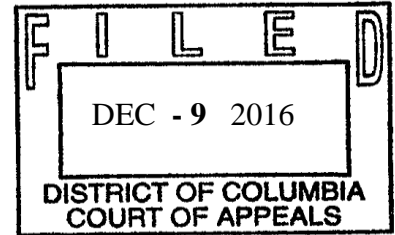


DISTRICT OF COLUMBIA COURT OF APPEALS

No. 15-AA-911

GARY GRUENWALD, PETITIONER,

v.



DISTRICT OF COLUMBIA DEPARTMENT OF EMPLOYMENT SERVICES, RESPONDENT.

Appeal from the District of Columbia
Department of Employment Services
Compensation Review Board
(CRB-67-15)

(Hon. Linda F. Jory, Administrative Appeals Judge)

(Argued November 10, 2016

Decided December 9, 2016)

Before GLICKMAN and BECKWITH, *Associate Judges*, and FARRELL, *Senior Judge*.

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: Gary Gruenwald petitions for review of an order of the Compensation Review Board (CRB). The order vacated an Administrative Law Judge's award of additional permanent partial disability (PPD) benefits under the Compensation Merit Personnel Act (CMPA) for the supposed aggravation of a work-related injury. For the reasons that follow, we affirm the CRB's decision.

I.

Petitioner, an employee of the District of Columbia Housing Authority (DCHA), injured his left shoulder and arm when he slipped and fell at work on October 1, 1998. As a result, in 2004, the Disability Compensation Program (the Program) awarded petitioner 22.5% PPD benefits from November 2, 2003, through February 7, 2005, for a schedule injury to his shoulder pursuant to D.C. Code § 1-623.07 (2014 Repl.). Petitioner's symptoms included pain and numbness in his

arm. He received physical therapy for several months in 2006. It appears his condition did not improve and may have deteriorated.

In February 2013, petitioner requested a 10% increase in his PPD award because his shoulder impairment had worsened. The Program denied the request on the ground, *inter alia*, that under the CMPA, “once a PPD award has been made there is no right to a subsequent additional PPD award for the same accepted injury.” Petitioner challenged the denial, and after a hearing, an Administrative Law Judge (ALJ) issued a compensation order in March 2015 awarding him an additional schedule award of 20% PPD benefits. Although the ALJ agreed that petitioner could not be awarded additional PPD benefits for the *same* injury, he granted relief on the theory that petitioner’s physical therapy in 2006 had aggravated his shoulder injury and thereby given him a *new* work-related injury for which he could be awarded PPD benefits under the CMPA. The DCHA appealed to the CRB, which vacated the ALJ’s award on the ground that petitioner sought the additional PPD benefits for the same injury, which was precluded according to the CRB’s interpretation of the CMPA.

II.

“Our review of a final order of the CRB is limited to determining whether the decision is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”¹ Accordingly, we will uphold the CRB’s rejection of findings of fact by an ALJ if they are not supported by substantial evidence,² and we will defer to a reasonable construction by the CRB of the CMPA’s compensation provisions.³ Under these principles, we must affirm the CRB’s decision in this case.

¹ *Reyes v. District of Columbia Dep’t of Emp’t Servs.*, 48 A.3d 159, 164 (D.C. 2012).

² *See id.*

³ *Sheppard v. District of Columbia Dep’t of Emp’t Servs.*, 993 A.2d 525, 527 (D.C. 2010).

First, petitioner was not entitled to receive a second award of PPD benefits on account of the worsening of his schedule injury. Under the CRB's settled interpretation of the pertinent provision of D.C. Code § 1-623.07 in effect when petitioner requested an increase, the first such award "extinguishes entitlement to additional PPD disability compensation under the schedule."⁴ The statute was amended in February 2015 to ratify that interpretation and provide explicitly that "[a] claimant shall not be entitled to receive multiple awards of compensation under this section for the same permanent disability, but shall only be entitled to receive one award of compensation payable under this section per permanent disability."⁵ As this amendment was in effect at the time the CRB rendered its decision in this case and did not alter or impair petitioner's vested rights, it applies here and is dispositive.⁶

Second, the CRB properly rejected the ALJ's finding that petitioner's physical therapy in 2006 aggravated his shoulder injury so as to give rise to a new work-related injury. The finding is not supported by substantial evidence in the record. No physician or other witness opined that there was a link of any kind between petitioner's physical therapy and the increased impairment of which he complained, nor do his medical records substantiate such a linkage. No specific event in the course of petitioner's physical therapy was identified as the possible cause of an aggravation of his injury. Petitioner himself never even made a claim of aggravation in the proceedings before the ALJ; it was a theory the ALJ raised entirely on his own (without notice to either party), based merely on what the ALJ took to be "the contemporaneous onset" of increased pain and numbness with petitioner's participation in physical therapy. Mere coincidence is not causation; it did not amount to substantial evidentiary support for a finding of a new injury attributable to aggravation.

⁴ *Washington v. D.C. Public Schools*, CRB No. 08-091, 2008 WL 965897, *2 (Mar. 20, 2008) (construing former subsection (b) of the statute, which was repealed in February 2015).

⁵ D.C. Code § 1-623.07 (a)(3)(C) (2015 Supp.).

⁶ *See Edwards v. Lateef*, 558 A.2d 1144, 1146 (D.C. 1989); *see also Landgraf v. USI Film Prods.*, 511 U.S. 244, 277 (1994).

For the above reasons, we affirm the CRB's decision vacating the award of PPD benefits in this case.

ENTERED BY DIRECTION OF THE COURT:



JULIO A. CASTILLO
Clerk of the Court

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