

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. 06-26

JEROME OUBRE,

Claimant – Respondent

v.

A.A. BEIRO CONSTRUCTION COMPANY AND HARTFORD ACCIDENT INDEMNITY COMPANY,

Employer/Carrier – Petitioner.

Appeal from a Compensation Order of
Administrative Law Judge Henry W. McCoy
AHD No. 85-276B, OWC No. 56181

Thomas G. Hagerty, Esq., for the Petitioner

William F. Mulroney, Esq., for the Respondent

Before FLOYD LEWIS, SHARMAN J. MONROE and JEFFREY P. RUSSELL, *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).¹

¹ 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 December 29, 2005, the Administrative Law Judge (ALJ) awarded a resumption of permanent total disability benefits from January 19, 2005, the date of such benefits were suspended along with a 20% percent penalty in accordance with D.C. Official Code § 32-1515(f). The Employer/Carrier-Petitioner (Petitioner) now seeks review of that Compensation Order.

As grounds for this appeal, the Petitioner alleges as error that the decision below is 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. 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 the ALJ erred in finding that D.C. Code § 36-308(9) was not applicable to previously awarded disability benefits after its repeal on April 16, 1999, that the Respondent’s social security retirement benefits for the year 2004 together with his workers’ compensation disability benefits did not exceed 80% percent of his average weekly wage and that it should be assessed a 20% penalty for violating D.C. Official Code § 32-1515(f). The Petitioner urges a reversal of *Lloyd v. Giant Foods, Inc.*, Dir.Dkt.No. 03-70, OHA No. 97-110E, OWC Nos. 501519, 230297, 265731 (September 30, 2004) as the holding, upon which the ALJ relied in rendering the decision on appeal, is fundamentally flawed. The Petitioner argues that *Lloyd*, in holding that the controlling date for the application of the repeal of D.C. Code § 36-308(9) is April 16, 1999 so that as of that date, an employer is not permitted to take a statutory offset for monies identified in the section, changes the status of its claim fixed in accordance with the original statutory provision which permitted the offset. The Petitioner asserts that rights and liabilities of the parties to this claim were permanently fixed by law as of the date of the injury, September 29, 1984, and subsequent modifications to the law should not be held to curtail or

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

otherwise modify those rights and liabilities. See Memorandum at pp. 7-11. Finally, the Petitioner asserts that as *Lloyd* and consequently the ALJ's decision are flawed, it is entitled to the offset it took. Accordingly, the Petitioner maintains that as of January 19, 2005, no compensation was due the Respondent under his permanent total disability award and the 20% percent penalty cannot be assessed against it.² See Memorandum at pp. 12-13.

As to the merits of the Petitioner's appeal, the record was thoroughly reviewed and the Panel finds that the ALJ's factual findings are supported by substantial evidence on the record as a whole, and are, therefore, conclusive. *Marriott Int'l. v. Dist. of Columbia Department of Employment Services*, 834 A.2d 882 (D.C. 2003); 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). Further, the ALJ's conclusions of law are in accordance with the law in this jurisdiction. The record fully supports the ALJ's thorough, well reasoned decision, and the Panel, therefore, adopts the reasoning and legal analysis expressed by the ALJ in that decision in affirming the Compensation Order in all respects.³ See also *Minor v. Verizon*, CRB No. 05-39, OHA No. 04-112, OWC No. 589813 (July 28, 2005).

CONCLUSION

The Compensation Order of December 29, 2005 is in accordance with the law.

ORDER

The Compensation Order of December 29, 2005 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

SHARMAN J. MONROE
Administrative Appeals Judge

May 3, 2006
DATE

² The Petitioner offered no argument in support of its position that the ALJ erred in finding that the Respondent's social security retirement benefits for the year 2004 together with his workers' compensation disability benefits did not exceed 80% percent of his average weekly wage. However, given that the 80% limitation is contained in D.C. Code § 36-308(9), it is reasonable to assume that the Petitioner's position is that the limitation was met and that it was accordingly entitled to the offset for the year 2004 also.

³ 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)(B) requires a more detailed and thorough written order than the instant Decision and Order where there is a reversal of the Compensation Order.