

**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 (Dir.Dkt.) No. 03-140**

**KENNETH THOMPSON,**

Claimant – Petitioner

**v.**

**PREMIUM DISTRIBUTORS AND LIBERTY MUTUAL INSURANCE CO.,**

Employer/Carrier – Respondent.

Appeal from a Compensation Order of  
Administrative Law Judge Karen R. Calmeise  
OHA No. 02-456, OWC No. 577298

Matthew Peffer, Esq., for the Petitioner

Catherine H. McQueen, for the Respondent

Before E. COOPER BROWN, *Acting Chief Administrative Appeals Judge*, SHARMAN J. MONROE  
and JEFFREY P. RUSSELL, *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).<sup>1</sup>

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<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 D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, 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 D.C. Workers' Compensation Act of 1979, as amended, D.C. Official Code §32-1501 *et seq.*, and the D.C. Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Official Code §1-623.1 *et seq.*, 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.

## BACKGROUND

This appeal follows the issuance of a Compensation Order from the Office of Hearings and Adjudication (OHA)<sup>2</sup> in the District of Columbia Department of Employment Services (DOES). In that Compensation Order, which was filed on October 16, 2003, the Administrative Law Judge (ALJ) denied the Claimant-Petitioner's request for temporary total disability benefits from March 15, 2002 to June 7, 2002 and temporary partial disability benefits from June 8, 2002 to the present and continuing, authorization for causally related medical treatment and interest on accrued benefits. The Claimant-Petitioner (Petitioner) now seeks review of that Compensation Order.

As grounds for this appeal, Petitioner alleges as error that the ALJ's failure to defer to the opinion of the treating physician.

## 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. *See* D.C. Workers' Compensation Act of 1979, as amended, D.C. Official Code §32-1501 *et seq.*, at §32-1522(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.

Turning to the case under review herein, Petitioner alleges that the ALJ's decision is based on legal error and should be reversed, in part, and that he should be awarded, *inter alia*, temporary total disability benefits from March 15, 2002 to June 7, 2002. The Petitioner argues that the ALJ committed legal error by not deferring to the opinion of the treating physician in this case. He maintains that the medical opinions from Concentra Medical Center (Concentra) and Dr. Joel Fetcher are based upon objective tests and they show that his disability continued after he was terminated from his employment on March 15, 2002. He asserts his termination did not absolve the Employer-Respondent (Respondent) of its obligation to pay him benefits due to his injury. Finally, the Petitioner states that the Respondent did not rebut the presumption of compensability and he is entitled to a finding that his current condition is medically causally related his injury.

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<sup>2</sup> Pursuant to the Director's Directive, Administrative Policy Issuance 05-01, the functions of the Office of Hearings and Adjudication have recently been assigned to the Administrative Hearings Division. (AHD).

In its Opposition to the appeal, the Respondent asserts that it presented sufficient evidence to rebut the presumption of compensability. As support, it references the reports from Concentra wherein the Petitioner was released to return to full duty without restrictions on February 25, 2002, and the reports of the independent medical examiner, Dr. James Callan, wherein he opined that the Petitioner was able to work full duty and had no remaining disability related to his work injury. Employer Exhibit No. 11. The Employer-Respondent, citing *Upchurch v. District of Columbia Department of Employment Services*, 783 A.2d 623 (D.C. 2001), maintains that an ALJ may reject the opinion of a treating physician if the ALJ states the reasons for doing so. The Respondent states that the ALJ herein complied with the case law and provided reasons for rejecting Dr. Fechter's opinion, to wit: his opinion was based upon inaccurate information. Finally, the Respondent argues that the Petitioner is not entitled to temporary total disability after he was terminated because his termination was unrelated to his work injury and he was able to work full duty at that time.

After reviewing the evidence in the record, the Panel rejects the Petitioner's arguments. The record shows that the Petitioner presented evidence that he sustained a work-related lumbar strain on February 14, 2002, that he received medical treatment therefor from Concentra Medical Center, and that he was disabled due to the injury, thereby invoking the presumption of compensability. Claimant Exhibit No. 1. Once the presumption attaches, pursuant to *Whittaker v. District of Columbia Department of Employment Services*, 668 A.2d 844 (D.C. 1995), it becomes all encompassing, creating a presumption of a medical causal relationship between a disability and an injury, unless rebutted by the employer. In response to the Petitioner's evidence, the record shows that the Respondent presented the February 25, 2002 report from Concentra whereby the Petitioner was released to return to his usual employment without restrictions. Employer Exhibit No. 10. It also presented the September 26, 2002 report from Dr. Callan wherein he opined that the Petitioner was capable of returning to any employment with no restrictions and that he has no remaining disability causally related to his work injury. Employer Exhibit No. 11. Contrary to the Petitioner's assertion, this evidence was specific and comprehensive enough to rebut the presumption of a medical causal relationship as the ALJ determined in her decision.

The Petitioner asserts that the ALJ committed a reversible legal error by not deferring to the opinion of Dr. Fetcher, the treating physician. It is well-settled in this jurisdiction that to grant a preference to and accept the opinion of the treating physician due to that physician's familiarity with a claimant's injury and treatment. See *Harris v. District of Columbia Department of Employment Services*, 746 A.2d 297 (D.C. 2000). This preference, however, is not absolute and an ALJ may reject the opinion of the treating physician so as long as the ALJ provides reasons for not according the treating physician's opinion great weight. See *Clark v. District of Columbia Department of Employment Services*, 772 A.2d 198, 202 (D.C., 2001). The record herein shows that after the Respondent rebutted the presumption, the ALJ weighed the medical evidence as is required once the presumption is rebutted, and rejected the opinion of the Petitioner's treating physician, Dr. Fetcher on the basis that Dr. Fetcher's opinion of a continuing disability was based upon the misinformation that the Petitioner had not returned to work since the date of his work injury. See Compensation Order at p. 6. After reviewing Dr. Fetcher's reports, the Panel discerns no error in the ALJ's rejection of the treating physician's opinion.

The record reveals that when the Petitioner was released to return to work full duty, he resumed his full duties. Thereafter, he was terminated from his employment for reasons unrelated to his injury. Specifically, the Petitioner was terminated for violating the Respondent's rules on employee conduct. Employer Exhibit No. 3; Transcript at p. 111. Under these circumstances, any wage loss that the Petitioner suffered after his termination was not a factor of his injury and is not compensable. *See Robinson v. District of Columbia Department of Employment Services*, 824 A.2d 962 (D.C. 2003).

#### CONCLUSION

The Compensation Order of October 16, 2003 is supported by substantial evidence in the record and is in accordance with the law.

#### ORDER

The Compensation Order of October 16, 2003 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

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SHARMAN J. MONROE  
Administrative Appeals Judge

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August 23, 2005  
DATE