

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA MARÍA MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 12-127

**FRANCISCA LETREN,
Claimant–Respondent,**

v.

**DISTRICT OF COLUMBIA CHILD AND FAMILY SERVICES,
Self-Insured Employer–Petitioner.**

Appeal from a Compensation Order on Remand by
Administrative Law Judge Belva D. Newsome
AHD No. PBL09-089A, DCP No. 30090951004-0001

Frank McDougald, Esquire for Petitioner
Matthew Peffer, Esquire for Respondent

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

MELISSA LIN JONES for the Compensation Review Board.

DECISION AND REMAND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

The facts underlying this claim are set forth in *Letren v. D.C. Child and Family Services*, CRB No. 11-021, AHD No. 09-089A, DCP No. 30090951004-0001 (August 16, 2011). Because those facts still have not changed, they are not reiterated here.

On February 9, 2011, an administrative law judge (“ALJ”) issued a Compensation Order awarding Ms. Francisca Letren temporary total disability compensation benefits from September 11, 2009 to the date of the formal hearing and continuing.¹ An appeal ensued focusing on the ALJ’s credibility finding.

¹ *Letren v. D.C. Child and Family Services*, AHD No. PBL09-089A, DCP No. 30090951004-0001 (February 9, 2011).

On August 16, 2011, the Compensation Review Board (“CRB”) reversed and remanded the February 9, 2011 Compensation Order with specific instructions regarding resolution of the errors in that Compensation Order:

In the case *sub judice*, two different versions of the same event were presented via the testimony of the Claimant and the Employer’s two witnesses. The Claimant testified Mr. Ward yelled and screamed at her on September 10, 2009, causing her to lose control. Mr. Ward testified he did not yell and scream at the Claimant and was always professional in his interactions with her. With two differing versions of the same event, a clear and unambiguous credibility finding of the Claimant and witnesses is necessary in ultimately determining whether or not the CO is supported by the substantial evidence in the record. Significantly, the ALJ must indicate what version of events she gives more weight to surrounding the incident of September 10, 2009. We find the credibility findings of the ALJ to be ambiguous at best.

As it pertains to the Claimant, the ALJ limits her credibility determination to the March 31, 2010 hearing. The ALJ appears to have excluded the record developed on July 13, 2010 and July 29, 2010 when determining the Claimant’s credibility. By limiting her determination to just the Claimant’s demeanor on one day and excluding evidence developed in the two subsequent hearings, it cannot be said that the credibility finding “hangs together” with other evidence of the record, including the testimony of the other witnesses.

Moreover, it is also questionable what the ALJ meant when she indicated that she found the “Employer’s testimony credible with respect to the actions of management concerning Claimant.” There were two witnesses presented by the Employer. We cannot discern whether or not the ALJ found both witness credible based upon their demeanor at the Formal Hearing and whether the ALJ credits the witness testimony surrounding the events of September 10, 2009 over that of the Claimant. The ALJ limited her credibility finding to the “actions of management” which we find to be vague and confusing as there were numerous actions presented by the Employer, many of which did not even occur on September 10, 2009. The ALJ seems to allude to personnel actions before the date in question as being the causative factor of the Claimant’s psychological issues. The evidence presented by Employer reveals numerous meetings, emails, communications, and personnel actions with the Claimant before the events of September 10, 2009. Specifically, the ALJ states,

After all the meetings, emails, the use of LWOP for annual leave for unscheduled absences due to her work-related injury of January 13, 2009, and the use of AWOL while Claimant was not on leave restriction or AWOL had not approved by the Director, Claimant reached her breaking point, and had to be released to a relative to be excused from duty. *Letren, supra* at 8.

Moreover, it is unclear if the ALJ found that only the September 10, 2009 event caused the psychological problems or if it was the cumulative workplace issues and the Employer's "actions." [Footnote omitted.] Such ambiguity constrains us to remand the case for the ALJ to clarify her credibility findings surrounding the events of September 10, 2009 and for a specific determination as to what event or events caused the Claimant's psychological problems.^[2]

A Compensation Order on Remand issued on October 18, 2011. The ALJ characterized the issue on remand as "What credibility determinations are necessary to find substantial evidence to support the award of disability benefits in the Compensation Order dated February 9, 2011?"³ Then, after reciting a portion of the CRB's August 16, 2011 Decision and Remand Order, the ALJ quoted *King v. D.C. Department of Employment Services*⁴ and without analysis stated Ms. Letren's version of the September 10, 2009 events is credible and the testimony of Employer's witnesses is not credible regarding the events of that date but is credible regarding "the actions of the Employer preceding September 10, 2009."⁵ Finally, the ALJ referenced some caselaw regarding cumulative injuries, the prior Compensation Order, and the claim for relief.

