

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

Department of Employment Services

VINCENT C. GRAY  
MAYOR



LISA M. MALLORY  
INTERIM DIRECTOR

**COMPENSATION REVIEW BOARD**

**CRB No. 10-074 (R)**

**JAIME REYES,**  
**Claimant,**

**v.**

**MANUEL GONZALEZ INDIVIDUALLY and T/A MANUEL GONZALEZ HOME IMPROVEMENT,<sup>1</sup>**  
**UNINSURED EMPLOYER.**

Upon Remand from the District of Columbia Court of Appeals, DCCA No. 10-AA-1244  
AHD No. 08-218A, OWC No. 641776

Neil J. Fagan, Esquire, for the Claimant  
Randy McRae, Esquire, for Uninsured Employer

Before: LAWRENCE D. TARR, HENRY M. MCCOY, AND HEATHER C. LESLIE,<sup>2</sup> *Administrative Appeals Judges*

LAWRENCE D. TARR, *Administrative Appeals Judge*, for the Compensation Review Board.

**DECISION AND REMAND ORDER**

INTRODUCTION

This case is before the Compensation Review Board (CRB) on the July 12, 2012, decision by the District of Columbia Court of Appeals (DCCA), *Reyes v. DOES*, No. 10-AA-1244, reversing and remanding the Compensation Review Board's Decision and Order, *Reyes v. Manuel Gonzalez Individually and T/A Home Improvement*, CRB 10-074,, AHD No. 08-218A, OWC No. 641776 a (September 16, 2010). The CRB's decision had affirmed the February 9, 2010, Compensation Order of an Administrative Law Judge (ALJ) in the Hearings and Adjudication Section, Office of Hearings and Adjudication, Department of Employment Services.

BACKGROUND FACTS AND PROCEDURAL HISTORY

The claimant, Jaime Reyes, injured his right shoulder on June 1, 2007 when he tripped on some netting while pouring concrete at the home of Manuel Gonzalez. Gonzalez is the claimant's brother-in-law. Gonzalez also is the founder and sole proprietor of MG Home Improvement.

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<sup>1</sup> This is the actual name of the company. The ALJ's CO and the CRB's DO incorrectly list the company as "Home Improvement."

<sup>2</sup> Judge Leslie is appointed by the Director of the Department of Employment Services as a CRB member pursuant to DOES Administrative Policy Issuance No. 11-04 (October 5, 2011).

When injured, the claimant and a few other MG Home Improvement employees were doing remodeling work at Gonzalez's personal residence.

The claimant filed a claim for workers' compensation benefits in July 2007 and in November, 2009, the ALJ held an evidentiary hearing on the claimant's request for temporary total disability benefits from June 1, 2007 to September 28, 2008, permanent partial disability benefits under the schedule for the 50% loss to his right arm, and for causally related medical expenses. At the hearing, the purported employer did not contest that the claimant sustained an injury by accident. Several issues were disputed, one of which was whether there was an employee/employer relationship between the claimant and MG Home Improvement.

In *Reyes v. Manuel Gonzalez, Individually and t/a Home Improvement*, AHD No. 08-218A, OWC No. 641776 (February 9, 2010), the ALJ denied the claim. The ALJ analyzed the evidence under the "relative nature of the work test" and determined the claimant did not prove an employee/employer relationship with MG Home Improvement. A divided CRB affirmed.

The DCCA reversed. The DCCA held "the evidence in the record clearly and convincingly supports (not negates) that an employee/employer relationship existed between Reyes and MG Home Improvement." The DCCA further held:

The CRB erred in affirming the ALJ's compensation order. The ALJ's analysis of the "relative nature of the work test" was flawed because some factual findings were not supported by substantial evidence, and other factual findings that did not have evidentiary support were used to draw legal conclusions that did not flow rationally from those facts. For those reasons, and because the ALJ did not address the remaining issues left for determination (*i.e.* whether Reyes's injury was causally related to the June 1, 2007 incident, the nature and extent of Reyes's injury, a calculation of Reyes's weekly wage, and whether penalties should be assessed for the unreasonable delay) we vacate the decision of the CRB and remand for further proceedings not inconsistent with this decision.

Therefore, consistent with the DCCA's decision, we must remand this case to the Hearings and Adjudication Section, Office of Hearings and Adjudication.

#### ORDER

This case is remanded to the Office of Hearings and Adjudication for such further proceedings that are consistent with this decision and the decision of the DCCA.

FOR THE COMPENSATION REVIEW BOARD:

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Lawrence D. TARR  
*Administrative Appeals Judge*

July 30, 2012  
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DATE