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

Office of Hearings and Adjudication
COMPENSATION REVIEW BOARD

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CRB No. 04-094

MEDSTAR (D/B/A AS GEORGETOWN UNIVERSITY HOSPITAL) AND KEMPER/BROADSPIRE

Employer/Third Party Administrator - Petitioner,

v.

GEORGETOWN UNIVERSITY HOSPITAL,

Self-Insured Employer – Respondent.

MANIJEH SHEMIRANI,

Claimant.[1]

Appeal from a Compensation Order of
Administrative Law Judge Jeffrey P. Russell
OHA No. 03-340A, OWC Nos. 551893, 587491

John Noble, Esquire for the Claimant

William S. Hopkins, Esquire, for the Petitioner

Michael D. Dobbs, Esquire for the Respondent

Before LINDA F. JORY, AND FLOYD LEWIS, Administrative Appeals Judges and E. COOPER BROWN, Chief Administrative Appeals Judge.

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 § 32-1521.01 and § 32-1522 (2004), 7 DCMR § 230 (1994), and the Department of Employment

[1] Claimant has not participated in the instant appeal.

Services Director's Directive, Administrative Policy Issuance 05-01 (February 5, 2005).[2] Pursuant to 7 D.C.M.R § 230.04, the authority of the Compensation Review Board extends over appeals from compensation orders including final decisions or orders granting or denying benefits by the Administrative Hearings Division (AHD) or the Office of Workers' Compensation (OWC) under the public and private sector Acts.

BACKGROUND

This appeal follows the issuance of a Compensation Order 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 Compensation Order, which was filed on April 14, 2004, the Administrative Law Judge (ALJ), concluded Claimant suffered a new injury on August 1, 2002 while working for Employer- Petitioner (Petitioner).

As grounds for this appeal, Petitioner alleges the ALJ failed to consider the medical evidence which Petitioner asserts supports a finding that Manijeh Shemirani, the Claimant's (Claimant) condition constitutes an occupational disease and, as such, the liability for compensation rests with the employer of the last known exposure. Self-Insured Employer-Respondent (Respondent) has filed its response asserting the ALJ correctly found claimant sustained a compensable aggravation of a prior injury and requests the Compensation Order be affirmed.

Claimant has not participated in the instant appeal.

ANALYSIS

As an initial matter, the scope of review by the Compensation Review Board (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. D.C. Official Code § 32-1521.01(d)(2)(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. District of Columbia Department of Employment Services 834 A.2d 882 (D.C.

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[2] 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 20024, Title J, the 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. Official Code §§ 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.

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. For reasons set forth below, the Panel finds the Compensation Order must be affirmed.

Petitioner concedes that "the only issue to be decided on appeal was which employer is responsible for payment of the stipulated periods of disability and the medical care provided to claimant". Petitioner's only allegation of error on the ALJ's part is his failure to consider medical evidence that Petitioner asserts supports a finding of an occupational disease as Petitioner asserts that if claimant's epicondylitis is found to be an occupational disease, pursuant to the last injurious exposure rule it would not be responsible for payment of claimant's wage loss and medical benefits.

As a matter of law in this jurisdiction, injuries that occur as a result of cumulative trauma or repetitive use have never been considered to be occupational diseases.

D.C. Code §32-1510 specifically states

> In case of pneumoconiosis, such as silicosis and asbestosis, radiation disease, and any other generally recognized occupational disease, liability for compensation rests with the employer of the last know exposure.

Occupational Disease is defined in 7 D.C.M.R. §299.1 as

> A disease or infection generally recognized by the medical profession as a disease or infection arising naturally out of a particular employment. The term includes, but is not limited to, pneumoconionsis, silicosis, asbestosis, and radiation diseases.

The Act's interpretation is consistent with that of Professor Larson, who acknowledges in his discussion of Risks Distinctly Associated with the Employment, occupational diseases, "as the name implies, are produced by the particular substances or conditions, inherent in the environment of the employment" §4.01, Part 2, Chapter 4 The Categories of Risk.

The Panel notes that the ALJ dispelled Petitioner's theory that claimant's condition could be a disease as opposed to a new injury at the Formal Hearing, calling the occupational disease theory a "red herring". Accordingly, the ALJ listed as the only issue to address in the Compensation Order was "Whether claimant sustained a new injury on August 1, 2003[3]" See CO at 2; HT at 108.

The ALJ indicated in a footnote in the Compensation Order that "while each of the parties' exhibits is not specifically referenced in this discussion each was reviewed, considered, and weighed during the course of this deliberation" and we find no reason to question this statement.

[3] Having reviewed the transcript in it's entirely, the Panel notes the date in question is August 1, 2002 and not 2003, which is an obvious typographical error on the ALJ's part

See CO at 3. Nevertheless, the Panel concludes the ALJ properly determined and advised the parties at the Formal Hearing that he would not consider as an issue Petitioner's theory that claimant's injury was due to an occupational disease, therefore the ALJ was not required to address the issue or refer to medical evidence Petitioner submitted in support of its theory.

CONCLUSION

The ALJ's conclusion that Claimant suffered a new injury on August 1, 2002 is supported by substantial evidence and is in accordance with the law.

ORDER

The Compensation Order issued on April 13, 2004 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

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LINDA F. JORY
Administrative Appeals Judge

January 11, 2006
DATE