

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. 06-43

JEREMIAH BRUMFIELD,

Claimant – Petitioner,

v.

GREYHOUND LINES, INC. AND ACE USA,

Employer/Carrier – Respondent.

Appeal from a Compensation Order of
Administrative Law Judge Anand K. Verma
OHA No. 03-442A, OWC No. 585744

Matthew Pepper, Esquire, for the Petitioner

Kathryn S. McAleer, Esquire, for the Respondent

Before: FLOYD LEWIS, SHARMAN J. MONROE and JEFFREY P. RUSSELL, *Administrative Appeals Judges*.

FLOYD LEWIS, *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, 32-1522 (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

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 March 28, 2006, the Administrative Law Judge (ALJ) denied the relief requested by Claimant-Petitioner (Petitioner), concluding that Petitioner's lower back symptoms were not causally related to the work injury of December 19, 2002. Petitioner now appeals that Compensation Order.

As grounds for this appeal, Petitioner alleges as error that ALJ's decision is arbitrary, capricious, unsupported by substantial evidence and is not in accordance with the law.

ANALYSIS

As an initial matter, the scope 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 §32-1522(d)(2). "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 scope 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 erroneous, contending that the ALJ's denial of benefits seems to rest on the opinion that Petitioner's condition had reached maximum medical improvement and as such, his symptoms had resolved and no causal relationship exists. Petitioner argues that the ALJ's conclusion that his low back condition was not causally related because Petitioner was at maximum medical improvement, is irrelevant on the issue of causal relationship.

Respondent counters that the ALJ's decision is supported by substantial evidence and should be affirmed. However, Respondent also argues that should this Panel have concerns with the ALJ's findings, this matter should be remanded for further consideration and findings upon review of Respondent's physician's reports and video surveillance.

Petitioner suffered a work-related injury in December of 2002 to his lower back and Respondent voluntarily paid Petitioner temporary total disability benefits from December 20, 2002 to February

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.

2, 2004. Due to this injury, Petitioner came under the care of Dr. Rafik Muawwad, who diagnosed Petitioner's condition as acute lumbar strain and ordered him to stop working. Dr. Muawwad's follow-up treatment extended through June of 2004, as he recommended that Petitioner undergo a work hardening program. Respondent's physician, Dr. Robert Gordon, examined Petitioner on March 17 and December 9, 2003 and Dr. Gordon opined that Petitioner's continuing symptoms were not related to the December 19, 2002 work injury.

In resolving this instant matter, the ALJ noted that Petitioner's treating physician, Dr. Muawwad, referred Petitioner to a neurosurgeon, Dr. Guy Gargour. On January 19, 2004, Dr. Muawwad stated that unless Dr. Gargour felt that Petitioner was a surgical candidate, Petitioner would be discharged, having reached maximum medical improvement. Petitioner's exh. 2. Dr. Gargour reviewed Petitioner's MRI and opined that surgery was not needed. The ALJ concluded:

. . . with the unequivocal opinion against any surgery, the undersigned is convinced that the lumbar strain claimant incurred in the December 19, 2002 work accident resolved and he reached maximum medical improvement on January 19, 2004, as tentatively noted by Dr. Muawwad in his follow up report.

Compensation Order at 5.

Then, "even without recourse to" Respondent's evidence or considering Dr. Gordon's report, the ALJ denied Petitioner's request for benefits.

After reviewing the record in its entirety, this Panel must agree with Petitioner's arguments in this matter. At no time during the period that Petitioner sought benefits, did Dr. Muawwad or Dr. Gargour release Petitioner to his pre-injury employment. In fact, the record reveals that on May 7, 2004, Dr. Muawwad wrote that he advised Petitioner not to work through June 9, 2004. Petitioner's exh. 2. In addition, as Petitioner noted, even on June 15, 2004, Dr. Muawwad recommended work hardening for Petitioner. Moreover, although Dr. Gargour did not believe that Petitioner was a candidate for surgery, he recommended that Petitioner begin a physical therapy program, undergo a Functional Capacity Evaluation and be evaluated by a psychologist to overcome his continuing problems with his pain

Dr. Gargour never opined that the myofascial pain injuries were not related to Petitioner's work injury, only that he did not feel that surgery was needed for Petitioner. Simply because Dr. Muawwad stated that Petitioner had reached maximum medical improvement unless the neurosurgeon, Dr. Gargour, could provide further treatment, does not, in and of itself, prove that Petitioner was not entitled to benefits during the period in question.

As such, the ALJ's conclusion that Petitioner's lower back symptoms were not causally related to his work injury is not supported by substantial evidence and is not in accordance with the law. Thus, this matter must be remanded to the ALJ for further consideration of the record as a whole, and further findings of fact and conclusions of law to resolve Petitioner's claim for temporary total disability benefits from February 3, 2004 to June 8, 2004.

CONCLUSION

The ALJ's determination in the Compensation Order of March 28, 2006 that Petitioner's claim should be denied is not supported by substantial evidence in the record and is not in accordance with the law

ORDER

The Compensation Order of March 28, 2006 is hereby VACATED and this matter is REMANDED to the Administrative Hearings Division for further proceedings consistent with the above discussion.

FOR THE COMPENSATION REVIEW BOARD:

FLOYD LEWIS
Administrative Appeals Judge

June 2, 2006
DATE

