

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

Department of Employment Services

VINCENT C. GRAY  
MAYOR



LISA MARÍA MALLORY  
DIRECTOR

**COMPENSATION REVIEW BOARD**

**CRB No. 13-122**

**DEBRA JOHNSON,  
Claimant-Respondent,**

**v.**

**DISTRICT OF COLUMBIA PUBLIC SCHOOLS,  
Employer-Petitioner.**

Appeal of a September 10, 2013 Compensation Order issued by  
Administrative Law Judge Leslie A. Meek  
AHD No. PBL 13-003, DCP No. 30120857519-001

Kevin J. Turner for Employer-Petitioner  
Richard Daniels for Claimant-Respondent<sup>1</sup>

Before LAWRENCE D. TARR, *Chief Administrative Appeals Judge*, MELISSA LIN JONES and  
HEATHER C. LESLIE, *Administrative Appeals Judges*.

LAWRENCE D. TARR for the Compensation Review Board.

**DECISION AND REMAND ORDER**

**FACTS OF RECORD AND PROCEDURAL HISTORY**

On August 20, 2012, Debra Johnson (Claimant) was employed as a teacher by the District of Columbia Public Schools (Employer). On that date, Claimant alleges she sustained a compensable workers' compensation injury that disabled her from August 20, 2012 to the present and continuing. Employer denied the claim, primarily defending on the grounds that the accident did not happen, that the claimant did not give timely notice, and that her current medical condition is not causally related to the alleged work incident.

After a full evidentiary hearing, an Administrative Law Judge (ALJ) issued a Second Errata Compensation Order (CO) in which she found Claimant sustained a compensable accident as alleged but that Claimant only was disabled from August 20, 2012 to December 8, 2012.

---

<sup>1</sup> Mr. Daniels represented the claimant at the formal hearing.

At the formal hearing, there were three witnesses, Claimant and two witnesses called by Employer, Lionel Jenkins and Erik Griffin.

Claimant testified that she aggravated her pre-existing back condition on August 20, 2012, the first day of the 2012-2013 school year, after she pulled a computer bag up stairs and rearranged the furniture in her classroom.

The CO contains a concise summary Claimant's testimony in the Discussion section:

At hearing Claimant testified, she injured her back at work previously in 2003. She stated she was paid wage replacement benefits and her injuries resolved. (TR p. 29). She testified, on August 20, 2012, she carried her computer bag up her school's stairs to her classroom, as the elevator was broken. She states the computer bag weighed 15-20 pounds. Claimant testified she further injured her back as she prepared her classroom for the first day of school, by moving chairs and desks and stretching above her head to decorate her bulletin board. (TR pp. 30-31).

CO at 4.

Mr. Jenkins testified that he arranged the desks and chairs in Claimant's classroom on August 20, 2012 and Claimant did not tell him she had moved any furniture. HT at 87-88. Mr. Griffin testified that he assisted Mr. Jenkins in arranging the furniture in Claimant's classroom that day. HT at 95-96.

Other than identifying Mr. Jenkins and Mr. Griffin in the introductory Statement of the Case, the CO does not identify the substance of their testimony nor does it contain any general or specific credibility determinations regarding their testimony.

In the CO, the ALJ held the claimant injured her pre-existing back condition on August 20, 2012, that she gave timely notice, that her injuries were causally related to the work events of August 20, 2012, but that the claimant was not continuously disabled since then but only was temporarily totally disabled from August 23, 2012 to December 8, 2012.

Only the employer has appealed the ALJ's decision and it only has appealed that part of the decision that found the claimant's injuries resulted from a work-related accident. The employer alleges that the CO is not supported by substantial evidence because the "factual findings contained in the CO are materially inconsistent with one another." No opposition was filed by the claimant.

#### DISCUSSION

At the formal hearing, the employer contested the claimant's allegation that she sustained an injury by accident at work. Claimant testified as to how she was injured. No witnesses were

called to corroborate her testimony. In the CO, the ALJ twice stated the claimant was not a credible witness:

At page 2, the ALJ found:

I also find Claimant's testimony lacked credibility based on the consistency of her testimony, its consistency with the other credible evidence of record, and her appearance and demeanor at the formal hearing.

