

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
ACTING DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 14-094

**MARTA ECHEVERRIA,
Claimant–Petitioner/Cross-Respondent,**

v.

**RITZ-CARLTON HOTEL and MARRIOTT CORPORATION
Employer/Insurer-Respondent/Cross-Petitioner.**

Appeal from a June 30, 2014 Compensation Order on Remand by
Administrative Law Judge Linda F. Jory
AHD No. 02-005C, OWC No. 517977

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2015 FEB 24 PM 2 11

Benjamin T. Boscolo for the Claimant
Alan D. Sundburg for the Employer

Before LAWRENCE D. TARR, *Chief Administrative Appeals Judge* and MELISSA LIN JONES and
JEFFREY P. RUSSELL, *Administrative Appeals Judges*.

LAWRENCE D. TARR for the Compensation Review Board. MELISSA LIN JONES, *dissenting*.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

On July 27, 1997, the claimant, Marta Echeverria, sustained injuries to her neck and both shoulders as the result of a July 27, 1997, accident while working as a housekeeper for the Ritz-Carlton Hotel (“Ritz-Carlton”). At the time of her injury, the claimant held another job; she also was self-employed as a housekeeper.

In 2000, after several attempts at light duty, the claimant stopped working at the Ritz-Carlton. The claimant continued to work at her secondary employment, but was not able to work as a housekeeper. Instead, claimant supervised two other housekeepers.

After a formal hearing, an ALJ awarded Claimant continuing temporary total disability benefits and causally related medical expenses beginning July 17, 2001 and determined that Claimant’s right shoulder injury was not medically causally related to the accident at work. *Echeverria v.*

Ritz-Carlton Hotel, OHA No. 02-005,OWC No. 517977 (February 28, 2002).¹ On appeal, the Director, who at that time had appellate responsibility, reversed the determination that Claimant's right shoulder injury was not medically causally related to the work injury. *Echeverria v. Ritz-Carlton Hotel*, Dir. Dkt. No 02-45, OHA No. . 02-005,OWC No. 517977 (Dec. 9, 2002).

On June 1, 2005, a different ALJ issued a Compensation Order that held the claimant proved she sustained 16% permanent partial losses to both her arms, and also had a (non-schedule) permanent partial disability due to cervical problems from the work accident that caused an ongoing partial wage loss. The ALJ did not award a dollar amount for the claimant's losses. *Echeverria v. Ritz-Carlton Hotel*, OHA No. . 02-005B, OWC No. 517977 (June 1, 2005).

The CRB vacated in part and remanded in part. *Echeverria v. Ritz-Carlton Hotel*, CRB No. 05-243, OHA No. 02-005B, OWC No. 517977 (Sept. 23. 2005). The CRB affirmed the ALJ's decision not to award a dollar amount but held the Compensation Order failed to contain sufficient findings of fact and conclusions of law that would permit the calculation of Claimant's compensation rate. The CRB held:

Therefore, this matter is remanded for further proceedings, including, but not limited to, the issuance of findings of fact and conclusions of law, to allow the Petitioner to establish the compensation rate payable for the permanent partial disability benefits awarded for her cervical condition.

In his Compensation Order on Remand the ALJ held: "Claimant's disability compensation shall be determined as set forth in D.C. Code 32-1508 (V)." *Echeverria v. Ritz-Carlton Hotel*, OHA No. . 02-005B, OWC No. 517977 (April 30, 2007). Although the ALJ did not, as instructed, establish the claimant's compensation rate, neither party appealed the Compensation Order on Remand.

On July 17, 2007, Claimant filed a motion seeking a supplementary compensation order awarding penalties and a declaration that the employer was in default. An ALJ denied the motion on May 1, 2008.

The CRB affirmed the decision denying the requests for penalty and default order. The CRB noted that Claimant could seek a judicial determination of the specific dollar amount to which she may be entitled under D.C. Code § 32-1508(V)(ii)(I) or (II) but that the claimant would have the burden of presenting evidence that is sufficient to establish each element of the statutory formula.

The present dispute stems from an ALJ's April 30, 2010, Supplemental Compensation Order, issued after the claimant filed a claim seeking penalties for the alleged failure to pay the permanent partial disability benefits and for an award for non-schedule permanent partial disability benefits pursuant to § 32-1508(3)(V)(ii) (I) or (ii)(II).

