

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA MARÍA MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 12-187(1)

**WILLIAM A. WORKCUFF,
Claimant-Respondent,**

v.

**DISTRICT OF COLUMBIA HOUSING AUTHORITY,
Employer-Petitioner.**

In re: Respondent's Motion for Reconsideration of the CRB's Decision and Remand Order of August 9, 2013 concerning an Appeal from an October 25, 2012 Compensation Order of Administrative Law Judge Karen R. Calmeise
AHD No. PBL12-022, DCP No. 761001000120020006

Eric Adam Huang, Esquire for the Petitioner
Harold L. Levi, Esquire for the Respondent

Before MELISSA LIN JONES, HENRY W. MCCOY and JEFFREY P. RUSSELL, *Administrative Appeals Judges.*

MELISSA LIN JONES for the Compensation Review Board.

ORDER DENYING MOTION FOR RECONSIDERATION

On August 15, 2013, Mr. William A. Workcuff filed a Motion for Reconsideration and Memorandum in Support of Motion ("Motion").¹ Mr. Workcuff requests reconsideration of the Compensation Review Board's August 9, 2013 Decision and Remand Order on the grounds that "in vacating the [Compensation Order] the [Decision and Remand Order] incorrectly holds that the [Compensation Order] applied an erroneous burden of proof in the first instance when [the administrative law judge] applied the preponderance of the evidence standard to the termination of [Mr. Workcuff's temporary total disability compensation] benefits."²

¹ Petitioner did not file any reply or opposition to the Motion.

² Motion at p. 2.

Mr. Workcuff expresses confusion over the scope of the government's burden in public sector workers' compensation cases. Although Mr. Workcuff quotes § 1-623.24(d)(1) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Code § 1-623.1 *et seq.* ("Act"), that section does not set forth the government's burden.³ Instead, as stated in the Decision and Remand Order:

In a public sector case, once a claim for disability compensation has been accepted and benefits have been paid, Employer must adduce persuasive evidence sufficient to substantiate a modification or termination of an award of benefits. [*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).] Pursuant to the January 14, 2004 Compensation Order, Employer paid Mr. Workcuff temporary total disability compensation benefits from February 21, 2002 until April 6, 2012; therefore, having paid disability compensation benefits due to work-related injuries, Employer initially must present substantial and recent medical evidence to support a modification or termination of benefits payable as a result of disability caused by those injuries. [*Jones v. D.C. Department of Corrections*, Dir. Dkt. No. 07-99, OHA No. PBL97-14, ODC No. 312082 (December 19, 2000).]^[4]

Mr. Workcuff relies on *Toomer*⁵ for the proposition that if the government meets its initial burden, the burden on the claimant is "to show through reliable, relevant and substantial medical evidence that his physical condition has not changed and that benefits should continue,"⁶ however, *Toomer* has been abrogated by several D.C. Court of Appeals cases that make it clear:

³ Section 1-623.24(d)(1) of the Act states

The Mayor may modify an award of compensation if the Mayor or his or her designee has reason to believe a change of condition has occurred. The modification shall be made in accordance with the standards and procedures as follows:

- (A) The Mayor shall provide written notice to the claimant of the proposed modification with the supportive documentation relied upon for the modification;
- (B) The claimant shall have at least 30 days to provide the Mayor with written information as to why the proposed modification is not justified; and
- (C) The Mayor shall conduct a full review of the reasons for the proposed modification and the arguments and information provided by the claimant.

⁴ *Workcuff v. D.C. Housing Authority*, CRB No. 12-187, AHD No. PBL12-022, DCP No. 7610001000120020006 (August 9, 2013), p. 3.

⁵ *Toomer v. D.C. Department of Corrections*, CRB No. 05-202, OHA No. PBL 98-048A, DCP No. LT5-DOC001603 (May 2, 2005).

⁶ Motion at p. 3. Although Mr. Workcuff indicates this standard is set forth in *Toomer, supra*, the quote is not from that case.

In workers' compensation cases where, as here, there is no presumption of compensability, [footnote omitted] the burden of proof "falls on the claimant to show by a preponderance of the evidence that his or her disability was caused by a work-related injury." *McCamey v. District of Columbia Dep't of Employment Servs.*, 947 A.2d 1191, 1199 [footnote omitted] (D.C. 2008) (*en banc*) (citing *Washington Hosp. Ctr. v. District of Columbia Dep't of Employment Servs.*, 744 A.2d 992, 998 (D.C. 2000)).^[7]

As explained in the Decision and Remand Order, the government's initial burden is to "present substantial and recent medical evidence to support a modification or termination of benefits payable as a result of disability caused by those injuries."⁸ If the government satisfies that requirement, the burden shifts to the claimant "to show by a preponderance of the evidence that his or her disability was caused by a work-related injury."⁹

Mr. Workcuff's Motion for Reconsideration is DENIED.

FOR THE COMPENSATION REVIEW BOARD:


MELISSA LIN JONES
Administrative Appeals Judge

August 30, 2013

DATE

⁷ *D.C. Department of Mental Health v. DOES*, 15 A.3d 692, 698 (D.C. 2011). See also *Mahoney v. DOES*, 953 A.2d 739, 745 (D.C. 2008); *McCamey v. DOES*, 947 A.2d 1191 (D.C. 2008).

⁸ *Jones v. D.C. Department of Corrections*, Dir. Dkt. No. 07-99, OHA No. PBL97-14, ODC No. 312082 (December 19, 2000).

⁹ *D.C. Department of Mental Health, supra*, at 698.