

**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. 08-065**

**PATRICIA SIMMONS,**

**Claimant – Petitioner,**

**v**

**ESPN ZONE AND LIBERTY MUTUAL INSURANCE,**

**Employer/Carrier –Respondent.**

Appeal from a Compensation Order on Remand of  
Administrative Law Judge Terri Thompson Mallett  
AHD No. 03-430, OWC No. 586176

Matthew Peffer, Esquire, for the Petitioner

Melissa Thompson, Esquire for the Respondent

Before: FLOYD LEWIS, SHARMAN J. MONROE AND JEFFREY P. RUSSELL, *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 §§ 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).

OVERVIEW

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 Order, which was filed on December 7, 2007, the Administrative Law Judge (ALJ) granted the request by Claimant-Petitioner (Petitioner) for reimbursement of causally related medical expenses. On January 2, 2008, Petitioner appealed that Order.

As grounds for this appeal, Petitioner alleges that the ALJ's decision is not supported by substantial evidence and is not in accordance with the law.

The granting of Petitioner's claim for reimbursement of causally related medical expenses is supported by substantial evidence and is 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 §32-1522(d)(2). "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 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 asserts that the ALJ erred in denying Petitioner's request for temporary total disability by concluding that Petitioner's low back condition and medical condition were not medically causally related to the work injury and by concluding that Dr. Marc Danziger was her treating physician. Employer-Respondent (Respondent) counters that Petitioner's disability is not medically causally related to the injury of February 20, 2001 and that the ALJ's conclusions concerning the medical evidence and the treating physician preference are supported by substantial evidence and are in accordance with the law.

In a Compensation Order, dated October 31, 2003, Administrative Law Judge E. Cooper Brown denied Petitioner's request for temporary total disability benefits from March 10, 2003 to the present and continuing, plus causally related medical expenses. On appeal, the CRB issued a Decision and Order, dated September 14, 2005, affirming in part and reversing and remanding the matter to the ALJ. The CRB affirmed the Compensation Order to the extent that it denied the claim for temporary total disability, but remanded the matter to the ALJ to determine whether Petitioner made an unauthorized change of physician and whether Respondent is liable for the medical care rendered to Petitioner by Dr. Joel Fechter.

In the Compensation Order on Remand, since the CRB affirmed the denial of the claim for temporary total disability benefits, the ALJ did not again address that issue.<sup>1</sup> On the issue of liability for medical expenses, the ALJ concluded that Respondent was liable for the medical treatment authorized by Drs. Danziger and Fechter. In appealing the Compensation Order on

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<sup>1</sup> On remand, AHD issued an Order to Show Cause indicating it was necessary to assign the matter to a second ALJ for resolution. AHD did not receive any objection to the assignment of this matter to ALJ Mallet for a decision on the record evidence.

Remand, Petitioner does not challenge the ALJ's conclusion surrounding Respondent's liability for reimbursement of medical expenses, but again disputes the denial of temporary total disability benefits, arguing that Petitioner's low back condition and medical treatment are causally related to the work-related injury of February 20, 2001.

On appeal, Petitioner argues that the ALJ erred by concluding that Dr. Danziger was Petitioner's treating physician and that the ALJ did not give Dr. Fechter's medical conclusions the benefits of the treating physician preference. However, despite Petitioner's arguments to the contrary, a review of the earlier Compensation Order clearly shows that concerning the care of Drs. Danziger and Fechter, the ALJ considered "the objective findings found within the two physician's medical evaluations" and concluded that "[d]uring their respective periods of treatment, both physicians engaged in the quality and type of professional medical conduct and care that one would expect of a treating physician." Compensation Order of October 31, 2003 at 8. As such, the ALJ determined that both physicians were treating physicians.

In determining that Dr. Danziger was a treating physician, the ALJ noted that Petitioner regularly treated with Dr. Danziger for over two years for her various problems, stressing that "Dr. Danziger monitored Claimant's medical progress and treated her, up until he released her to return to full duty, over a more extended time than did Dr. Fechter." *Id.* Then after analyzing the reports and opinions of the two treating physicians, Drs. Danziger and Fechter, the ALJ was ultimately persuaded by Dr. Danziger's medical opinion and emphasized that the conclusions of the independent medical examiner, Dr. William McNamara, corroborated Dr. Danziger's medical opinion that Petitioner's present condition did not preclude her from returning to full duty work without restrictions. This Panel must reject Petitioner's arguments and can find no reason disturb the ALJ's conclusions on this issue.

Petitioner's contention that the ALJ erred by concluding that Petitioner's low back condition and medical treatment were not causally related to the February 20, 2001 work incident must be dismissed. Despite Petitioner's argument to the contrary, the ALJ found and the record contains, substantial evidence in the reports of Drs. Danziger and McNamara to support the conclusion that Petitioner's back condition is not related to the work incident that she sustained in February of 2001.

This Panel also must emphasize that in the instant Compensation Order on Remand, the ALJ specifically noted that the CRB's September 14, 2005 Decision and Order affirmed the earlier Compensation Order of October 31, 2003 to the extent that it denied Petitioner's claim for temporary total disability benefits. Thus, the ALJ did not address that issue in the Compensation Order on Remand, only addressing whether Petitioner made an unauthorized change of physician and therefore, whether Respondent is liable for the medical care rendered by Dr. Fechter.

The ALJ concluded that Respondent is liable for the medical treatment of Dr. Fechter and ultimately granted Petitioner's claim for reimbursement of causally related medical treatment by Drs. Danziger and Fechter. Petitioner did not appeal this determination in her Application for Review, but again raised arguments over the denial of the claim for temporary total disability benefits. However, Petitioner's arguments on this matter must be rejected, as the CRB's previous

ruling on the claim for temporary total disability benefits stands as the law of the case and there is no valid reason for reconsidering that ruling

Accordingly, after a complete review of the record, the ALJ's conclusions are supported by substantial evidence and are in accordance with the law.

**CONCLUSION**

The Compensation Order on Remand, of December 7, 2007 is supported by substantial evidence and is in accordance with the law.

**ORDER**

The Compensation Order on Remand of December 7, 2007, is hereby **AFFIRMED**.

**FOR THE COMPENSATION REVIEW BOARD:**

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FLOYD LEWIS  
Administrative Appeals Judge

March 21, 2008  
DATE