

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**Department of Employment Services**

MURIEL BOWSER  
MAYOR



DEBORAH A. CARROLL  
DIRECTOR

**COMPENSATION REVIEW BOARD**

**CRB No. 15-030**

**JOHN T. HAMILTON,  
Claimant-Petitioner,**

v.

**MEGA BUS and SPECIALTY RISK SERVICES,  
Employer/Insurer-Respondent.**

Appeal from a January 28, 2015 Compensation Order on Remand by  
Administrative Law Judge Linda F. Jory<sup>1</sup>  
AHD No. 14-084A, OWC No. 708285

DEPT. OF EMPLOYMENT  
SERVICES  
COMPENSATION REVIEW  
BOARD  
2015 JUN 25 PM 12 04

Michael J. Kitzman for Claimant  
Zachary L. Erwin for Employer

Before: JEFFREY P. RUSSELL, HEATHER C. LESLIE, *Administrative Appeals Judge*, and LAWRENCE  
D. TARR, *Chief Administrative Appeals Judge*.

JEFFREY P. RUSSELL, for the Compensation Review Board:

**DECISION AND ORDER**

**FACTS OF RECORD AND PROCEDURAL HISTORY**

Claimant, a resident of Baltimore, Maryland, worked as a bus operator for Employer. Claimant's job duties involved driving a Mega Bus to various cities on the east coast. Claimant would start at Employer's garage in Landover, Maryland and stop in Washington, D.C. at Union Station before proceeding to other cities. On August 12, 2013, Claimant was driving from Union Station to Charlotte, North Carolina when he injured his back while unloading luggage in Richmond, Virginia.

Claimant sought treatment and was unable to work for a period of time due to his work related injury. Claimant returned to work in a light duty position on April 27, 2014.

<sup>1</sup> Judge Jory was an Administrative Law Judge (ALJ) in the Administrative Hearings Division (AHD) of the Department of Employment Services (DOES) at the time the subject Compensation Order was issued. Judge Jory has subsequently re-joined the Compensation Review Board (CRB) as an Administrative Appeals Judge.

An evidentiary hearing occurred on June 1, 2014 before an Administrative Law Judge (ALJ) in the Administrative Hearings Division (AHD) in the Department of Employment Services (DOES). Claimant sought an award of temporary total disability benefits from October 5, 2013 to April 27, 2014, interest on accrued benefits and payment of all casually related medical expenses. The issues raised were whether jurisdiction in the District of Columbia was proper, and the nature and extent of Claimant's disability. A Compensation Order was issued on June 26, 2014 denying the claim for relief. The ALJ determined that jurisdiction was not proper in the District of Columbia, relying on the test enunciated in *Hughes v. DOES*, 498 A.2d 567 (D.C. 1985)(Hughes).

Claimant appealed the Compensation Order to the CRB. Claimant argued that the conclusion that jurisdiction does not vest in the District of Columbia is contrary to *Hughes* and not in accordance with the law. Claimant urged the Compensation Order be vacated and remanded for further consideration.

Employer opposed Claimant's appeal, stating the Compensation Order was supported by substantial evidence in the record and is in accordance with the law.

The CRB rejected Claimant's arguments that the ALJ erred in finding that neither of the first two prongs of the three-prong *Hughes* test had been met, but found that the ALJ had erroneously analyzed the facts under the third prong by considering not the Claimant's "base of operations", but Employer's. The CRB wrote:

Claimant argues that the ALJ erred in applying the *Hughes* test. The ALJ first correctly noted that D.C. Code § 32-1503(a)(2) controlled based upon the facts of the case. This section states,

Except as provided in subsections (a-1) through (a-3) of this section, this chapter shall apply to: (2) The injury or death of an employee that occurs outside the District of Columbia if, at the time of the injury or death, the employment is localized principally in the District of Columbia.

As the ALJ correctly states:

The Director of the Department of Employment Services (the Director) established a three prong test to determine the locality of claimant's employment. This test was adopted by the Court of Appeals in *Hughes v. District of Columbia Department of Employment Services*, 498 A.2d 567 (D.C. 1985) (*Hughes*) and incorporated in the annotations of D.C. Code, as amended §32-1503. Under the *Hughes* test, to determine the location of an employment relationship, the trier of fact must weigh the following factors:

(1) The place of the employer's business office or facility at which or from which the employee performed the principal service for which he was hired or

(2) If there is no such office or facility at which the employee works, the employee's residence, the place where the contract is made and the place of performance, or

(3) If neither (1) nor (2) is applicable, the employee's base of operations.

CO at 3.

The CRB determined that the ALJ properly rejected jurisdiction under the first prong, and although it determined that there was an analytic error in the second prong, the error was deemed harmless. However, the ALJ analyzed the third prong from the perspective of the Employer's base of operation, rather than the Claimant's. The CRB remanded for further consideration, writing:

The above analysis is in error. The third prong of the *Hughes* test is not determined by the Employer's base of operations, as the last paragraph states, but the *Employee's* base of operations, as the ALJ correctly noted at the outset when quoting *Hughes*. As we have stated before, we cannot affirm a CO that reflects "a faulty application of the law." *Washington Metro. Area Transit Auth. v. DOES*, 992 A.2d 1276, 1280 (D.C. 2010) (quoting *Georgetown Univ.*, 971 A.2d at 915)." Such is the case here where the above analysis determines the Employer's base of operations and not the Employee's base of operations, pursuant to *Hughes*. We are forced to remand for further findings of fact and conclusions of law determining where the Employee's base of operations is located, the third prong of the *Hughes* test.

