

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**Department of Employment Services**

MURIEL BOWSER  
MAYOR



DEBORAH A. CARROLL  
DIRECTOR

**COMPENSATION REVIEW BOARD**

**CRB No. 15-108**

**MICHELLE THOMAS,  
Claimant–Respondent,**

**v.**

**DISTRICT OF COLUMBIA DEPARTMENT OF PUBLIC WORKS,  
Employer–Petitioner.**

Appeal from a May 29, 2015 Compensation Order  
by Administrative Law Judge Fred D. Carney, Jr.  
AHD No. PBL 14-015A, DCP No. 0468-WC-0000341

(Decided November 23, 2015)

Harold L. Levi for Claimant<sup>1</sup>  
Andrea Comentale for Employer<sup>2</sup>

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

JEFFREY P. RUSSELL for the Compensation Review Board.

**DECISION AND REMAND ORDER**

**FACTS OF RECORD AND PROCEDURAL HISTORY**

Claimant Michelle Thomas was employed by Employer as a parking enforcement officer when, on November 6, 2012, she sustained an injury when she tripped over a manhole cover. Her leg and shoulder were injured<sup>3</sup> such that she was unable to continue perform her normal duties and her claim for compensation for this injury was accepted. After a period of time off, Claimant

<sup>1</sup> The Compensation Order (CO) erroneously identifies Claimant’s counsel as Kirk Williams. The Certificate of Service also misidentifies both counsels, includes a party not involved in this case, and omits Claimant. Mr. Levi represented Claimant at the formal hearing and represents Claimant in this appeal.

<sup>2</sup> The CO erroneously identifies Employer’s counsel as Frank McDougald. Lindsay Neinast represented Employer at the formal hearing. Ms. Comentale, along with Ms. Neinast, filed the Application for Review on Employer’s behalf.

<sup>3</sup> The CO is silent as to which leg and shoulder were injured in the manhole incident, and is similarly silent as to the injuries sustained in the instant claim. There is also no finding concerning claimant’s work status.

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returned to work for Employer in a light duty position, working under the direction of the Assistant Director, William Carter.<sup>4</sup> Claimant again went off work to have surgery, and again returned to a light duty position. Thereafter she returned to her pre-injury job, where she worked under the supervision of Jocelyn Chase.

On February 6, 2014, Claimant advised Ms. Chase that she would like to find an alternate job within the department to accommodate problems she was still having performing her job. Ms. Chase advised Claimant to speak with John Parham, the human resources administrator for Employer, located at the Reeves Center on 14<sup>th</sup> Street, NW, about work modifications and/or accommodated positions under the Americans with Disabilities Act (e ADA). The Reeves Center is a government owned building housing numerous District of Columbia offices, including the office of the Assistant Director of the Department of Public Works (DPW).

While there Claimant slipped and fell and was injured. Employer denied Claimant's claim for benefits under D.C. Code § 1-623.01, *et seq.*, (the Act) which governs claims for workers' compensation for employees of the District of Columbia government, and is administered by the Public Sector Workers' Compensation Program (PSWCP). The denial was based upon a determination by the PSWCP that the injury did not arise out of or occur in the course of Claimant's employment. Rather, the PSWCA asserted in its Notice of Determination (NOD) denying the claim that the injury occurred while Claimant was "visiting a friend".

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 Act.<sup>5</sup>

Employer filed an Application for Review of Compensation Order and a memorandum of points and authorities in support thereof (Employer's Brief) with 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.

We affirm the finding that the injury arose out of and occurred in the course of Claimant's employment with Employer, but remand 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.

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<sup>4</sup> As Employer points out, the CO contains an error where it states that Mr. Carter was Claimant's supervisor on the date of the February 6, 2014 slip and fall. We deem this error to be of no consequence, given that the CO also identifies Mr. Carter as having been Claimant's supervisor while she was working light duty, and identifies Ms. Chase as Claimant's supervisor on the date of the February 6, 2014 injury. The finding concerning Mr. Carter that is of significance, that being that Mr. Carter was not a personal friend of Claimant's at the time she went to speak with him at the Reeves Center on February 6, 2014, is not challenged or disputed by Employer.

