

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Department of Employment Services

VINCENT C. GRAY  
MAYOR



LISA M. MALLORY  
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 11-062

SAUNDRA TAYLOR,

Claimant-Petitioner,

v.

VERIZON COMMUNICATIONS, INC.,

Self-Insured Employer-Respondent.

Appeal from a Compensation Order of  
Administrative Law Judge Leslie A. Meek  
AHD No. 03-216E, OWC No. 571165

DEPT. OF EMPLOYMENT  
SERVICES  
COMPENSATION REVIEW  
BOARD  
2012 JUN 25 PM 12 47

Saundra Taylor, *pro se* Petitioner

Curtis B. Hane, Esquire, for the Respondent

Before JEFFREY P. RUSSELL,<sup>1</sup> MELISSA LIN JONES AND LAWRENCE D. TARR, *Administrative Appeals Judges*.

JEFFREY P. RUSSELL, for the Compensation Review Panel:

**DECISION AND REMAND ORDER**

OVERVIEW

A formal hearing was held on October 1, 2009 before Administrative Law Judge (ALJ) Joan Knight. At that hearing, Ms. Taylor sought an award of permanent total disability, and causally related medical care. In a Compensation Order issued August 6, 2010, ALJ Knight denied the claim for relief, finding that the alleged cause of the claimed disability, an alleged brain injury, was not causally related to the work injury that Ms. Taylor had sustained August 24, 2001. Ms. Taylor appealed the Compensation Order to the CRB, which affirmed the denial of the claims in a Decision and Order issued January 14, 2011.

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<sup>1</sup> Judge Russell is appointed by the Director of DOES as an Board Member pursuant to DOES Administrative Policy Issuance No. 11-03 (October 5, 2011).

Ms. Taylor filed a new Application for Formal Hearing (AFH) on March 8, 2011. The matter was assigned to ALJ Leslie Meek, who conducted a Snipes hearing<sup>2</sup> on June 16, 2011, at which time Ms. Taylor made an oral presentation and submitted 57 documentary exhibits. The following day, ALJ Meek issued an Order in which she held that Ms. Taylor had failed to adduce sufficient evidence to establish that there is reason to believe that there has been a change of conditions subsequent to the prior formal hearing affecting the fact or degree of disability or the amount of compensation to which Ms. Taylor is entitled. Consistent with that finding, ALJ Meek dismissed the AFH.

Ms. Taylor appealed the Order on July 15, 2011 by filing a Memorandum of Points and Authorities in Support of Petition for Review with the CRB.

#### STANDARD OF REVIEW

The scope of review by the CRB, as established by the Act and as contained in the governing regulations, 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. Official Code § 32-1501, *et seq.*, (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.

#### DISCUSSION AND ANALYSIS

The issues to be decided in a Snipes proceeding are whether a party can produce “some evidence of (1) a change in the fact or degree of the claimant’s disability, and (2) some initial work-related injury that caused the previous disability.” *Short v. DOES*, 723 A.2d 845 (D.C. 1998). The operative period upon which such an inquiry would focus in this case is the time between the prior formal hearing, October 1, 2009, and the Snipes hearing, June 16, 2011.

Review of the 57 exhibits submitted by Ms. Taylor reveals that at least six of them are medical records generated during that time span: CE 14 (an MRI taken May 13, 2011), 15 (an MRI report dated October 20, 2010), 16, 17 (medical reports from Dr. Mouchir Harb dated April 18, 2011 and November 2, 2010), 20 (a medical report from Dr. William Garmoe dated November 24, 2010), and 21 (a medical report from Dr. Arthur Becker dated April 5, 2011).<sup>3</sup>

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<sup>2</sup> Under *Snipes v. DOES*, 542 A.2d 832 (D.C. 1988), where a party seeks a modification of a Compensation Order, prior to that party being entitled to a formal hearing, a preliminary review of the evidence should be undertaken to determine whether there is reason to believe that there has been a change of conditions effecting the fact or degree of disability or the amount of compensation to which a claimant is entitled.

