CRB No. 12-009

KAREN BRYANT,

Claimant–Petitioner,

v.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY,

Self-Insured Employer.

Appeal from Compensation Order of
Administrative Law Judge Linda F. Jory
AHD No. 11-318, OWC No. 678920

Michael J. Kitzman, Esquire, for the Petitioner

Sarah O. Rollman, Esquire, for the Respondent

Before JEFFREY P. RUSSELL,[1] LAWRENCE D. TARR, AND HENRY W. MCCOY, *Administrative Appeals Judges*.

JEFFREY P. RUSSELL, for the Compensation Review Board.

DECISION AND ORDER

BACKGROUND

Karen Bryant is employed by Washington Metropolitan Transit Authority (WMATA) as a station manger. Her duty station is Mt. Vernon Square station, on the Green Line. She claimed benefits under the Act for an injury to her right hand sustained while boarding a train at the Columbia Heights station, also on the Green Line. Ms. Bryant was at that station because she had visited a health club near the station. The claimed injury occurred before Ms. Bryant had arrived at her own workplace and before her scheduled work shift commenced.

[1] Judge Russell was appointed by the Director of DOES as an interim Board Member pursuant to DOES Administrative Policy Issuance Nos. 11-02 (June 23, 2011).

WMATA denied the claim on the grounds that the claimed injury did not arise out of or occur in the course of Ms. Bryant's employment. Following a formal hearing before an Administrative Law Judge (ALJ), Ms. Bryant's claim was denied in a Compensation Order (CO) issued December 11, 2011. In the CO, the ALJ accepted WMATA's argument, and determined that Ms. Bryant's claimed injury did not arise out of and occur in the course of her employment with WMATA. Ms. Bryant timely appealed, to which appeal WMATA filed an opposition.

We affirm.

STANDARD OF REVIEW

The scope of review by the CRB is generally 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. *See,* D.C. Workers' Compensation Act of 1979, as amended, D.C. Code § 32-1501, *et seq.*, (the Act) at § 32-1521.01 (d)(2)(A), and *Marriott International v. DOES*, 834 A.2d 882 (D.C. 2003). Consistent with this standard of review, the CRB and this review panel must affirm 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 this panel might have reached a contrary conclusion. *Id.*, at 885.

DISCUSSION AND ANALYSIS

In the Compensation Order, the ALJ properly noted that this is a case involving what is typically referred to as "going and coming" rules, and properly noted that in this jurisdiction, such injuries are generally not deemed compensable under the theory that they do not arise out of or occur in the course of employment. *McKinley v. DOES*, 696 A.2d 1377 (D.C. 1997).

The ALJ then identified the recognized exceptions to this rule in this jurisdiction, which in her words:

> include an employee shown to be on a special errand for employer, a part of which errand or mission involves travel to or from employer's work site or premises; or where an accident occurs while the claimant is traveling to or from work in employer provided transportation or where or where employer requires claimant to have a vehicle available for work purposes, and claimant is injured commuting in that vehicle. If claimant falls in any of the categories above, claimant's injury may be found to be in the course of his employment because employer obtains some special benefit or imposes some special hazard from the method of commute.

CO, Page 3, ANALYSIS.

Petitioner argues that the ALJ erred because, while she recognized that "where an accident occurs while the claimant is traveling to or from work in employer provided transportation" as an exception to the general rule, she denied the claim despite the fact that the ALJ found in her findings of fact that Ms. Bryant was taking employer provided transportation to get to work when the claimed injury occurred.

We must reject this argument. Although identified as an exception, the ALJ did not state that any time any worker is injured commuting on employer provided transit, the injury is compensable. Rather, she stated that in some such cases an injury *may* be compensable, and she immediately described the context in which some such cases may result in a compensable injury, and that the analytical theory underlying those that are compensable involve whether the "employer obtains some special benefit or imposes some special hazard from the method of commute."

In undertaking her analysis, the ALJ addressed the authority relied upon by Petitioner, *Kolson v. DOES,* 699 A.2d 357 (D.C. 1997). She wrote:

> Claimant's reliance [on] *Kolson* is misplaced. As employer properly noted in closing argument, the *Kolson* court's conclusion, after highlighting many standards from other jurisdictions was that "when a traveling employee is injured while engaging in a reasonable and foreseeable activity that is reasonably related to or incidental to his or her employment, the injury arises in the course of employment". The instant claimant is not a "traveling employee" and nothing present [sic] by claimant … has established that station managers are required to travel to perform their duties other than everyday "coming and going", which in this jurisdiction does not arise out of and in the course of an employee's employment.

CO, page 5, ANALYSIS.

The ALJ expanded upon this in a footnote in which she pointed out that the District of Columbia Court of Appeals (DCCA) found that a Greyhound bus driver arrived in the District of Columbia at 4:00 a.m., and was given a "chit" to stay at a hotel about six blocks from a location where his employer sent him to drop off another bus. While walking to the hotel, he was assaulted. The DCCA held that the injuries were compensable under the Act. The ALJ wrote in that footnote, accurately, that the DCCA determined that "given the circumstances of Mr. Kolson's interstate employment, the time of his arrival in the District, the location of his home in Maryland, and his need for local lodging, his walk to the hotel was incidental to his employment. Consequently the injury he received while walking from the [bus] terminal to register at a nearby hotel at 4:30 a.m. with a 'chit' provided by his employer arose in the course of and out of his employment."

Ms. Bryant argues that WMATA "encouraged" her to use the transit system to get to work. But, as the ALJ pointed out, Petitioner is provided free, unlimited access to bus and subway transit as a benefit of employment, and this benefit is not limited to her commuting to and from work; it was also noted that Petitioner was not required to use that benefit to get to work if she chose not to do so. Ms. Bryant does not explain in what manner she was "encouraged" to use the transit system, and we are not directed by her to anything in the record to assist us in knowing exactly what she means. However, it is evident that the ALJ's assessment that transit use was permissive and not mandatory, that it was available whether for commuting or otherwise, that the injury took place before Ms. Bryant's work day had begun and before she arrived at her workplace, and that it occurred at a station where she had gone for the purely private purpose of visiting a nearby health club. Further, we are directed to no *evidence* (as opposed to the surmise and conjecture found in the penultimate

paragraph of Petitioner's Argument B) that WMATA in any identifiable way obtained any benefit from Ms. Bryant's transit use as opposed to any other method of conveyance.

CONCLUSION

The denial of the claim based upon a finding that the claimed injury and disability did not arise out of or occur in the course of Ms. Bryant's employment is supported by substantial evidence and is in accordance with the law.

ORDER

The Compensation Order of December 30, 2011 is affirmed.

FOR THE COMPENSATION REVIEW BOARD:

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JEFFREY P. RUSSELL
Administrative Appeals Judge

March 21, 2012
DATE