

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA MARÍA MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 12-027

**EARL JONES,
Claimant–Respondent,**

v.

**WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY and CAMBRIDGE SOLUTIONS,
Employer/Carrier–Petitioner.**

Appeal from a February 17, 2011 Compensation Order on Remand by
Administrative Law Judge Joan E. Knight
AHD No. 09-318, OWC No. 648010

Donna Henderson, Esquire for Petitioner
Michael Kitzman, Esquire for Respondent

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

MELISSA LIN JONES, *Administrative Appeals Judge*, for the Compensation Review Board.

DECISION AND REMAND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

On February 26, 2008, Mr. Earl Jones injured his right knee when he struck it on a fare-box keypad. Conservative treatment was unsuccessful, and on December 12, 2008, Mr. Jones underwent arthroscopic surgery.

Washington Metropolitan Area Transit Authority (“WMATA”) voluntarily paid Mr. Jones temporary total disability benefits from February 27, 2008 to April 13, 2008 and from December 18, 2008 to March 8, 2009. Mr. Jones applied for a formal hearing to request additional temporary total disability benefits from April 15, 2008 to December 16, 2008 and from March 10, 2009 to the date of the formal hearing and continuing.

Following a formal hearing, an administrative law judge (“ALJ”) issued a Compensation Order dated November 6, 2009.¹ The Compensation Order granted Mr. Jones’ request for temporary total disability benefits but only for the closed period of April 15, 2008 to December 16, 2008.

Mr. Jones filed an appeal, and the Compensation Review Board (“CRB”) affirmed the November 6, 2009 Compensation Order in part; Mr. Jones’ right knee condition was causally related to his work-related accident until March 10, 2009. Because the ALJ had intermingled the presumption of compensability in the analysis of the nature and extent of Mr. Jones’ disability, the CRB remanded the matter for the ALJ to reconsider the nature and extent of Mr. Jones’ disability.²

In a Compensation Order on Remand dated October 20, 2011, the ALJ re-analyzed the issues of causal relationship and nature and extent.³ Then, although the claim for relief was for “temporary total disability benefits from April 15, 2008 to December 16, 2008 and from March 10, 2009 to the present and continuing,” the ALJ granted Mr. Jones temporary partial disability benefits from April 15, 2008 to December 16, 2008 and from March 10, 2009 to the present and continuing.⁴

Because the ALJ did not have authority to revisit the causal relationship of Mr. Jones’ right knee condition after March 10, 2009, the CRB vacated that portion of the October 20, 2011 Compensation Order on Remand awarding benefits after March 10, 2009.⁵ In addition, because the ALJ had applied the wrong standard of proof when analyzing the nature and extent of Mr. Jones’ disability and because it was “unclear what ultimately the ALJ concludes after engaging in this burden shifting scheme, especially as it relates to the Claimant’s physical work capacity,”⁶ the CRB remanded the matter for the ALJ to address only the issue of nature and extent of Mr. Jones’ disability from April 15, 2008 to December 18, 2008.

Another Compensation Order on Remand issued on February 17, 2011.⁷ The ALJ concluded Mr. Jones “is entitled to temporary partial disability benefits from April 15, 2008 to December 16, 2008” and granted his claim for relief for “temporary total disability benefits from April 15, 2008 to December 16, 2008.”⁸

¹ *Jones v. Washington Metropolitan Area Transit Authority*, AHD No. 09-318, OWC No. 648010 (November 6, 2009).

² *Jones v. Washington Metropolitan Area Transit Authority*, CRB No. 10-032, AHD No. 09-318, OWC No. 648010 (March 10, 2011).

³ *Jones v. Washington Metropolitan Area Transit Authority*, AHD No. 09-318, OWC No. 648010 (October 20, 2011).

⁴ *Id.*

⁵ *Jones v. Washington Metropolitan Area Transit Authority*, CRB No. 11-120, AHD No. 09-318, OWC No. 648010 (December 12, 2011).

⁶ *Id.*

⁷ *Jones v. Washington Metropolitan Area Transit Authority*, AHD No. 09-318, OWC No. 648010 (February 17, 2011).

