

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



F. THOMAS LUPARELLO
ACTING DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 14-031

**MIRNA PLACIDO,
Claimant-Respondent,**

v.

**COMPASS GROUP, USA, INC.,
and GALLAGHER BASSETT SERVICES,
Self-Insured Employer/Third Party Administrator-Petitioner.**

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2014 JUN 24 PM 12 16

Appeal from a February 24, 2014 Compensation Order By
Administrative Law Judge Amelia G. Govan
AHD No. 05-509E, OWC No. 658118

David J. Kapson for Respondent
Joseph C. Tarpine for the Petitioner

Before: JEFFREY P. RUSSELL, HENRY W. MCCOY and HEATHER C. LESLIE, *Administrative Appeals Judges.*

JEFFREY P. RUSSELL for the Compensation Review Board.

DECISION AND REMAND ORDER

OVERVIEW

This claim has been the subject of numerous prior formal hearings and Compensation Orders, the details of which are not germane here. What is material to our review is the February 4, 2013, Compensation Order in which an Administrative Law Judge (ALJ) in the Administrative Hearings Division (AHD) of the Department of Employment Services (DOES) determined Claimant's work injury, sustained March 2, 2009, resulted in Claimant's being physically limited to working 20 hours per week, and awarded temporary partial disability based upon a 20 hour weekly loss of wages on an ongoing basis.

Thereafter, on May 13, 2013, Employer had Claimant examined by Dr. Clifford Hinkes, for the purpose of an independent medical evaluation (IME). Based upon the results of that IME, Employer filed an Application for Formal Hearing (AFH) seeking modification of the February 4, 2013 Compensation Order..

On October 17, 2013, a proceeding was convened in AHD for the purpose of determining whether the evidence proffered by Employer was sufficient to entitle it to a formal hearing on the modification request.

Both parties submitted documentary exhibits, but no testimony was taken. Following review of the submitted exhibits, the ALJ issued an Order on February 24, 2014, finding Employer's evidence insufficient to require a formal hearing.

Employer has now appealed the February 24, 2014 Order to the Compensation Review Board (CRB), arguing that the IME report, when compared to other prior medical records and reports, evinced improvement in Claimant's physical condition. Claimant opposed the appeal, asserting that the IME report contains no objective findings of any improvement in her condition, and that the Order is therefore supported by substantial evidence.

Because the IME report contains some evidence of a change in the fact or degree of Claimant's disability, we reverse the Order and remand for the requested formal hearing.

DISCUSSION AND ANALYSIS¹

In seeking to modify a prior Compensation Order, the party seeking modification has the burden of showing preliminarily that there is reason to believe that, since the date of the Compensation Order, a change of conditions has occurred which raises issues concerning the fact or the degree of disability or the amount of compensation payable. *Snipes v. DOES*, 542 A.2d 832 (D.C. 1988). Upon such a showing, a formal hearing is required to consider the issue, following which the District of Columbia Workers' Compensation Act requires the issuance of a "new compensation order which may terminate, continue, reinstate, increase, or decrease such compensation previously paid, or award compensation". See D.C. Code § 32-1524 (a), (a)(1) and (c). At the formal hearing, the burden is upon the party seeking a modification to establish the existence of such a change in conditions. *Washington Metropolitan Area Transit Authority v. DOES*, 703 A.2d 1225 (D.C. 1997). The alleged change in conditions is not limited to claimant's medical condition, but also encompasses non-medical, economic circumstances. *Id.*

In the present case, citing *Snipes*, the ALJ correctly stated "Every claim for modification of a prior Compensation Order requires a preliminary hearing to be held to review new evidence if there is reason to believe that the Claimant's medical condition and disability has changed in fact or degree since the previous Compensation Order". Compensation Order, page 4.

In this case, as the ALJ noted, the evidence presented by Employer is the IME report of Dr. Clifford Hinkes, dated May 13, 2013 (EE 1). On page 5 of that report, Dr. Hinkes notes in the History that "Ms. Placido is back to work full time, full duty in the Food Prep department. She is doing well" and on page 7 under the Opinion section that "Ms. Placido is working full time, full duty. She may continue."

¹ The CRB reviews a Compensation Order to determine whether the factual findings are based upon substantial evidence in the record, and whether the legal conclusions drawn from those facts are in accordance with applicable law. The CRB will affirm 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.

Inasmuch as Claimant's disability as found in the prior CO was premised upon her continuing inability work more than 20 hours per week, evidence that by May 13, 2013 she was able to, and was, in fact working full time constitutes some evidence of a change in the fact or degree of disability, as a matter of law. If by May 13, 2013, Claimant had returned to work full time, she was no longer partially disabled under the wage loss provisions of the Act, which was the basis of the benefits awarded in the Compensation Order of February 14, 2013.

Accordingly, Employer has presented some evidence of a change in Claimant's degree of disability subsequent to the prior Compensation Order.

Because this evidence is adequate to warrant a formal hearing, we do not consider the specific comparisons between the medical findings in the earlier reports of her various treating and IME physicians that Employer contends demonstrate a medical improvement. We leave that analysis to the ALJ on remand, should she find such analysis necessary.

CONCLUSION AND ORDER

The determination that Employer had failed to adduce some evidence of a change in the fact or degree of Claimant's disability sufficient to warrant a formal hearing is unsupported by substantial evidence, and is reversed. The matter is remanded for a formal hearing.

FOR THE COMPENSATION REVIEW BOARD:



JEFFREY P. RUSSELL
Administrative Appeals Judge

June 24 , 2014

DATE