The ALJ held the claimant did not prove the requisite elements for calculating a permanent partial disability award under either D.C. Code §32-1508 (V)(ii)(I) or (ii)(II), but nevertheless

¹ The ALJ's decision and the Director's decision misspelled Claimant's last name. The CRB has used the correct spelling in the citations to these cases.

found the claimant entitled to benefits. *Echeverria v. Ritz-Carlton Hotel*, AHD No. 02-005C, OWC No. 517977 (April 30, 2010).

The ALJ acknowledged the evidence before her did not establish these necessary elements of the statutory formula and devised her own formula. On review, the CRB agreed with the ALJ that the claimant had not established the necessary statutory components of both statutes but vacated the award because the ALJ had awarded benefits pursuant to a formula not stated in any statute or regulation. *Echeverria v. Ritz-Carlton Hotel*, CRB 10-126, AHD NO. 02-005C, OWC No. 517977 (December 1, 2011).

The claimant appealed the CRB's decision to the District of Columbia Court of Appeals (DCCA). In its February 21, 2013, Memorandum Opinion and Judgment, the DCCA affirmed the CRB's decision that the ALJ acted beyond her authority in devising her own formula for benefits. The DCCA remanded this matter, despite these evidentiary deficiencies, because it was unchallenged that Claimant was entitled to benefits for the wage loss due to her permanent partial disability.

At the DCCA, Claimant presented an alternative to overcoming the problem that she could not establish the requisite elements for an award under D.C. Code §32-1508 V) (ii) (I) or (ii) (II), a method that was not presented either to the ALJ or to the CRB:

Petitioner also argues, in the alternative that the average weekly wage of her post-injury housekeeping business, had it existed at the time of her injury, could have been determined by adjusting for the rate of inflation and replacing the 2004 value of the dollar with the 1997 value of the dollar. This alternative method of calculation was not presented to the numerous ALJs who reviewed this matter, nor to the CRB. We have discretion to decide whether to entertain arguments made for the first time on appeal. *Bautista v. United States*, 10 A. 3d 154, 159 (D.C. 2010). In this case, we choose not to decide petitioner's alternative argument.

In sum, because we defer to the CRB as to its interpretation of the compensation calculation method provided in the statute, we remand the case so that it can be further remanded to an administrative law judge to conduct a fact-finding hearing, utilizing one of the alternative methods set forth in the statute to determine and make a specific award to the petitioner given the ALJ's unchallenged finding that the petitioner is entitled to compensation for wage loss due to her permanent partial disability.

Echeverria v. DOES and Ritz-Carlton Hotel, Intervenor, No. 12-AA-001, Mem. Op & J. (D.C. Feb. 21, 2013).

Consistent with the DCCA's decision, the CRB remanded this case on March 20, 2013. In accordance with the DCCA's directive to make a specific award, the ALJ issued the Compensation Order on Remand that is the subject of this review. *Echeverria v. Ritz-Carlton Hotel*, AHD No. 02-005C, OWC No. 517977 (June 30, 2014).

The Award section of the Compensation Order on Remand, as amended, stated:

It is ORDERED Claimants [sic] claim for relief is GRANTED IN PART and DENIED IN PART. Employer is ordered to commence permanent partial disability benefits at the PPD rate of \$281.81 per week from June 4, 2004 to the present and continuing with credit for benefits paid and subject to the limitations found at §32-1505 (B).

Claimant filed a request for entry of an Errata order on July 18, 2014. Employer filed a response and opposition on July 23, 2014. On July 28, 2014, the ALJ issued an Errata that removed the award's limitation and specified this award:

It is ORDERED Claimant's claim for relief is GRANTED IN PART and DENIED IN PART. Employer is ordered to commence permanent partial disability benefits at the PPD rate of \$281.81 per week from June 4, 2004 to the present and continuing with credit for benefits paid by employer to date.

On July 29, 2014, Claimant filed her Application for Review at the CRB. Apparently, Claimant did not know of the Errata issued by the ALJ the previous day because she attached only the ALJ's June 30, Compensation Order on Remand and only appealed the ALJ's limiting the Award by §32-1505 (B), which limitation had been eliminated by the ALJ in the Errata.

