GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services

VINCENT C. GRAY
MAYOR

F. THOMAS LUPARELLO
ACTING DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 14-075

DEPT. OF EMPLOYMENT SERVICES
COMPENSATION REVIEW BOARD
2014 OCT 30 AM 11 08

SAUNDRA TAYLOR,
Claimant–Petitioner,

v.

VERIZON COMMUNICATIONS, INC.,
Self-Insured Employer-Respondent

Upon Consideration of a "Petition for Review"
seeking to Suspend or Vacate a Compensation Order issued
by Administrative Law Judge Joan E. Knight on August 6, 2010 or
Alternatively Reverse or Vacate an Order on Second Remand issued
by Administrative Law Judge Leslie J. Meek on May 19, 2014
AHD No. 03216E, OWC No. 571165

Saundra Taylor, *pro se* Petitioner
Curtis B. Hane for Respondent

Before JEFFREY P. RUSSELL, MELISSA LIN JONES, *Administrative Appeals Judges*, and LAWRENCE D. TARR, *Chief Administrative Appeals Judge.*

JEFFREY P. RUSSELL on behalf of the Compensation Review Board.

DECISION AND ORDER

BACKGROUND[1]
Procedural Matters

The following are the documents that have been filed or submitted[2] to the Compensation Review Board (CRB) in this appeal:

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[1] The scope of review by the CRB is generally 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. *See*, D.C. Workers' Compensation Act of 1979, as amended, D.C. Code § 32-1501, *et seq.*, (the Act) at § 32-1521.01 (d)(2)(A), and *Marriott International v. DOES*, 834 A.2d 882 (D.C. 2003). Consistent with this standard of review, the CRB and this review panel must affirm 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 this panel might have reached a contrary conclusion. *Id.*, at 885.

1. On June 4, 2014, Petitioner filed a document titled "Petition for Review", seeking review of a Compensation Order issued by Administrative Law Judge (ALJ) Joan Knight on August 6, 2010, and in the alternative, seeking review of an order titled "Order on Second Remand" issued by ALJ Leslie Meek on May 19, 2014;

2. On that same date, Petitioner filed a "Memorandum of Points and Authorities in Support of Application for Review";

3. Also on that same date, Petitioner filed a "Motion to Vacate the Compensation Review Board's Order of July 27, 2011". These first three filings were all captioned consistent with a matter being filed with the CRB, i.e., the parties are referred to as "Petitioner" and Respondent", they bear a CRB number (an incorrect number of unknown derivation) and contain reference to the CRB in the caption;

4. Also accompanying these documents filed June 4, 2014 was a document styled "Motion to Add Exhibits", which contained a listing of 5 documents, bore an AHD number (03-216E), no CRB number, no reference to the CRB at all, and contained no argument or further discussion concerning the exhibits referenced therein;

5. On June 17, 2014, Respondent filed "Employer/TPA's Opposition to Claimant's Application for Review";

6. On June 20, 2014, Petitioner filed "The Petitioner's Reply to Employer/TPA's Opposition to Claimant's Application for Review";

7. On September 26, 2014, Petitioner filed a "Motion to Supplement Record" with the CRB;

8. On October 1, 2014, Respondent filed "Employer's Opposition to Claimant's Motion to Supplement Record";

9. On October 6, 2014, Petitioner filed "Plaintiff's Amended Reply Memorandum in Support of Ms. Taylor's Motion to Supplement Record"; and

10. On October 9, 2014, Petitioner filed "Plaintiff's Reply Memorandum in Support of Ms. Taylor's Motion to Supplement Record".

The regulations governing filings concerning appeals to the CRB establish time frames within which documents may be filed, and limits the types of documents that may be filed. The applicable regulations provide that any party adversely affected by a compensation order or final order issued by the Administrative Hearings Division (AHD) may file an Application for Review with the CRB within thirty calendar days of the date shown on the Certificate of Service of said order (7 DCMR

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[2] Our review has been limited to the documentary record developed in AHD. We have not considered any documents not included in that record submitted by either party in this appeal, including an Order issued by the D.C. Superior Court submitted by Respondent.

