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. 08-006

JAMIE W. HUSCROFT,

Claimant–Respondent,

VS.

LINCOLN HOCKEY LLC/WASHINGTON CAPITALS and
CHUBB GROUP OF INSURANCE COMPANIES,

Employer/Carrier–Petitioner.

Appeal from a Compensation Order of
Administrative Law Judge Gerald D. Roberson
AHD No. 04-185A, OWC No. 568442

Stewart S. Manela, Esq., for Petitioner

Benjamin T. Boscolo, Esq., for Respondent

Before E. COOPER BROWN, *Chief Administrative Appeals Judge*, JEFFREY P. RUSSELL and SHARMAN J. MONROE, *Administrative Appeals Judges*.

E. COOPER BROWN, *Chief Administrative Appeals Judge*, for the Review Panel:

DECISION AND REMAND ORDER

JURISDICTION

Jurisdiction is conferred upon the Compensation Review Board (CRB) 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).[1]

[1] 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

Claimant-Respondent (Respondent) was injured on October 13, 2000 while playing in a regular season game in Quebec, Canada for the Portland Pirates, an American Hockey League team affiliated with Employer-Petitioner (Petitioner). Respondent subsequently filed the instant claim with DOES seeking temporary total disability benefits from May 1, 2001 to July 31, 2001, and temporary partial disability benefits from August 1, 2001 to the present and continuing, including payment of causally related medical expenses. This appeal follows the issuance of a Compensation Order by the Administrative Hearings Division (AHD), D. C. Department of Employment Services (DOES), issued September 10, 2007, awarding to Respondent the relief requested. Petitioner now seeks review of the Compensation Order pursuant to an Application for Review (AFR) filed with the CRB on October 9, 2007, asserting that the ALJ's findings of fact are not supported by substantial evidence of record, and that the Compensation Order is not in accordance with applicable law.

ANALYSIS

In support of its appeal, Petitioner asserts that DOES lacks jurisdiction over Respondent's claim because his employment at the time of his injury, which occurred outside the District of Columbia, was not principally localized in the District. In support of its position, Petitioner cites to the Board's attention the Court of Appeals recent decision in *Furtick v. D.C. Dept. of Employment Services*, 921 A.2d 787 (D.C. 2007), involving a case analogous in many respects to the instant case. In further support of its appeal, Petitioner contends that substantial evidence of record does not support the ALJ's determination that Respondent's condition is causally related to the accidental injury upon which his claim is based, and that in any event an award of temporary partial disability benefits should be limited to the date at which Respondent's career as a professional athlete would have ended had the injury for which he seeks compensation not occurred.

In opposition to the Application for Review, Respondent asserts that jurisdiction over his claim is properly vested in the District of Columbia, relying upon *Pro-Football, Inc. v. D.C. Dept. of Employment Services*, 588 A.2d 275 (D.C. 1991). With respect to the other issues raised on appeal, Respondent argues that the evidence of record supports the ALJ's determination that Petitioner failed to present sufficient evidence to overcome Respondent's successful invocation of the Act's rebuttable presumption that his disability arose out of and in the course of his employment, and that D.C. Official Code § 32-1508(3)(w), upon which Petitioner relies to support its argument that the ALJ erred by not affixing an end-date to the award of temporary partial disability benefits, is inapplicable to the instant case. Thus, Respondent argues, the Compensation Order should be affirmed.

The scope of review by the 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

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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.

conclusions drawn from those facts are in accordance with applicable law. *See* D.C. Workers' Compensation Act of 1979, as amended, D.C. Official Code §32-1501 to §32-1545, 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.