In its Opposition to Claimant's Application For Review, Employer argued that the Errata rendered Claimant's appeal moot, that the ALJ erred by using an errata order to make a substantial revision to the Compensation Order on Review and also argued that the Award was subject to the now removed limitation in § 32-1505 (B).

Employer filed its own Application for Review on July 30, 2014.² In its supporting memorandum, Employer objected the evidence relied on by the ALJ to calculate the permanent partial disability rate.

CLAIMANT'S APPLICATION FOR REVIEW

The only issue that Claimant appealed was the ALJ's determination that her award was limited by §32-1505 (B). The ALJ's July 28, 2014 Errata order eliminated that limitation. Therefore, the CRB agrees with Employer that Claimant's appeal is moot. Claimant's July 29, 2014 Application for Review is dismissed.

ISSUES ON APPEAL

On Review, Employer raises three issues:³

1. Did the ALJ err by using an Errata order to amend her previously issued Award?

² For administrative convenience, Employer's Application for Review was considered by the CRB as a Cross-Application for Review.

³ Employer's Opposition to Claimant's appeal challenged the form and the substance of the ALJ's Errata order. The finding that Claimant's appeal is moot eliminated the argument as to the form but not the substance of the Award in the Errata order. Therefore, the CRB shall consider that argument.

2. Did the ALJ properly calculate Claimant's permanent partial disability rate?
3. Is Claimant's award subject to the limitation of §32-1505 (B)?

DISCUSSION

Did the ALJ err by using an Errata order to amend her previously issued Award?

Employer argues that the ALJ erred by making a substantive change to the Compensation Order on Remand by using an errata order. Employer says an errata order only can be used to correct typographical or clerical errors, not to make a substantive change in the Award such as removing the 500-week limitation on benefits in § 32-1505(B). Employer says that only way the ALJ could have changed the Award to make a substantive change would be if the ALJ responded to a Motion for Reconsideration.

Employer further states that even though the ALJ could have changed the Award if Claimant filed either a reconsideration motion or an errata motion, it matters which motion was filed:

If the end result of both a Motion for Reconsideration and a Motion for Errata Order are the same, namely the deletion of language which was arguably inapplicable to the circumstances of the claimant' [sic] claim, why does it matter? It matters because the Compensation Order on Remand defines the right and obligations of the parties. The Order gives a specific statement of the amounts due to the claimant, and provides a date certain with the entry of an Order. Under the Act, a number of deadlines are tied to the issuance of the Order, including the time for payment and the time for appeal.

Employer's Memorandum at 5.

Employer's asserts that by filing for an errata instead of a filing for reconsideration, Claimant avoided the 10-day limit for filing a Motion for Reconsideration permitted under Rule 59, Superior Court Rules of Civil Procedure.

The CRB finds the ALJ did not commit reversible error by utilizing an errata order to amend the Award section of the April 30, 2014 Compensation Order on Remand.

7 DCMR § 221.4 states:

A Hearing or Attorney Examiner shall conduct impartial formal hearings on claims in accordance with the District of Columbia Administrative Procedure Act (§ 1-1601 et seq., D.C. Code, 1981 ed.) and issue compensation orders and other orders in accordance with the Act and this chapter. A Hearing or Attorney Examiner *may* use the Rules of Civil Procedure of the Superior Court of the District of Columbia as guidelines in matters of procedure not specifically addressed in the District of Columbia Administrative Procedure Act and the Act.

(Emphasis added).

In *Cobb v. Clean-Cut Hauling & Demolition, LLC*, CRB No. 13-037, AHD No.12-509, OWC No. 695660 (October 31, 2013), the CRB held this regulation affords an ALJ has discretionary authority to rely on Superior Court rules:

Because the Hearings and Adjudication Section of the District of Columbia Department of Employment Services is not a court in the judicial system of the District of Columbia, it is not bound by, but may rely on those rules for procedural issues where appropriate. *See 7 DCMR § 261.4*. [sic].⁴

The ALJ properly exercised her discretionary authority and chose not to apply Superior Court rules.