§§ 258.1 and 258.2); the Application for Review "shall identify the compensation order or final decision from which petitioner appeals (7 DCMR § 258.4 (a)); a party adverse to the Application for Review may file an opposition within fifteen calendar days of the date of filing of the Application for Review (7 DCMR § 258.8); petitioner may file a reply to the opposition within five days, and "no further submissions by the parties shall be permitted, unless directed by the Review Panel to which the appeal is assigned." (7 DCMR § 258.10). Lastly, any party may request reconsideration of any Decision and Order or other order issued by the CRB within 10 days of the date shown on the certificate of service thereof (7 DCMR § 268.1).

The "Motion to Vacate the Compensation Review Board's Order of July 27, 2011" (which we deem to be a variant of a motion for reconsideration), was not filed within ten days of the CRB order sought to be vacated and hence is not timely. It is accordingly denied.

The "Motion to Add Exhibits" does not appear to be intended to be considered by the CRB, and was presumably misfiled. There have been multiple proceedings in this matter. The "Motion to Add Exhibits" does not identify which proceedings are sought to be supplemented, and does not contain any argument, discussion or justification for the request. Further, it contains no certificate of service. Because Petitioner subsequently filed a "Motion to Supplement Record", indicating that "Motion to Add Exhibits" pleading, which in its caption identifies the presiding officer as an AHD ALJ, was intended for AHD and not the CRB, we deem this filing not to be before us for consideration. Moreover, because it fails to satisfy the requirements regarding service upon the opposing party and contains no argument in support of its requested relief, to the extent that the motion is intended to be considered by the CRB, it is denied.

Following Respondent's filing its opposition to the application for review on June 17, 2014, Petitioner filed a reply on June 20, 2014. Both were timely and are permissible pleadings under the regulations.

On September 26, 2014, Petitioner filed a "Motion to Supplement Record", to which Respondent filed an opposition on October 1, 2014, following which Petitioner filed "Plaintiff's Amended Reply Memorandum in Support of Ms. Taylor's Motion to Supplement Record" and then, on October 9, 2104, she filed "Plaintiff's Reply Memorandum in Support of Ms. Taylor's Motion to Supplement Record". None of these filings are among the permissible pleadings under the regulations, none were requested by the CRB, and all were out of time under the regulations. In addition to these reasons, because the issues of fraud, credibility, and this magazine article are addressed elsewhere in this matter, we deny the motion on the grounds that the movant has failed to provide evidence of any "unusual circumstances" as required by Section 32-1520(c) of the Act to warrant re-opening the record.

In summary, therefore, the following pleadings and filings are presented for our consideration and decision:

1. Petitioner's June 4, 2014 "Petition for Review";

2. Respondent's June 17, 2014 "Employer/TPA's Opposition to Claimant's Application for Review"

3. June 20, 2014, Petitioner's June 20, 2014 "The Petitioner's Reply to Employer/TPA's Opposition to Claimant's Application for Review".

ANALYSIS

In her Petition for Review, Petitioner seeks relief in the alternative: Petitioner seeks to have the Compensation Order of August 6, 2010, authored by ALJ Joan Knight, "suspended or set aside", and failing that, Petitioner requests that the CRB reverse and remand, "to a different ALJ" (different, that is, than ALJ Leslie Meek) the May 19, 2014, "Order on Second Remand".[3]

Concerning the first request for relief, it appears primarily to be premised upon a claim that some sort of fraud has been committed in connection with the submission of an article from the internet dealing with Petitioner's earnings as a professional poker player. Petitioner also asserts that ALJ Knight impermissibly rejected testimony from her witnesses concerning her medical condition.

