

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA MARÍA MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 13-109

**LILLIE TINSLEY,
Claimant–Petitioner,**

v.

**D.C. OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION,
Employer-Respondent.**

Appeal from a August 9, 2013 Compensation Order by
Administrative Law Judge Fred D. Carney, Jr.
AHD No. PBL09-036B, DCP No. 30080214753-0001

Ms. Lillie Tinsley, Self-Represented Petitioner
Frank McDougald, Esquire for Respondent

Before MELISSA LIN JONES, HEATHER C. LESLIE, and JEFFREY P. RUSSELL, *Administrative Appeals Judges*.

MELISSA LIN JONES for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

On February 20, 2008, Ms. Lillie Tinsley injured her neck, back, shoulders, and wrists when her car was hit from behind; Ms. Tinsley also experienced headaches as a result of the accident. At the time of the accident, Ms. Tinsley was performing her job duties as a senior program specialist for the D.C. Office of the State Superintendent of Education (“Employer”).

Employer provided Ms. Tinsley wage loss and medical benefits until November 20, 2012 when the Public Sector Workers’ Compensation Program terminated those benefits on the grounds that Ms. Tinsley was able to return to work. As a result, on April 24, 2013, the parties proceeded to a formal hearing before an administrative law judge (“ALJ”) to determine the nature and extent of Ms. Tinsley’s disability from her work-related accident, and on August 9, 2013, the ALJ issued a

Compensation Order denying Ms. Tinsley's request for restoration of her temporary total disability compensation benefits and her medical benefits.¹

Ms. Tinsley filed an Application for Review on September 9, 2013 in the form of a letter-request disagreeing with the Compensation Order and requesting additional time to prepare a Memorandum of Points and Authorities. On September 10, 2013, the Compensation Review Board's Chief Administrative Appeals Judge granted Ms. Tinsley an extension to September 24, 2013. Ms. Tinsley did not file a Memorandum of Points and Authorities.

ISSUE ON APPEAL

1. Is the August 9, 2013 Compensation Order supported by substantial evidence and in accordance with the law?

ANALYSIS²

So long as an Application for Review is filed timely, is in writing, and states an appeal is being taken, it qualifies to initiate the review process; “[l]egal arguments would certainly strengthen an appeal and would assist . . . in making a decision, however, that is not how the sufficiency of an appeal is measured.”³ Without any specific legal argument, the CRB's role is restricted to reviewing the Compensation Order to ascertain if it is supported by substantial evidence and in accordance with the law.⁴

In a public sector case, if a claim for disability compensation has been accepted and benefits have been paid, Employer initially must adduce persuasive evidence sufficient to substantiate a

¹ *Tinsley v. D.C. Office of the State Superintendent of Education*, AHD No. PBL09-036B, DCP No. 30080214753-0001 (August 9, 2013).

² The scope of review by the Compensation Review Board (“CRB”) is limited to making a determination as to whether the factual findings of the appealed 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. Section 32-1521.01(d)(2)(A) of the District of Columbia Workers’ Compensation Act, as amended, D.C. Code §32-1501 to 32-1545, (Act). Consistent with this standard of review, the CRB is constrained to uphold a Compensation Order that is supported by substantial evidence, even if there also is contained within the record under review substantial evidence to support a contrary conclusion and even if the CRB might have reached a contrary conclusion. *Marriott International v. DOES*, 834 A.2d 882, 885 (D.C. 2003).

³ *Wilson v. Mergentine/Perini*, Dir. Dkt. No. 91-58, H&AS No. 91-24, OWC No. 145052 (January 4, 1994) . Although *Wilson, supra*, is a workers’ compensation case litigated pursuant to the District of Columbia Workers Compensation Act of 1979, D.C. Code, as amended, § 32-1501 *et seq.*, the WCA and its caselaw are instructive on general principles of workers compensation law, and this jurisprudence has validity and applicability under both the public and private sector statutes and schemes, especially when the statutory provisions are so similar. *Kralick v. D.C. Department of Human Services*, CRB No. 07-043. OHA/AHD No. PBL XX-885, DCP No. 10092 (March 27, 2007).

⁴ *Short v. Washington Metropolitan Area Transit Authority*, Dir. Dkt. No. 97-20, H&AS 87-44A, OWC No. 083016 (August 15, 1997) reversed on other grounds *Short v. DOES* 723 A.2d 845 (D.C. 1998).

modification or termination of an award of benefits.⁵ Employer paid Ms. Tinsley temporary total disability compensation benefits; therefore, the burden was on Employer to present evidence to support a modification or termination of benefits payable as a result of disability caused by the injury.⁶ The ALJ found Ms. Tinsley's

duties were essentially driving to day care facilities, schools and shelters, making site inspections and preparing reports on the care facilities. I find Claimant carries her lap top computer and/or files with her on site visits. I find Claimant can carry more than five pounds in her left hand. Claimant's other job duties are primarily sedentary and does [*sic*] not require strenuous work or heavy lifting in excess of 5 lbs.

