

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



F. THOMAS LUPARELLO
ACTING DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 14-019

**JOHN WHIPPS,
Claimant-Petitioner,**

v.

**DOMINION MECHANICAL CONSTRUCTION INC.,
and ERIE INSURANCE EXCHANGE,
Employer/Insurer-Respondent.**

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2014 JUN 24 AM 10 20

Appeal from a January 29, 2014 Compensation Order on Second Remand by
Administrative Law Judge Leslie A. Meek
AHD No. 12-085, OWC No. 672696

Michael J. Kitzman for the Petitioner
Cheryl D. Hale for the Respondent

Before: JEFFREY P. RUSSELL, HEATHER C. LESLIE, and MELISSA LIN JONES, *Administrative Appeals Judges.*

JEFFREY P. RUSSELL for the Compensation Review Board

DECISION AND ORDER

**STANDARD OF REVIEW, FACTS OF RECORD
AND BACKGROUND AND DISCUSSION**

The scope of review by the Compensation Review Board (CRB) is limited to making a determination as to whether the factual findings contained in the Compensation Order under review are based upon substantial evidence in the record, and whether the legal conclusions drawn from those facts flow rationally therefrom and are in accordance with the law. *See* D.C. Code § 32-1521.01 (d)(2)(A). Consistent with this standard of review, the CRB and this review

panel are constrained to uphold a Compensation Order that is supported by substantial evidence¹, even if there is substantial evidence which supports a contrary conclusion, and even where the reviewing authority might have reached a contrary conclusion. *Marriott International v. DOES*, 834 A.2d 882 (D.C. 2003), at 885.

Claimant and Petitioner John Whipps sustained injuries while employed as a steam fitter working for Employer and Respondent Dominion Mechanical Construction Company. Claimant sought an award of temporary total disability benefits for the period October 11, 2010 through November 22, 2010, and awards for the 25% permanent partial disability to each leg under the schedule at a formal hearing conducted before an Administrative Law Judge (ALJ) in the Administrative Hearings Division (AHD) of the Department of Employment Services (DOES). The formal hearing was held on April 12, 2012, following which the ALJ issued a Compensation Order on June 22, 2012 (CO 1). In CO 1, the claims were denied.

Claimant appealed the denial to the Compensation Review Board (CRB) which issued a Decision and Remand Order on October 10, 2012 (DRO 1). In DRO 1, the CRB remanded for reconsideration of the denials of both claims.

On February 8, 2013, the ALJ issued a Compensation Order on Remand (CO 2), again denying both claims. Claimant appealed CO 2 to the CRB, which on August 1, 2013 issued a second Decision and Remand Order (DRO 2). In DRO 2, the CRB affirmed the denial of the schedule awards, and vacated the denial of the temporary total disability claim. The CRB remanded the matter to AHD with instructions to enter an award for the temporary total disability claim.

On January 29, 2014, the ALJ issued Compensation Order on Second Remand (CO 3), in which the ALJ repeated the denial of the schedule claims (which were in fact not before AHD) and further made the award of temporary total disability as directed in DRO 2.

On February 27, 2014, Claimant appealed CO 3 to the CRB, asserting the same grounds for the appeal as had been asserted in the prior appeals. On March 14, 2014, Employer filed an opposition to the appeal. It is that appeal that is now before us.

Regarding the schedule award claim, the ALJ's decision on that claim was affirmed by the CRB in DRO 2. The issue was not remanded to AHD, and hence was not before the ALJ. Accordingly, that determination is not before the CRB.

Regarding the temporary total disability claim, the issue was returned to AHD for the sole purpose of having the ALJ award the claim. The ALJ did as instructed. Accordingly, for the reasons set forth on August 1, 2013 in DRO 2, the award of Claimant's claim for temporary total disability is affirmed.

¹ "Substantial evidence" is such evidence as a reasonable person might accept to support a particular relevant conclusion. *Marriott, supra*.

CONCLUSION AND ORDER

For the reasons set forth in the Decision and Remand Orders of October 10, 2012 and August 1, 2013, the Compensation Order of January 29, 2014 is affirmed.

FOR THE COMPENSATION REVIEW BOARD:



JEFFREY P. RUSSELL
Administrative Appeals Judge

June 24 , 2014

DATE