Moreover, an ALJ has ongoing authority to amend, change, or modify a Compensation Order until a party files a request for review or until the Compensation Order is final by the expiration of the 30-day period for filing a review request, whichever event occurs first. The ALJ acted within that time.

Lastly, while Employer identifies several possible ways in which a party might be prejudiced by the form the ALJ used to substantively amend a Compensation Order, it does not assert that it was, in fact, prejudiced by the ALJ's using an errata order. In this case, Employer had notice that Claimant moved the ALJ to remove the limitation, Employer had the opportunity to file an opposition, and Employer was able to appeal the ALJ's Errata.

Did the ALJ properly calculate Claimant's permanent partial disability rate?

D.C. Code § 32-1508(V)(i)(1) gives employees an election to have their permanent partial disability wage loss benefits calculated in accordance with the formula set forth in either subparagraph (ii)(I) or (ii)(II) of that section.

Claimant advised the ALJ that she elected to have her permanent partial disability benefit calculated in accordance with the formula in subparagraph (ii)(II), preferring to receive 66 2/3% of the difference between (1) the average weekly wage, at the time she returned to work, of the jobs she held before her disability and (2) the actual wage of the job that she held when she returned to work.

With respect to (2), the ALJ previously determined that Claimant earned \$186.25 when she returned to work in 2004. This finding was affirmed on appeal by the CRB and the DCCA.

The evidentiary challenge faced by the ALJ related to (1).

⁴ The citation to 7 DCMR § 261.4 is incorrect. That regulation gives the CRB discretionary authority to use the Superior Court rules.

As our previous CRB decision noted, the statutory formula could not be directly applied because the evidence did not establish what Claimant's pre-injury jobs would have earned when she returned to work in 2004.

In her 2010 compensation order, the ALJ acknowledged the evidence before her did not establish these necessary elements of the statutory formula but devised her own formula, which was determined to be improper by the CRB and the DCCA. The DCCA remanded this matter, despite these evidentiary deficiencies, because it was unchallenged that Claimant was entitled to benefits for the wage loss due to her permanent partial disability.

The ALJ therefore was tasked with calculating Claimant's permanent partial disability rate despite not having all necessary elements to strictly apply the statute so that she could carry out the DCCA's directive to "to determine and make a specific award."

At the DCCA, Claimant's counsel had presented an alternative to overcome the evidentiary deficiencies by a method that was not presented either to the ALJ or to the CRB:

Petitioner also argues, in the alternative, that the average weekly wage of her post-injury housekeeping business, had it existed at the time of her injury, could have been determined by adjusting for the rate of inflation and replacing the 2004 value of the dollar with the 1997 value of the dollar

The DCCA remanded this case so that the alternative method could be considered.

On remand, the ALJ and the parties agreed to submit briefs and documentary evidence instead of holding another formal hearing. To present the alternative method of calculation argued to the DCCA, Claimant submitted as an exhibit a letter, authored by economic analyst Richard B. Edelman, Ph. D.

Dr. Edelman was asked by Claimant's counsel to do two wage conversions - determine what the equivalent wage in 2004 would be for an employee who earned \$101.84 and determine what the equivalent wage in 1997 would have been for an employee who earned \$186.25 in 1997.⁵

Dr. Edelman reviewed the National Compensation Surveys for the Washington-Baltimore, DC-MD-VA-WV areas published by the Department of Labor, Bureau of Labor Statistics. He concluded that \$101.84 in 1997 was equivalent to \$123.85 in 2004 and \$186.25 in 2004 was equivalent to \$153.15 in 1997

The second page of Dr. Edelman's letter, titled Table 1, showed the data that he relied on to reach his conclusions. This table showed the equivalent weekly salaries for each year from 1997 to 2004 for maids in the four geographic areas. The table also had a column titled "Annual Holding Period Growth," a column titled "1994 to 2004 Dollars" and a final column titled "2004 to 1998 Dollars" that listed figures for each of the years.

The ALJ's Compensation Order on Remand stated Claimant's counsel stated in his post-remand brief:

⁵ The parties stipulated that Claimant earned \$101.84 per week from both employments when she was injured in 1997. As noted earlier, the ALJ previously determined that Claimant earned \$186.25 when she returned to work in 2004.