* * *

I find as of August 3, 2012, Claimant was able to perform the duties of her employment by using her left hand to carry, lift or move any objects she needed to perform the duties of her job. I find Claimant has not returned to work.^[7]

The ALJ's findings are supported by the medical evidence:

Dr. Barth opined Claimant was able to return to work with in a light duty capacity with a restriction on lifting more than 5lbs. with her right hand. (EE 2)

“She can carry her laptop in her left arm and use her left arm to move the jars, etc., to check inventory. . . In my opinion, Ms. Tinsley's current neck complaints are causally related to the injury of February 20, 2008. She had immediate onset of neck pain following her accident. According to the records, she has had persistent pain since then. In my opinion, Ms. Tinsley has some pre-existing asymptomatic cervical spine disease. I find no evidence of any shoulder pathology. In my opinion, her Para scapular [*sic*] complaints are secondary to her neck injury[.]

Finally, the records indicate that her lateral epicondylitis has been accepted as work related. The first record that I find of a diagnosis of lateral epicondylitis is approximately 9 months after her injury. In my opinion, her right lateral epicondylitis is not

⁵ *Lightfoot v. D.C. Department of Consumer and Regulatory Affairs*, ECAB No. 94-25 (July 30, 1996); *Scott v. Mushroom Transportation*, Dir. Dkt. No. 88-77 (June 5, 1990). Although the Employees' Compensation Appeals Board was abolished in 1998, its rulings remain persuasive in deciding disability cases.

⁶ *Jones v. D.C. Department of Corrections*, Dir. Dkt. No. 07-99, OHA No. PBL97-14, ODC No. 312082 (December 19, 2000).

⁷ *Tinsley, supra*, pp. 2-3.

related to the injury of February 20, 2008 as I can find no record of any right elbow complaints, symptoms or treatment in the initial injury period. The first mention made of lateral epicondylitis is many months after her injury. If she had developed traumatic lateral epicondylitis from the accident, I would expect her to have immediate onset of elbow pain, with should be documented in the initial evaluation of February 20, 2008.”

Employer also introduced the August 3, 2012, letter from Claimant’s treating physician Dr. Neviaser. Dr. Neviaser agreed with the opinion of Dr. Barth. (EE 3)

“To Whom It May Concern,

I’ve read the IME report performed by Dr. Richard Barth on June 20, 2012 and I fully agree with Ms. Lillie Tinsley’s return to work status and treatment status given by Dr. Barth.”

The medical reports [of] Drs. Barth and Neviaser both indicate that Claimant is able to return to work with restrictions on lifting in excess of 5lbs. The position description of a Senior Program Specialist contains no physical requirement that Claimant would have to lift or carry in excess of 5lbs in the right hand. (EE4)^[8]

Based upon the evidence, the ALJ ruled Employer had satisfied its burden:

Notwithstanding the lack of substantive evidence on accommodations, Employer has produced evidence of a change in condition since Claimant’s February 20, 2008 work injury. Employer has produced the medical reports of Claimant’s treating physician and the IME of Dr. Barth. Those reports indicate that Claimant’s accepted work injury has improved such that she is able to return to work with restrictions on using her right hand to lift in excess of 5 lbs.^[9]

The ALJ’s determination that Employer met its burden is supported by substantial evidence and is in accordance with the law; therefore, there is no justification for setting aside the ALJ’s shifting the burden of proof to Ms. Tinsley to prove her entitlement to reinstatement of temporary total disability compensation benefits.

With the burden shifted, the ALJ considered Ms. Tinsley’s evidence and determined she is not entitled to temporary total disability compensation benefits:

⁸ *Id.* at pp. 4-5.

⁹ *Id.* at p. 5.

Claimant on the other hand introduced no evidence and did not testify on at the formal hearing. She indicated in her opening statement that she continues with pain on her whole right side that she treats with pain medication.

The weight of the evidence of record indicates that Claimant continues with some remaining disability as a result of her work injury. Claimant's job is primarily sedentary and she is capable of using her left had to move objects and carry her equipment with her upper extremity. Claimant's testimony was insufficient to out-weight the expert medical testimony of Drs. Barth and Nevaizer [*sic*]. Therefore Employer has produced a preponderance of evidence that Claimant is able to return to work.^[10]

There is no basis for disturbing the ALJ's ruling.

CONCLUSION AND ORDER

The ALJ applied the correct burden of persuasion and correct burden of proof and did not err by denying Ms. Tinsley an award of temporary total disability compensation benefits. The August 9, 2013 Compensation Order is supported by substantial evidence, is in accordance with the law, and is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

MELISSA LIN JONES
Administrative Appeals Judge

October 15, 2013
DATE

¹⁰ *Id.*