GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services
Labor Standards Bureau

Office of Hearings and Adjudication
COMPENSATION REVIEW BOARD

(202) 671-1394-Voice
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CRB No. 07-167

MAURICE SINCLAIR,

Claimant – Petitioner

v.

PREMIUM DISTRIBUTORS OF WASHINGTON, D.C. AND LIBERTY MUTUAL INSURANCE,

Employer/Carrier –Respondent.

Appeal from a Compensation Order on Remand of
Administrative Law Judge Anand K. Verma
OHA No. 05-364, OWC No. 606018

Maurice Sinclair, *pro se* Petitioner

Curtis B. Hane, Esquire for the Respondent

Before: LINDA F. JORY, FLOYD LEWIS AND SHARMAN J. MONROE, *Administrative Appeals Judges.*

FLOYD LEWIS, *Administrative Appeals Judge*, on behalf of the Review Panel:

DECISION AND ORDER

JURISDICTION

Jurisdiction is conferred upon the Compensation Review Board pursuant to D.C. Official Code §§ 32-1521.01 and 32-1522 (2004), 7 DCMR § 230, and the Department of Employment Services Director's Directive, Administrative Policy Issuance 05-01 (February 5, 2005).[1]

[1] Pursuant to Administrative Policy Issuance No. 05-01, dated February 5, 2005, the Director of the Department of Employment Services realigned the Office of Hearings and Adjudication to include, *inter alia*, establishment of the Compensation Review Board (CRB) in implementation of the District of Columbia Fiscal Year 2005 Budget Support Act of 2004, Title J, the D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, sec. 1102 (Oct. 1, 1994), *codified at* D.C. Code Ann. §§ 32-1521.01, 32-1522 (2005). In accordance with the Director's Policy Issuance, the CRB replaces the Office of the Director in providing administrative appellate review and disposition of workers' and disability compensation claims arising under the D.C. Workers' Compensation Act of 1979, as amended, D.C. Code Ann. §§ 32-1501 to 32-1545 (2005) and the D.C. Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Code Ann. §§ 1-623.1 to 1.643.7 (2005), including responsibility for administrative appeals filed prior to October 1, 2004, the effective date of the D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004.

BACKGROUND

This appeal follows the issuance of a Compensation Order on Remand from the Administrative Hearings Division (AHD) of the Office of Hearings and Adjudication (OHA) in the District of Columbia Department of Employment Services (DOES). In that Order, which was filed on July 12, 2007, the Administrative Law Judge (ALJ) denied the request by Claimant-Petitioner (Petitioner) for an award of temporary total disability from May 5, 2005 to the present and continuing. On September 21, 2007, Petitioner appealed that Compensation Order.[2]

As grounds for this appeal, Petitioner alleges that the ALJ's decision is not supported by substantial evidence and that he remains disabled.

ANALYSIS

As an initial matter, the scope of review by the Compensation Review Board (CRB) and this Review Panel, as established by the Act and as contained in the governing regulations, is 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. D.C. Official Code §32-1522(d)(2). "Substantial evidence," as defined by the District of Columbia Court of Appeals, is such evidence as a reasonable person might accept to support a particular conclusion. *Marriott Int'l. v. District of Columbia Department of Employment Services*, 834 A.2d 882 (D.C. App. 2003). Consistent with this scope of review, the CRB and this Review Panel are constrained to uphold 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 the reviewing authority might have reached a contrary conclusion. *Marriott*, 834 A.2d at 885.

On August 30, 2006, the ALJ issued a Compensation Order denying Petitioner's claim for temporary total disability benefits and concluded that Petitioner voluntarily limited his income. In a Remand Order, dated December 7, 2006, the CRB reversed and remanded this matter to the ALJ to consider additional evidence offered by Petitioner. In a Compensation Order on Remand, dated March 30, 2007, the ALJ reversed the earlier Compensation Order and granted Petitioner's claim for benefits. On July 10, 2007, the CRB again reversed and remanded this matter to the ALJ.