<sup>3</sup> We note that one medical report identified on Ms. Taylor table of contents of exhibits, CE 13, is not included in the record transmitted to the CRB. We do not know what the date of that exhibit is, nor what it purports to show. Although listed as an exhibit entered into the record in HT, it is apparent that the HT listing of exhibits is merely a recitation of the table of contents and not a list of documents identified individually at the time of the hearing. *See*, HT 17, lines 10 –

The Order dismissing the appeal is a page and a half in length. The majority of the Order consists of recitation of the standards to be adhered to when determining whether a party has adduced a sufficient quantum of evidence under Snipes and its progeny to warrant a formal hearing.

The entire substantitive portion of the Order reads as follows:

On June 16, 2011, a hearing was convened in this matter and a Snipes hearing was conducted. Upon review of the evidence admitted into evidence, and the argument presented, I find claimant has filed the instant request for modification in a timely manner. I also find, however, that Claimant failed to proffer sufficient, credible evidence to support a reason to believe that since the date of the previous Compensation Order, a change has occurred which raises issues concerning the fact, degree or extent of her disability.

Order, unnumbered page 2. No aspect of the facts of this case appears in the Order. There is no discussion concerning what degree of disability Ms. Taylor experienced at the time of the prior formal hearing (the Order erroneously identifies the date of the Compensation Order as the time from which a change in conditions is being assessed; it is the date of the prior formal hearing), and no discussion of what the evidence presented by Ms. Taylor (a) consisted of or (b) purported to demonstrate *vis a vis* her condition. There is no identification in the Order of what Ms. Taylor claims with respect to her condition now as opposed to the time of the prior formal hearing.

At the time of the Snipes hearing, Ms. Taylor referred to and alleged that comparison of various MRIs demonstrate that her physical condition has deteriorated, and that a new test, called a fiber tracking test, confirms the existence of a traumatic brain injury. In response to the ALJ's questions 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. None of these reports upon which Ms. Taylor relied are addressed in the Order.

In the recent case of *Jones v. DOES*, 41 A.3d 1219 (D.C. 2012), the District of Columbia Court of Appeal made clear that the reasons for an ALJ's decision must be set out in the operative order with specificity. In that decision overturning a CRB affirmance of an ALJ's determination of the extent of disability a claimant had sustained under the schedule, the court wrote:

The court is charged, by statute, "to hold unlawful and set aside" an agency's decision if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." D.C. Code § 2-510 (a)(3)(A). That determination cannot be made unless the court has a basis for evaluating the agency's exercise of discretion, and we require that it be provided, for otherwise, we risk "invit[ing] the exercise of [administrative] impressionism. Discretion there may be, but 'methodized by

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15. However, it is apparently the same exhibit discussed at some length at HT 46-47 which from that discussion appears to be a 13 page medical report.

analogy, disciplined by system.' CARDOZO, THE NATURE OF THE JUDICIAL PROCESS, 139, 141 (1921). Discretion without a criteria for its exercise is authorization of arbitrariness.'" (James) Johnson v. United States, 398 A.2d 354, 366 (D.C. 1979) (quoting Brown v. Allen, 344 U.S. 443, 496, 73 S. Ct. 397, 97 L. Ed. 469 (1953)).

Here, because the ALJ did not explain her reasoning in arriving at a disability award of 7%, we are unable to meaningfully review the decision to determine whether it is based on substantial evidence, applying proper legal principles.

*Jones*, supra, at 1221.

One can not tell from the Order under review why the ALJ ruled as she did, because there is nothing therein that explains her decision in anything other than conclusory terms. 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.

Ms. Taylor has another assignment of error. She sought to present her testimony by reading from either notes or a prepared statement. She complains on this appeal that the ALJ frustrated her presentation by cutting short her opportunity to read from the statement.

D.C. Code §32-1525, "Hearings before Mayor" governs the formal hearing process. It provides, in pertinent part:

- (a) In making an investigation or inquiry or conducting a hearing the Mayor shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by this chapter, but may make such investigation or inquiry or conduct such hearing in such manner as to best ascertain the rights of the parties. Prior to the hearing before the Mayor the parties may conduct such discovery, including but not limited to the use of interrogatories and depositions as, in the opinion of the Mayor, will be helpful in determining the rights of the parties.

