

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. 06-23

TOMMIE AMBROSE,

Claimant – Respondent,

v.

HOWARD UNIVERSITY AND PROPERTY & CASUALTY GUARANTY CORP.,

Employer/Carrier – Petitioner.

Appeal from a Compensation Order of
Administrative Law Judge Henry W. McCoy
OHA No. 01-501A, OWC No. 511642

William Schladt, Esq., for the Petitioner

Allen J. Lowe, 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 6, 2005, the Administrative Law Judge (ALJ) awarded permanent partial disability benefits based upon a 25% disability to the right lower extremity, permanent total disability benefits based upon a total hip replacement and causally related medical expenses. The Employer/Carrier-Petitioner (Petitioner) now seeks review of that Compensation Order.

As grounds for this appeal, the Petitioner alleges that the decision below is erroneous because the Respondent is not entitled to concurrent permanent partial schedule and permanent total disability benefits for the same injury. Moreover, the Petitioner alleges that the Respondent is not entitled to permanent total disability benefits because the Petitioner has the capacity to work and there are jobs available for him.

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.

As to the merits of the Petitioner’s appeal, the record was thoroughly reviewed and 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 notes that the ALJ relied upon the holding of *Wormack v. Fishbach & Moore Electric, Inc.*, CRB No. 03-159, AHD 03-151, OWC No. 564205 (July 12, 2005) in awarding permanent partial disability benefits based upon a 25% disability to the right lower extremity and, in so doing, properly weighed the medical evidence of the Respondent’s impairment and the effect the impairment had on the Respondent’s ability to find future employment within his medical restrictions. The ALJ reviewed and properly applied the holding of *Sullivan v. Boatman & Magnani*, CRB No. 03-74, OHA No. 90-597E, OWC No. 088187 (2005) in awarding permanent total disability benefits for the Petitioner’s total hip

replacement. 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.²

CONCLUSION

The Compensation Order of December 6, 2005 is supported by substantial evidence in the record and is in accordance with the law.

ORDER

The Compensation Order of December 6, 2005 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

SHARMAN J. MONROE
Administrative Appeals Judge

March 15, 2006
DATE

² 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.