

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

Office of Hearings and Adjudication
COMPENSATION REVIEW BOARD



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CRB No. 06-055

TERRENCE NETTLEFORD,

Claimant–Petitioner,

v.

CAMBRIDGE MANAGEMENT AND TRAVELERS INSURANCE,

Employer/Carrier–Respondent.

Appeal from a Compensation Order of
Administrative Law Judge Henry W. McCoy
AHD No. 05-509, OWC No. 603267

Heather C. Leslie, Esquire, for the Petitioner

Amy L. Epstein, 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).¹

¹Pursuant 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

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 May 16, 2006, the Administrative Law Judge (ALJ) denied Petitioner's request for an award of temporary total disability benefits and medical care, finding that although Petitioner did sustain an accidental injury arising out of and occurring in the course of his employment with Respondent on November 10, 2003, Petitioner failed to provide adequate and timely notice of the injury under the Act to Respondent, and that the claimed medical care was not medically causally related to the work injury. Petitioner now seeks review of that Compensation Order.

As grounds for this appeal, Petitioner alleges as error that Petitioner had proven that Respondent had actual notice of the injury sufficient to satisfy the requirements of the Act, in a timely fashion, thereby rendering the denial of temporary total disability benefits erroneous, and that the ALJ's determination regarding a lack of a causal relationship between the claimed medical care and the accidental work injury is factually unsupported and is contrary to the statutory presumption that timely notice was given.

Respondent opposes the appeal, asserting that the ALJ's Compensation Order is supported by substantial evidence, is in accordance with the law, and should be affirmed.

ANALYSIS

As an initial matter, the scope 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. *See* 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). "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. Dist. of Columbia Dep't. of Employment Servs.*, 834 A.2d 882 (D.C. 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.

Turning to the case under review herein, Petitioner first asserts that the ALJ's ruling that Petitioner did not provide adequate and timely notice of the work injury is unsupported by substantial

administrative appeals filed prior to October 1, 2004, the effective date of the District of Columbia Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004.

evidence. Rather, Petitioner asserts, “the uncontradicted evidence presented at the Formal Hearing is that [Petitioner] gave actual notice within the statutory requirements”.²

Initially, it is noted that Petitioner repeatedly asserts that Petitioner advised someone that counsel describes as “the site supervisor”, and identifies as Elaine Gooding, of the work injury. See, Petitioner’s “Memorandum of Points and Authorities in Support of Application for Review” (Petitioner’s Memorandum), page 4; see also, Compensation Order, page 6, footnote 8. However, as noted by the ALJ, the record does not support this assertion, even if one accepts Petitioner’s testimony as being credible. Nowhere that we can find in the transcript does Petitioner utter Ms. Gooding’s name, nor does he ever describe her as being his “site supervisor”, or state that he advised any such “site supervisor” of the injury. Neither does Petitioner’s counsel point us to any such testimony or record evidence.³ The only references that we have found to Ms. Gooding are at HT 118 and HT 131, where she is identified by a witness for Respondent as one of several “site supervisors” in Respondent’s employ, and is said to have advised the witness that Petitioner was out of work in order to have surgery, and was not expected to return.

Petitioner on appeal also asserts, and the record supports that Petitioner so testified, that he advised his supervisor, Jim Hampton, about the incident very soon after it occurred. Because Mr. Hampton, who has left Respondent’s employ, did not testify at the formal hearing, Petitioner argues that Petitioner’s testimony, being uncontradicted, is conclusive on this issue, particularly in light of the statutory presumption of notice.

Although not cited by Petitioner explicitly, the statutory presumption of notice provision is found at D.C. Code § 32-1521, and reads in pertinent part, “In any proceeding for the enforcement of a claim for compensation under this chapter it shall be presumed, in the absence of evidence to the contrary: ... (2) That sufficient notice of such claim has been given”.

While Petitioner is correct that the Act has such a presumption, the statute also provides that the presumption operates only “in the absence of evidence to the contrary”. In this case, it must be noted that Respondent presented the testimony of John Bronder, Respondent’s Director of Human Resources. He testified that he spoke with Mr. Hampton, who did not substantiate Petitioner’s claim

² The Act requires that injured workers give employers written notice containing certain specified details relating to a work injury within 30 days, but mandates waiver of the written notice requirement where the employer had actual notice of the injury and its connection to employment within the same time frame, if the failure to give the written notice was not prejudicial to the employer. See, D.C. Code § 32-1513 (a) and (d)(1). Although Petitioner testified that he authored an incident report on the day of the injury and placed it in an interoffice mail envelope which he claims that he delivered to Respondent’s business office, Petitioner does not contend in this appeal that he gave proper written notice. Petitioner’s only argument in this appeal concerning notice is that Respondent had actual notice of the injury based upon Petitioner’s testimony that he told various people about it, and that the injury was witnessed by two co-workers.

³ Curiously, while Petitioner cites several documents by exhibit number in the recitation of “Facts” in the Memorandum, counsel dispenses with any attempt to identify by HT page or exhibit number any record evidence in support of Petitioner’s claim on appeal that he advised Ms. Gooding of the accident, or that Ms. Gooding was the site supervisor for the place where Petitioner was injured, a failure that makes assessing Petitioner’s contention about this problematic.

that Petitioner advised him of such an incident⁴, and that he, that is, Mr. Bronder, had reviewed Petitioner's personnel file and determined that it did not contain any written report of such an injury, either from Petitioner or Mr. Hampton. While obviously not conclusive, such evidence is "evidence to the contrary" as it relates not only to the testimony that Petitioner advised Mr. Hampton of the accident, but also that he wrote an incident report and delivered it to Respondent's business office. Accordingly, the presumed adequacy of notice has been rebutted, freeing the ALJ to weigh the record as a whole. Because of the ALJ's stated doubts about Petitioner's credibility, the ALJ concluded that no such notice had been given. See, Compensation Order, page 5 – 6. Inasmuch as credibility determinations are peculiarly within the broad discretion of the ALJ, and considering the reasons given by the ALJ in this case for doubting Petitioner's veracity, we will not disturb the ALJ's decision not to credit Petitioner's claim that he gave both written and oral notice of the injury to Respondent in a timely fashion.⁵

Accordingly, we hold that the ALJ's determination that Petitioner did not give adequate and timely notice of the injury is supported by substantial evidence and is in accordance with the law.

