

**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**  
**(202) 673-6402-Fax**

**CRB No. 05-222**

**EDNA MCMANUS,**

**Claimant - Petitioner**

**v.**

**D. C. DEPARTMENT OF CORRECTIONS,**

**Employer- Respondent**

Appeal from a Final Compensation Order of  
Administrative Law Judge Robert R. Middleton  
AHD No. PBL 02-017C, DCP Nos. 002705, 002683

Amy Vruno, Esquire, for the Petitioner

Pamela Smith, Esquire, for the Respondent

Before LINDA F. JORY, JEFFREY P. RUSSELL and SHARMAN J. MONROE, *Administrative Appeals Judges*.

LINDA F. JORY, *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 § 1-623.28, § 32-1521.01, 7 DCMR § 118, Department of Employment Services (DOES) Director's Directive, Administrative Policy Issuance 05-01 (February 5, 2005).<sup>1</sup>

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<sup>1</sup> 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, §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

## BACKGROUND

This appeal follows the issuance of a Final Compensation Order (FCO) by the Assistant Director for Labor Standards of DOES, approving and adopting a Recommended Compensation Order from the former Office of Hearings and Adjudication (OHA). In that Recommended Compensation Order, (the Compensation Order) which was filed on February 28, 2005, the Administrative Law Judge (ALJ), denied Claimant-Petitioner's request to utilize the Act's § 1-623.25 entitled "Misbehavior at Proceedings" to penalize employer for its alleged refusal to comply with the terms of a prior Final Compensation order, but granted Claimant's claim for a determination that her right side carpal tunnel injury arose out of and in the course of her employment duties on February 26, 2002 as alleged.

Petitioner filed an Application for Review (AFR) and Memorandum of Points and Authorities in Support of the Application for Review. As grounds for this appeal, Claimant-Petitioner alleges as error that although the ALJ granted Claimant's claim for a right sided carpal tunnel injury arising out of and in the course of her employment duties, the ALJ failed, however, to rule on whether Claimant was eligible for the requested Temporary Total Disability benefits based on her right carpal tunnel injury. Petitioner urged the CRB to uphold every other aspect of the February 2005 FCO and reiterated that the appeal was only of the ALJ's failure to decide whether claimant was independently eligible for TTD benefits due to the right carpal tunnel injury.

Employer-Respondent filed no response to the AFR, and has not participated in this appeal.

## ANALYSIS

As an initial matter, the scope of review by the CRB and this Review Panel (hereafter, the 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. *See* D.C. Comprehensive Merit Personnel Act of 1978, as amended, D.C. Official Code § 1-623.28(a). "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. Dist. of Columbia Dep't. of Employment Servs.* 834 A.2d 882 (D.C. 2003). Consistent with this scope of review, the CRB and this panel are bound 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.

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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.

Turning to the case under review, Petitioner relies on § 1.623.24(a) in support of her appeal, asserting that §1-623.24(a) requires a determination regarding payment of compensation. Petitioner asserts that §1-623.24 (a) entitles her “to a decision regarding whether she is legally entitled to monetary compensation for her right carpal injury” and adds: “[t]he D.C. Code gives a worker a right to a decision for or against payment of Compensation”.

In that §1-623.24(a) requires a determination be made at the initial Third Party Administrator’s (TPA) level before proceeding to a Formal Hearing, both the administrative file and the evidentiary record were reviewed to determine if the disability related to Claimant’s right carpal tunnel syndrome was ever addressed by the TPA. Petitioner alleged that in a July 15, 2002, Form 5, Compensation Determination, her claim for monetary and medical benefits for both left and right carpal tunnel injuries was denied. In response to Claimant’s request for reconsideration of the original determination, a “Final Order of Denial was issued on July 25, 2003, again denying medical and monetary benefits. In determining that Claimant-Petitioner has met the threshold requirement of acquiring a determination at the TPA level, the Panel hereby takes administrative notice that the July 15, 2002 Form 5 and the Final Order of Denial issued on July 25, 2003 did deny Claimant medical and monetary benefits for both her left and right carpal tunnel problems<sup>2</sup>.

Thereafter, Claimant filed for a hearing regarding the compensability of both her right and left carpal tunnel injuries. The ALJ at the AHD level severed the issues regarding the left and right carpal tunnel injuries into two separate proceedings. On April 4, 2003, OHA issued an FCO finding Claimant eligible for medical and TTD benefits for her left carpal tunnel injury. On the matter of the right carpal tunnel injury, a full evidentiary hearing was held on February 10, 2004 and July 16, 2004 which resulted in the February 28, 2005 FCO’s ruling that Claimant’s right carpal tunnel injury was related to her employment and granted her medical benefits. The ALJ did not decide whether the right carpal tunnel injury contributed to Claimant’s disability in any way.

Neither the transcript of the Formal Hearing held by the ALJ on February 10, 2004 or on July 16, 2004 provides a recitation of the issues presented by the parties to be addressed by the ALJ in the FCO. The ALJ does not address a claim for wage loss benefits brought by Claimant until the last paragraph of the FCO when he states, after citing §1-623.3 (a) of the Act, regarding claimant’s entitlement to medical benefits:

Finally, since the record at the time of the 2004 formal hearings revealed claimant was receiving income replacement benefits; there is no need to consider this matter herein.

In addition to the above, the Panel has reviewed the administrative file to determine if there was a pre-hearing order or any other pertinent information which would establish that the

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<sup>2</sup> The Panel acknowledges that Claimant-Petitioner has recited verbatim from the July 15, 2002 Form 5 and the Final Order of Denial issued on July 25, 2003 which has not been made part of this record but is contained within Employer-Respondent’s appeal of the April 4, 2003 Final Compensation Order currently pending before the CRB under CRB No. 09-03, AHD No. PBL 02-017(B), DCP Nos. 002805, 022683, awarding Claimant temporary total disability for her left wrist injury.

nature and extent of Claimant's disability was being contested by employer at either of the two recent hearings. When asked to state what she was requesting as a result of the hearing, claimant stated in the JPHO that she was requesting medical benefits retroactive to February 26, 2002 for her right carpal tunnel injury. In addition, the JPHO indicates "Claimant also requests a ruling that her right carpal tunnel injury is disabling and is an independent basis for the awarding of TTD benefits (to be offset by the TTD benefits already received for the left carpal tunnel injury).

Notwithstanding Petitioner's incorrect label of "independent" to her request, Claimant-Petitioner has demonstrated that her claim for disability related to her right carpal injury has in fact been denied by the TPA pursuant to §1-623.24(a), and the ALJ has failed to render a decision on any *contribution* the right carpal tunnel syndrome may have to her current disability. The Panel is, accordingly, in agreement that the matter must be remanded to AHD for fact finding and a conclusion of law as to whether Petitioner's work related right carpal injury has contributed to the wage loss found by the ALJ in his April 4, 2003 FCO.

#### CONCLUSION

The February 28, 2005 Final Compensation Order is not in accordance with the law as ALJ erred by not considering whether Claimant-Petitioner's right carpal tunnel injury of February 26, 2002, contributed to Claimant-Petitioner's current wage loss.

#### ORDER

The Final Compensation Order of February 28, 2005 is hereby REVERSED and REMANDED to AHD for further fact finding and a conclusion of law as to whether Petitioner's work related right carpal injury has resulted in or has contributed to her current disability.

FOR THE COMPENSATION REVIEW BOARD:

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LINDA F. JORY  
Administrative Appeals Judge

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May 19, 2005  
DATE