

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 16-005

**JUANA LOPEZ MORALES,
Claimant-Respondent,**

v.

**DEAN AVENUE CLEANERS
Employer-Petitioner.**

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2016 MAY 27 PM 12 21

Appeal from a December 14, 2015 Compensation Order
by Administrative Law Judge Amelia G. Govan
AHD No. 14-350, OWC No. 711122

(Decided May 27, 2016)

Willie T. Craft, Jr., *pro se*, for the Employer¹
Justin G. Nunzio for the Claimant

Before HEATHER C. LESLIE, LINDA F. JORY, and JEFFREY P. RUSSELL, *Administrative Appeals Judges*.

HEATHER C. LESLIE, for the Compensation Review Board:

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

Claimant was injured when a hot iron press came down on her left hand on November 9, 2013. Claimant told a co-worker who in turn told the owner, Mr. Craft. Mr. Craft called an ambulance and Claimant was transported to Washington Hospital Center. Claimant's treatment consisted of "dressing, debriding, skin grafts and anesthesia." Compensation Order (CO) at 3.

Claimant followed up with Dr. Philip Fidler for her left hand burn. Dr. Fidler described the left hand burn as "limb-threatening," recommended physical therapy, and kept Claimant in an off-duty status.

¹ Leroy E. Giles, Jr. represented Employer at the Formal Hearing

Claimant has not received any further treatment since February 10, 2014 due to financial constraints. The uninsured Employer paid Claimant her regular wages until May 21, 2014.

A full evidentiary hearing occurred on May 20, 2015. Claimant's claim for relief was for an award of temporary total disability benefits from November 10, 2013 to the present and continuing (subject to a credit for wages paid), and payment of causally related medical bills. The issues listed to be adjudicated were whether Claimant's November 9, 2013 accidental injury arose out of and in the course of her employment, and the nature and extent of Claimant's disability, if any. A Compensation Order (CO) was issued on December 14, 2015 which granted Claimant's claim for relief.

Employer appealed. Employer argues several points, addressed more fully below, but in essence, Employer is arguing the findings of fact and conclusions of law are not supported by the substantial evidence in the record.

Claimant opposes Employer's appeal, arguing that the CO is supported by the substantial evidence in the record and in accordance with the law.

ANALYSIS²

Employer first disputes several findings of fact, including the conclusion that Employer had not shown the availability of other jobs which Claimant could perform. As the Administrative Law Judge (ALJ) noted in the CO, when the issue of nature and extent is raised,

Under *Logan v. DOES*, 805 A.2d 237 (D.C. 2002), once a claimant has demonstrated the inability to perform his/her usual job, a *prima facie case* of total disability is established, which the employer may seek to rebut by establishing the availability of other jobs which the claimant could perform. *Id.* at 240. Where the employer meets this evidentiary burden, claimant, in order to sustain a disability finding, must either successfully challenge the legitimacy of employer's evidence of available employment, or demonstrate diligence, but lack of success, in obtaining other employment. *Id.* at 243.

Employer argues "had the this issue arisin [sic] during the hearing, Employer would have been prepared to present the following evidence to show that efforts were made to provide other jobs for Claimant to perform..." Employer's argument at 2.

²The scope of review by the CRB is generally 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. See D.C. Workers' Compensation Act of 1979, as amended, D.C. Code § 32-1501, *et seq.*, (the Act) at § 32-1521.01 (d)(2)(A), and *Marriott International v. DOES*, 834 A.2d 882 (D.C. 2003). Consistent with this standard of review, the CRB and this review panel must affirm 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 this panel might have reached a contrary conclusion. *Id.*, at 885.

However, the issue of nature and extent was raised by the Employer in the joint pre-hearing statement and at the Formal Hearing, implicating *Logan* and the burden shifting scheme outlined above. Contrary to Employer's assertions, Employer knew prior to the hearing what the issues were to be adjudicated.

In addressing the issue of the nature and extent of Claimant's disability, the ALJ determined Claimant presented a *prima facie* case of total disability, a finding not appealed by Employer. Thus, the burden shifted to Employer to present evidence establishing the availability of other jobs. This the Employer did not do at the Formal Hearing, either through evidence or testimony or by eliciting testimony on cross examination from the Claimant. We reject Employer's argument.

