GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

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DIRECTOR

COMPENSATION REVIEW BOARD

DEPT. OF EMPLOYMENT SERVICES
COMPENSATION REVIEW BOARD
2016 AUG 19 PM 12 26

CRB No. 16-052

MICHELLE THOMAS,
Claimant–Respondent,

v.

DISTRICT OF COLUMBIA DEPARTMENT OF PUBLIC WORKS
Employer–Petitioner.

Appeal from a May 10, 2016 Compensation Order on Remand
by Administrative Law Judge Fred D. Carney, Jr.
AHD No. PBL 14-015A, DCP No. 0468-WC-04-0000341

(Decided August 19, 2016)

Harold L. Levi for Claimant
Lindsay M. Neinast for Employer

Before LINDA F. JORY, HEATHER C. LESLIE, and JEFFREY P. RUSSELL, *Administrative Appeals Judges.*

LINDA F. JORY for the Compensation Review Board.

DECISION AND REMAND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

Claimant, a parking enforcement officer, tripped and fell over a Segway while walking through offices at the Franklin D. Reeves Center on February 6, 2014. She fell onto her left side, sustaining injury to her left side and head. The Public Sector Workers' Compensation Program (PSWCP) denied Claimant's claim for benefits as it was determined Claimant's injury did not arise out of and in the course of her employment.

Following the denial, Claimant filed an Application for Formal Hearing in the Administrative Hearings Division (AHD) of the Department of Employment Services (DOES). A hearing was held before an Administrative Law Judge (ALJ) on March 10, 2015, and on May 29, 2015, the ALJ issued a Compensation Order (the CO) finding the injury to be compensable under the D.C. Comprehensive Merit Personnel Act of 1978, as amended D. C. Code § 1-623.01 *et seq.*, (the Act).

The Compensation Review Board (CRB) affirmed the finding that the injury arose out of and occurred in the course of Claimant's employment with Employer, but remanded the matter to AHD for clarification of the nature of the claim for relief and the nature of the award, including specific findings as to nature of the injuries sustained, Claimant's past and current work status, and the relief to which Claimant is entitled. *Thomas v. D.C. Department of Public Works,* CRB No. 15-108 (November 23, 2015) (DRO).

The CRB explained in a footnote:

> For reasons not apparent in the CO or addressed in either party's submissions, the ALJ framed the order as follows: "It is ORDERED that Claimant's claim for relief be, and hereby is, GRANTED to the extent the overpayment notice is not upheld." There is no mention of any Notice of Overpayment in the CO, and the Claim for Relief is framed as "Claimant seeks an award of medical and wage loss benefits both retroactively and prospectively."

DRO at 2, n. 2

On remand the CRB ordered AHD to provide:

> . . . further clarification of the nature of claimant's injuries, the claim for relief, Claimant's past and current work status, and the nature of the relief granted.

Id. at 4.

The ALJ who originally presided over the matter issued a Compensation Order on Remand (COR) on March 10, 2016, wherein he ordered:

> It is ORDERED that Claimant's claim for relief be, and hereby is GRANTED. Claimant is hereby awarded temporary total disability from February 6, 2014 to April 30, 2014 and payment of related medical expenses from February 6, 2014 to the present and continuing.

COR at 3.

Employer filed an Application for Review of Compensation Order and a memorandum of points and authorities in support thereof (Employer's Brief) with the Compensation Review Board (CRB) seeking reversal of the CO. Claimant filed Claimant's Opposition to Employer's Application for Review of Compensation Order and a memorandum of points and authorities in support thereof (Claimant's Brief), requesting that the CO be affirmed

ISSUE ON APPEAL

Is the May 10, 2016 COR supported by substantial evidence and in accordance with the law?

ANALYSIS

The scope of review by the Compensation Review Board (CRB) and this Review Panel (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. Code § 1-623.28(a) "Substantial evidence", as defined by the District of Columbia Court of Appeals (DCCA), is such evidence as a reasonable person might accept to support a particular conclusion. *Marriott Int'l. v. DOES* 834 A.2d 882 (D.C. 2003)(*Marriott*). 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.

