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. 08-029

MILDRED STEWART,

Claimant – Respondent

v.

D.C. DEPARTMENT OF CORRECTIONS,

Employer – Petitioner

Appeal from a Compensation Order of
Administrative Law Judge Terri Thompson Mallett
AHD No. PBL 06-088; OWC No. 761032

Thelma Chichester Brown, Esquire for the Petitioner

Harold L. Levi, 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 § 1-623.28, § 32-1521.01, 7 DCMR § 118, and DOES Director's Directive Administrative Policy Issuance No. 05-01 (Feb. 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 D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, D.C. Official Code § 32-1521.01. In accordance with the Director's Directive, 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. Official Code § 32-1501 *et seq*., and the D.C. Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Official Code § 1-623.1 *et seq*., 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 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 October 1, 2007, the Administrative Law Judge (ALJ) ordered that the disability benefits of Claimant-Respondent (Respondent) be reinstated to the date of termination and that Respondent's medical benefits related to her physical and mental conditions be reinstated and that Respondent be reimbursed for all causally related medical expenses. Employer-Petitioner (Petitioner) now seeks review of that Compensation Order.

As grounds for this appeal, Petitioner alleges as that the ALJ's decision is not based upon substantial evidence and is not in accordance with the law.

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 § 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 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.

After Respondent, a corrections officer, suffered a work-related injury in August of 1985, when she was assaulted by a group of eight to ten inmates, her claim for disability benefits was accepted. Respondent received a Final Determination on Reconsideration on June 23, 2006, terminating her benefits. Respondent filed a timely application for a Formal Hearing and a Scheduling Order was issued by AHD. In accordance with the Scheduling Order, Respondent furnished Petitioner with her completed Pre-Hearing Order on August 10, 2006, but Petitioner did not respond. On October 12, 2006, Respondent filed a request for an *ex parte* hearing. The request was granted and the hearing proceeded *ex parte.*

At the *ex parte* evidentiary hearing, the ALJ was faced with Respondent's request for reinstatement of her disability benefits and payment of causally related medical expenses. After reviewing the evidence of record and finding that Petitioner failed to present evidence sufficient to support a termination of benefits, the ALJ concluded that Respondent is disabled under the Act and ordered that Respondent's benefits be reinstated to the date of termination.

Turning to the case under review herein, Petitioner alleges that the Compensation Order is erroneous and contrary to established law because Respondent "currently receives retirement benefits and has thus voluntarily removed herself from the work force."

In analyzing this case, the ALJ properly noted that in this jurisdiction, it has been consistently held that once a claim has been accepted and disability benefits paid, the burden of proof rests with the employer to present substantial and recent medical evidence to justify a modification or termination of those benefits. *See Toomer v. D.C. Dep't. of Corrections,* CRB No. 05-202, OHA No. PBL. No. 98-048A, DCP No. LT5-DOC001603 (May 2, 2005); *Jones v. D.C. Dep't. of Corrections,* Dir. Dkt. No. 07-99, OHA No. PBL No. 97-14, ODC No. 312082 (December 19, 2000); *Robinson v. D.C. General Hospital,* EC AB No. 95-8, ODCVC No. 303585 (July 8, 1997).

In granting Respondent's request for benefits, the ALJ noted that this was an *ex parte* proceeding and there was no evidence submitted by Respondent:

> No documentary evidence was presented by Employer and no testimony was presented. The Final Decision on Reconsideration relies on the independent medical examinations of Dr. Zamani and Collins . . . The notice concludes, "the Disability Compensation Benefits are being terminated as of the date of this correspondence. Your benefits were in fact terminated as you elected to retire at the end of 2003." Mildred Stewart - Decision on Reconsideration. The medical records in the Decision on Reconsideration were not attached; therefore, there is no evidence to substantiate Employer's final determination.

Compensation Order at 4.

Also, the ALJ specifically emphasized that "Employer did not present any evidence to support a conclusion that Claimant *elected* to retire." *Id.* at n. 4.

As to Respondent's evidence, the ALJ found that her testimony and the medical reports of the treating physicians evidenced an on-going disability. The ALJ also found that Petitioner's independent medical examiner, Dr. Zamani, concluded that Respondent's depression is causally related to the work incident, that she is not able to perform her job as a corrections officer and due to the length of time she has been off from work, she probably would not be a successful rehabilitation candidate.

As to the argument Petitioner raises on appeal, this Panel notes that, as indicated by the ALJ, Petitioner did not submit any evidence or documentation to substantiate the final determination that Respondent's benefits were terminated because Respondent elected to retire in 2003. At the hearing, Petitioner raised the issue of Respondent's voluntary retirement, however, Petitioner failed to carry its burden of proof on this issue. As such, Respondent must prevail, as Petitioner failed to present substantial evidence to substantiate a termination in Respondent's benefits.

Accordingly, the ALJ's conclusion that Respondent's disability benefits be reinstated to the date of termination must be affirmed.

CONCLUSION

The Compensation Order of October 1, 2007 is supported by substantial evidence in the record and is in accordance with the law.

ORDER

The Compensation Order of October 1, 2007 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

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FLOYD LEWIS
Administrative Appeals Judge

December 21, 2007
DATE