GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR

LISA M. MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 10-141(2)

NATHALIA BROWN,
Claimant-Petitioner,

v.

POTOMAC ELECTRIC POWER COMPANY,
Self-Insured Employer-Respondent.

Appeal from a June 10, 2010 Compensation Order By
The Honorable Nata K. Brown
AHD No. 98-259D, OWC No. 525617

DEPT. OF EMPLOYMENT SERVICES
COMPENSATION REVIEW BOARD
2012 MAR 8 AM 9 45

Matthew Peffer, Esquire, for the Petitioner
Kevin J. O'Connell, Esquire, for the Respondent

Before MELISSA LIN JONES, JEFFREY P. RUSSELL,[1] and LAWRENCE D. TARR, *Administrative Appeals Judges.*

MELISSA LIN JONES, *Administrative Appeals Judge*, for the Compensation Review Board.

DECISION AND ORDER

JURISDICTION

Jurisdiction is conferred upon the Compensation Review Board ("CRB") pursuant to §§32-1521.01 and 32-1522 of the District of Columbia Workers' Compensation Act of 1979, D.C. Code, as amended, §32-1501 *et seq.*, ("Act"), 7 DCMR §250, *et seq.*, and the Department of Employment Services Director's Administrative Policy Issuance 05-01 (February 5, 2005).

FACTS OF RECORD AND PROCEDURAL HISTORY

On March 26, 1995 while working as a lead shop-mechanic for the Potomac Electric Power Company ("Pepco"), Ms. Nathalia Brown touched a live wire as she was standing on a ladder. She received an electric shock, and to break the connection, a coworker kicked the ladder out from under her.

[1] Judge Russell has been appointed by the Director of the DOES as a temporary CRB member pursuant to DOES Administrative Policy Issuance No. 11-01 (June 23, 2011).

Multiple Compensation Orders have issued in this case. On March 15, 2005, an administrative law judge ("ALJ") held that Ms. Brown had sustained multiple injuries to her back, neck, arms, and legs. The ALJ awarded Ms. Brown specific medical treatment.[2] This Compensation Order was not appealed.

On January 18, 2007, another ALJ suspended Ms. Brown's benefits because she had failed to cooperate with vocational rehabilitation services. The ALJ also found Ms. Brown had voluntarily limited her income when she had refused light duty work.[3] On May 15, 2007, the CRB affirmed this Compensation Order.[4]

Next, Ms. Brown requested schedule member permanent partial disability benefits and wage loss permanent partial disability benefits. Another ALJ awarded Ms. Brown permanent partial disability schedule benefits and permanent partial disability wage loss benefits. The ALJ held that all these awards should run consecutively.[5]

On appeal to the CRB, the ruling that any awards should run consecutively was affirmed; however, because the ALJ had not addressed the issue of whether or not Ms. Brown was eligible to receive any award following the previous suspension of benefits, the case was remanded.[6] On June 10, 2010, the ALJ issued a Compensation Order on Remand; the ALJ ruled Ms. Brown is not entitled to permanent partial disability benefits because Ms. Brown has neither requested a modification of the January 18, 2007 Compensation Order nor demonstrated a change in condition since the issuance of that Compensation Order:

> Claimant began receiving temporary total disability benefits in 2000.[Previously it had been] determined that Claimant was not permanently and totally disabled, that she could perform light weight work, and that she failed to cooperate with vocational rehabilitation. ... ALJ McCoy suspended Claimant's disability benefits because of her failure to cooperate with vocational rehabilitation. ... Claimant did not seek to modify the order consistent with §32-1524 of the Act an [*sic*] the modification process established by *Snipes*. The ALJ did not issue an order to modify previous holdings in [the prior Compensation Order.] Instead, Claimant sought a permanent partial disability award without providing evidence of a change in condition or asking the court to review whether there was a change in Claimant's condition that made her continued failure to cooperate with vocational rehabilitation reasonable or that justified her refusal to cooperate with vocational

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[2] *Brown v. PEPCO*, AHD No. 98-259A, OWC No. 525617 (March 15, 2005).

[3] *Brown v. Potomac Electric Power Company*, AHD No. 98-259B, OWC No. 525617 (January 18, 2007).

[4] *Brown v. PEPCO*, CRB No. 07-46, AHD No. 98-259B, OWC No. 525617 (May 15, 2007).

[5] *Brown v. Potomac Electric Power Company*, AHD No. 98-259D, OWC No. 525617 (April 30, 2009).

[6] *Brown v. Potomac Electric Power Company*, CRB No. 09-085, AHD No. 98-259B, OWC No. 525617 (August 18, 2009).

rehabilitation. Therefore, Claimant's benefits remain suspended pursuant to §32-1507(d), and she is not entitled to receive permanent partial disability benefits.[7]

Notwithstanding the prior Compensation Order ruling that Ms. Brown has voluntarily limited her income and has failed to cooperate with vocational rehabilitation, Ms. Brown now argues on appeal that she is entitled to both concurrent schedule member permanent partial disability benefits and wage loss permanent partial disability benefits. She requests the CRB reverse the June 10, 2010 Compensation Order on Remand.

On the other hand, Pepco argues Ms. Brown is not entitled to permanent partial disability benefits because the prior Compensation Order suspending benefits for failure to cooperate with vocational rehabilitation and voluntary limitation of income has not been modified. In addition, Pepco argues the law of the case establishes that Ms. Brown is not entitled to concurrent permanent partial disability benefits for schedule and non-schedule losses. Pepco requests the CRB affirm the June 10, 2010 Compensation Order on Remand.

ISSUE ON APPEAL

When a Compensation Order has suspended a claimant's benefits, is that claimant entitled to permanent partial disability benefits without obtaining a modification of the prior Compensation Order?

