

DISTRICT OF COLUMBIA COURT OF APPEALS

Nos. 14-AA-1253 & 15-AA-593

SAUNDRA TAYLOR, PETITIONER,

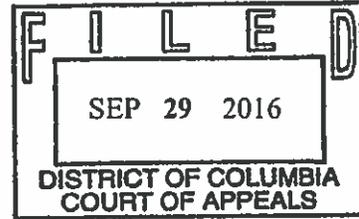
v.

DISTRICT OF COLUMBIA
DEPARTMENT OF EMPLOYMENT SERVICES, RESPONDENT,

AND

VERIZON COMMUNICATIONS, INC., ET AL., INTERVENORS.

Appeals from the Department of Employment Services
Compensation Review Board
(CRB No. 14-075)



DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD

2016 OCT 6 AM 10 02

(Submitted April 12, 2016

Decided September 29, 2016)

Before GLICKMAN and EASTERLY, *Associate Judges*, and KING, *Senior Judge*.

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: In these consolidated appeals, petitioner Sandra Taylor challenges two orders of the Compensation Review Board (“CRB”) denying post-adjudication motions she had filed. In No. 14-AA-1253, the CRB upheld an Administrative Law Judge’s (“ALJ’s”) determination that petitioner was not entitled to an evidentiary hearing on her claim that there had been a change of conditions bearing on the fact or degree of her disability. In No. 15-AA-0593, the CRB upheld the rejection of a request by petitioner to supplement the record of her worker’s compensation hearing with evidence purportedly showing that the

intervenor's attorney had perpetrated a fraud against her. Finding no legal error or abuse of discretion in either decision, we affirm each CRB ruling.¹

Petitioner was injured while working for intervenor Verizon Communications, Inc., when she fell down a flight of stairs on August 24, 2001. She filed a claim for worker's compensation benefits. Finding that her work-related injuries were not, in fact, disabling, the Department of Employment Services ("DOES") denied petitioner's claim in 2005. This court affirmed that decision in 2008.² Thereafter, petitioner sought to overturn the denial of disability benefits by proffering evidence purporting to show (i) a material change in conditions, and (ii) fraud in the administrative proceedings.

Change of Conditions. Petitioner requested the DOES to review its denial of her claim for disability benefits in light of new medical evidence. On May 19, 2014, an ALJ denied this request without an evidentiary hearing on the ground that the proffered medical evidence did not provide reason to believe a "change of conditions" concerning the fact or degree of petitioner's disability had occurred. The CRB upheld this determination.³ Petitioner does not persuade us that it was erroneous.

A party to a worker's compensation case may apply to DOES for review and modification of a compensation order "where there is reason to believe that a change of conditions has occurred which raises issues concerning . . . [t]he fact or the degree of disability or the amount of compensation payable pursuant

¹ See *Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Emp't Servs.*, 992 A.2d 1276, 1280 (D.C. 2010) ("To the extent that the [CRB] properly conducts its review of the decision of the ALJ, we will affirm the ruling unless it is arbitrary, capricious, or otherwise an abuse of discretion and not in accordance with the law.") (quoting *Georgetown Univ. v. District of Columbia Dep't of Emp't Servs.*, 971 A.2d 909, 915 (D.C. 2009)).

² *Saundra Taylor and Virginia S. Peterson v. District of Columbia Dep't of Emp't Servs.*, Nos. 05-AA-700, 05-AA-1208, Mem. Op. & J. at 8-9 (D.C. May 30, 2008).

³ *Saundra Taylor v. Verizon Commc'ns, Inc.*, CRB No. 14-075, 2014 WL 5847456, at *5 (Oct. 30, 2014).

thereto[.]”⁴ The applicant is entitled to an evidentiary hearing on such a request only if, upon preliminary examination, DOES determines that the evidence proffered in support of the application could, if credited, establish the necessary change of conditions.⁵ Thus, to satisfy the “reason to believe” standard in the preliminary evaluation, the applicant must provide “*some evidence* of [] a change in the fact or the degree of disability” sustained in the initial work-related injury.⁶

Here, petitioner proffered medical reports relating to a neck injury she sustained in her fall in 2001, including a new MRI and a fiber tracking test.⁷ But although these reports were new, they did not show any change in the fact or the degree of petitioner’s disability; evidence of the same injury was submitted and considered in the original workers’ compensation hearing and the new evidence did not indicate that the injury had changed since then.⁸ DOES therefore did not err in denying petitioner an evidentiary hearing on her request for modification of the compensation order in her case.

Fraud in the Administrative Hearing. Petitioner also moved post-adjudication to supplement the record with evidence purportedly showing fraud committed by intervenors’ counsel during her original worker’s compensation hearing. At that hearing, intervenors’ counsel offered in evidence two pages of a three-page article from Bluff magazine to rebut petitioner’s claim that her injuries in 2001 had impaired her ability to sit for long periods and her cognitive skills. The two pages revealed that petitioner was a professional poker player who was able to earn substantial income from her winnings *after* she fell and injured herself

⁴ D.C. Code § 32–1524 (a) (2012 Repl.).

