

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Department of Employment Services  
Labor Standards Bureau

Office of Hearings and Adjudication  
COMPENSATION REVIEW BOARD



(202) 671-1394-Voice  
(202) 673-6402 - Fax

CRB No. 07-53

JOHN H. DOUGLAS, JR.,

Claimant - Petitioner

v.

UPS AND LIBERTY MUTUAL INSURANCE,

Employer/Carrier - Respondent

Appeal from a Compensation Order of  
Administrative Law Judge Reva M. Brown  
AHD No. 06-212, OWC No. 617374

Heather C. Leslie, Esquire for the Petitioner

Donald P. Maiberger, Esquire for the Respondent

Before LINDA F. JORY, JEFFREY P. RUSSELL and FLOYD LEWIS, *Administrative Appeals Judges*.

LINDA F. JORY, *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>.

---

<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 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. Official Code §§ 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 January 31, 2007, the Administrative Law Judge (ALJ) granted Claimant-Petitioner's (Petitioner) claim for temporary total disability relief should be denied but his claim for causally related medical benefits was granted as the ALJ concluded Petitioner had not provided Employer-Respondent (Respondent) with timely notice of a work related injury.

Petitioner's Application for Review alleges as grounds for its appeal that the ALJ's decision is inconsistent with the substantial evidence in the record and the law applicable thereto and should be vacated. Respondent has filed a response asserting the ALJ's finding that Petitioner failed to provide adequate notice is supported by substantial evidence and is in accordance with the law.

## ANALYSIS

As an initial matter, the scope of review by the Compensation Review Board (CRB) and this Review Panel (hereafter, the 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 scope of review, the CRB and this panel are bound 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 initially asserts the ALJ committed error by denying his motion to compel discovery, specifically Petitioner's personnel file kept by Respondent as Petitioner asserts that this file could have information regarding timely notice and reporting of an accident.

Review of the hearing transcript reveals the ALJ explained on the record why he had denied Petitioner's Motion to Compel, primarily because Petitioner's Motion was filed on June 12, 2006 despite the fact that the scheduling order indicated that discovery would close on May 17, 2006. The Panel agrees with Respondent that the ALJ was well within his discretion to deny the Motion to Compel.

Petitioner asserts the denial of this motion as well as his Motion to have the ALJ recuse himself was in error and highly prejudicial to the claimant's ability to prove his case.<sup>2</sup> Petitioner asserts that the ALJ issued an advisory opinion which according to Petitioner establishes that the ALJ has pre-judged cases in which the firm in which Petitioner's counsel is a member represents the injured worker.

The Panel notes that the ALJ who heard the instant matter and who Petitioner moved to recuse himself no longer is employed by DOES, and did not issue a Compensation Order prior to his termination. Accordingly, AHD issued an Order to Show Cause to the parties to give the parties an opportunity to show cause why the matter should not be assigned to another ALJ. Both parties responded that they had no objection to the reassignment to another ALJ as long as the matter was not predicated on a finding of credibility and neither party moved to have the matter reheard by a new ALJ.

The Panel concludes that any allegation of a lack of impartiality could have been rectified by having the matter reheard. However, Petitioner did not utilize the opportunity afforded him to have the matter re-heard by another ALJ which could also have remedied the alleged evidentiary issue Petitioner raised. Accordingly, the Panel must find these allegations moot as the matter was decided by a new ALJ and the "form letter" previously discussed was in fact admitted into the record by the initial ALJ. *See* HT at 10,11.

Likewise, Petitioners' third and fourth assertions respectively, that the ALJ displayed material bias and prejudice against injured workers; and that the original ALJ's bias extends beyond the four corners of the courtroom and is personal not judicial in nature are moot given that the ALJ is no longer employed in AHD and that the matter was in fact not decided by this ALJ.

Lastly, Petitioner asserts that he did give timely notice to Respondent of a work related injury contrary to the re-assigned ALJ's conclusion in the Compensation Order. Specifically, Petitioner asserts that he gave actual notice of his injury on the date of the injury by using a DIAD board and also by calling Respondent. Petitioner asserts that Respondent's evidence of testimony of several of its employees specifically Jim Hale, and Debbie Thomas was not sufficient to rebut Petitioner's testimony as according to Petitioner these two employees testified that they could not remember with specificity what conversations they had with him that day.

Contrary to Petitioner's allegation on appeal, Respondent did not call Debbie Thomas as its witness nor did counsel for Respondent ask any questions of Thomas. Secondly, under direct examination from counsel for Petitioner, Thomas testified only that she did not remember receiving any messages from Petitioner on February 15, 2005 the date of the alleged injury<sup>3</sup>.

---

<sup>2</sup> The basis of Petitioner's Motion to Recuse is based upon Petitioner's allegation that the ALJ attended a meeting held by the defense bar to discuss workers' compensation cases. Specifically, Petitioner alleges that the ALJ discussed the admissibility of Petitioner's law firm's "fill in the blank forms" routinely relied upon by counsel in presenting medical opinions in workers' compensation cases. According to Petitioner, the ALJ "offered the advisory opinion that he would sustain any objection to the admissibility of these forms in any case he tried".

<sup>3</sup> The Panel notes also that counsel for Petitioner followed up this question asking Thomas if she remember anything about January 14<sup>th</sup> and January 15<sup>th</sup>, however it is unclear from review of the record why these two dates were chosen.

Respondent did call Jim Hale, Petitioner's supervisor, as a witness on its behalf. Mr. Hale testified he did not have any conversation with Petitioner concerning the happening of any accident or injury that occurred in 2005 and further testified the he did not receive a report of injury from petitioner. HT at 118, 119<sup>4</sup>.

Respondent also submitted the testimony of Jim Harris, business manager who Petitioner claimed was in the office with his supervisor when he reported the injury. Mr. Harris also denied having a conversation with Petitioner concerning the happening of an accident or incident that took place in February 2005 and that if an injury would have been reported to him he would have followed Respondent's procedures which is to document the injury and "call it in". HT at 126, 127<sup>5</sup>.

In that Petitioner has put forward no other support for his assertion that the ALJ erred in finding Petitioner failed to provide timely notice of his work injury to Respondent, the Panel must affirm the ALJ's conclusion as it is supported by substantial evidence in the record and is in accordance with §32-1513.

#### CONCLUSIONS

The ALJ's conclusion that Petitioner did not provide timely notice to employer is supported by substantial evidence. The Compensation Order of January 31, 2007 is in accordance with the law.

---

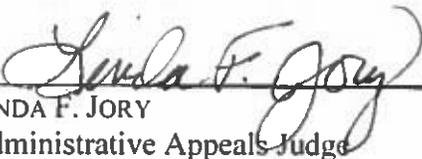
<sup>4</sup> The Panel acknowledges that counsel for Petitioner attempted to suggest to Hale that he could not say with a certainty that Petitioner did not call him however this leading question was withdrawn after objection from counsel for Respondent.

<sup>5</sup> Harris did not elaborate on who he was supposed to call regarding the injury.

**ORDER**

The Compensation Order of January 31, 2007 is hereby **AFFIRMED**.

FOR THE COMPENSATION REVIEW BOARD:

  
\_\_\_\_\_  
LINDA F. JORY  
Administrative Appeals Judge

\_\_\_\_\_  
April 18, 2007  
Date