ANALYSIS

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[8] in the record and whether the legal conclusions drawn from those facts are in accordance with applicable law.[9] Consistent with this standard of review, the CRB is constrained to uphold 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 reached a contrary conclusion.[10]

Ms. Brown's argument on appeal lacks cohesiveness and validity. Without addressing the rulings in the January 18, 2007 Compensation Order, Ms. Brown states she has the burden of proving "by substantial credible evidence" her entitlement to the requested level of benefits, states she is permanently disabled as determined in the April 30, 2009 Compensation Order, and shifts the focus to the extent of her disability as an economic concept within the *Logan* framework. Ms. Brown then concludes that her refusal to participate in vocational rehabilitation and her

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[7] *Brown v. Potomac Electric Power Company*, AHD No. 98-259D, OWC No. 525617 (June 10, 2010), p.5.

[8] "Substantial evidence" is relevant evidence a reasonable person might accept to support a conclusion. *Marriott International v. DOES*, 834 A.2d 882, 885 (D.C. 2003).

[9] Section 32-1521.01(d)(2)(A) of the Act.

[10] *Marriott, supra.*

voluntarily limitation of income does not preclude a finding that she is entitled to permanent partial disability benefits because of the law of the case.

First, at the November 28, 2008 formal hearing, Ms. Brown was not entitled to any presumption regarding the nature and extent of her alleged disability. It was her burden to prove any such entitlement by a preponderance of the evidence, not substantial evidence.[11]

Next, in the April 30, 2009 Compensation Order, an ALJ ruled that Ms Brown had proven that she "suffers from permanent partial disability to the left arm, right arm, left leg, right leg, back and neck."[12] On appeal, however, the awards for permanent partial disability benefits were vacated.[13] As a result, the finding that Ms. Brown was permanently disabled is of no legal consequence and cannot operate as the law of the case.

Then, despite her position that her permanent disability had been established in the April 30, 2009 Compensation Order, by re-arguing her permanent disability entitlement within the context of *Logan* but without regard to the prior Compensation Order ruling that she had voluntarily limited her income and had failed to cooperate with vocational rehabilitation, Ms. Brown diverts her attention from the real issue at hand. The issue here is not the nature and extent of Ms. Brown's disability, if any; the issue is whether as a matter of law Ms. Brown is entitled to any permanent partial disability benefits when a Compensation Order ruling that her benefits should be suspended remains in full force and effect.

At the January 5, 2006 formal hearing, Ms. Brown requested permanent total disability benefits. Not only was her claim for relief denied, the ALJ suspended her entitlement to benefits.

Pursuant to §32-1507(d) of the Act,

> If at any time during such period the employee unreasonably refuses to submit to medical or surgical treatment or to an examination by a physician selected by the employer, or to accept vocational rehabilitation the Mayor shall, by order, suspend the payment of further compensation, medical payments, and health insurance coverage during such period, unless the circumstances justified the refusal.

The plain language of the Act, does not discriminate as to the type of benefit to be suspended when a claimant fails to cooperate; the payment of all "further compensation, medical payments,

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[11] *Golding-Alleyne v. DOES*, 980 A.2d at 1216 (D.C. 2009) (The claimant had the burden of proof when presenting her case to the ALJ, and she must prove her case by a preponderance of the evidence. Merely presenting substantial evidence to support a claim is not necessarily enough to carry the burden of persuading the finder of fact.)

[12] *Brown v. Potomac Electric Power Company*, AHD No. 98-259D, OWC No. 525617 (April 30, 2009), p.7.

[13] *Brown v. Potomac Electric Power Company*, CRB No. 09-085, AHD No. 98-259B, OWC No. 525617 (August 18, 2009).

and health insurance" is suspended.[14] Ms. Brown cites to no legal authority for her position that despite the plain language of the Act and despite the prior Compensation Order she remains entitled to permanent partial disability benefits, and we are not persuaded by her unsupported argument.

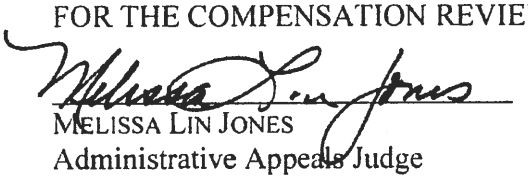
Furthermore, the January 18, 2007 Compensation Order remains in full force and effect. Although §32-1524 of the Act provides for a modification of an existing Compensation Order, Ms. Brown has not requested any modification.

Under different circumstances, when a prior Compensation Order awards or denies temporary total disability benefits, it may not be necessary to request modification of that Compensation Order in order to obtain permanent partial disability benefits. In Ms. Brown's case, however, the prior Compensation Order suspended further compensation, and until such time as that suspension has been modified, the rulings in the January 18, 2007 Compensation Order set the law of the case.

CONCLUSION AND ORDER

Any payment of further compensation, medical payments, or health insurance coverage is suspended until such time as the January 18, 2007 Compensation Order ruling that Ms. Brown has failed to cooperate with vocational rehabilitation and has voluntarily limited her income is modified. The June 10, 2010 Compensation Order is AFFIRMED; therefore, any remaining issues regarding the payment of benefits are MOOT.

FOR THE COMPENSATION REVIEW BOARD:



MELISSA LIN JONES
Administrative Appeals Judge

March 8, 2012
DATE

[14] An employer's obligation to continue to pay health insurance premiums pursuant to §32-1507(a-1)(4) of the Act has been preempted by §514(a) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1144. *D.C. v. Greater Washington Board of Trade*, 506 U.S. 125, 113 S.Ct. 580 (1992).