It is also well settled in this jurisdiction that, in order to conform to the requirements of the D.C. Administrative Procedures Act (DCAPA), D.C. Official Code § 2-501 *et seq*., for each administrative decision in a contested case, (1) the agency's decision must state findings of fact on each material, contested factual issue, (2) those findings must be based on substantial evidence, and (3) the conclusions of law must follow rationally from the findings. *Perkins v. D.C. Department of Employment Services*, 482 A.2d 401, 402 (D.C. 1984); D.C. Official Code § 2-509. Thus, when an ALJ fails to make factual findings on each materially contested issue, an appellate body is not permitted to make its own finding on the issue; it must remand for the proper factual finding. *See Jimenez v. D.C. Dept. of Employment Services*, 701 A.2d 837, 838-840 (D.C. 1997). As explained in *King v. D.C. Dept. of Employment Services*, 742 A.2d. 460, 465 (D.C. 1999), basic findings of fact on all material issues are required, for "[o]nly then can this court determine upon review whether the agency's findings are supported by substantial evidence and whether those findings lead rationally to its conclusions of law." *See also Sturgis v. D.C. Dept. of Employment Services*, 629 A. 2d 547 (D.C. 1993). The CRB is no less constrained in its review of compensation orders issued by AHD. *WMATA v. D.C. Dept. of Employment Services (Juni Browne, Intervenor)*, 926 A.2d 140 (D.C. 2007). *Accord, Hines v. Washington Metropolitan Area Transit Authority*, CRB No. 07-004, AHD No. 98-263D (December 22, 2006). The determination of whether an ALJ's decision complies with the foregoing APA requirements is a determination that is necessarily limited in scope to the "four corners" of the compensation order under review. Thus, where an ALJ fails to make express findings on all contested issues of material fact, the CRB can no more "fill the gap" by making its own findings from the record than can the Court of Appeals upon review of a final agency decision. Instead, the Board must remand the case to permit the ALJ to make the necessary findings. *See Mack v. D.C. Dept. of Employment Services*, 651 A.2d 804, 806 (D.C. 1994). So too, where the ALJ misapplies and/or misconstrues the governing law thereby warranting reversal of the compensation order under review, the CRB is constrained to remand the decision to the ALJ for a proper application of the law to the facts of the case. *WMATA*, 926 A.2d at 150.

With the foregoing principles of agency appellate review in mind, we turn to the issues raised by the present application for review, addressing first the threshold issue of whether DOES has subject matter jurisdiction over Respondent's claim pursuant to the provisions of D.C. Official Code § 32-1503. We do not reach the issue of whether the ALJ's determination that Respondent suffered a work-related injury is supported by substantial evidence of record, or reach the other issues raised by Petitioner on appeal, until we first determine that the agency has jurisdiction over the instant claim.

Because the purported work injury upon which Respondent's claim is based occurred outside the District of Columbia, controlling with respect to the issue of jurisdictional coverage is D.C. Official Code § 32-1503(a)(2), which provides jurisdictional coverage under the Act "if, at the time of the injury . . . the employment is localized principally in the District of Columbia," provided the exceptions set forth at subsections 1503(a-1) through (a)(3) do not apply.[2]

In concluding pursuant to Section 32-1503(a)(2) that the agency had jurisdiction over Respondent's claim, the ALJ focused upon the control that Petitioner exerted for its benefit over Respondent's employment conduct under the employment contract:

> Even though the contract permitted the Employer to assign Claimant's services to its minor league affiliate, Claimant's employment had substantial and legitimate contacts with the District as required by *Petrilli, supra*, 509 A.2d at 632. The Employer utilized its minor league team to enhance the performance of its NHL franchise, and it controlled whether Claimant participated in minor league games. The Employer could assign and recall the Claimant to further its business interest as a member [of] the National Hockey League. The Employer would continue to pay for the services of the Claimant at a reduced rate while he performed services for the Employer's minor league affiliate, and the Employer maintained total control over the nature of the employment relationship while the Claimant was assigned to the Portland Pirates.
> . . . Given the employment relationship was controlled by the Employer during the period when the Employer assigned Claimant to its minor league affiliate, Claimant's employment had substantial and legitimate contacts with the District to bring his injury within the coverage of the Act.

Compensation Order (CO) at pg. 6.