Under D.C. Code §32-1508(V)(ii)(II), [claimant's] wage loss would be 458.94 (pre-injury wage in 2004 dollars (\$ 645.19) [minus] Post injury wage in 2004 dollars (\$ 186.25). This yields a compensation rate of \$ 305.96 per week.

The ALJ did not accept counsel's calculations:

In a footnote only, claimant states that "The 2004 adjustment of [claimant's] average weekly wage was determined by multiplying the 1997 pre-injury average weekly wage by the annual holding period growth found by Dr. Edelman. Claimant does not explain which growth rate he [sic] applied and \$645.19 divided by \$517.84 equates to 1.24 which is a rate not seen anywhere in Dr. Edelman's table.

Neither Dr. Edelman nor counsel for claimant have explained what an "Annual Holding Period Growth" is or how it is derived. Nor is there an explanation as to how to use the growth rate or what the last two columns signify.

Nor was the ALJ convinced by Employer's argument that Claimant should not receive any award:

Nevertheless, employer's sole argument in response to claimant's calculations is that each of the surveys relied upon by Dr. Edelman is based on wage data for full-time employees and the wages to which the instant claimant seeks to apply this data are part-time in nature and are for self -- employment. Employer further argues that no evidence has been submitted to suggest that the wage trend for full-time employees would be reflected either in wages for part-time employment or in self--employment situations. Employer was provided with ample time to provide its own calculations or statistics. Moreover the undersigned finds employer's argument specious at best at this point in time. It is undisputed that there is a wage loss and it is undisputed that claimant is unable to work in a full time position.

The ALJ then made her own calculation using Dr. Edelman's research:

Claimant's arrival at \$ 645.19 as the figure that represents what claimant's wage loss of \$ 517.84 equates to in 2004 dollars is not supported by a discernable explanation, however, Dr. Edelman's Table does list the average weekly wage rate for maids from 1997 to 2004. The undersigned finds it more reasonable to apply the percentage of 17.6% to \$ 517.84 to arrive at a 2004 figure of \$ 608.97. 17.6 % is the percentage of increase from the 1997 maid weekly wage to the 2004 weekly average rate of \$ 395 per week.

Plugging \$ 608.97 into the equation, the permanent partial disability rate claimant should receive as of June 4, 2004 is \$ 281.81 ($\$ 608.97 - \$ 186.25 = \$ 422.72 \times \frac{66}{2/3} = \$ 281.81$).

The ALJ entered an award, as corrected by the Errata, on behalf of Claimant providing for continuing permanent partial disability benefits beginning on June 4, 2004 at the weekly rate of \$281.81.

The CRB affirms the ALJ's decision. We find the ALJ's analysis to be a reasonable way of reconciling the evidentiary limitations with the instructions to determine and make a specific award to the claimant for wage loss due to her permanent partial disability.

Is Claimant's award subject to the limitation of § 32-1505(B)?

Employer's other argument is that the ALJ committed reversible error by not limiting Claimant's award to the 500-week limitation of D.C. Code § 32-1505(b). That section of the Code was added in 1999, two years after Claimant's work injury. The ALJ ultimately determined that the 500-week limitation would not be applied retrospectively to limit Ms. Echeverria's award. We agree.

In resolving the question before us, we must resolve the conflict between two principles of statutory construction - the principle that a court is to apply the law in effect at the time of its decision and the principle that retrospective application of a law is not favored. *Peterson v. D.C. Lottery and Charitable Games Control Board*, 673 A. 2d 664 (D.C. 1996).

In *Landgraf v. USI Film Products*, 511 U.S. 244 (1994) the Supreme Court held that a court's first task is to determine whether the legislature has expressly stated that a law is to be applied retrospectively. There is nothing in the statutory language of D.C. Code § 32-1505(b) that indicates that it is, or is not, to be applied retrospectively.

Since there is no express statement regarding retrospective application of the statute, we are then to analyze the nature and impact of the statute. *Id.* at 279. A court will give retrospective application to a law unless doing so impairs rights a party had when the party acted, increase a party's liability for past conduct or impose new duties on transactions already completed. *Id.* at 280.