Petitioner also challenges the ALJ's determination that the complained of back injury for which he obtained and seeks additional medical care is not medically causally related to the work injury which the ALJ found to have occurred. Citing *Whittaker v. District of Columbia Department of Employment Services*, 531 A.2d 844 (D.C. 1995), among other cases, Petitioner argues that, having found that Petitioner had sustained a work injury, there is a presumption that the complained of condition is medically causally related to that injury.

On this point, Petitioner's argument is well taken. While it is possible that the ALJ could have concluded that no injury occurred in this case, he did not do so. Having decided that Petitioner did in fact sustain an injury to his back when he and a co-worker were lifting and carrying a heat pump weighing in excess of 250 pounds up a ladder, it is presumed, under *Whittaker*, that Petitioner's ongoing back problems are causally related to that incident. This is particularly evident when one considers the fact that Petitioner presented a document, albeit a cursory one, from his treating physician asserting such a causal relationship, and the fact that Respondent's own independent medical evaluation (IME) report states that "if the original work injury is accepted as work related, then his current condition is related as well". See, EE 6. Such evidence clearly supports a finding that the incident which the ALJ found to have occurred had the potential to cause not just an injury, but the injury from which Petitioner suffered at the time of the formal hearing, and is therefore sufficient to invoke the presumption of a medical causal relationship between the work injury and the current and apparently uncontested condition of Petitioner's back.

⁴ Further corroboration of the finding that Mr. Hampton had not been advised by Petitioner of the work incident is the similar absence of any mention of the work injury in any of the contemporaneous medical reports, a fact also noted by the ALJ at page 4 of the Compensation Order.

⁵ Petitioner's argument that actual notice was given also includes the assertion that the injury was witnessed by two co-workers. Petitioner's Memorandum, page 4. However, even if the record did establish that fact conclusively (which it does not, given Petitioner's testimony that he made no contemporaneous exclamation of pain, and that he left the work site without saying anything to anyone about having injured himself, and the fact that neither of these co-workers testified at the formal hearing) neither of these co-workers qualifies as an "agent in charge of the business [of Respondent] in the place where the injury occurred", as specified in D.C. Code § 32-1513 (d)(1).

Further, we note that the Compensation Order contains contradictory findings and holdings on this question, in that included in the “Findings of Fact”, on page 5, is the sentence “I further find that Claimant’s low back pain is medically causally related to the work place injury that he sustained”, while on page 7, in the “Discussion” section the ALJ wrote “I find that the evidence adduced by Claimant is deemed insufficiently credible to invoke the presumption as to medical causation”, and on page 9, in the “Conclusion” section, he wrote “I find and conclude that Claimant sustained an accidental injury within the first two weeks of November 2003 and that said injury arose out of and in the course of but is not medically causally related to Claimant’s employment”. This final sentence is particularly problematic: while it may be merely an instance of imprecise phrasing, we feel that it may betray some misunderstanding of the nature of “medical causal relationship”.

For clarity’s sake, we remind those concerned that, as a general rule, questions of “arising out of and occurring in the course of” employment deal with legal causation, i.e., the question of whether a particular incident which caused (or is alleged to have caused) an injury occurred under circumstances making the injury a compensable event under the Act. “Medical causal relationship”, on the other hand, presents the question of whether a given condition for which medical or disability benefits are sought is related to the work injury. It is of course possible that a claimant could sustain an injury that is work related, but that the specific conditions for which he seeks benefits are not, as a medical matter, related to the injury that was sustained. In other words, in this case, having found that an injury occurred on November 10, 2003, and that that injury arose out of and occurred in the course of Petitioner’s employment, “legal causation” has been established, leaving the question of whether the complained of conditions (that is, the conditions for which Petitioner seeks benefits) are medically causally related to that November 10, 2003 injury.

For these reasons, we hold that the ALJ’s determination that Petitioner has not produced sufficient evidence to invoke the presumption that his current condition is medically causally related to the work injury is not in accordance with the law. Because the denial of the claimed medical care was premised upon this erroneous ruling, the matter must be remanded to the ALJ for further consideration of the evidence, giving Petitioner the benefit of the presumption that Petitioner’s low back condition is medically causally related to the work injury of November 10, 2003.

CONCLUSION

The denial of the claim for temporary total disability based upon the finding that Petitioner did not provide adequate and timely notice of the work injury to Respondent is supported by substantial evidence in the record and is in accordance with the law. The denial of the claim for medical care based upon the finding that Petitioner did not adduce sufficient evidence to invoke the presumption that his complained of low back injury is medically causally related to the work injury of November 10, 2003 is not in accordance with the law.

ORDER

The Compensation Order of May 16, 2003 is hereby affirmed in part, reversed in part, and remanded. The denial of the claim for temporary total disability is affirmed; the denial of the claim for causally related medical care is reversed and the matter is remanded for further consideration in light of and consistent with the foregoing Decision and Order.

FOR THE COMPENSATION REVIEW BOARD:

JEFFREY P. RUSSELL
Administrative Appeals Judge

August 1, 2006
DATE