

**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. 05-263**

**ROSS SIMPSON,**

Claimant–Petitioner,

v.

**THE ASSOCIATED PRESS AND ZURICH AMERICAN INSURANCE COMPANY,**

Employer/Carrier–Respondent.

Appeal from a Compensation Order of  
Administrative Law Judge David L. Boddie  
OHA/AHD No. 05-238, OWC No. 554336

Heather C. Leslie, Esquire, for the Petitioner

Jamie L. DeSisto, Esquire, for the Respondent

Before JEFFREY P. RUSSELL, SHARMAN J. MONROE, and FLOYD LEWIS, *Administrative Appeals Judges*.

JEFFREY P. RUSSELL, *Administrative Appeals Judge*, for the Compensation 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).<sup>1</sup>

---

<sup>1</sup>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 District of Columbia Workers’ Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, *codified at* D.C. Official Code § 32-1521.01. In accordance with the Director’s Directive, the CRB replaces the Office of the Director in providing administrative appellate review and disposition of workers’ and disability compensation claims arising under the District of Columbia Workers’ Compensation Act of 1979, as amended, D.C. Code Ann. §§ 32-1501 to 32-1545 (2005), and the District of Columbia 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 District of Columbia Workers’

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 followed a formal hearing conducted on June 21, 2005, and was filed on August 15, 2005, the Administrative Law Judge (ALJ) awarded Petitioner 26% permanent partial disability to the left ring finger, and denied the claim of Petitioner for permanency in the amount of 31% permanent partial disability to the left hand. Petitioner now seeks review of that Compensation Order, and seeks reversal of the award of 26% permanent partial disability to the left ring finger, and seeks an award of 31% permanent partial disability to his left hand, or in the alternative, an award of 38% permanent partial disability to his left ring finger. Respondent opposes the appeal, and asserts that the decision of the ALJ is supported by substantial evidence and is in accordance with the law.

The record has been reviewed and we find that the ALJ's factual findings are supported by substantial evidence in the record as a whole, and are therefore conclusive. *Marriott Int'l. v. Dist. of Columbia Dep't. of Employment Servs.*, 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).

Review of the Application for Review (AFR) and memorandum in support thereof reveals that the Petitioner's complaints of error relate the weight of the evidence, which in this case consisted of three different ratings from three different evaluating physicians. Petitioner's arguments deal with Petitioner's view as to the relative merits of each physician's opinions, and do not rise to the level of legal error as to admissibility. Further, although Petitioner initially argues that the opinion of Petitioner's treating physician ought be accorded less weight than the opinion rendered by a physician retained by Petitioner solely for the purpose of obtaining an independent medical evaluation (IME) on the subject of permanent partial impairment, which IME opinion was that Petitioner had sustained a higher degree of medical impairment than the treating physician opined, Petitioner argues in the alternative that rejection of the treating physician's opinion by the ALJ was erroneous as a matter of law, under the treating physician preference rule in this jurisdiction.

Review of the Compensation Order reveals that the ALJ carefully considered all three rating opinions, and selected the one that in his view was most consistent with the other evidence of record, and conformed most closely to the statutorily sanctioned factors, being those commonly referred to as "the Maryland factors", and the strictures of the *American Medical Association Guidelines to the Evaluation of Permanent Impairment* (The AMA Guides). Further, in rejecting the opinion of the treating physician, the ALJ gave the reasons for so doing, being that the treating physician's opinion was not based upon and did not take into account "the Maryland factors", described in the Compensation Order by the ALJ as "the factors for consideration identified in D.C. Code § 32-1508 (3)(U-i)". Compensation Order, page 11. In that the Act makes consideration of such factors relevant, the failure to address them is an adequate reason for the ALJ to prefer a different opinion that does address them, as well as conforms to the protocols of the AMA Guides, which are also statutorily sanctioned for use in these types of claims under the same provision in the Act.

Petitioner's remaining assertions are nothing more than arguments that the ALJ accepted medical opinion that was in its view not as compelling as that preferred by Petitioner. However, subject to the caveat that rejection of treating physician opinion must be explained and supported by persuasive reasons (*see, Butler v. Boatman & Magnani*, OWC No. 044699, H&AS No. 84-348 (December 31, 1986), *Short v. District of Columbia Department of Employment Services*, 723 A.2d 845 (1998), and *Stewart v. District of Columbia Department of Employment Services*, 606 A.2d 1350 (1992), the ALJ is free to accept such evidence as the ALJ finds most persuasive.

We defer to and accept the ALJ's fact findings. The record evidence fully supports the ALJ's thorough and reasoned decision, and identifies the evidence in the record upon which the ALJ based his factual findings, and legal conclusions. We therefore affirm the reasoning and legal analysis expressed by the ALJ in that decision, affirming the Compensation Order in all respects.

### **ORDER**

The Compensation Order of August 15, 2005 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

\_\_\_\_\_  
JEFFREY P. RUSSELL  
Administrative Appeals Judge

\_\_\_\_\_  
November 10, 2005  
DATE