<sup>5</sup> 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."

## STANDARD OF REVIEW

The scope of review by the CRB is limited to making a determination as to whether the factual findings of the appealed compensation order are based upon substantial evidence in the record and whether the legal conclusions drawn flow rationally from those facts and are in accordance with applicable law. The CRB must affirm a compensation order that is supported by substantial evidence, even if there also is contained within the record under review substantial evidence to support a contrary conclusion and even if the CRB might have drawn a contrary conclusion. *Marriott International v. DOES*, 834 A.2d 882, 885 (D.C. 2003).

## DISCUSSION

The issue presented to the ALJ for resolution was whether Claimant's slip and fall at the Reeves Center arose out of and occurred in the course of her employment.

Based upon Claimant's testimony, the ALJ found that Claimant's supervisor, Ms. Chase, directed that Claimant travel to the Reeves Center to meet with Mr. Parham to discuss accommodated positions, and Mr. Parham testified that he advised Claimant to see his assistant, Ms. Snowden, to pick up some ADA forms. Claimant testified that after leaving the meeting with Mr. Parham, she went to see Mr. Carter to enlist his aid in seeking accommodated work, and was walking through an office occupied by a Ms. Broom, outside of which a Segway was lying on the floor, over which Claimant tripped, sustaining an injury.

Although the CO states that Ms. Broom's office was adjacent to Mr. Parham's, this is an error, possibly typographical. Ms. Broom's office is where Claimant went to speak with her former supervisor, Mr. Carter.

Despite the assertion by the PSWCP in the NOD that the injury occurred while Claimant was "visiting a friend", the ALJ specifically found that Mr. Carter was not a personal friend, and that Claimant went to see him to inquire about potential accommodated jobs in DPW.

Although Employer also argued at the formal hearing that Claimant was "visiting a friend" when she was injured (CO, p. 5), Employer has abandoned that contention in this appeal. In fact, Employer acknowledges that "Claimant left Mr. Parham's office and went to speak with another representative, William Carter ("Mr. Carter"), in Mrs. Brooms' office at the Reeves Center". Employer's Brief, p. 6.

It is now Employer's position that because Claimant was not issuing parking tickets and was not seeing Ms. Snowden, that she had somehow deviated from her employment by going to see Mr. Carter first. *Id.*

The ALJ properly cited *Grayson v. DOES*, 516 A.2d 909 (D.C. 1986) as establishing the "positional risk" analytic approach to the issue of "arising out of" and "in the course of" employment, and properly describes *Grayson* as a "but for" test, wherein the ALJ must

determine if, but for the fact, conditions and obligations of employment, a claimant would not have been at the place and time of the injury.

As the ALJ noted, Arthur Larson has written “arising out of refers to whether the injury was causally connected to the employment” and “course of employment” refers to an injury that takes place where the employee may reasonably be expected to be. 1 LARSON’S WORKERS’ COMPENSATION LAW, §§ 35.01, 35.04, Rex K. Larson, Ed. (Matthew Bender 2011).

Claimant argues that her reason for seeing Mr. Carter was to attempt to locate positions that would enable her to continue to work, and that is now undisputed. We agree with Claimant that nothing in this record to which Employer has directed our attention substantiates a conclusion that Claimant had left the course of her employment when seeking to meet with Mr. Carter, and that finding is affirmed.

However, as noted above, the CO requires amendment so as to clarify (1) what the claim for relief is, (2) what the ALJ intended to order and (3), both as to time lost in the past and the current status.

#### CONCLUSION AND ORDER

The finding that Claimant had not deviated from her employment at the time of the injury is supported by substantial evidence, is in accordance with the law, and is AFFIRMED. The matter is remanded to AHD for 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.

*So ordered.*