At page 7, the ALJ again stated she found the claimant was not a credible witness:

While Claimant's testimony is not credible, the record evidence shows she was temporarily totally disabled from working during the period of August 23, 2012 to December 8, 2012.

Although the ALJ stated she did not find the claimant's testimony credible, the ALJ inconsistently held the claimant sustained an accidental work injury.

While it is well settled that an ALJ is not required to inventory the evidence and explain in detail why a particular part of it is accepted or rejected, it is equally well settled that the CRB must remand a CO where the conclusions of law do not follow rationally from factual findings. Moreover, where an ALJ fails to make express findings on all contested issues of material fact, the CRB can not "fill the gap" by making its own findings from the record but must remand the case to permit the ALJ to make the necessary findings. *King v. DOES*, 742 A.2d 460, 465 (D.C. 1999).<sup>2</sup>

While the ALJ might have had a valid reason for saying Claimant was not credible but accepting her testimony over that of Jenkins and Griffin, the CO does not contain any explanation or discussion reconciling these incompatible findings. Therefore, the conclusion that Claimant sustained a compensable accident at work does not flow rationally from the ALJ's finding that Claimant's testimony was not credible.

The CRB must remand this case so that the ALJ can fill in the gap and explain or alter her decision to resolve the inconsistency in the decision.

There also is a second, independent reason why the CRB cannot affirm the CO.

In reaching her decision, the ALJ, relying decisions from the Employees' Compensation Appeals Board (ECAB) and the DOES Director, stated Claimant's burden of proof as follows:

It is well settled that when a claimant has the burden of proving that his/her injuries are causally related to his/her employment, he/she must do so by producing substantial evidence. *Will-Rice v. DOES*, ECAB No. 88037 (May 31,

---

<sup>2</sup> The employer has not identified any authority for its assertion at page 3, footnote 1 of its Memorandum that the District of Columbia Administrative Procedures Act (DCAPA) does not apply to the Compensation Order. The DCAPA applies to the CO.

1991). Substantive (sic) evidence has been defined as more than a mere scintilla of evidence, but such evidence a reasonable mind might accept as adequate to support a conclusion. *Roach v. Solar United Technologies*, H&S No. 90-138 (March 3, 1991).

CO at 4.

Although the Employees' Compensation Appeals Board and the DOES Director no longer have direct appellate authority over workers' compensation claims, their decisions may be persuasive unless they are inconsistent with decisions by the District of Columbia Court of Appeals (DCCA) or the CRB.

The DCCA repeatedly has held a claimant must prove entitlement to disability benefits by a preponderance of the evidence. The following holding from the DCCA's 2008 *McCamey* decision is representative of the correct legal standard that must be applied:

In workers' compensation cases where, as here, there is no presumption of compensability, the burden of proof "falls on the claimant to show by a preponderance of the evidence that his or her disability was caused by a work-related injury."

*McCamey v. DOES*, 947 A.2d 1191, 1199 n.6 (D.C. 2008) (en banc) (citing *Washington Hospital Center. v. DOES and Callier, Intervenor*, 744 A. 2d 992 (D.C. 2000)).<sup>3</sup>

Therefore, on remand the ALJ should analyze the evidence in accordance with this burden of proof.<sup>4</sup>

#### CONCLUSION AND ORDER

For the reasons stated, the September 10, 2013 CO is not supported by substantial evidence in the record nor is it in accordance with the applicable law. The Award in that CO is VACATED and this case remanded to AHD for further proceedings consistent with this Decision and Remand Order.

FOR THE COMPENSATION REVIEW BOARD:

---

LAWRENCE D. TARR  
*Chief Administrative Appeals Judge*

---

<sup>3</sup> Merely presenting 'substantial evidence' to support a claim is not necessarily enough to carry the burden of persuading the finder of fact. *Washington Metropolitan Area Transit Authority v. DOES*, 992 A.2d 1276, 1282 (D.C. 2010).

<sup>4</sup> Because the issue has not been appealed by either party, the CRB neither endorses nor rejects the ALJ's determination that a claimant may not receive temporary total disability benefits because a claimant has certified for unemployment benefits that she is ready, willing and able to work.

January 24, 2014  
DATE