The ALJ's focus upon Petitioner's control over the employment relationship, while a relevant factor, does not alone resolve the question of whether Respondent's employment was principally localized in the District at the time of his injury. To assist in determining whether an employee's employment is principally localized in the District within the meaning of the Act, the Director of

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[2] Subsections (a-1) through (a-3) of Section 32-1503 state:

(a-1) No employee shall receive compensation under this chapter and at any time receive compensation under the workers' compensation law of any other state for the same injury or death.

(a-2) This chapter shall not apply if the employee injured or killed was a casual employee except that for the purposes of this chapter, casual, occasional, or incidental employment outside the District of Columbia by a District of Columbia employer of an employee regularly employed by the employer within the District of Columbia shall be construed to be employment within the District of Columbia.

(a-3) An employee and his employer who are not residents of the District of Columbia and whose contract of hire is entered into in another state shall be exempted from the provisions of this chapter while such employee is temporarily or intermittently within the District of Columbia doing work for such nonresident employer, if such employer has furnished workers' compensation insurance coverage under the workers' compensation or similar laws of such other state, so as to cover employee's employment while in the District of Columbia. The benefits under this chapter or similar laws of such other state shall be the exclusive remedy against such employer for any injury, whether resulting in death or not, received by such employee while working for such employer in the District of Columbia.

DOES formulated a three-prong test patterned after the Model Compensation Act,[3] which the Court of Appeals upheld as reasonable in *Hughes v. D.C. Dept. of Employment Services*, 498 A.2d 567 (D.C. 1985).[4] The factors to be considered under this test include:

(1) The place(s) of the employer's business office(s) or facility(ies) at which or from which the employee performs the principal services(s) for which he was hired; or
(2) If there is no such office or facility at which the employee works, the employee's residence, place where the contract is made and place of performance; or
(3) If neither (1) or (2) is applicable, the employee's base of operations.

Hughes, 498 A.2d at 569.

In *Petrilli v. D. C. Dept. of Employment Serv's.*, 509 A.2d 629 (D.C. 1986), the Court revisited the Director's test. In deciding whether the employee's employment was principally localized in the District, *Petrilli* affirmed the Director's focus upon the employee's "employment relationship" with the District at the time of injury and whether that relationship constituted "a set of substantial and legitimate contacts" with the District more significant than with any other jurisdiction. Analysis of the employee's *employment relationship*, "rather than merely [focusing upon] the work activity on the particular day the injury occurred," the Court noted, permits for an appropriate examination of "significant contacts besides work activity in the District to deem whether contacts with the District are more substantial than those involving other jurisdictions." 509 A.2d at 632.

Citing the Director's three-part analytical framework for analyzing the employment relationship, the *Petrilli* Court declared it "unnecessary to hold that [the *Hughes* test] should have universal application in all cases. It is enough to say that the term 'employment principally localized in the District' [within the meaning of the Act] requires a showing that a claimant's employment relationship with this jurisdiction must have contacts more substantial here than in any other place. This limit on statutory coverage is consistent with the meaning of the term 'principally localized' for such words plainly contemplate the kind of employment which is primarily or predominantly performed in the District." *Id*. at 633.[5]

The Court of Appeals has had occasion since *Petrilli* to apply this refined legal principle. Notable is the Court's recent decision in *Furtick v. D.C. Dept. of Employment Services*, 921 A.2d 787 (D.C. 2007), upon which Petitioner relies in support of its argument that DOES lacks jurisdiction over the

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[3] Council of State Governments Workmen's Compensation and Rehabilitation Law, § 7(d)(4) (1974).

[4] *Hughes* interpreted the earlier version of the jurisdictional statutory provision which is at issue in the case before us, D.C. Code § 36-303(a) (1981), which extended coverage to an injured employee "irrespective of the place where the injury . . . occurs provided that at the tie of such injury . . . employment is principally localized in the District of Columbia. . . ." For the legislative history leading up to the adoption of the current version in Section 32-1503(a), *see Furtick v. D.C. Dept. of Employment Services*, 921 A.2d at 791-793.

