GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR

LISA M. MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 10-157

DAVID MAJORS,
Claimant–Respondent,

v.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY,
Employer-Petitioner.

Appeal from a Compensation Order by
The Honorable Amelia G. Govan
AHD No. 09-241, OWC No. 652891

Donna Henderson, Esquire for the Petitioner
Manuel Geraldo, Esquire for the Respondent

Before MELISSA LIN JONES, JEFFREY P. RUSSELL,[1] and HENRY W. MCCOY, A*dministrative Appeals Judges*.

MELISSA LIN JONES, *Administrative Appeals Judge*, for the Compensation Review Board.

DECISION AND REMAND ORDER

JURISDICTION

Jurisdiction is conferred upon the Compensation Review Board ("CRB") pursuant to §§32-1521.01 and 32-1522 of the District of Columbia Workers' Compensation Act of 1979, D.C. Code, as amended, §32-1501 *et seq*., ("Act"), 7 DCMR 250, *et seq*., and the Department of Employment Services Director's Administrative Policy Issuance 05-01 (February 5, 2005).

FACTS OF RECORD AND PROCEDURAL HISTORY

On September 11, 2008, Mr. David Majors worked for the Washington Metropolitan Area Transit Authority ("WMATA") as a journeyman; he was responsible for maintaining, inspecting, and repairing elevators and escalators. On that day, after completing his repairs, Mr. Majors was on his way to the station manager's kiosk to complete paperwork when he saw a teenager on the

[1] Judge Russell has been appointed by the Director of the DOES as a temporary CRB member pursuant to DOES Administrative Policy Issuance No. 11-01 (June 23, 2011).

ground directly outside the fare gates being kicked and beaten by a group of teenage boys. When Mr. Majors yelled, the group disbursed, but shortly thereafter that same group continued the assault at another station entrance. Mr. Majors ran toward the group yelling, and the group, again, dispersed. This time the victim of the assault stood and attempted to run; Mr. Majors grabbed the victim to prevent him from being hit by a car and moved him inside the station to wait for Metro Transit Police to respond.

As a result of these events, Mr. Majors began experiencing Acute Stress Reaction, Hypertension, and Post Traumatic Stress Disorder. Mr. Majors' condition caused him to miss work, and he requested temporary total disability benefits from September 12, 2008 to October 26, 2008 as well as medical benefits.

Following a formal hearing, an administrative law judge ("ALJ") granted Mr. Majors' claim for relief. The ALJ determined the presumption of compensability was invoked by Mr. Majors' testimony and the medical records of Dr. Justin S. Gatewood, Dr. Steven K. Seigel, and Dr. Michael B. Rose. The independent medical examination report containing Dr. Daniel J. Freedenburg's opinions was not sufficient to rebut the presumption of compensability because it was based upon "significant factual untruths."[2] Furthermore, WMATA's attempt to rebut the presumption of compensability by arguing Mr. Majors' intervention in a fight did not arise out of the course of employment because his actions exceeded his responsibilities was unpersuasive in the context of the positional risk test:

> Claimant was obligated to report to the area where the fight occurred because his job duties required him to report to the metro station kiosk upon the completion of an escalator or elevator repair. It is also uncontroverted that every employee is obligated to maintain the safety of Metro patrons. Claimant was on his way to the station kiosk when he saw a defenseless child being kicked and beaten by a group of ten boys on Employer's property. Concerned about the safety of the potential patron, and the immediate physical harm being inflicted upon him, Claimant, in compliance with the Metrorail Safety Rules and Procedures Handbook, used his judgment to intervene in and prevent the boy from being further harmed. [Footnote omitted.] Thereafter, he immediately notified his Supervisor, Ms. Perez, of the events. Ms. Perez then drove Claimant to Washington Medical Center where he was diagnosed with an Acute Stress Reaction that Dr. Gatewood determined was caused by the situation. Thus, Claimant's injury did arise out of the obligations of his employment.[3]

On appeal, WMATA argues Mr. Majors' injuries are not compensable because his job duties did not require him to take the actions he took. WMATA argues Mr. Majors' intervention was a diversion from his job duties thereby taking those actions beyond the scope of his employment.

