

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. 08-057

QUINTON BRISCOE,

Claimant – Respondent,

v

PEPCO,

Self-Insured Employer – Petitioner.

Appeal from a Compensation Order on Remand of
Administrative Law Judge Anand K. Verma
AHD No. 06-313, OWC No. 614187

Kevin J. O’Connell, Esquire for the Petitioner

W. Scott Fungler, Esquire for the Respondent

Before: E. COOPER BROWN, *Chief Administrative Appeals Judge*, FLOYD LEWIS 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).

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 Order, which was filed on November 14, 2007, the Administrative Law Judge (ALJ) awarded Claimant-Respondent (Respondent) a fifteen percent (15%) permanent partial impairment to his left lower extremity. On December 12, 2007, Employer-Petitioner (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.

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 by concluding that Respondent is entitled to a 15% permanent partial impairment of the left lower extremity and that the ALJ violated Petitioner's right to due process by failing to consider the testimony of witnesses present in the courtroom and failing to consider the submission of post-hearing evidence. Respondent counters that the Compensation Order is based upon substantial evidence and is in accordance with the law. Respondent also argues that Petitioner's Motion to Re-Open the record was properly denied and that Petitioner failed to secure the time necessary to present the testimony of its witnesses, thus the ALJ did not commit any error on these issues.

This is the third time that this matter is before the CRB. On July 31, 2007, after an earlier June 19, 2007 remand by the CRB, the ALJ issued a Compensation Order on Remand in this matter, granting Respondent's requested relief for temporary total disability benefits and permanent partial disability benefits under D.C. Official Code § 32-1508(3) for a 15% impairment to the left lower extremity. Petitioner appealed that Order to the CRB.

In a Decision and Remand Order, dated November 8, 2007, the CRB affirmed the ALJ's conclusions in the Compensation Order on Remand of July 31, 2007 with respect to the award made to Respondent, as that award was supported by substantial evidence. However, the CRB again remanded this matter to the ALJ for the sole and limited purpose of correcting the Conclusions of Law section to reflect that the Respondent's schedule award was made pursuant to the Act in D.C. Official Code §32-1508(3) and not pursuant to the American Medical Association (AMA) Guides.

Initially, this Panel must stress that in the previous Decision and Remand Order, the CRB found that the ALJ's award of a 15% partial impairment, based on the treating physician's rating, was supported by substantial evidence in the record. In the instant Compensation Order on Remand, the ALJ again reiterates the reliance on that rating to support the conclusion that Respondent is entitled to a 15% permanent partial impairment and corrected the Conclusion of Law section to properly reflect that this rating is in accordance with D.C. Official Code §32-1508(3). As such, Petitioner's

argument that the ALJ's award of a 15% permanent partial impairment to the lower left extremity is not supported by substantial evidence and is not in accordance with the law must be rejected.

As far as Petitioner's arguments concerning the ALJ's denying its Motion to Re-Open the Record to receive post-hearing reports and precluding the testimony of its witnesses which it once again raises on appeal, this Panel must emphasize that previously in both earlier decisions, the CRB concluded that the ALJ's actions in this regard were in accord with the law and did not require a reversal. Once again, Petitioner's arguments concerning the ALJ's denial of its motion and precluding the testimony of its witnesses must be denied. Our previous ruling on this matter stands as the law of the case. We find no valid reason for reconsidering that ruling.

Accordingly, after a complete review of the record, the ALJ's conclusion that Respondent is entitled to a 15% permanent partial impairment of the lower extremity is supported by substantial evidence and is in accordance with the law.

CONCLUSION

The Compensation Order on Remand of November 14, 2007 is supported by substantial evidence and is in accordance with the law.

ORDER

The Compensation Order on Remand of November 14, 2007, is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

FLOYD LEWIS
Administrative Appeals Judge

March 5, 2008
DATE