

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. 06-38

BENJAMIN RAMEY,

Claimant – Petitioner,

v.

POTOMAC ELECTRIC POWER COMPANY AND CHC,

Employer/Carrier – Respondent.

Appeal from a Compensation Order of
Administrative Law Judge Amelia G. Govan
AHD No. 05-318, OWC No. 608087

Maria C. Mendoza, Esq., for the Petitioner

Kevin J. O’Connell, Esq., for the Respondent

Before E. COOPER BROWN, *Chief Administrative Appeals Judge*, 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

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 March 17, 2006, the Administrative Law Judge (ALJ) denied the relief sought upon a finding that the Claimant-Petitioner (Petitioner) did not sustain an emotional injury arising out of and in the course of his employment. The Petitioner now seeks review of that Compensation Order.

As grounds for this appeal, the Petitioner alleges as error that the findings of fact set forth in the Compensation Order are not based upon substantial evidence in the record and that the Compensation Order is not otherwise not in accordance with the applicable 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.

Below, the Petitioner alleged that he sustained post-traumatic stress syndrome as a result of events which occurred at work on August 31, 2003 when he was accused of being intoxicated then forced to ride with three co-workers to several medical facilities in Virginia without being allowed to eat, drink or use a restroom and administered a Breathalyzer test more than eleven hours after his shift began. The ALJ applied the established test for determining whether an alleged emotional injury arises out of and in the course of employment as enunciated in *Dailey v. 3M Company*, H&AS No. 85-259 (May 19, 1988) and found that the Petitioner did not sustain a compensable work injury.

Turning to the case under review herein, the Petitioner asserts that the ALJ erred in finding that there was no evidence of timely notice when the Petitioner submitted post-hearing evidence

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.

on the issue. The Petitioner asserts that the ALJ made erroneous findings on the date of his accidental injury and of his return to work after the injury. The Petitioner also asserts that the ALJ made numerous other erroneous findings of fact about the events relevant to this claim and cites his testimony at the hearing as an accurate rendition of various events. Finally, the Petitioner asserts that the ALJ was incorrect in relying upon the medical opinion of Dr. Brian Schulman, the independent medical examiner, to make the determination that the Petitioner did not sustain a compensable emotional injury.

In this jurisdiction, in order to invoke the presumption of compensability for an emotional injury, an injured worker must show that the actual working conditions, not the injured worker's perception of the conditions, caused the emotional injury. This presumption for emotional injuries can be invoked by showing that a particular incident or situation at work was a significant stressor that could reasonably be expected to affect a person of ordinary sensibilities in the same way that it affected the injured worker. See *Sturgis v. D.C. Department of Employment Services*, 629 A.2d 547, 552 (D.C. 1993). If the injured worker fails to invoke the presumption, the worker must prove by a preponderance of the evidence that an emotional injury is work-related. See *Washington Hospital Center v. D.C. Department of Employment Services*, 744 A.2d 992, 998 (D.C. 2000). See also *Brown v. Bloomberg, L.P.*, CRB No. 05-45, OHA/AHD No. 02-392, OWC No. 568405 (January 10, 2006).

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. D.C. Department of Employment Services*, 834 A.2d 882 (D.C. 2003); D.C. Workers' Compensation Act of 1979, as amended, D.C. Official Code §§ 32-1501 to 32-1545 (2005) at § 32-1521.01(d)(2)(A). The Petitioner's challenges to the Compensation Order are not substantially sufficient to warrant a reversal of the ALJ's ultimate finding and conclusion. At best, the ALJ's errors of finding that the date of injury was August 30, 2003 and finding that the Petitioner returned to work on September 2, 2003 were harmless, not requiring corrective action. The Panel defers to and accepts the ALJ's credibility determinations as well as they are supported by substantial evidence in the record. See *Teal v. D.C. Department of Employment Services*, 580 A.2d 647 (1990); *Dell v. D.C. Department of Employment Services*, 499 A.2d 102, 106 (D.C. 1985). Given that the ALJ found the Petitioner's testimony not credible, the ALJ's reliance on the medical opinion of Dr. Schulman, a board-certified psychiatrist, as opposed to the Petitioner's testimony, was not erroneous.² See Employer Exhibit No. 2. The record fully supports the ALJ's thorough, well reasoned decision, and the Panel, therefore, summarily affirms the Compensation Order in all respects.

CONCLUSION

The Compensation Order of March 17, 2006 is supported by substantial evidence in the record and is in accordance with the law.

² The Panel notes that Dr. Schulman was the only psychiatrist to render an opinion on the Petitioner's alleged emotional injury. The other opinions in the record were from a clinical social worker and an individual with a Ph.D., specialty unknown. See Claimant Exhibit Nos. 3 and 4.

ORDER

The Compensation Order of March 17, 2006 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

SHARMAN J. MONROE
Administrative Appeals Judge

June 14, 2006

DATE