

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. 04-06

DEBRA WILLIAMS,

Claimant – Petitioner

v.

HOWARD UNIVERSITY AND SEDWICK INSURANCE CO.,

Employer/Carrier – Respondent.

Appeal from a Compensation Order of
Administrative Law Judge Jeffrey P. Russell
OHA No. 03-566, OWC No. 560064

Matthew Peffer, Esq., for the Petitioner

Melissa L. Klemens, Esq., for the Respondent

Before LINDA F. JORY, FLOYD LEWIS and SHARMAN J. MONROE, *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).¹

¹ 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 D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, sec. 1102 (Oct. 1, 1994), *codified at* D.C. Code Ann. § 32-1521.01 (2005). In accordance with the Director's Policy Issuance, 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. Code Ann. §§ 32-1501 to 32-1545 (2005) and the D.C. 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 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 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 December 19, 2003, the Administrative Law Judge (ALJ) denied the request for temporary total disability benefits continuing from May 22, 2003 on the grounds that the alleged disability had resolved no later than February 21, 2003. The Claimant-Petitioner (Petitioner) now seeks review of that Compensation Order.²

As grounds for this appeal, the Petitioner alleges as error that Compensation Order is inconsistent with the evidence in the record and the applicable law.³

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. D.C. Official Code § 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. 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.

² On January 29, 2004, the Respondent filed a Motion to Dismiss the Petitioner’s Memorandum of Points and Authorities because it was untimely filed and a copy of the underlying Application for Review was not served on it. The Respondent also filed a Consent Motion for Extension of Time for Filing Points and Authorities in Support of Employer’s Opposition to Claimant’s Application for Review. On or about February 2, 2004, the Petitioner filed an Opposition to the Respondent’s Motion to Dismiss. After reviewing the arguments raised by the parties in their respective motions, the Panel denies the Motion to Dismiss. Further given that the Respondent has filed its Memorandum of Points and Authorities, which filing has been accepted, the Panel dismisses the Consent Motion as it is moot.

³ On September 28, 2005, the Respondent notified the Panel of the Petitioner’s current employment status. By law, the CRB is authorized to only review matters brought before it; it cannot consider matters *de novo* or anew. Accordingly, the rules governing the operation of the CRB prevent the CRB from considering evidence, documentary or otherwise, that was not submitted to the claims examiner or the administrative law judge. *See* 7 DCMR §§ 251.2, 266.1 (Notice of Emergency and Proposed Rulemaking (August 19, 2005)). Consequently, the information submitted by the Respondent will not be considered or reviewed as part of this appeal. Assuming *arguendo* that the Respondent filed the document under 7 DCMR § 264 (Notice of Emergency and Proposed Rulemaking (August 19, 2005)), on cursory review, the Panel determines that the document is not material to the question of whether the Petitioner’s disability resolved by February 21, 2003.

The record in this case was reviewed in its entirety. The Panel determines that the ALJ's factual findings are supported by substantial evidence on the record as a whole, and are conclusive, and that the ALJ's legal conclusions are in accordance with the law. *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). The Panel defers to and accepts the ALJ's credibility determinations as well. *See Nasser v. Moran Limousine Services*, Dir. Dkt. No. 91-80, H&AS No. 90-818 (September 9, 1992). The record fully supports the ALJ's thorough, well reasoned decision, and the Panel, therefore, adopts the reasoning and legal analysis expressed by the ALJ in that decision in affirming the Compensation Order in all respects.⁴

CONCLUSION

The Compensation Order of December 19, 2003 is supported by substantial evidence in the record and is not in accordance with the law.

ORDER

The Compensation Order of December 19, 2003 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

SHARMAN J. MONROE
Administrative Appeals Judge

November 10, 2005
DATE

⁴ 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)(B) requires a more detailed and thorough written order than the instant Decision and Order where there is a reversal of the Compensation Order.