[5] Applying this refined legal principle, the Court in *Petrilli* concluded that the claimant's employment was not principally localized in the District "because [the] contacts with the District were less substantial than those with another jurisdiction" since the claimant resided in Maryland, executed her contract of employment outside of the District, worked for a Maryland employer in employment that took her outside the District 90% of her time, and because she subsequently was paid compensation benefits by Maryland. 509 A.2d at 633-34.

instant claim. Therein the Court concluded that, "Under *Petrilli's* focus on the employment relationship and whether that relationship has 'contacts more substantial here than in any other place,' Mr. Furtick's contacts were more substantial with the Republic of Georgia (place of work), [and] Virginia and California (places of residence), than with the District during his assignments from 1995 to 1997, and after his return from the Republic of Georgia due to his injury." 921 A.2d at 795. In arriving at its conclusion, the Court considered the following facts of relevance: (1) that notwithstanding that the employer's main office was located in the District of Columbia during the period of the claimant's employment, its business was internationally oriented with a focus on staffing projects in other parts of the world, thus in the Court's estimation rendering the employer's relationship to the District a "matter of convenience"; (2) that although the claimant had worked in the employer's D.C. office for several years before being assigned to work abroad,[6] at the time of his injury the claimant was based in the foreign country to which he had been assigned and was performing the principal service for which he had been hired; (3) that "his personal ties during his employment with ACDI were more significant" in Virginia and California, where he maintained his personal residences, than in the District; and (4) that upon his return from the foreign country where he had been working, he could have filed for workers' compensation benefits in California where he then resided. 921 A.2d at 794.

Consistent with the foregoing, yet adding an additional legal refinement applicable to the instant case, is *Pro-Football, Inc. v. D.C. Dept. of Employment Services*, 588 A.2d 275 (D.C. 1991), and the Director's decision that followed as a result of the Court's remand therein, *Stuart Anderson v. Pro-Football, Inc.*, Dir. Dkt. No. 88-55, H&AS No. 87-301 (March 3, 1995). Read together, the Court's ruling and the Director's decision upon remand stand for the legal principle that the employment relationship of a professional athlete employed to perform his or her principal services in the District will be deemed to be principally localized in the District under prong one of the *Hughes* test (*i.e*. the place "at which . . . the employee performs the principal service for which he was hired") if, at the time of the player's injury outside the District he is either actually performing in the District the principal services for which he was hired or such performance is contemplated, even though those services constitute but a minority of the player's total employment-related time. As the Court explained, "In the final analysis, professional athletes are entertainers. Just as an actor's rehearsals are ancillary to his performance on the stage, so a professional athlete's practice is merely preparatory to the game." 588 A.2d at 279.

Presented in *Pro-Football* were the claims of fourteen former Washington Redskins professional football players resulting from injuries sustained by the players in the course of their employment in practice exercises outside the District. The Court distinguished the claims of ten of the players who had actually played regular season NFL football games in the District from four who had never played a game at RFK Stadium nor otherwise performed services for the employer in the District, holding that the employment relationship of the ten was properly considered to be principally localized in the District. Cited was the fact that the principal service for which the claimants had been hired was to play in regularly scheduled NFL football games, with more of the games played for the Redskins in the District than elsewhere, and that although a majority of their employment time was spent in practice outside the District, nevertheless the time each player spent in practice

[6] Prior to his transfer to the Republic of Georgia the end of 1995, Mr. Furtick had worked for the employer in its Washington, D.C. office a number of years. *See* 921 A.2d at 788..

was "merely preparatory to the performance of his principal service" which in fact was performed in the District. 588 A.2d at 278. Thus, the Court had "no difficulty in concluding that, with respect to the claimants who have played for the Redskins at RKF Stadium, the Director's decision [invoking coverage] must be sustained." *Id*. As to the four claimants who had never played a game at RFK, nor performed any other services for the Redskins in the District, the Court found that they did "not fall within the literal language of the first prong of *Hughes* if that prong is construed as focusing strictly on actual performance." 588 A.2d at 279. However, because the Court was of the opinion that the word "performs" in the first prong of the *Hughes* test might embrace "contemplated performance" as well as actual performance, but because this issue had not been previously addressed, the Court remanded the case of the four players who were unable to establish actual performance in the District to DOES for clarification of this question.

