

**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 (Dir.Dkt) No. 05-05**

**GEORGIANA MILLER,**

**Claimant – Respondent,**

**v.**

**RIGGS BANK AND CHUBB INSURANCE COMPANY,**

**Employer/Carrier – Petitioner.**

Appeal from a Compensation Order of  
Administrative Law Judge Jeffrey P. Russell  
OHA No. 00-157B, OWC No. 182471

Robert C. Baker, Jr., Esq., for the Petitioner

Lisa M. Re, Esq., for the Respondent

Before E. COOPER BROWN, *Chief Administrative Appeals Judge*, LINDA F. JORY and SHARMAN J. MONROE, *Administrative Appeals Judges*.

SHARMAN J. MONROE, *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, and the Department of Employment Services 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, sec. 1102 (Oct. 1, 1994), *codified at* D.C. Code Ann. § 32-1521.01 (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 responsibility for administrative appeals filed

## 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 September 17, 2004, the Administrative Law Judge (ALJ) found that the Employer/Carrier-Petitioner (Petitioner) failed to sustain its burden to produce some evidence of an improvement in the physical condition of the Claimant-Respondent (Respondent) to warrant a modification of the outstanding Compensation Order pursuant to D. C. Official Code § 32-1524 and, consequently, denied the Petitioner's Application for Formal Hearing. The Petitioner now seeks review of that Compensation Order.

As grounds for this appeal, the Petitioner alleges as error that the decision below is not supported by substantial evidence and not in accordance with the law.

## ANALYSIS

As an initial matter, the standard 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 § 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. App. 2003). Consistent with this standard 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.

Turning to the case under review herein, the Petitioner alleges that, contrary to the ALJ's finding, it sustained its burden in accordance with *Snipes v. D.C. Department of Employment Services*, 542 A.2d 832 (D.C. 1988). Specifically, the Petitioner asserts that it satisfied the requirement to produce "some evidence" of a reason to believe that a change of condition occurred via the medical opinion of Dr. Robert Collins. The Petitioner points to Dr. Collins' opinion that any residuals of the Respondent's May 1999 back injury have resolved and that the Respondent is now disabled due to rheumatoid arthritis, not her back injury.

The record shows that the Respondent injured her back while at work on May 21, 1999. In a Compensation Order dated June 16, 2000, the back injury was found to have arisen out of and in the course of employment and the Respondent was awarded temporary total disability benefits. The Petitioner subsequently sought a modification of that Compensation Order based upon, *inter alia*, a

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prior to October 1, 2004, the effective date of the D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004.

January 25, 2001 opinion of Dr. Stuart Gordon. Following a formal hearing, the presiding ALJ found that although the Petitioner presented “some evidence” of a change of condition as required by *Snipes*, further analysis demonstrated that the Respondent was still temporarily totally disabled due to her back injury.

In its latest request for a modification, the Petitioner presented the medical opinions of Dr. Robert Collins. In his May 5, 2004 report, Dr. Collins diagnosed the Respondent’s current condition as “chronic rheumatoid arthritis bilateral, *lumbar strain* with some radiculopathy but no proven herniated disk in the lumbar spine and a degenerated disk and spurring at T12-L1 which was operated on and relieved.” Employer Exhibit No. 1. (emphasis added). In his deposition, Dr. Collins stated in response to questions concerning the presence, if any, of any residuals related to the Respondent’s back injury, “I think her back strain resolved” and “I thought the back strain had resolved.” Employer Exhibit No. 2 at pp. 11-13. The ALJ found that the Dr. Collins’ deposition opinion was contradicted by the findings in his May 5, 2004 report and was, therefore, not credible. Having concluded that Dr. Collins’ opinion lacked credibility, the ALJ concluded that the Petitioner had failed to meet its evidentiary burden of proof under *Snipes*, and thus denied Petitioner’s request for a modification of the prior Compensation Order.

The Panel is 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. This is particularly so given that the ALJ in the instant case determined that the opinion of Dr. Collins is lacking in credibility. See *George Hyman Construction v. D.C. Department of Employment Services*, 498 A.2d 563, 566 (D.C. 1985); *Washington Vista Hotel v. D.C. Department of Employment Services*, 721 A.2d 574, 578. The ALJ’s finding that the Petitioner failed to sustained its burden under *Snipes* is supported by substantial evidence in the record.

#### CONCLUSION

The Compensation Order of September 17, 2004 is supported by substantial evidence in the record and is in accordance with the law.

#### ORDER

The Compensation Order of September 17, 2004 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

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SHARMAN J. MONROE  
Administrative Appeals Judge

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March 31, 2006

DATE