

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 (Dir.Dkt.) No. 04-71

SHIRLEY PROCTOR,

Claimant – Petitioner,

v.

GIANT FOOD, INC.,

Self-Insured Employer – Respondent.

Appeal from a Compensation Order of
Administrative Law Judge Linda F. Jory
OHA No. 04-168, OWC No. 586913

Charles Krikawa, Esq., for the Petitioner

Michael L. Dailey, Esq., for the Respondent

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

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 9, 2004, the Administrative Law Judge (ALJ) denied the requested relief after concluding that there was no causal connection between the alleged neck disability and the work injury to the back sustained on January 29, 2003. The Claimant-Petitioner (Petitioner) now seeks review of that Compensation Order.²

As grounds for this appeal, the Petitioner alleges as error that the ALJ incorrectly applied the applicable law and misconstrued the evidence such that the decision below should be vacated. The Respondent filed a Response to the Petitioner's Application for Review asserting therein that the ALJ's decision is supported by substantial evidence and is in accordance with the law.

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 alleges that the ALJ erroneously concluded that the Respondent had rebutted the statutory presumption of compensability. The Petitioner maintains that the opinion of Dr. Robert Collins, upon whom the ALJ relied, was ambiguous and did not constitute substantial evidence. The Petitioner alleges the ALJ improperly weighed the medical evidence after finding that the Respondent rebutted the presumption. The

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

² Attached to the Petitioner's Memorandum of Points and Authorities were medical reports from Dr. Edward F. Aulisi. In her Memorandum, the Petitioner indicated that since the hearing, she had come under the care of Dr. Aulisi who performed a cervical discectomy. A review of the record below indicates that these medical records were not submitted into evidence and considered by the ALJ. Per 7 DCMR § 266.1, the CRB is limited in its review to the record made below and may not consider any additional evidence. This limitation is applicable to this case although the appeal was filed before the institution of the CRB, the Director was precluded from considering evidence not made part of the record below. See *Canlas v. D.C. Department of Employment Services*, 723 A.2d 1210 (D.C. 1999). Thus, Dr. Aulisi's medical reports will not be reviewed in rendering this decision.

Petitioner argues that the opinion of the treating physician is accorded greater weight and the Dr. Joel Fetcher was unequivocal in his opinion of work relatedness of her neck disability. Finally, the Petitioner asserts, that the ALJ failed to consider that the January 29, 2003 work incident aggravated a pre-existing neck condition. In support of this assertion, the Petitioner cites the opinion of Dr. Polin that the work incident of January 29, 2003 aggravated her neck condition to the point it became disabling.

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. v. Dist. of Columbia Dep't. of Employment Servs.*, 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). 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.³

CONCLUSION

The Compensation Order of June 9, 2004 is supported by substantial evidence in the record and is in accordance with the law.

ORDER

The Compensation Order of June 9, 2004 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

SHARMAN J. MONROE
Administrative Appeals Judge

April 20, 2006
DATE

³ 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.