Review of a four year old Compensation Order is beyond our jurisdiction, inasmuch as more than thirty days has passed from its issuance and the filing of this "Petition for Review". 7 DCMR 258.2.

Beyond this, although Petitioner accuses Respondent's counsel of "fraud", the nature of the alleged fraud is not described with sufficient clarity for this panel to ascertain precisely what is being alleged, nor is there any evidence to which we are directed in the memorandum demonstrating the commission of any fraud. Accordingly, we decline to vacate or otherwise disturb the now final Compensation Order of August 6, 2010. Further, the complaints of "fraud" have previously been addressed; no new arguments that we can discern have been presented, and we shall not consider it anew at this time.

Turning to the second request for relief, we initially point out that the "Order on Second Remand" resulted from an earlier remand to the ALJ, issued June 18, 2013, in which the CRB specifically identified exhibits adduced by Petitioner at a *Snipes* proceeding which Petitioner argued demonstrated a change of condition warranting a modification of ALJ Knight's original Compensation Order denying Petitioner's claim for disability benefits. The following is taken from that Decision and Remand Order, and sets forth what the ALJ was instructed to do:

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[3] Petitioner also renews her request that the ALJ recuse herself. She does not provide any cognizable reason for such an action. Moreover, "recusal requires more than 'bald allegations of favoritism or bias with no proof thereof.' [citing *Jones-Coe v. D.C. Dept. of Mental Health*, Dir. Dkt. No. 13-03, OHA No. PBL98-024A; DCP Nos. LT 4-DMH 000405 and 364789 (August 26, 2003)].In seeking recusal on the ground of bias, a party initially must allege facts that (1) are material and stated with particularity; (2) are such that, if true, they would convince a reasonable person that a bias exists; and (3) show that the bias is personal, as opposed to judicial, in nature. Personal bias in this context means that the alleged bias must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learns from participation in the case. In other words, the bias must have its source beyond the four corners of the hearing room. [citing *Dupont Circle Citizens Assn. v. D.C. Alcoholic Beverage Control Board*, 766 A. 2d 59 (D.C. 2001)]." *McNair v. DOES,* CRB No. 12-148, AHD No. PBL 12-018, DCP No. 30100723741-0001(November 13, 2012).

In the *[prior]* Decision and Remand Order, the CRB had specifically noted that "In response to the ALJ's questions [at the formal hearing] concerning which exhibits in her package support her claim that there has been a change in conditions, Ms. Taylor identifies CE 14, 15 (HT 37), 16 (HT 38), a fiber tracking test, which is CE 15 (HT 40; HT 56 - 58), and CE 13, a report of unknown date by a Dr. Bracharon. At HT 53 - 54, Ms. Taylor appears to be suggesting that Dr. Harb's reports from the prior hearing are in some manner different from his newer reports."

In these passages, the CRB identified numerous specific exhibits that Ms. Taylor had pointed to as demonstrating a change in her condition meeting the Snipes standard. The ALJ only addressed one of them, CE 13. We find no error in her dismissing CE 13 as being inadequate to meet the Snipes burden.

The ALJ found the claimant's evidence was insufficient because the documents "consisted primarily of documents that preceded the August 6, 2010 Compensation Order" or because they "merely reasserted medical conclusions that were previously rejected. None of the other three exhibits that the CRB instructed the ALJ to analyze (CE 14, 15 and 16) preceded the August 6, 2010 CO. It may well be that the other documents "merely reassert [...] the medical reports and conclusions previously rejected". However, their contents are not described or discussed and are not correlated in any fashion to any previously considered and rejected evidence. While it is well settled that there is no requirement for an ALJ to inventory the evidence in a case, there is a requirement to acknowledge and address evidence that is presented in direct support of or in opposition to a claim. See, *Kyle v. Safeway Stores, Inc.*, CRB No. 12-117, AHD No. 12-116, OWC No. 685101 (October 9. 2012), *Green v. Palomar Hotel*, CRB No. 11-065, AHD No. 10-582, OWC Nos. 673571 and 673273 (November 10, 2011).