⁸ *Id.*

On appeal this time, WMATA contends the ALJ did not properly consider the nature and extent of Mr. Jones' disability from April 15, 2008 to December 18, 2008. WMATA requests the CRB reverse the February 17, 2011 Compensation Order.

In response, Mr. Jones argues he has been temporarily, totally disabled since March 10, 2009. Mr. Jones requests the CRB affirm the February 17, 2011 Compensation Order on Remand.

ISSUE ON APPEAL

1. Is the February 17, 2011 Compensation Order on Remand supported by substantial evidence?

ANALYSIS⁹

At this point, it bears repeating that the following are accepted as given in this case:

- Until March 10, 2009, Mr. Jones' right knee condition was causally related to his work-related accident;¹⁰
- WMATA voluntarily paid Mr. Jones temporary total disability benefits from February 27, 2008 to April 13, 2008 and from December 18, 2008 to March 8, 2009;¹¹
- This matter most recently was remanded for the ALJ to address only the issue of the nature and extent of Mr. Jones' disability from April 15, 2008 to December 18, 2008.¹²

In analyzing Mr. Jones' disability from April 15, 2008 to December 18, 2008, the only 2 statements in the February 17, 2011 Compensation Order on Remand regarding Mr. Jones' work capacity which may relate to this closed period are

- "On February 26, 2008, Claimant was working as a transit bus operator for Employer when he suffered an injury his [*sic*] right knee rendering him unable to perform his usual duties. He was placed off work and underwent conservative orthopedic treatment."¹³

⁹ The scope of review by the CRB is limited to making a determination as to whether the factual findings of the appealed Compensation Order on Remand are based upon substantial evidence in the record and whether the legal conclusions drawn from those facts are in accordance with applicable law. Section 32-1521.01(d)(2)(A) of the District of Columbia Workers' Compensation Act, as amended, D.C. Code §32-1501 to 32-1545. Consistent with this standard of review, the CRB is constrained to uphold a Compensation Order on Remand 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 contrary conclusion. *Marriott International v. DOES*, 834 A.2d 882, 885 (D.C. 2003).

¹⁰ *Jones v. Washington Metropolitan Area Transit Authority*, CRB No. 10-032, AHD No. 09-318, OWC No. 648010 (March 10, 2011).

¹¹ *Jones v. Washington Metropolitan Area Transit Authority*, CRB No. 11-120, AHD No. 09-318, OWC No. 648010 (December 12, 2011).

¹² *Id.*

¹³ *Jones v. Washington Metropolitan Area Transit Authority*, AHD No. 09-318, OWC No. 648010 (February 17, 2011).

and

- Dr. Meyer examined Claimant on May 14, 2008 and opined “he is not fit for working duty as he is unable to put the appropriate weight on his right leg in order to operate bus controls including braking.”¹⁴

Although the February 17, 2011 Compensation Order on Remand purports to adopt facts set forth in the prior Compensation Order and Compensation Order on Remand, it is beyond the CRB’s authority to piece together findings from prior Compensation Orders to create a reasonable result, and this matter must be remanded.

A summary of medical treatment alone is not helpful to resolving the issue at hand; there must be specific findings regarding Mr. Jones’ ability to work from April 15, 2008 to December 18, 2008. Without such findings, there can be no conclusion regarding the nature and extent of his disability. Furthermore, those findings must be based upon a preponderance of the evidence without resort to the presumption of compensability; only then might those findings trigger the *Logan*¹⁵ burden-shifting scheme.

CONCLUSION AND ORDER

The findings of fact and conclusions of law regarding the nature and extent of Mr. Jones’ disability from April 15, 2008 to December 18, 2008 are not supported by substantial evidence and are not in accordance with the law. The February 17, 2011 Compensation Order on Remand is VACATED, and this matter is REMANDED for further proceedings consistent with this Decision and Remand Order.

FOR THE COMPENSATION REVIEW BOARD:

MELISSA LIN JONES
Administrative Appeals Judge

March 20, 2013
DATE

¹⁴ *Id.*

¹⁵ *Logan v. DOES*, 805 A.2d 237 (D.C. 2002).