Applying this analysis to the present case, we find that applying D.C. Code § 32-1505(b) retrospectively would affect Claimant's substantive rights.

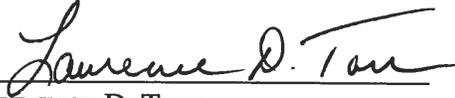
The operative event is the claimant's 1997 accident. Her entitlement to permanent partial disability wage loss benefits stems from that event. There was no 500-week limit on benefits in 1997 and limiting them now would impair rights that she had when she was injured in 1997

Failing to apply the statute retrospectively does not increase Employer's liability for past conduct nor does it impose new duties since there was no cap when Claimant was injured. Moreover, if there was any uncertainty as to retrospective application of the 500 week limit in D.C. Code § 32-1505(b), we would resolve it in Claimant's favor as the Act is to be afforded a liberal construction with doubts to be in Claimant's favor.

CONCLUSION AND AWARD

Claimant's July 29, 2014 Application for Review is DISMISSED. The ALJ's June 30, 2014 Compensation Order on Remand, as amended by the Errata, is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:



LAWRENCE D. TARR

Chief Administrative Appeals Judge

February 24, 2015

DATE

MELISSA LIN JONES, *dissenting*.

I dissent from the majority's opinion for multiple reasons.

The District of Columbia Court of Appeals remanded this case "so that it can be further remanded to an administrative law judge to conduct a fact-finding hearing, utilizing one of the alternative methods set forth in the statute to determine and make a specific award to [Ms. Echeverria] given the ALJ's unchallenged finding that the petitioner is entitled to compensation for wage loss due to her permanent partial disability." *Echeverria v. DOES*, No. 12-AA-001 (Feb. 21, 2013), p. 6. (Emphasis added.) The ALJ was to consider "the average weekly wage of [Ms. Echeverria's] post-injury housekeeping business, had it existed at the time of her injury, could have been determined by adjusting for the rate of inflation and replacing the 2004 value of the dollar with the 1997 value of the dollar." *Id.* In response, the ALJ first found Ms. Echeverria

had approximately 8 clients in 2004 and charged an average of \$87.25 per house. Not all of claimant's clients required weekly cleaning services. Claimant and her two employees cleaned approximately 5 houses per week. Claimant paid out an average of \$50.00 per house to the two employees and kept approximately \$35.00 per house for her own income. I find claimant earned \$186.25 per week when she returned in 2004.

Echeverria v. Ritz-Carlton Hotel, AHD No. 02-005C, OWC No. 517977 (June 30, 2014), p. 5. These findings are filled with ambiguity as a result of the approximations and averages. The Act does not account for such uncertainty, and given that it was Ms. Echeverria's burden to prove the elements of the applicable formulas in order to recover a penalty against the Ritz, without the requisite proof, Ms. Echeverria's claim must fail at least as to consideration of her wages from self-employment.

As for Ms. Echeverria's alternative argument regarding economic adjustments, the ALJ considered this theory in conjunction with the 2004 wage figure of \$186.25 per week and concluded Ms. Echeverria should receive permanent partial disability wage loss benefits at a rate of \$281.81:

Dr. Edelman reported that \$101.84 in 1997 was equivalent to \$123.85 in 2004 and \$186.25 in 2004 was equivalent to \$153.15 in 1997 dollars. Dr. Edelman reported that \$186.25 in 2004 was equivalent to \$152.15. See CE 1. Dr. Edelman also provided a Table entitled Equivalent Weekly Salaries between 1997 and 2004; [b]ased on Weekly Salaries for Maids in the DC-MD-VA-WV Area Reported by the U.S. Department of Labor. The Table lists the average Salary for maids in 1997 and each year through 2004. The Table also provides "Annual Holding Period Growth["] rates and two columns of figures entitled "1994 to 2004 dollars and 2004 to 1992 Dollars.["]

Neither Dr. Edelman nor counsel for claimant have explained what an "Annual Holding Period Growth" is or how it is derived. Nor is there an explanation as to how to use the growth rate or what the last two columns signify. Nevertheless counsel for claimant asserts that according to his calculations:

Under D.C. Code §32-1508(V)(ii)(II), [claimant's] wage loss would be \$458.94 (pre-injury wage in 2004 dollars (\$645.19) - - Post injury wage in 2004 dollars (\$186.25). This yields a compensation rate of \$305.96 per week.