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[2] *Majors v. WMATA*, AHD No. 09-241, OWC No. 652891 (August 10, 2010), p. 4.

[3] *Majors*, *supra*, p. 5.

Mr. Majors contends his actions were consistent with the Metrorail Safety Manual and his injuries were sustained because conditions and obligations of his employment placed him in the position causing his injuries. He requests we affirm the August 10, 2010 Compensation Order.

ISSUE ON APPEAL

1. Do injuries sustained when a claimant intervenes in a fight taking place on an employer's premises arise in the course of employment?

ANALYSIS

The scope of review by the CRB is limited to making a determination as to whether the factual findings of the appealed Compensation Order are based upon substantial evidence[4] in the record and whether the legal conclusions drawn from those facts are in accordance with applicable law.[5] Consistent with this standard of review, the CRB is constrained to uphold a Compensation Order that is supported by substantial evidence, even if there also is contained within the record under review substantial evidence to support a contrary conclusion and even if the CRB might have reached a contrary conclusion.[6]

In the District of Columbia the positional risk test applies to determine whether or not an accidental injury has occurred in the course of employment:

> For an employee's injury to have arisen out of the employment the obligations or conditions of employment must have exposed the employee to the risks or dangers connected with the injury.[7]

WMATA argues Mr. Majors' injuries were not sustained as a result of obligations or conditions of his employment. We disagree.

"Under familiar doctrines in the law relating to emergencies generally, the scope of an employee's employment is impliedly extended in an emergency to include the performance of any act designed to save life or property in which the employer has an interest."[8] Mr. Majors was on WMATA premises during his tour of duty when he witnessed the assault of a potential WMATA patron on WMATA premises; Mr. Majors acted in good faith to protect that victim but

[4] "Substantial evidence" is relevant evidence a reasonable person might accept to support a conclusion. *Marriott, supra*.

[5] Section 32-1521.01(d)(2)(A) of the Act.

[6] *Marriott International v. DOES*, 834 A.2d 882, 885 (D.C. 2003).

[7] *Grayson v. DOES*, 516 A.2d 909, 911 (D.C. 1986).

[8] 2-28 Larson's Workers' Compensation Law § 28.01.

sustained injuries as a result of his intervention. Under these circumstances, his injuries arise in the course of his employment. [9]

Despite our holding that Mr. Majors was acting within the scope of his employment at the time he was injured, this matter must be remanded for reconsideration of the issue of the nature and extent of Mr. Majors' injuries because the ALJ applied the "substantial evidence" standard of proof as opposed to the more demanding preponderance of the evidence standard:

> The nature and extent of Claimant's injury is also at issue. Claimant therefore has the affirmative duty to present substantial, credible evidence to support his claim for the level of benefits he seeks. *Dunston v. District of Columbia Department of Employment Services,* 509 A.2d 109, 111 (D.C. 1986).
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> Claimant has requested temporary total disability benefits from September 12, 2008 to October 26, 2008 and causally related medical costs. Claimant's testimony and the medical reports of Dr. Gatewood, Dr. Seigel and Dr. Rose provide substantial, credible evidence that Claimant's injury impaired his ability to perform his work duties. [10]

We cannot affirm an administrative determination that "reflects a misconception of the relevant law or a faulty application of the law."[11]

CONCLUSION AND ORDER

We affirm that portion of the Compensation Order that holds Mr. Majors sustained compensable injuries; however, the matter is remanded for reconsideration of the nature and extent of Mr. Majors' injuries.

FOR THE COMPENSATION REVIEW BOARD:

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MELISSA LIN JONES
Administrative Appeals Judge

March 22, 2011
DATE

[9] See *O'Leary v. Brown-Pacific Maxon, Inc.*, 340 U.S. 504, 71 S.Ct. 470, 95 L. Ed. 483 (1951) (Death caused by an attempt to rescue a complete stranger was compensable because the connection to the employment is furnished not by the nature of the employment but solely by the fact that the employment brought the employee to the place where he observed the occasion for the rescue attempt.)

[10] *Majors, supra*, pp. 5-6.

[11] *D.C. Department of Mental Health v. DOES,* 15 A.2d 692 (2011) (Internal citations omitted.)