

**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 No. 07-48**

**OLIVER AMAECHI,**

**Claimant – Respondent**

**v.**

**D.C. DEPARTMENT OF CORRECTIONS,**

**Employer – Petitioner.**

Appeal from a Compensation Order of  
Administrative Law Judge Terri Thompson Mallet.  
AHD No. PBL 99-013C; DCP No. LT5-DOC002454

Pamela Smith, Esquire, for the Petitioner

Harold 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).<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 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 January 23, 2007, the Administrative Law Judge (ALJ) concluded that Employer-Petitioner (Petitioner) had no authority to offset the disability benefits of Claimant-Respondent (Respondent) for amounts paid under the Social Security Disability Insurance program. In addition, the ALJ concluded that Petitioner had failed to present sufficient evidence of a change of condition to terminate Respondent's benefits. 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. App. 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.

Turning to the case under review herein, Petitioner alleges that the Compensation Order is erroneous because Respondent should not be allowed to receive both District of Columbia disability compensation benefits and social security disability benefits and that the ALJ abused her discretion by allowing Respondent to testify by telephone. Respondent counters that his receipt of social security disability benefits along with his disability compensation benefits is in accordance with the law, that the ALJ's finding that Petitioner failed to present evidence of a change of condition sufficient to terminate Respondent's disability benefits was supported by substantial evidence and that the ALJ did not commit an abuse of discretion by allowing Respondent to testify by telephone.

Petitioner argues that it should be able to seize or offset the \$52,881.68 of social security disability benefits paid to Respondent, as he had received disability compensation benefits and the law does not contemplate receiving social security benefits as the result of a work injury. However, as Respondent points out, the Act does not preclude D.C. government employees from also contemporaneously receiving various Federal benefits. D.C. Official Code §1-623.16 (a) only precludes recipients of District workers' compensation benefits from receiving "salary, pay or remuneration of any type from the District of Columbia . . . ."

Moreover, recently the CRB decided a case in which the issue was whether there was a bar to a worker simultaneously receiving disability retirement benefits from the United States Office of Personnel Management and District disability compensation benefits. *Carry v. D. C. Department of Mental Health*, CRB No. 07-031 (March 14, 2007). In *Carry*, the CRB concluded that District government employees were not covered by the Federal Employee's Compensation Act, as the District has its merit system (the Act) to cover disability benefits for District government employees. As such, the CRB held that the Act had no requirement that a credit be taken for federal disability retirement benefits received by that worker.

In *Carry*, the CRB stated, "Hence, Respondent's receipt of federal disability retirement benefits is essentially no different than an employee who requests social security benefits while receiving wage loss benefits for a work related injury." Similarly, this Panel concludes that the Act has no provision that precludes Respondent from simultaneously receiving disability compensation benefits and social security disability insurance benefits.

At the time of the formal hearing, Respondent resided in Africa, where he has lived for years and the ALJ allowed Respondent to testify by telephone. Petitioner objects to this type of testimony, alleging that it prevented effective cross-examination and that the ALJ's ruling to allow this telephone testimony was an abuse of discretion.

Initially, in looking at this issue, it should be pointed out that there is nothing in the Act or the regulations that prevents telephonic testimony, nor does Petitioner cite any authority prohibiting such testimony. D.C. Code § 1.623.24 (b)(2), provides that the ALJ "may conduct the hearing in such manner as to best ascertain the rights of the claimant." In allowing Respondent to testify by telephone, the ALJ swore in Respondent and after being satisfied that Respondent was in fact the claimant in this matter, the ALJ allowed Respondent to present evidence in support of his claim.

Respondent asserts that Petitioner has known that Respondent has resided outside of the country since his benefits were terminated in 2002 and Petitioner has also known that due to the termination of his benefits, returning to the United States would have been a harsh financial burden, because of his lack of income. As Respondent points out, Petitioner does not suggest that the witness was anyone other than Respondent and the Scheduling Order in this case gave Petitioner the right to obtain testimony from Respondent by interrogatories, requests for production, etc, but Petitioner did not conduct any other discovery. As such, Respondent argues that the ALJ's decision to allow Respondent to testify by telephone was an appropriate manner to best protect his rights as a claimant, and thus, was not an abuse of discretion.

This Panel notes that a review of the transcript reveals that despite Petitioner's argument that the telephonic testimony prevented it from engaging in effective cross-examination, Respondent was, in fact, vigorously cross-examined by Petitioner. Moreover, in its appeal, Petitioner only alleges error in the ALJ's denial of the social security set-off and Respondent's limited testimony in this regard only confirms that he had applied for and received social security disability benefits and that Petitioner had taken back, as a set off, all of the funds that he had received from the Social Security Administration. It should be stressed that in this matter, Petitioner does not in any way dispute the facts concerning the set-off, as it only contends that the seizure was proper under District law. After

closely reviewing this matter, this Panel concludes that the ALJ did not abuse her discretion by allowing Respondent to testify by telephone.

Accordingly, after a complete review of the record in this matter, this Panel concludes that the ALJ's decision is supported by substantial evidence, is in accordance with the law and should not be disturbed.

#### CONCLUSION

The Compensation Order of January 23, 2007 is supported by substantial evidence in the record and is in accordance with the law.

#### ORDER

The Compensation Order of January 23, 2007 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

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FLOYD LEWIS  
Administrative Appeals Judge

April 19, 2007  
DATE