Nothing therein prohibits the procedure employed. On the contrary, it is clear that the Act intends to afford the ALJ discretion in the procedures to be employed in this process. It was certainly within that discretion for the ALJ to limit the extent to which Ms. Taylor's presentation consisted of reading from a prepared statement or scripted notes, in an effort to focus the proceedings on what was relevant to the limited issue at hand, whether there was some evidence of a change in conditions concerning the fact or degree of disability or the level of compensation to which Ms. Taylor is entitled.

Our review of the transcript of proceedings satisfies us that the ALJ's questions to Ms. Taylor were reasonably calculated to get to the heart of that issue, and were posed in clear, simple and direct terms. There is nothing in Ms. Taylor's responses to these questions that suggests that Ms. Taylor didn't understand the queries or was unable to respond to them. Further, the ALJ accepted all of Ms. Taylor's documentary submissions.

If Ms. Taylor, after responding to the inquiries from the ALJ, had requested that she be permitted to submit a copy of her written statement or notes for the ALJ's consideration, we would be faced with a different issue. However, no such request was made, and on this record we detect nothing in the procedure employed that impeded or prevented Ms. Taylor from apprising the ALJ of the basis of her modification request, and we therefore reject Ms. Taylor's argument in connection therewith.

Ms. Taylor also raises the issue of whether the ALJ accorded her the benefit of the statutory presumption of compensability. We point out to Ms. Taylor while the Snipes evidentiary threshold is a low one, there is no statutory presumption of a change in conditions.

Ms. Taylor has also requested that this case be set in for *en banc* review. We perceive no reason why such an unusual procedure should be employed in this case, and in any event, *en banc* review has been established via regulation, and none of the criteria for implementing the procedure are presented here. We therefore decline to have this matter decided *en banc*. See, 7 DCMR § 255.8.<sup>4</sup>

Finally, we note that, although Verizon's counsel and the ALJ characterized these proceedings as a Snipes hearing in order to consider whether a modification of the prior order is appropriate, we are unclear as to why this is a modification proceeding.

The prior Compensation Order denied Ms. Taylor's claim for relief on the grounds that her current alleged brain injury was not causally related to the work injury sustained while employed by Verizon. It appears to us that much of the evidence put before the ALJ and included in the exhibit package, and most if not all of the discussion on the record at that hearing, relate to the brain injury claim.

The law of this case, as established in the prior Compensation Order, which was affirmed by the CRB and does not appear to have been appealed to the District of Columbia Court of Appeals, is that Ms. Taylor current brain injury, if any she has, is not causally related to her work injury. Thus, any "worsening" of that condition is irrelevant to this case.

On remand, prior to embarking on an analysis of the evidence relied upon by Ms. Taylor, the ALJ must identify what this case is about. If it is a modification that is being sought, then the ALJ must review and discuss in some fashion the evidence that Ms. Taylor relies upon which has come into existence since the prior formal hearing and determine how it relates to her condition at that earlier time, which of necessity will require some assessment or description of that earlier condition.

If, on the other hand, analysis of the claim leads to the conclusion that this proceeding is in actuality an attempt to re-litigate the existence of a brain injury and its causal relationship to the work injury, and nothing more, than the ALJ is free to dismiss the AFH on *res judicata* grounds.

Regardless, however, it is incumbent upon the ALJ to identify precisely what is presented to her for resolution, and explain the basis of her decision by reference to the evidence adduced.

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<sup>4</sup> The procedure exists for the purpose of reconciling or making uniform decisions of the CRB in instances where there is a conflict between existing CRB case law.

CONCLUSION

The Order of June 17, 2011 dismissing the Application for Review is insufficiently complete to permit review for legal sufficiency.

ORDER

The Order of June 17, 2011 is vacated and reversed, and the matter is remanded for further consideration in a manner consistent with the foregoing Decision and Remand Order.

FOR THE COMPENSATION REVIEW BOARD:

/s/ Jeffrey P. Russell  
JEFFREY P. RUSSELL  
Administrative Appeals Judge

June 25, 2012  
DATE