier request that was pending final resolution and the two are not severable. This fact provides an additional basis for not proceeding with the Petitioner’s request for relief at this time.

Finally, with respect to transportation expense, the Petitioner also argues that the Respondent stopped providing transportation services without cause and in violation of the Compensation Order issued in OHA 92-359E. The Panel, however, is without authority to determine whether a party has failed to comply with the proscriptions of a compensation order. The authority to hold a party in default of a compensation order rests with AHD. *See* D.C. Official Code § 32-1515. The Panel notes, after a review of the August 14, 2002 Compensation Order, that the ALJ did not order the Respondent to pay for transportation services.

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<sup>8</sup> The Panel notes that, in OHA No. 92-329F, the ALJ rejected the response of the Petitioner’s physician because the Petitioner, not the physician, prepared the response and the physician merely signed it. Additionally, as the statements in the response were inconsistent with the level of physical ability demonstrated by the Petitioner in a surveillance videotape. *See* Supplemental Compensation Order of June 4, 2004 at p. 4.

In sum, the Panel discerns no abuse of discretion, arbitrariness, capriciousness or reversible error on the part of the ALJ in not deciding the merits of the Petitioner's instant request for relief until the outstanding appeal is resolved.<sup>9</sup>

CONCLUSION

The Compensation Order of August 12, 2004 is supported by substantial evidence in the record and is in accordance with the law.

ORDER

The Compensation Order of August 12, 2004 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

  
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SHARMAN J. MONROE  
Administrative Appeals Judge

April 26, 2007  
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DATE

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<sup>9</sup> The Panel notes that a decision issued on the pending appeal referenced in the instant Compensation Order on March 28, 2007. See Compensation Order on Remand, OHA No. 92-359E, OWC No. 115568 (March 28, 2007).