

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. 04-074

KENNETH SIMMONS,

Claimant – Petitioner

v.

BRANMORE CONSTRUCTION INC. AND OHIO CASUALTY GROUP,

Employer/Carrier – Respondent.

Appeal from a Compensation Order of
Administrative Law Judge Jeffrey P. Russell
OHA No. 04-190, OWC No. 590531

Heather Leslie, Esq., for the Petitioner

Michael T. O'Bryant, Esq., for the Respondent

Before LINDA F. JORY, FLOYD LEWIS and SHARMAN J. MONROE, *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

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 14, 2004, the Administrative Law Judge (ALJ) found that the Claimant-Petitioner did not sustain an accidental injury arising out of and in the course of his employment and injury denied the relief. The Petitioner now seeks review of that Compensation Order.

As grounds for this appeal, the Petitioner alleges as error that the decision below is arbitrary, capricious, unsupported by substantial evidence and not in accordance with the law.²

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.

As to the merits of the Petitioner’s appeal, the record was thoroughly reviewed and the Panel finds that the ALJ’s factual findings are supported by substantial evidence on the record as a whole, and are, therefore, conclusive. *Marriott Int’l. v. Dist. of Columbia Department of Employment Services*, 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 ALJ’s conclusions of law are in accordance with the law as well. The Panel defers to and accepts the

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.

² Along with his Application for Review, the Petitioner filed a Motion to Extend Time with in Which to File Memorandum of Points and Authorities in Support of Application for Review. Although the regulations previously governing appeals required that the memorandum be filed with the Application for Review, it was the policy of the Director, Department of Employment Services to routinely grant requests for extension of time to file a memorandum. However, the policy was abolished with the institution of the CRB, which assumed the appellate responsibilities of the Director, in light of the new statutorily imposed time constraints for issuing decisions. Nevertheless, as the Petitioner’s memorandum was received before this matter was assigned for review, the Petitioner’s request is granted and its memorandum is accepted on its merits.

ALJ's credibility determinations as well. *See Mohamed Nasser v. Moran Limousine Services*, Dir. Dkt. No. 91-80, H&AS No. 90-818 (September 9, 1992). In sum, 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 14, 2004 is supported by substantial evidence in the record and is in accordance with the law.

ORDER

The Compensation Order of June 14, 2004 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

SHARMAN J. MONROE
Administrative Appeals Judge

January 19, 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.

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2006 a copy of the foregoing DECISION AND ORDER was mailed by certified mail to the following:

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Gregory E. Lamb
Clerk of the Board