Upon remand, the Director held that the first prong of the *Hughes* test "encompasses contemplated performance of principal services as well as actual performance." *Stuart Anderson v. Pro-Football, Inc.*, Dir. Dkt. No. 88-55, H&AS No. 87-301 (March 3, 1995). The Director emphasized the importance of the fact that the principal service for which these players were hired was to play in regularly scheduled revenue generating National Football League (NFL) games, a majority of which were contemplated to be played in the District. Thus, the Director viewed, as had the Court, the practices and training sessions outside the District where the players were injured as merely preparatory to the performance of a player's principal service. In the Director's view, the only difference between these four claimants and the other players was that they had suffered injuries before they were able to perform the principal service for which they were hired, but that this distinction did not alter or affect the factors that establish that the employment relationship was principally located in the District. As the Director stated, "The place where the employment relationship is principally localized does not change, whether or not one of employer's players has, in fact, played at RFK Stadium or was injured before he had the opportunity to perform at RFK. Since the principal service for which these football players was hired is to play in revenue generating regular season games, the fact does not change simply because a player was injured while engaging in preparatory acts (training and practice sessions) before he could actually perform the service for which he was hired. These four players were under contract to perform principal services in the District and that is where the employment relationship is principally localized, as employer plays far more of its regular season games in the District than in any other jurisdiction." *Anderson*, slip op. at pp. 6-7.

Applying the foregoing legal principles to the instant case, a determination is required as to the nature of Respondent's employment relationship with the District at the time of his injury, and whether that relationship constitutes a set of substantial and legitimate contacts with the District more significant here than elsewhere. Among the findings of fact that must necessarily be made in order to make this determination, which findings are not within the jurisdiction or authority of this Review Panel to perform, *see Rovinski v. American Combustion Industries*, CRB No. 07-91, AHD No. 06-341 (June 5, 2007), should address the following: What is the nature and purpose of Petitioner's business within the District? What was/were the principle service(s) for which Respondent was hired? Whether Respondent's principle service(s) was/were to be performed in the District, or elsewhere? Were the principle service(s) for which Respondent was hired being performed at Petitioner's business facilities in the District at the time of his injury, even though but a minority of Respondent's total employment-related time? Whether, at the time of his injury,

Respondent was performing outside the District the principle service(s) for which he had been hired? If at the time of his injury Respondent was not performing the principle service(s) for which he had been hired, was it nevertheless contemplated that he would perform those services in the District? Whether Respondent enjoys significant non-work related contacts with the District, as opposed to elsewhere? The Compensation Order reveals a limited number of express findings of fact relevant to the issue of jurisdictional coverage.[7] However, these findings of fact do not adequately address the findings of material fact upon which a determination of the legal question of coverage in the instant case must be based.[8]

Additionally, in addressing the foregoing the ALJ should also determine whether, in assessing Respondent's employment relationship at the time of his injury, the whole of Respondent's two-year contract period should be taken into consideration, or whether the nature and purpose of Respondent's employment services changed in any fundamental way such that a lesser period than the two years of his contract should more appropriately be considered. *See Furtick, supra* (notwithstanding that Furtick began work for his employer in 1992 and thereafter "spent years at ACDI's office in the District before accepting the assignment . . . to the Republic of Georgia" pursuant to a new contract signed in January of 1996, *Id*. at 788, it was only the period of Furtick's employment history subsequent to his assignment overseas that the Court considered relevant to the assessment of the nature and purpose of his employment). *See also, Stewart v. Schindler Elevator Corp*., CRB No. 07-135, AHD No. 07-161 (Sept. 20, 2007) (wherein the CRB, in upholding the ALJ's determination that an employee's employment at the time of injury was not principally localized in the District, refused to enunciate a conclusive time period for determining the location of the employment relationship in the absence of evidence that the employee's geographical reassignment prior to her work injury represented some permanent fundamental change in the character of the employee's employment).

