

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 (Dir.Dkt.) No. 03-127

VIRGINIA S. PETERSON,

Claimant – Petitioner

v.

HOWARD UNIVERSITY HOSPITAL AND SEDGWICK CLAIMS MANAGEMENT SERVICES,

Employer/Carrier – Respondent.

Appeal from a Compensation Order of
Administrative Law Judge Jeffrey P. Russell
OHA No. 03-140A, OWC No. 561661

Benjamin T. Boscolo, Esq., for the Petitioner

Curtis B. Hane, Esq., for the Respondent

Before SHARMAN J. MONROE, LINDA F. JORY and FLOYD LEWIS, *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 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 September 23, 2003, the Administrative Law Judge (ALJ) denied the request for temporary total disability and schedule permanent partial disability benefits based upon a finding that the alleged disability had resolved. The Claimant-Petitioner (Petitioner) now seeks review of that Compensation Order.

As grounds for this appeal, the Petitioner alleges as error that the Compensation Order is not supported by substantial evidence and should be vacated and remanded.

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. 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 is not supported by substantial evidence. Specifically, the Petitioner asserts that the ALJ erred in rejecting the opinion of Dr. Richard Grant, the treating physician, in favor of the opinions of that Drs. Robert Gordon and Mark Danziger, the independent medical examiners, in contravention of the law in this jurisdiction to accord great weight to the opinion of the treating physician.

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. Although the Petitioner challenges the ALJ’s rejection of the opinion of the treating physician as contrary to the law, the law is not absolute. When rejecting the opinion of the treating physician, the fact-finder must set forth persuasive reasons for such action which are supported by the record. See *Short v. District of*

Columbia Department of Employment Services, 723 A.2d 845 (D.C. 1998); *Stewart v. District of Columbia Department of Employment Services*, 606 A.2d 1350 (D.C. 1992). Here, the ALJ stated in detail the reasons for rejecting Dr. Grant's opinion. Specifically, the ALJ stated that Dr. Grant's vague restriction on excessive walking at work seemed incongruent with his prescription for walking the same or substantially similar distances at home three (3) days per week for exercise, that Dr. Grant's opinion was based entirely upon the Petitioner's subjective complaints without consideration to essentially normal objective medical tests results and Dr. Grant's opinion did not address the only thing the Petitioner testified was beyond her capacity to do at work, i.e., work long or extended hours. After a review, the Panel determines that the reasons are supported by substantial evidence in the record as a whole. 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.²

CONCLUSION

The Compensation Order of September 23, 2003 is supported by substantial evidence in the record and is in accordance with the law.

ORDER

The Compensation Order of September 23, 2003 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

SHARMAN J. MONROE
Administrative Appeals Judge

October 14, 2005
DATE

² 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.