Another appeal ensued, and because the Compensation Order on Remand lacked explanation or support for the credibility findings that Ms. Letren is credible and the other witnesses are not, the matter was remanded for "an appropriate credibility analysis as the *Ramey* test requires."⁶ Additional findings regarding whether Ms. Letren's injury was discrete or cumulative also were necessary on remand.

A second Compensation Order on Remand issued on July 9, 2012. The ALJ, again, ruled Ms. Letren is entitled to temporary total disability compensation benefits from September 11, 2009 to the date of the formal hearing and continuing.⁷

In this appeal of the July 9, 2012 Compensation Order on Remand, Employer argues the ALJ has not complied with the CRB's directives because "[t]he ALJ has failed to specifically refer to or identify any workplace conditions or events, other than the September 10, 2009 event, that caused Claimant's psychological injury."⁸ Employer also argues the ALJ has not properly

² *Letren v. D.C. Child and Family Services*, CRB No. 11-021, AHD No. PBL09-089A, DCP No. 30090951004-0001 (August 16, 2011), pp. 3-4.

³ *Letren v. D.C. Child and Family Services*, AHD No. PBL09-089A, DCP No. 30090951004-0001 (October 18, 2011), p. 2.

⁴ *King v. DOES*, 560 A.2d 1067 (D.C. 1989).

⁵ *Letren v. D.C. Child and Family Services*, AHD No. PBL09-089A, DCP No. 30090951004-0001 (October 18, 2011), p. 3.

⁶ *Letren v. D.C. Child and Family Services*, CRB No. 11-129, AHD No. PBL09-089A, DCP No. 30090951004-0001 (March 28, 2012), p. 4.

⁷ *Letren v. D.C. Child and Family Services*, AHD No. PBL09-089A, DCP No. 30090951004-0001 (July 9, 2012).

⁸ Memorandum of Points and Authorities in Support of Petitioner's Application for Review, p. 5.

applied the *Ramey* test to this public sector case. Finally, Employer argues the ALJ inappropriately applied the eggshell rule to Ms. Letren because this case does not include a claim for an aggravation of a pre-existing condition. For these reasons, Employer requests the CRB reverse and remand this matter for a new hearing before a different ALJ.⁹

In response, Ms. Letren asserts Employer's arguments are unsupported by the facts of her case. Ms. Letren requests the CRB affirm the Compensation Order on Remand because it is not clearly erroneous, is not inconsistent with the law, and is not in contravention of the March 28, 2012 Decision and Remand Order.

ISSUES ON APPEAL

1. Does substantial evidence in the record demonstrate the ALJ properly considered the directives in the March 28, 2012 Decision and Remand Order?
2. Was the *Ramey* test properly applied in this public sector case?
3. Was the eggshell rule properly applied?
4. Is the July 9, 2012 Compensation Order on Remand supported by substantial evidence and in accordance with the law?

ANALYSIS¹⁰

The Compensation Order on Remand is based upon the jurisprudence that

[t]he District of Columbia Government Comprehensive Merit Personnel Act and the District of Columbia Workers' Compensation Act are conceptually close, and the differences do not materially alter the analysis of a case involving a psychological injury related to a physical injury suffered in the course of employment.^[11]

So long as this jurisprudence is premised on the fact that this case is a public sector workers' compensation case, it is not necessarily false in physical-mental cases at a certain point in the

⁹ The CRB exercises "only legal review authority concerning the contents of Compensation Orders, not administrative control [over the Administrative Hearings Division]." *Galligan v. John F. Kennedy Center for Performing Arts*, CRB No. 04-28(R), OHA No. 03-045A, OWC No. 571106 (August 8, 2007).

