

**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. 03-132**

**VERONICA M. NOEL,**

**Claimant–Petitioner**

**v.**

**RS INFORMATION SYSTEMS, INC. AND CNA INSURANCE COMPANY,**

**Employer/Carrier–Respondent.**

Appeal from a Compensation Order of  
Administrative Law Judge Karen R. Calmeise  
OHA/AHD No. 03-381, OWC No. 585953

Benjamin T. Boscolo, Esquire, for the Petitioner

Joseph C. Veith, III, Esquire, for the Respondent

Before JEFFREY P. RUSSELL, LINDA F. JORY, and FLOYD LEWIS, *Administrative Appeals Judges*.

JEFFREY P. RUSSELL, *Administrative Appeals Judge*, for the Compensation 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 District of Columbia Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, *codified at* 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 District of Columbia Workers' Compensation Act of 1979, as amended, D.C. Code Ann. §§ 32-1501 to 32-1545 (2005), and the District of Columbia 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 prior to October 1, 2004, the effective date of the District of Columbia Workers'

## 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 29, 2003, the Administrative Law Judge (ALJ) found that Petitioner had sustained an accidental injury arising out of and occurring in the course of her employment with Respondent, granted Petitioner's claim for causally related medical care, but denied her claim for temporary total disability benefits from October 22, 2002 through the date of the formal hearing and continuing. Petitioner now seeks review of that portion of the Compensation Order which denied the claim for temporary total disability benefits.

As grounds for this appeal, Petitioner alleges as error that the denial of the claimed disability benefits was not in accordance with the law because (1) according to Petitioner, the ALJ denied the benefits because Petitioner had been terminated from her job and hence the denial was contrary to the holding in *Upchurch v. District of Columbia Department of Employment Services*, 783 A.2d 623 (2001), (2) the ALJ failed to accord proper deference to the opinion of Dr. Joel Fechter, and (3) the ALJ improperly "substituted" her judgment for the treating physician's judgment.

Respondent opposes the appeal, and asserts that the decision of the ALJ is supported by substantial evidence in the record and is in accordance with the law. Respondent does not contend that the finding that Petitioner sustained an accidental work related injury is in error.

## 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. *See* D.C. Workers' Compensation Act of 1979, as amended, D.C. Code Ann. §32-1501 to 32-1545 (2005), at §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. Dist. of Columbia Dep't. of Employment Servs.*, 834 A.2d 882 (D.C. 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, we note preliminarily that the finding that Petitioner sustained the alleged work injury is supported by substantial evidence, is in accordance with the law, and is therefore affirmed.

In her appeal, Petitioner first asserts that the denial of the claimed disability benefits was not in accordance with the law because in her view, the ALJ denied the benefits because Petitioner had been terminated and hence the denial was contrary to the holding in *Upchurch v. District of Columbia Department of Employment Services*, 783 A.2d 623 (D.C. 2001). However, review of the Compensation Order does not support Petitioner's description of the basis for the ALJ's decision. Nowhere in the Compensation Order does the ALJ cite Petitioner's termination as grounds for denial of the claimed benefits. Rather, the ALJ determined that Petitioner was capable of performing her pre-injury job based upon numerous grounds, including Petitioner's testimony concerning her capacity for vigorous physical activity outside of work, the lack of contemporaneous medical documentation of disability for much of the claimed period, and contrary medical opinion in the form of independent medical evaluation (IME) reports. The ALJ simply did not rule as Petitioner contends.

Regarding the contention that the ALJ failed to accord proper deference to the opinion of Dr. Joel Fechter, and that she improperly "substituted" her judgment for the treating physician's judgment, we will not address these issues at this time, because it appears to this Panel that the ALJ failed to apply the presumption that Petitioner's claimed wage loss was medically causally related to the established work injury, a presumption to which Petitioner is entitled under *Whittaker v. District of Columbia Department of Employment Services*, 531 A.2d 844 (D.C. 1995). This error is evident from the following quotation from the Compensation Order: "Thus, claimant has the burden of proving, by substantial evidence, a nexus between her wage loss ... and her ... work injury" (Compensation Order, page 5).

Having found that Petitioner had sustained an accidental injury at work, the ALJ was required, under *Whittaker*, to provide Petitioner with the presumption that her wage loss was causally related to that injury. The ALJ's failure to accord Petitioner that presumption is error, and the matter must therefore be remanded for further evaluation of the evidence, in light of that presumption.

#### CONCLUSION

That portion of the Compensation Order of September 29, 2003 denying the claim for temporary total disability benefits is not in accordance with the law, in that the ALJ failed to accord Petitioner the benefit of the presumption that her claimed wage loss was causally related to the work injury that the ALJ found to have been sustained by Petitioner.

**ORDER**

The Compensation Order of September 29, 2003 is hereby affirmed in part reversed in part, and remanded with instructions that on remand, Petitioner is to be accorded the presumption that her claimed wage loss is causally related to the work injury.

FOR THE COMPENSATION REVIEW BOARD:

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JEFFREY P. RUSSELL  
Administrative Appeals Judge

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August 30, 2005  
DATE