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
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CRB No. 08-025

PHILLIPE BROWN,

Claimant – Respondent,

v.

GOODWILL CENTER OF GREATER WASHINGTON AND PMA MANAGEMENT GROUP,

Employer/Carrier – Petitioner.

Appeal from a Compensation Order of
Administrative Law Judge Nata K. Brown
AHD No. 07-246, OWC No. 605152

Douglas A. Datt, Esq., for the Petitioner

Ryan J. Foran, Esq., for the Respondent

Before E. COOPER BROWN, *Chief Administrative Appeals Judge*, SHARMAN J. MONROE, and JEFFREY P. RUSSELL, *Administrative Appeals Judge*.

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

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 October 2, 2007, the Administrative Law Judge (ALJ) awarded permanent partial disability benefits, pursuant to the schedule at D.C. Official Code § 32-1508(3) for a forty-two percent (42%) impairment to the right lower extremity and a thirty percent (30%) impairment to the left lower extremity. On October 30, 2007, the Employer/Carrier-Petitioner (Petitioner) filed an appeal Application for Review seeking review of the Compensation Order.

As grounds for this appeal, the Petitioner alleges as error that the decision below is arbitrary, capricious and not in accordance with the law. The Respondent timely filed an Opposition.

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 asserts that while the ALJ was correct in not according great weight to either the opinion of Dr. Raymond Draper or Dr. John Parkerson since neither was a treating physician, the ALJ erred in relying on Dr. Drapkin's opinion as he did not indicate which edition of the AMA Guidelines for Evaluation of Permanent Impairment he used and did not provide any explanation for the ratings he assigned. Moreover, the Petitioner asserts that the medical evidence shows that the Respondent did not suffer any radiating leg pain as a result of his work injury and that, at best, the ALJ should have relied on Dr. Parkerson's opinion of a two and a half percent (2.5%) impairment to the right lower extremity and a zero percent (0%) impairment to the left lower extremity. Citing to *Negussie v. D.C. Department of Employment Services*, 915 A.2d 391 (D.C. 2007) and *Corrigan v. Georgetown University*, CRB No. 06-034, AHD No. 06-256, OWC No. 604612 (September 14, 2007), the Petitioner asserts

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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.

that the ALJ either employed the wrong standards or misconstrued the standards in evaluating the evidence to arrive at a schedule permanent partial disability award.

In this jurisdiction, an ALJ possesses broad discretion to consider medical and non-medical evidence, in determining the disability rating for claims made pursuant to the schedule. *See Negussie, supra*; *Corrigan, supra*. As the CRB explained, the terms "loss of industrial use" and "industrial capacity" in *Wormack v. Fishback & Moore Electric*, CRB No. 03-159 (July 22, 2005) do not refer to loss of wage earning capacity and are not intended to direct an ALJ to consider earning capacity or ability to return to work in determining a disability rating. Rather, the terms direct the ALJ to not only consider the physical condition of the injury, the "Maryland factors", but also "the employee's scheduled injury . . . from the standpoint of the injured member's use in employment." *See Corrigan, supra* at pp. 9-11.

On review of the evidence, the Panel determines that the ALJ's findings are supported by substantial evidence in the record as a whole, and the 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 § 32-1521.01(d)(2)(A). Although the ALJ used the term "loss of industrial use" in arriving at the disability ratings, the ALJ considered the ratings of Drs. Drapkin and Parkerson, the Respondent's overall medical treatment, the Respondent's current complaints and the Respondent scheduled injuries from their standpoint of use in employment. The Panel discerns no reason to disturb the ALJ's determination in this case. The Panel is 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.

CONCLUSION

The Compensation Order of October 2, 2007 is supported by substantial evidence in the record and is in accordance with the law.

ORDER

The Compensation Order of October 2, 2007 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

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SHARMAN J. MONROE

Administrative Appeals Judge
January 31, 2008
DATE