

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services
Labor Standards Bureau**

**Office of Hearings and Adjudication
Compensation Review Board**

**(202) 671-1394 -Voice
(202) 673-6402 - Fax**



CRB No. 07-86

PATRICIA MORGAN,

Claimant – Petitioner

v.

D.C. DEPARTMENT OF CORRECTIONS,

Employer – Respondent.

Appeal from a Compensation Order on Remand of
Administrative Law Judge Nata Brown
OHA No. PBL 04-008, DCP No. LT5-DOC000879

William J. Howard, Esq., for the Petitioner

Linda Singer, Esq., for the Respondent

Before E. COOPER BROWN, *Chief Administrative Appeals Judge*, FLOYD LEWIS and SHARMAN J. MONROE, *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

BACKGROUND

This appeal follows the issuance of a Compensation Order on Remand 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 on Remand, which was filed on March 29, 2007, the Administrative Law Judge (ALJ) denied the Claimant-Petitioner's (Petitioner) request to augment her disability compensation rate based upon overtime pay. The Petitioner now seeks review of the Compensation Order on Remand.

As grounds for this appeal, the Petitioner alleges that the decision below is not supported by substantial evidence is not in accordance with the law.² The Respondent filed an Opposition asserting that the decision be upheld.

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 §§ 1-623.28(a) and 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. 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 instant appeal, the Petitioner argues that, contrary to the ALJ's finding that her overtime hours were voluntary in nature, the record demonstrates that her overtime hours were regular, mandatory and required of other employees. The Petitioner, therefore, asserts that she falls into the exception to D.C. Official Code § 1-623.14(e)(1) for mandatory overtime pay which was enunciated in *Lopez v. D.C. Fire and Emergency Medical Services Department*, CRB

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

² The Petitioner attached documents labeled Exhibit No. I-III. Pursuant to 7 DCMR § 266.1, the CRB's appellate jurisdiction is limited to a review of the record made before AHD or OWC, as applicable. It is not empowered to conduct a *de novo* review of matters appealed to it. After a review, the Panel finds that exhibits are part of the official file created before AHD in this case and will, therefore, be considered in rendering this decision.

No. 07-74, OHA No. PBL 04-015 (March 25, 2005) and her disability compensation rate must be augmented.

The record in this case was reviewed in its entirety. The Panel determines that the ALJ's factual findings are supported by substantial evidence on the record as a whole, and are conclusive, and that the ALJ's legal conclusions are in accordance with the law. *Marriott Int'l., supra*; D.C. Workers' Compensation Act of 1979, as amended, D.C. Official Code § 32-1501 at § 32-1521.01(d)(2)(A). Although the Petitioner asserts that her overtime met the *Lopez* test, the evidence shows the overtime was not a regular part of her work schedule. The Petitioner testified that she would be called from 45 to 15 minutes before her regular shift ended to work overtime and that the selection of officers to work overtime was made from a list of names maintained in alphabetical order. Hearing Transcript (HT) at pp. 20, 26. The fact that the Petitioner may have been terminated from her position if she refused to work overtime does not make her overtime "mandatory" within the meaning of *Lopez*. 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.

CONCLUSION

The Compensation Order on Remand of March 29, 2007 is supported by substantial evidence in the record and is in accordance with the law.

ORDER

The Final Compensation Order on Remand of March 29, 2007 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

SHARMAN J. MONROE
Administrative Appeals Judge

July 12, 2007
DATE