Finally, should a determination pursuant to the foregoing legal principles be made upon remand that Respondent's employment is localized principally in the District, the ALJ must further determine whether any of the exceptions set forth at subsections (a-1) through (a)(3) apply before concluding that there is jurisdictional coverage of Respondent's claim under the Act.

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[7] *I.e.*, (1) that Respondent is a professional hockey player; (2) that Petitioner and Respondent entered into a "two way contract" in 1999 for a two year period [although the significance of a "two way" contract is not explained]; (3) that during the course of the 1999-2000 hockey season (the first year of the contract), Respondent participated in preseason practice with the Washington Capitals at Petitioner's Maryland training facility and played in seven games with the Capitals [although there is no indication where these games were played or if any were played in the District]; that thereafter Respondent was assigned to Petitioner's minor league affiliate, the Portland Pirates, an American Hockey League team, where he "played in more than 50 games" [although there is no indication over what period of time these 50 games were played]; (5) that Respondent returned briefly to the Capitals at the end of the first season for the playoffs, although he did not suit up and play in the playoff games; (6) that during the 2000-2001 season, Respondent participated in training camp at Petitioner's Maryland facilities, but was again assigned by Petitioner to play with the Pirates before the start of the 2000-2001 season; and (7) that Respondent was injured on October 13, 2000 while playing in a regular season game in Quebec, Canada for the Portland Pirates, and that he has not played professional hockey since. Comp Order at pp. 2-4.

[8] It is noted that in addition to the ALJ's express findings of fact, the "discussion" portion of the Compensation Order contains additional relevant information. *See* Comp Order at p. 5 *et seq*. However, these discussion statements, a number of which are simply accounts of the parties' respective testimony, are not accorded the same significance upon appellate review as are the express findings of fact set forth within the Compensation Order.

Petitioner's second challenge to the Compensation Order focuses upon the finding by the ALJ that Respondent's disability arose out of and in the course of his employment based upon the determination that Petitioner failed to present evidence sufficient to rebut Respondent's invocation of the Act's presumption of causality. Because the Compensation Order herein appealed is vacated and the case remanded to the Administrative Hearings Division for reassessment of the threshold issue of jurisdiction, it is not necessary that we reach this or the other issue raised by Petitioner on appeal. Nevertheless, because the Compensation Order is vacated, thus requiring reconsideration upon remand of the entirety of Respondent's claim should the ALJ conclude that jurisdiction exists under the Act, for the sake of judicial economy and in the hope of avoiding needless further appeal, we afford the ALJ the following legal principles applicable to the issue of causation, as well as the third issue raised by the instant appeal.

As the ALJ noted in the Compensation Order, the Act affords the claimant a statutory presumption of compensability based upon a minimal showing by the claimant. *See Ferreira v. D.C. Dept. of Employment Services*, 531 A.2d 651, 655 (D.C. 1987). Where that showing is made, and the Act's presumption thereby invoked, "the burden of production shifts to the employer to set forth 'substantial evidence' showing that the death or disability is not work-related." *Parodi v. D.C. Dept. of Employment Services*, 560 A.2d 524, 526 (D.C. 1989). To rebut the Act's presumption once invoked, it is not necessary that the employer disprove causality with absolute certainty, "an employer [need] only offer 'substantial evidence'." *Washington Hospital Center v. D.C. Dep't. of Employment Servs.*, 744 A.2d 992, 1000 (D.C. 2000). "Substantial evidence," the Court has noted, "is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Dell v. D.C. Dep't. of Employment Services*, 499 A.2d 102, 108 (D.C. 1985). Other than stating that "substantial evidence" means "more than a mere scintilla," the Court of Appeals has not established a precise quantum of proof required to meet this "substantial evidence" threshold. However, in *Safeway Stores, Inc. v. D.C. Dep't. of Employment Servs.*, 806 A.2d 1214 (D.C. 2002), the Court has indicated that the statutory presumption "is not so strong as to require the employer to prove causation is impossible in order to rebut it." *Id*. at 1220.