In a footnote only, claimant states that "The 2004 adjustment of [claimant's] average weekly wage was determined by multiplying the 1997 pre-injury average weekly wage by the annual holding period growth found by Dr. Edelman". Claimant does not explain which growth rate he applied and \$645.19 divided by \$517.84 equates to 1.24 which is a rate not seen anywhere in Dr. Edelman's table.

Nevertheless, employer's sole argument in response to claimant's calculations is that each of the surveys relied upon by Dr. Edelman is based on wage data for full-time employees and the wages to which the instant claimant seeks to apply this data are part-time in nature and are for self-employment. Employer further argues that no evidence has been submitted to suggest that the wage trend for full-time employees would be reflected either in wages for part-time employment or in self-employment situations. Employer was provided with ample time to provide its own calculations or statistics. Moreover the undersigned finds employer's argument specious at best at this point in time. It is undisputed that there is a wage loss and it is undisputed that claimant is unable to work in a full time position.

Claimant's arrival at \$645.19 as the figure that represents what claimant's wage loss of \$517.84 equates to in 2004 dollars is not supported by a discernable

explanation, however, Dr. Edelman's Table does list the average weekly wage rate for maids from 1997 to 2004. The undersigned finds it more reasonable to apply the percentage of 17.6% to \$517.84 to arrive at a 2004 figure of \$608.97. 17.6% is the percentage of increase from the 1997 maid weekly wage to the 2004 weekly average rate of \$395 per week.

Plugging \$608.97 into the equation, the permanent partial disability rate claimant should receive as of June 4, 2004 is \$281.81 ($\$608.97 - \$186.25 = \$422.72 \times 66 \frac{2}{3} = \281.81).

Echeverria v. Ritz-Carlton Hotel, AHD No. 02-005C, OWC No. 517977 (June 30, 2014), p. 6. The ALJ's decision cannot be affirmed.

Ms. Echeverria elected to have her permanent partial disability wage loss calculations made pursuant to § 32-1508(3)(V)(ii)(II) of the Act, *Id.* at p. 5, which requires determining

1. the average weekly wage of the pre-injury position at the time the claimant returns to work and
2. the claimant's actual wage when the claimant returns to work.

Although a claimant may be able to establish these requirements through expert testimony, if the claimant is unable to prove those elements, the claimant is unable to prevail. The ALJ did not rely on economic calculations performed by Ms. Echeverria's expert analyst. As set forth above, the ALJ specifically rejected the expert's opinion. The ALJ then went on to substitute her own version of calculations to reach her conclusion, and it is unclear how the ALJ's independent calculations comport with the language of the Act. Thus, the law requires the Compensation Order on Remand be vacated.

Next, regarding the 500 week cap, in the June 20, 2014 Compensation Order on Remand, the Order section reads

It is ORDERED Claimants [*sic*] claim for relief be GRANTED IN PART and DENIED IN PART. Employer is ordered to commence permanent partial disability benefits at the PPD rate of \$281.81 per week from June 4, 2004 to the present and continuing with credit for benefits paid and subject to the limitations found at §32-1505(b).

Id. at p. 7. On July 28, 2014, the ALJ issued an Errata changing the Order section of the Compensation Order on Remand to read

It is ORDERED Claimant's claim for relief be GRANTED IN PART and DENIED IN PART. Employer is ordered to commence permanent partial disability benefits at the PPD rate of \$281.81 per week from June 4, 2004 to the present and continuing with credit for benefits paid by employer to date.

Echeverria v. Ritz-Carlton Hotel, AHD No. 02-005C, OWC No. 517977 (July 28, 2014). The majority relies upon the Errata to resolve the other issues regarding a permanent partial disability wage loss award in this case but ignores it to address the 500 week cap. Based upon the errata and upon the resolution of the other issues in this appeal, the majority provides an advisory opinion as to whether the provisions of §32-1505(b) of the Act retroactively apply to this case. I decline to do so.

/s/ Melissa Lin Jones

MELISSA LIN JONES

Administrative Appeals Judge