Decision and Remand Order, p. 6.

On January 28, 2014, the ALJ issued a Compensation Order on Remand in which the claim was again denied, based upon the determination that the District of Columbia was not Claimant's "base of operations". Claimant filed an Application for Review and Memorandum of Points and Authorities in support thereof (Claimant's brief). Employer filed an opposition to the appeal, and Memorandum of Points and Authorities in support thereof (Employer's brief).

Because the findings of fact concerning Claimant's base of operations are uncontested and are supported by substantial evidence, and because the conclusion that Claimant's base of operations is in Landover, Maryland flows rationally from those facts, we affirm the Compensation Order on Remand.

## ANALYSIS

The scope of review by the CRB is limited to making a determination as to whether the factual findings of the appealed 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. Code § 32-1521.01 (d)(1)(A). Consistent with this standard of review, the CRB is constrained to uphold a Compensation Order 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 different conclusion. *Marriott International v. DOES*, 834 A.2d 882, 885 (D.C. 2003).

The Compensation Order on Remand dealt with a single issue. The CRB having previously affirmed the ALJ's findings that the facts of this case do not comport with either of the first two prongs of the *Hughes* test, the only issue addressed in the Compensation Order on Remand was whether the facts support a finding of jurisdiction under the third prong, being whether Claimant's base of operations was in the District of Columbia, or in some other jurisdiction.<sup>2</sup>

The ALJ found that Claimant began each workday at Employer's Landover, Maryland bus depot; provided documentation at that location to allow him to operate a bus, and was assigned a bus and a route. He performed a "pre-trip" on the bus, then departed for Union Station in the District of Columbia, which was his first pick-up point for passengers. Thereafter he proceeded on his route to drop off and pick up additional passengers outside the District of Columbia, depending upon the route, in Virginia, Tennessee, Maryland, North Carolina, Pennsylvania, New Jersey and New York. These facts led the ALJ to conclude that Claimant's base of operations was not in the District of Columbia, but rather, was in Landover, Maryland.

Claimant argues that under *Shipkey v. DOES*, 955 A.2d 718 (D.C. 2008), Claimant should be found to have his base of operations at Union Station. We disagree.

Mr. Shipkey worked as a plumber for the Washington Metropolitan Area Transit Authority. He reported to work in Maryland every day, but was then dispatched to work in the District of Columbia, Maryland or Virginia. The court reversed the CRB's affirmance of the ALJ's analyzing the case under the third prong of *Hughes*, finding that the record compelled a conclusion that Mr. Shipkey's employment met the first prong, based upon an analysis of the number of hours that he spent in the three jurisdictions while performing his plumbing duties. Unlike Mr. Shipkey, Claimant clearly spent fewer hours in the District of Columbia than anywhere else while driving his long distance, out of state routes.

More importantly, the court in *Shipkey* was considering the first prong of the *Hughes* test, not the third. Nothing in that case sheds any light upon where a claimant's base of operations is to be found, assuming such an inquiry is needed. *Shipkey's* diminishment of the importance of

---

<sup>2</sup> Claimant reiterates in this appeal that he does not agree with the CRB's affirmance of the findings and conclusions regarding the first two prongs of the *Hughes* test, but presents no additional argument beyond preserving the arguments raised in the prior appeal by reference, and citing a case, *Shipkey, supra*, which explores the applicability of the first prong.

regularity of Mr. Shipkey's preliminary activities as opposed to the performance of the essential job functions, quoted and relied upon in Claimant's brief, only has logical force where, as in that case, the first prong is at issue.

And we note further that, in *Shipkey*, the court wrote in footnote 7, at 725:

See *Guglielme v. U.S. Air*, H&AS No. 87-424 (Dec. 8, 1987) (applied third prong of Hughes test to flight attendants because there was no employer facility where they performed their principal service for which they were hired, which would be their work during flights, and the place of performance was during flight, which crossed state borders).

Although *Guglielme* is a case from the hearings division which was not appealed to the Director, it was cited by the CRB as being persuasive in the original *Shipkey* CRB decision. While the court ultimately reversed the CRB, it nonetheless referred to *Guglielme* with apparent approval in the above quoted footnote. As in that case, there is no evidence of the existence of an Employer operated facility in the District of Columbia from which Mega Bus based its operations, and thus there is no evidence in the record that Claimant's base of operations was located there. The only evidence is that Mr. Hamilton would drive to Union Station and pull into a bus bay which, absent any further evidence, one must assume to be owned by Union Station.

The ALJ found that Claimant reported to Employer's bus depot in Maryland at the commencement of every business day, and engaged in a series of significant and mandatory administrative and technical tasks before being assigned to a bus route and provided with a bus, and that the job required that Claimant take possession of that bus in Maryland. Only then did he proceed to Union Station, from which he would depart to other pick up and drop off points in Maryland, Virginia and points north or south. The ALJ's assessment that the Landover depot constitutes Claimant's base of operations is logical and reasoned, the facts are not disputed, and the conclusion that this Mega Bus driver's base of operations is Landover, Maryland flows rationally from those facts.

#### CONCLUSION AND ORDER

The facts as found by the ALJ are supported by substantial evidence, and the determination that Claimant's base of operation is Landover, Maryland is in accordance with the law. The Compensation Order on Remand is affirmed.

FOR THE COMPENSATION REVIEW BOARD:

  
\_\_\_\_\_  
JEFFREY P. RUSSELL  
*Administrative Appeals Judge*

\_\_\_\_\_  
June 25, 2015  
DATE