⁵ *Bowser v. District of Columbia Dep’t of Emp’t Servs.*, 129 A.3d 253, 258 (D.C. 2015), as amended (Feb. 25, 2016) (citing *Snipes v. District of Columbia Dep’t of Emp’t Servs.*, 542 A.2d 832, 834 n.4 (D.C. 1988)).

⁶ *Walden v. District of Columbia Dep’t of Emp’t Servs.*, 759 A.2d 186, 191 (D.C. 2000) (italics in the original) (citing *Short v. District of Columbia Dep’t of Emp’t Servs.*, 723 A.2d 845, 851 (D.C. 1998); see *Snipes*, 542 A.2d at 834 n.4.

⁷ See *Taylor*, 2014 WL 5847456, at *3, *5.

⁸ *Id.*

in 2001.⁹ Appellant belatedly moved to supplement the record with the third page of the article, which intervenors' counsel had not offered in evidence, because it allegedly showed that she actually won more poker tournaments and had greater winnings before her fall. Like the CRB, however, we are not persuaded by appellant's argument that withholding the third page amounted to a fraud.

For additional evidence to be submitted to the CRB after a worker's compensation claim has been adjudicated, DOES regulations require (1) that the new evidence be material, and (2) that there exist reasonable grounds for the petitioner not to have presented the evidence at the formal adjudicative hearing.¹⁰ In upholding the denial of petitioner's motion to supplement the record with the third page of the Bluff magazine article, the CRB explained that "[e]ven . . . accept[ing] [petitioner]'s assertion that the information is material, [petitioner] has not established reasonable grounds for the failure to introduce these documents at the formal hearing."¹¹ This conclusion finds ample support in the record, for when part of the magazine article was introduced at her formal hearing, petitioner was well aware that the third page was omitted, and she well knew what it would have shown. Indeed, on cross-examination she testified that the third page would show that she won more poker tournaments before her work injury than after it. Petitioner has furnished no reason for her failure to introduce the missing third page herself.

Nor has petitioner demonstrated that the third page would have been material to the ALJ's decision on her disability claim. The two pages that were introduced were probative evidence of appellant's continuing post-accident capabilities. The third page did not contradict that evidence or undermine its meaning and probative value merely because it would have confirmed petitioner's testimony that she had greater success as a poker player before the accident.

⁹ See *Sandra Taylor v. Verizon Commc'ns*, CRB No. 14-075, 2015 WL 2340401, at *1-2 (Apr. 28, 2015).

¹⁰ D.C. Mun. Regs. Tit. 7, §264.1; see *Bennett v. District of Columbia Dep't of Emp't Servs.*, 629 A.2d 28, 30-31 (D.C. 1993) (citing D.C. Code § 32-1522 (2012 Repl.) (formerly D.C. Code § 36-322)).

¹¹ *Taylor*, 2015 WL 2340401, at *2.

Moreover, and in any event, the ALJ relied on other substantial evidence for discrediting petitioner and denying her disability claim.¹²

For much the same reasons, withholding the third page did not amount to fraud. Fraud requires “(1) a false representation, (2) in reference to a material fact, (3) made with knowledge of its falsity, (4) with the intent to deceive, and (5) action taken in reliance upon the representation.”¹³ These requirements are not met here. Although petitioner contends that relying on only part of the magazine article was a misrepresentation, this was not so – neither the facts set forth in the pages introduced nor the implications of those facts were false or misleading without the omitted page. As the CRB stated, while the document introduced in evidence by intervenors’ counsel was incomplete, “an incomplete document is not a fraudulent document.”¹⁴

IV.

For the foregoing reasons, we conclude that the challenged rulings in the two decisions under review were supported by substantial evidence in the record and were neither arbitrary, capricious, nor otherwise contrary to law or an abuse of discretion. Accordingly, we affirm the orders of the Compensation Review Board in Nos. 14-AA-1253 and 15-AA-593.

¹² See *Taylor*, Nos. 05-AA-700, 05-AA-1208, Mem. Op. & J. at 3 (“The order found Dr. Alkaitis’ EMG opinion to be ‘equivocal,’ and Dr. Mark Cohen’s diagnosis to be based largely on Ms. Taylor’s subjective complaints and not supported by his own objective test. [The ALJ] credited the analyses of Dr. Gisolfi and Dr. Edward Cohen over that of Dr. Mark Cohen because the latter diagnosis was based on Ms. Taylor’s subjective complaints, and he did not find Ms. Taylor to be a credible witness. He was not convinced by her descriptions of pain, and noted that she sat for ninety minutes throughout the hearing in no apparent discomfort. Further, he noted that Ms. Taylor owns a vacation home in Las Vegas, and shows no reluctance to sit through flights there and elsewhere.”).

¹³ *Bennett v. Kiggins*, 377 A.2d 57, 59 (D.C. 1977).

¹⁴ *Taylor*, 2015 WL 2340401, at *2 (quoting *Saundra Taylor v. Verizon Commc’ns, Inc.*, CRB No. 10-163, 2011 WL 3625290, at *1 (July 27, 2011)).

ENTERED BY DIRECTION OF THE COURT:



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Clerk of the Court

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