

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services
Labor Standards Bureau

Office of Hearings and Adjudication
Compensation Review Board

(202) 671-1394 -Voice
(202) 673-6402 - Fax



CRB (Dir.Dkt) No. 04-39

ROBERTO SEGOVIO,

Claimant – Petitioner,

v.

MILLER & LONG CONSTRUCTION COMPANY,

Self-Insured Employer – Respondent.

Appeal from a Compensation Order of
Administrative Law Judge Jeffrey P. Russell
AHD No. 03-570, OWC No. 564713

Monica Myers Turnbo, Esq., for the Petitioner

John C. Duncan, Esq., for the Respondent

Before FLOYD LEWIS, LINDA F. JORY 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

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 April 19, 2004, the Administrative Law Judge (ALJ) denied the requested relief based upon a finding that the Claimant-Petitioner (Petitioner) neither sustained an accidental injury as alleged nor provided timely notice of the alleged injury.

The Petitioner appeals the Compensation Order.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. App. 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.

The Panel thoroughly reviewed the record in this case determines 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

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 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 On or about April 25, 2004, the Petitioner, through counsel, filed an Application for Review. The Application was presented via a one page letter that also contained a request for leave to file a Memorandum of Points and Authorities by May 26, 2004. Although the regulations previously governing appeals required that a 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. See 7 DCMR § 258.3. In a letter dated January 9, 2006, the parties were informed that this matter was to be assigned to a Review Panel for disposition and afforded time to file supplemental briefs. To date, the Petitioner has not submitted a memorandum or any other pleading setting forth the specific reasons for his appeal. Accordingly, the Panel will conduct a substantial evidence review of the Compensation Order.

882 (D.C. 2003); D.C. Workers' Compensation Act of 1979, as amended, D.C. Official Code §§ 32-1501 to 32-1545 (2005), at § 32-1521.01(d)(2)(A). Further, the ALJ's conclusions are in accordance with the law. In rendering this decision, the ALJ found that the Petitioner's testimony was not credible; the ALJ set forth in detail the bases for such a finding. It is well-settled in this jurisdiction that credibility findings are accorded special deference and decisions based thereon are especially weighty. *See Teal v. D.C. Department of Employment Services*, 580 A.2d 647 (1990); *Dell v. D.C. Department of Employment Services*, 499 A.2d 102, 106 (D.C. 1985). The Panel finds that the credibility determinations made herein are also supported by substantial evidence and defers to and accepts the ALJ's credibility determinations. 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 April 19, 2004 is supported by substantial evidence in the record and is in accordance with the law.

ORDER

The Compensation Order of April 19, 2004 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

SHARMAN J. MONROE
Administrative Appeals Judge

June 13, 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.