

**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. 07-134**

**PATRICIA MORGAN,**

**Claimant–Petitioner,**

**v.**

**DISTRICT OF COLUMBIA DEPARTMENT OF CORRECTIONS,**

**Employer–Respondent.**

Appeal from a Compensation Order of  
Administrative Law Judge Terri Thompson Mallett  
AHD No. PBL 04-008B, DCP No. 761032-0003-2000-0003

William Howard, Esquire, for the Petitioner

Pamela Smith, Esquire, for the Respondent

Before JEFFREY P. RUSSELL, FLOYD LEWIS and SHARMAN J. MONROE, *Administrative Appeals Judges*.

JEFFREY P. RUSSELL, *Administrative Appeals Judge*, for the Compensation Review Panel:

**DECISION AND REMAND 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

## 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 June 6, 2007, the Administrative Law Judge (ALJ) denied Petitioner's claim for reinstatement of temporary total disability benefits, which benefits had been terminated as of February 11, 2007. Petitioner now seeks review of that Compensation Order.

As grounds for this appeal, Petitioner alleges as error that the decision to uphold Respondent's termination of Petitioner's benefits, based upon the ALJ's determination that Petitioner's disabling condition is not causally related to the work-related injury of November 9, 1999, is unsupported by substantial evidence and is not in accordance with the law.

Because the Compensation Order does not specify in sufficient detail the factual basis of the decision, it is reversed and remanded for further findings of fact and conclusions of law.

## ANALYSIS

As an initial matter, the scope of review by the Compensation Review Board (CRB) and this Compensation 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. Comprehensive Merit Personnel Act of 1978, as amended, D.C. Official Code § 1-623.01, *et seq.*, at § 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. District of Columbia Department of Employment Services*, 834 A.2d 882 (D.C. App. 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, Petitioner alleges that the ALJ's decision should be reversed, because Petitioner asserts that the fact of there being a causal relationship between Petitioner's November 9, 1999 injury and the disabling mental condition from which she suffers is established and may not be relitigated, under principles of *res judicata*.

The ALJ in this case identified, on page 3 of the Compensation Order, the proper statutory provision governing the issue before her, that is, modification of an award of compensation. That provision, D. C. Code § 1-623.24 (d)(1) states :

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

An award may not be modified because of a change in the claimant's condition unless:

- (A) The disability for which compensation was paid has ceased or lessened;
- (B) The disabling condition is no longer causally related to the employment;
- (C) The claimant's condition has changed from a total disability to a partial disability;
- (D) The employee has returned to work on a full-time or part-time basis other than vocational rehabilitation; or
- (E) The Mayor or his designee determines based upon strong compelling evidence that the initial decision was in error.

The ALJ also identified the proper standards for consideration of evidence in connection with modification of awards following acceptance of a claim and payment of benefits, as enunciated by the Employees' Compensation Appeals Board (ECAB), the administrative body that considered appeals of compensation orders under the Act prior to 1998, and whose decisions the agency continues to accord weight. See, Compensation Order, page 4.

The ALJ rejected Petitioner's argument that this matter is beyond consideration due to *res judicata*, and, while we do not necessarily agree with her analysis of the legal principal generally, we detect no error in the ALJ's determination the matters before her were subject to the statutory provision and case law referred to above, and that the evidence should be considered consistent therewith. We note that, as the Compensation Order is written, it does not appear that the ALJ has determined that the original underlying acceptance of a causal relationship between the work injury and the prior condition was erroneous, because if that is what the ALJ intended to do, we assume that she would have proceeded under subsection (E) above.

The ALJ then noted that in the case before her, Respondent's claim that the disabling condition claimed is not causally related to the established (and uncontested) work injury of November 9, 1999, is based upon "new evidence" (Compensation Order, page 4), identified by the ALJ as the medical reports and opinions of Dr. Daniel J. Freedenburg of December 12, 2006 (EE 3) and Dr. A. Jerry Friedman of August 9, 2006 (EE 4). The ALJ cited Dr. Freedenburg's statement that Petitioner "suffers from psychotic depression with fixed delusional ideas about her persecution at work", and Dr. Friedman's statement that Petitioner's "current complaints are not related to her injury of November 9, 1999", and found them "sufficient to meet Employer's initial burden of showing a change in condition such that the disabling condition is no longer causally related to Claimant's employment", under D. C. Code § 1-623.24 (d)(1)(B). Compensation Order, page 5.

What we are unable to discern from the Compensation Order is whether the ALJ has determined that the prior disabling condition, that is, the one which was accepted by Respondent as compensable and for which benefits were paid, continues to be disabling, and if not, upon what evidence the ALJ bases such a finding. Further, we are unable to discern from the Compensation Order whether the ALJ has found that Petitioner's current condition is a new, separate injury unrelated to the first, previously compensable one, or represents a worsening or deterioration of that same condition, and in either case, upon what evidence she bases that finding.

If the ALJ is of the view that the current condition represents a wholly new, separate injury distinct from the prior disabling injury, and that it is either (1) not causally related to the work injury of November 9, 1999, or (2) despite being causally related, is nonetheless not compensable because it fails to meet the standards for compensable psychological injuries under the “objective test” applicable to public sector claims (see, *McCamey v. Dist. of Columbia Public Schools*, Dir. Dkt. No. 10-03, OHA PBL No. 02-031, OBA No. LT2-DDT002160 (February 10, 2004)), it is necessary that she so state, and identify the evidence upon which those findings are based, so that the legal sufficiency of that determination can be reviewed if necessary.

If, however, the ALJ is of the view that the current disabling condition is a progression or worsening of the prior condition, then it is error to find that it is not causally related to the work injury of November 9, 1999, and we fail to see how a termination of benefits could be sustained where a disabling compensable condition worsens, rather than improves.<sup>2</sup> Further, unless there is evidence that the previously accepted condition for which benefits had been paid has abated to the point where it is no longer disabling, the termination of benefits is likewise unsustainable.

Lastly, we direct attention to *Perry v. District of Columbia Dep’t of Family & Child Serv’s*, CRB No. 07-74 (May 29, 2007), for a general discussion of the standards to be applied in disability compensation cases in the public sector.

#### CONCLUSION

Because the Compensation Order of June 6, 2007 lacks sufficient specificity to permit us to review the sustainability of the conclusion, it is not in accordance with the law.

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<sup>2</sup> There may be circumstances, not presented here, where entitlement to ongoing benefits might be terminated even in the absence of medical improvement, due to a successful course of vocational rehabilitation, and then a worsening occurs for reasons separate and distinct from the natural and probable progress of the underlying condition, resulting in a renewed inability to perform the duties of the new job. In such a case we might be presented with the need to consider whether the new disability is causally related to employment. However, we need not do so at this time.

**ORDER**

The Compensation Order of June 6, 2007 is reversed, vacated and remanded to AHD for a new Compensation Order consistent with the foregoing instructions.

FOR THE COMPENSATION REVIEW BOARD:

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JEFFREY P. RUSSELL  
Administrative Appeals Judge

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September 5, 2007  
DATE