In the Remand Order of July 10, 2007, the CRB noted that the earlier remand was for sole purpose of determining whether the post-hearing submission consisting of Petitioner's May 4, 2006 lumbar spine MRI scan was relevant and material evidence and whether it was dispositive of the issue presented for resolution at the September 27, 2005 hearing. In awarding Petitioner benefits in the Compensation Order on Remand of March 30, 2007, the ALJ also decided to consider other

[2] While the Compensation Order on Remand was issued on July 12, 2007, it was not mailed to Petitioner's current address. As a result, Petitioner did not receive proper notice of the decision. Thus, the Compensation Order on Remand was again sent by certified mail, to Petitioner's correct address, on September 24, 2007. As a result, Petitioner's Application for Review was timely filed.

additional evidence, submitted by Petitioner, as the ALJ clearly considered two post-hearing reports by Dr. Michael Kuo on the issue of causal relationship.

The CRB stressed that while it is clear that the CRB's Remand Order instructed the ALJ to consider the MRI, the CRB also recognized the ALJ's broad discretion in considering this new additional evidence in resolving the claim for benefits. Thus, the CRB concluded that it was not improper for the ALJ to do so by considering the two reports from Dr. Kuo. However, since the ALJ decided to consider this additional evidence that was related to the MRI study, Respondent clearly should have been afforded the opportunity to respond to this additional evidence, with any rebuttal evidence it wished to submit for the ALJ to consider.

Thus, the CRB remanded the matter to the ALJ to provide Respondent an opportunity to respond to the new evidence and revisit the case after considering the new evidence and any rebuttal evidence submitted by Respondent.

In the instant Compensation Order on Remand, after considering all of the evidence of record, including Respondent's rebuttal, the ALJ determined that Petitioner's wage loss was not related to his original work injury, as the ALJ concluded that there was no conclusive evidence that Petitioner's lumbar symptoms were caused by his left knee injury in September of 2004. In his appeal, Petitioner generally disputes the ALJ's conclusions and argues that the evidence reveals that he is still disabled from his work injury.

After again reviewing the May 5, 2006 MRI study of Petitioner's lumbar spine and all of the evidence of record, the ALJ concluded that Petitioner's claimed wage loss was not the result his original September 2004 work injury. The ALJ explained the reasons for denying Petitioner's claim, stating:

> The MRI, however, was not done until May 4, 2006, which disclosed a L3-4 disc herniation. However, its nexus with the original left knee contusion of September 23, 2004 was not stated by Dr. Kuo with any reasonable degree of medical certainty.
>
> Predicated upon the additional evidence consisting of the May 4, 2006 MRI scan of claimant's lumbar spine, as interpreted by Dr. Kuo, in *pari material* with claimant's other medical records, the undersigned is not persuaded that it is the natural sequela of the September 23, 2004 left knee contusion.
>
> In its rebuttal . . . employer questioned how a post-hearing MRI of the lumbar spine could be dispositive on the issue of an accidental injury to the left knee only. Upon reviewing the adduced evidence, the undersigned holds that the record contains no conclusive evidence showing claimant's lumbar symptoms were attributable to the left knee contusion incurred in the September 23, 2004 work incident.

Compensation Order on Remand at 6.

As such, the ALJ ultimately concluded that there was no conclusive evidence of record demonstrating that Petitioner's subsequent lumbar symptoms could be attributed to the initial left knee injury. In addition, the ALJ specifically incorporated by reference the findings made in the August 30, 2006 Compensation Order, in which the ALJ determined that Petitioner voluntarily limited his income.

As to the merits of the Petitioner's appeal, the record was thoroughly reviewed and the Panel finds that the ALJ's factual findings are supported by substantial evidence on the record as a whole, and are, therefore, conclusive. *Marriott supra* at 882 (D.C. 2003); D.C. Official Code § 32-1521.01(d)(2)(A). The ALJ's conclusions of law are in accordance with the law as well. In sum, the record fully supports the ALJ's decision, and this Panel, therefore, adopts the reasoning and legal analysis expressed by the ALJ in that decision in affirming the Compensation Order on Remand.

CONCLUSION

The Compensation Order on Remand of July 12, 2007 is supported by substantial evidence and is in accordance with the law.

ORDER

The Compensation Order on Remand of July 12, 2007, is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

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FLOYD LEWIS
Administrative Appeals Judge

December 13, 2007
DATE