Employer asserts:

> . . . [T]he ALJ ultimately awarded Claimant "temporary total disability from February 6, 2014 to April 30, 2014 and [the] payment of medical expenses from February 6, 2014 to the present and continuing." *Id.* Because the ALJ does not explicitly make a finding as to the extent of the workplace injury, Employer requests that the matter be remanded for clarification, or that the CRB clarify that the extent of Claimant's injuries resulting from her workplace injury is a closed head injury with body contusion. *See Sylvia Brown-Carson v. D. C. Office of Unified Communications*, CRB No. 13-132, AHD No. PBL 13-002 (Jan. 24, 2014) ("As no other conclusion can attain based on the record evidence . . . . , the [Compensation Order] is vacated and this matter is remanded to the ALJ to issue [a Compensation Order consistent with CRB's conclusions in the remand order.").

Employer's Brief at 5.

Claimant asserts:

> Employer tries to confuse a November 6, 2012 employment-related injury which Claimant sustained (the workers' compensation claim for which was accepted) with the February 6, 2014 workplace injury at the Reeves Center which is at issue here. The COR identified the injuries sustained in both work incidents. While the COR plainly identifies the "head, neck, back, left arm and wrist, left thigh, knee and ankle. . ." injuries Claimant sustained on February 6, 2014 at the Reeves Center in footnote 2, Employer seems dissatisfied either with the placement of the identification of Claimant's injuries in a footnote or with Judge Carney's textual discussion of Claimant's testimony.
>
> The fact of the matter is, there no longer [sic] any confusion regarding the nature of Claimant's injuries. Head, neck, back, left arm, left wrist, left thigh, left knee and left ankle are clearly stated.

Claimant's Brief at 5.

We disagree with Claimant and find, to the contrary, that "confusion" still exists as to what injuries Claimant alleges she sustained in the February 6, 2014 incident.

The CO's findings of fact with respect to the injuries Claimant sustained on February 6, 2014 include:

> . . . In walking to through the offices she tripped and fell sustaining injuries that required her being transported to Washington Hospital Center (WHC). Claimant reported to the WHC with complaints of pain in her head, neck, back and both shoulders. She was diagnosed with a closed head injury with body contusion as a result of her recent trauma.

CO at 3.

In a footnote, the ALJ added:

> I find while she was at the Reeves Center on February 6, 2014, that Claimant fell on her left side injuring the left side of her head, her neck, back, left arm and wrist, left thigh, knee and ankle. (HT 45)

Id. n. 2.

The CO's discussion with respect to the injuries sustained contains the following:

> Claimant was equally vague and unspecific about the injuries she sustained on February 6, 2014. Claimant testified she injured [sic] head, her left shoulder, and her hip on the left side, her ankle, thigh and knee. She did not specify which ankle, knee and thigh was injured. (HT 53).

Contrary to Claimant's Brief, Employer does not take issue with the ALJ placing a finding of fact in a footnote, however, we do, as the "finding" in footnote 2 is not supported by the evidence of record. Moreover, it is not consistent with the subsequent finding that "Claimant reported to the WHC with complaints of pain in her head, neck, back and both shoulders". COR at 3. Review of page 45 of the hearing transcript (HT), which the ALJ cites to in the footnote, reveals that Claimant was asked what injuries she suffered in the 2012 fall and she replied: "I suffered injuries to my left side, my shoulder, my hip, my back, my knee and my ankle on the left side". The injuries Claimant sustained in 2012 are not relevant to the injuries she sustained in 2014 incident that was before the ALJ.

Inasmuch as the ALJ awarded medical benefits from February 6, 2014 to the present and continuing it is required that the ALJ specifically identify what injuries Claimant will be receiving medical treatment for from February 6, 2014 to the present and continuing. Contrary to Employer's suggestion, the CRB is not empowered to make such findings of

fact or fill any gaps created by the testimonial or evidentiary record. *See King v. DOES*, 742 A.2d. 460 (D. C. 1999); *Mack v. DOES,* 651 A.2d 804, 806 (D.C. 1994).

CONCLUSION AND ORDER

The finding that on February 6, 2014, Claimant fell on her left side injuring the left side of her head, her neck, back, left arm and wrist, left thigh, knee and ankle is not supported by substantial evidence and is vacated. The matter is once again remanded to AHD for clarification of the nature of Claimant's injuries for which claimant seeks medical treatment as a result of the February 6, 2014 work-related fall.

So ordered.