Moreover, our review is limited to the evidence in the record. Employer summarizes documents and testimony that would have been elicited in support of its argument that the findings of fact were not supported by the substantial evidence in the record. As these letters are not in the record, we cannot entertain any arguments Employer based on these documents. While Employer alludes to the CRB's ability to permit the submission of additional evidence pursuant to the statute and regulations, as Employer concedes in argument, submission of additional evidence after the Formal Hearing is proper *if* there are reasonable grounds for the failure to present such evidence.³ Employer puts forth no reasonable grounds for the failure to present such documents, other than Employer was unaware of the issues to be adjudicated, which as stated above is simply not true.

Employer also argues the CO's conclusion that the burns on Claimant's left hand were consistent with the grid configuration of the pressing machine is erroneous, arguing the machine has a flat surface. We will only say that a review of the evidence reveals Employer submitted pictures of the presser, however, these pictures do not provide a close up of the surface of the presser. We cannot say the ALJ's statement that the Claimant's hand burn is reflective of a grid configuration is wrong. Indeed, what Employer is asking us to do is to reweigh the evidence, a task we cannot do. *Marriott*, supra. We decline to follow Employer's argument.

Employer also argues the CO's finding that the Claimant's average weekly wage of \$340.00 is an error. A review of the hearing transcript reveals Employer's Counsel stipulated to this amount. Hearing transcript at 5-6. Employer's argument is rejected.

³ 7 DCMR § 264, Submission of Additional Evidence, states:

264.1 Where a party requests leave to adduce additional evidence the party must establish: (a) that the additional evidence is material, and (b) that there existed reasonable grounds for the failure to present the evidence while the case was before the Administrative Hearings Division or the Office of Workers' Compensation (depending on which authority issued the compensation order from which appeal was taken).

264.2 Where a party satisfies the requirements of subsections 264.1(a) and (b), the Review Panel to which the appeal is assigned, at its sole discretion, may remand the case to Administrative Hearings Division or the Office of Workers' Compensation for such further proceedings as the presiding Administrative Law Judge or claims examiner deems necessary.

Employer next argues Employer presented credible evidence to rebut Claimant's version of events. When analyzing whether Employer rebutted the presumption of compensability, the ALJ stated:

The critical dispute in this case is whether or not Claimant's left hand was burned within the course and scope of her employment while pressing pants on November 9, 2013. In this case, Employer has not adduced specific, comprehensive persuasive evidence which severs said connection. There is no direct, contemporaneous evidence to support Employer's contention that Claimant's left hand was not injured by the pressing machine she was using.

Further, there is no testimonial or direct medical evidence to contradict Claimant's version of the events pertinent to her claim for benefits. The facts of record indicate that the risk incurred by using a machine to press pants on November 9, 2013 was created via the employer-employee relationship.

The accident occurred within the boundaries of time and space created by the terms of employment, in the performance of an activity related to employment, which included an expected activity of mutual benefit to employer and employee. As such, the accident and resultant injuries arose out of and in the course of Claimant's employment. *Kolson*, [699 A.2d 357 (D.C. 1997)].

CO at 4.

Employer does not contest the above quoted paragraph's conclusions, but rather argues the ALJ should have taken into consideration Claimant's failure to "demonstrate the manner in which she burned her hand on November 9, 2013" as requested by Employer prior to the Formal Hearing; her failure to do so is highly suspect and evidence that the accident did not occur as Claimant testified. Employer's argument at 3.

Again, our review is limited to determining 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. The ALJ found Claimant's testimony credible as to how the injury occurred. Her testimony, along with the evidence presented, was found to be more persuasive than any argument presented by Employer or Employer's witnesses. The ALJ conclusions are based upon the substantial evidence in the record and in accordance with the law.

Finally, Employer argues that Employer's counsel did not explore suspicions that Claimant may have been under the influence of an unknown medication based upon the observations of co-workers. As Counsel did not question Claimant about these suspicions, Employer argues,

Petitioner should be provided the opportunity to investigate and, if appropriate, present additional evidence on this issue at a hearing. The failure to present such evidence at the Formal Hearing in this matter was based on Petitioner following

the advice of counsel and should be considered reasonable grounds to grant this request.

Employer's argument at 4.

Without sounding redundant, Employer knew prior to the Formal Hearing what the issues were and what claim for relief was sought by Claimant. Employer was afforded ample opportunity to investigate the facts of Claimant's November 2013 injury prior to the May 2015 Formal Hearing. Employer's argument is rejected.

CONCLUSION AND ORDER

The December 14, 2015 Compensation Order is supported by the substantial evidence in the record and in accordance with the law and is **AFFIRMED**.

So ordered.