Only in the absence of employer evidence "specific and comprehensive enough to sever the potential connection between a particular injury and a job-related event" will the compensation claim be deemed to presumptively fall within the purview of the statute. *Parodi, supra*, 560 A.2d at 526. Where, however, the employer successfully rebuts the claimant's invocation of the Act's presumption, the evidence of both parties in support of and in opposition to causation is to be weighed by the ALJ. At this juncture, the claimant must prove by a preponderance of the evidence, with any presumptive benefit, that his or her disability arose out of and in the course of the employment. *See, Miller v. D.C. Water & Sewer Authority*, CRB No. 07-114, AHD No. 05-291 (July 31, 2007).

The final issue raised on appeal raises the question of whether Respondent's awarded benefits should terminate upon conclusion of his expected professional hockey career pursuant to D.C. Official Code § 32-1508(3)(W). In 1999 the Act was amended by the City Council to add Sections 32-1508(3)(W) and 32-1501(17C) by which disability wage loss benefits to which a professional athlete is entitled are to be limited by the athlete's career expectancy. Section 1508(3)(W) provides:

> The compensation and remuneration payable to a professional athlete claimant pursuant to subparagraph (V)(ii) of this paragraph shall be determined by referring to the date of the claimant's disability and a date that is not later than the date on which the claimant's employment as a professional athlete would have ended, as determined pursuant to § 32-1501(17C), if the disability for which he or she seeks compensation and remuneration pursuant to subparagraph (V)(ii) of this paragraph had not occurred.

Section 1501(17C) in turn provides:

> 'Professional athlete's work life expectancy' means the work life expectancy of a professional athlete that is determined separately for each professional sports franchise in the District by the Office of Workers' Compensation through its rulemaking authority.

Based upon these provisions, Petitioner asserts that any award of permanent partial disability benefits should be limited to the two-year period of Respondent's contract. Notwithstanding the lack of OWC rule-making pursuant to § 32-1501(17C), Petitioner argues that the Department may exercise its adjudicative power to implement the "clear intent of the Act" and limit the award of disability benefits for only as long as Respondent's career as a professional athlete would have lasted. Petitioner's Memorandum of Points and Authorities, pg. 26. Respondent argues, on the other hand, that because the Office of Workers' Compensation has not adopted rules determining "work life expectancy" for any of the professional sports franchises located in the District, including professional hockey, the foregoing provisions are inapplicable to the instant case. Accordingly, Respondent asserts, any limitation imposed upon Respondent's entitlement to wage loss benefits should be determined based solely on Respondent's actual wage loss during the continuance of his disability.

The Compensation Order herein appealed states that Petitioner "shall pay temporary partial disability beginning August 1, 2001 for the duration of Claimant's [Respondent's] work life expectancy as [a] professional hockey player", CO at 14, but nevertheless effectively awarded such benefits indefinitely, having granted Respondent's claim for relief in its entirety. CO at 15. Upon remand, should the ALJ conclude that Respondent is entitled to wage loss disability benefits, the ALJ should clearly establish whether or not the award is to be limited to Respondent's "work life expectancy" as a professional athlete, and why.

CONCLUSION

The determination that the jurisdictional coverage provisions of D.C. Official Code § 32-1503(a)(2) have been met, as set forth in the Compensation Order of September 7, 2007 herein appealed, is not supported by substantial evidence in the record and is not in accordance with applicable law.

ORDER

The Compensation Order of September 7, 2007, herein appealed, is VACATED. The case is remanded to AHD for further proceedings consistent with this Decision and Remand Order as the ALJ upon remand deems warranted, including if necessary further evidentiary proceedings.

FOR THE COMPENSATION REVIEW BOARD:

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E. COOPER BROWN
Chief Administrative Appeals Judge

___December 19, 2007_____
DATE