¹⁰ The scope of review by the CRB is limited to making a determination as to whether the factual findings of the Order are based upon substantial evidence in the record and whether the legal conclusions drawn from those facts are in accordance with applicable law.^[1] Section 1-623.28(a) of the Act. 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).

¹¹ *Letren v. D.C. Child and Family Services*, AHD No. PBL09-089A, DCP No. 30090951004-0001 (July 9, 2012), p. 3.

legal analysis, but because this mental-mental case involves the public sector compensation act, there is no presumption of compensability.

Despite previous caution to avoid application of the private sector presumption of compensability, the ALJ determined “[i]n the instant matter, a review of the record determines that the events upon which Claimant bases her claim did occur. The *Ramey* test does not require Claimant to show unusually stressful conditions in order to establish a *prima facie* case.”¹² In addition, after evaluating Employer’s testimonial and medical evidence, the ALJ determined “Employer has not provided substantial, credible evidence to overcome Claimant’s *prima facie* case.”¹³

A *prima facie* case is “[t]he establishment of a legally required rebuttable presumption,”¹⁴ and the ALJ has applied the presumption of compensability to this public sector case. Applying the private sector presumption of compensability is clear error that requires we vacate and remand this matter.

Furthermore, the ALJ went on to rule “the events upon which Claimant bases her claim did occur”¹⁵ because

Claimant and Employer had numerous meetings and email correspondences, including Claimant’s union representative with respect to her time, attendance and use of annual leave or administrative leave under the Act instead of leave without pay. Employer placed Claimant on AWOL on two occasions for unscheduled absences.

Upon the arrival of Employer witness Ward to work on September 10, 2009, Claimant was informed by him that her request to leave her work station to get some coffee would require to use her first 15-minute break to do so. Claimant began screaming and lost control while Employer witness Ward was standing at Tammy Hagins’ cubicle. The single event of being informed to use her first 15-minute break to get coffee led to Claimant’s losing control and suffering a psychological injury.¹⁶

Although these are precisely the types of findings of fact necessary to resolve a mental-mental case, the ALJ relied upon these facts to conclude

¹² *Id.*

¹³ *Id.* at 4.

¹⁴ BLACK’S LAW DICTIONARY 1228 (8th ed. 2004).

¹⁵ *Letren v. D.C. Child and Family Services*, AHD No. PBL09-089A, DCP No. 30090951004-0001 (July 9, 2012), p. 3.

¹⁶ *Id.*

Claimant has established with substantial, credible evidence, through her testimony and evidence on record that the events upon which the harm is predicated are factual, and that the harm caused her work-related psychological injury.^[17]

McCamey makes it clear that

[w]here the presumption is either inapplicable or has been rebutted, the burden falls on the claimant to prove by a preponderance of the evidence that the physical accident caused or contributed to the psychological injury. *See Washington Post v. District of Columbia Dep't of Employment Servs.*, 852 A.2d 909, 911 (D.C. 2004). In determining whether a claimant has met his or her burden, a hearing examiner must weigh and consider the evidence as well as make credibility determinations. In this regard, the examiner may of course consider the reasonableness of the testimony and whether or not particular testimony has been contradicted or corroborated by other evidence.^[18]

Having applied the incorrect standard of proof to the facts, the Compensation Order on Remand cannot stand.

Employer has raised several specific arguments on appeal; however, given that the entire Compensation Order on Remand is premised upon a defective application of an inappropriate legal standard in a public sector, mental-mental case, we decline to address those specific arguments on the grounds that on remand when applying the proper legal framework to the record, an ALJ will issue a thorough and well-reasoned Compensation Order on Remand that addresses Employer's arguments without the need for what could be construed here as an advisory opinion under these circumstances.

CONCLUSION AND ORDER

The July 9, 2012 Compensation Order on Remand is VACATED. This matter is REMANDED for findings of fact supported by the record and conclusions of law that rationally flow from an analytical application of the proper law to those facts.

FOR THE COMPENSATION REVIEW BOARD:

MELISSA LIN JONES
Administrative Appeals Judge

July 25, 2013
DATE

¹⁷ *Id.*

¹⁸ *McCamey v. DOES*, 947 A.2d 1191, 1214 (D.C. 2006).