Accordingly, the ALJ failed to completely carry out the directive of the CRB to address the specific evidentiary submissions in anything other than conclusory terms. Accordingly, we must again remand the matter so as to permit the ALJ to review, identify and discuss in specific terms what these remaining exhibits contain, and how they are mere reassertions as opposed to new findings.

As before therefore, one can not tell from the Order on Remand why the ALJ ruled as she did, because there is nothing therein that explains her decision in anything other than conclusory terms for any of the remaining evidentiary submissions upon which Ms. Saunders relies. So again, without an explanation we are unable to carry out our review obligation of determining whether the decision was supported by substantial evidence. We have no choice but to remand for further consideration and discussion from the ALJ concerning the basis of her decision.

Taylor v. Verizon, CRB No. 12-184, AHD No. 03-216, OWC No. 571165 (June 18, 2013).

As this passage shows, the matter was remanded for the purpose of having the ALJ address three remaining evidentiary submissions that Petitioner had in some way argued supported her claim of a change in conditions: CE 14, 15, and 16.

We note preliminarily that certain parts of Petitioner's memorandum seem to suggest that she perceived error in that the ALJ did not afford her the benefit of a "presumption" that her claim should be heard. We shall merely point out that there is no presumption that a change of conditions has occurred in a *Snipes* review. Rather, the burden is upon the party seeking a modification to present some evidence of a change in conditions.

In the Order on Second Remand, the ALJ specifically addressed each of these documents. Two of the?, CE 14 and 15, are medical reports or records.[4]

CE 14 dealt with an MRI report relating to a May 3, 2011 cervical study, which the ALJ found unconvincing, given (i) there were no prior studies to which it could be compared, and (ii) nothing in the report states anything relevant concerning Petitioner's physical or functional capacity as compared to her capacity at the prior formal hearing. Review of the report supports the ALJ's rational conclusion that it fails to demonstrate any relevant change in condition.

CE 15 is a report concerning an October 20, 2010 brain MRI study, which includes the statement that "Findings: Comparison is made to a prior MRI dated 08/14/2008… there does not appear to be a significant change in the appearance of the MRI study." That statement supports the ALJ's conclusion that "Claimant's CE 15 does not provide a reason to believe Claimant's condition has changed as a result of the work injury." Indeed, it would seem to compel a finding that there has been no change due to any reason. Accordingly, the report supports the ALJ's determination that CE 15 fails to demonstrate a change in conditions since the prior formal hearing.

Lastly, the ALJ reviewed CE 16. The ALJ wrote:

> Claimant has provided three copies of CE 16. CE 16 is a document concerning Las Vegas Neuroscience and Pain Medicine. One copy of CE 16 is missing the second page. The remaining copies have no signature, nor do they provide any indication of who authored the document. CE 16 has been given no weight as it is incomplete and unsigned.

Again, the ALJ's description of the exhibit is accurate and her characterization of it as deserving no evidentiary weight is certainly within her discretion as the fact finder to accord it as much or as little weight as she deems it worth.

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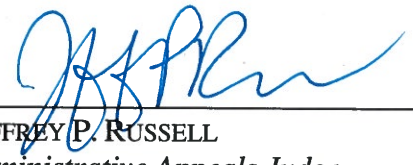
[4] None of the documents which remained for review by the ALJ on remand were non-medical. That is, all of the documents identified by Ms. Taylor as showing some change in condition were medical. Thus, there was no reason for any consideration of any non-medical change of conditions claim in this remand.

CONCLUSION AND ORDER

The ALJ carried out the mandate of the CRB, and in doing so reached conclusions of law that are supported by substantial evidence. The Order on Second Remand is affirmed.

FOR THE COMPENSATION REVIEW BOARD:



JEFFREY P. RUSSELL
Administrative Appeals Judge

October 30, 2014
DATE