

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 (Dir. Dkt.) No. 05-212

JACOB ABRAHAM,

Claimant–Respondent

v.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY,

Self-Insured Employer–Petitioner

Appeal from a Compensation Order of
Administrative Law Judge Amelia G. Govan
OHA/AHD No. 04-456, OWC No. Not Assigned

Harold Levi, Esquire, for the Respondent

Donna Henderson, Esquire, for the Petitioner

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

JEFFREY P. RUSSELL, *Administrative Appeals Judge*, for the Compensation 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 D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, D.C. Official Code §32-1521.01. In accordance with the Director's Directive, 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. Official Code §32-1501 *et seq.*, and the D.C. Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Official Code §1-623.1 *et seq.*, including responsibility for administrative appeals filed

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 January 28, 2005, the Administrative Law Judge (ALJ) granted Respondent's claim for temporary total disability benefits from June 17, 2004 through the present and continuing, with interest on accrued benefits, and causally related medical costs, as requested by respondent. Petitioner now seeks review of that Compensation Order.

As grounds for this appeal, Petitioner alleges as error that there was insufficient evidence for the ALJ to have found that Respondent sustained an accidental injury arising out of and occurring in the course of his stipulated employment with Petitioner, or that the stipulated period of disability and claimed medical care is causally related to the alleged work injury.

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. *See* D.C. Workers' Compensation Act of 1979, as amended, D.C. Official Code §32-1501 *et seq.*, at §32-1522(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.

Turning to the case under review herein, Petitioner does not allege that Respondent's evidence was insufficient to invoke the presumption of compensability, either as to the issue of accidental injury, or as to the issue of medical causal relationship. Rather, Petitioner maintains that it presented sufficient evidence to rebut the presumptions, a proposition that is true and was so found by the ALJ, and that the ALJ erred by determining that Respondent had demonstrated a work injury and disability therefrom by a preponderance of the evidence. *See*, "WMATA's Memorandum of Law in Support of Its Application for Review" (WMATA's Memo), page 5 - 6.

The substance of Petitioner's allegation of error is that Petitioner asserts that Respondent's treating physician's opinion that Respondent sustained an injury to his heel and foot while stepping off of a bus should be rejected, because in Petitioner's view, that opinion was

prior to October 1, 2004, the effective date of the D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004.

thoroughly discredited under cross-examination in the doctor's deposition. After discussing several details of the deposition testimony, Petitioner summarized the reasons why the doctor's opinion should not be accepted:

The opinion of Dr. Jeng must be rejected because he did not have all of Claimant's prior medical records at the time he made his findings but received them at his cross-examination deposition [sic]; because his operative report identifies and describes a surgical correction of a congenital defect known as "Haglund's deformity"; because he admits that traumatically induced Achilles insertional tendonitis would result in bruising, warmth and swelling, and the medical records reveal that these were not present; and because his testimony on cross-examination is that the condition was "temporally" related rather than causally related as required by the definition of "accidental injury" by the Act.

WMATA's Memo, page 11.

We note with all due respect that Petitioner's characterization of Dr. Jeng's testimony as it relates to a temporal relationship "rather" than a causal relationship is misleading. In none of his testimony does Dr. Jeng imply that there is a "temporal" but *not* a medical causal relationship between the aggravation of the pre-existent underlying condition and the "trauma" experienced when Respondent stepped from the bus to the ground. The temporal relationship between the work related incident and the onset of symptoms is given as a reason for his opinion as to the existence of a medical causal connection. We perceive no legal or logical flaw in that conclusion. Further, the decision in the Compensation Order appears to be consistent with the principles governing the compensability of aggravations of pre-existent, quiescent conditions as described in *Metropolitan Poultry v. District of Columbia Department of Employment Services*, 706 A.2d 33 (D.C. App. 1998), among other cases.

Beyond this, we note that, in cases such as this where there is a difference of expert medical opinion, the fact finder is generally free to accept one opinion and reject counter opinion, subject to the preference accorded under the Act to the opinion of a treating physician, such as Dr. Jeng. *Short v. District of Columbia Department of Employment Services*, 723 A.2d 845 (D.C. App. 1998). *See also*, *Stewart v. District of Columbia Department of Employment Services*, 606 A.2d 1350 (D.C. 1992) and; *Butler v. Boatman and Magnani*, OWC No. 0044699, H&AS 84-348 (December 31, 1986). While Petitioner presents reasons why the ALJ might have chosen to reject the treating physician's opinion in favor of Petitioner's proffered expert opinions to the contrary, Petitioner cites no support for the proposition that Dr. Jeng's opinion must, as a matter of law, be rejected. Given Dr. Jeng's status as a treating physician, and given his unequivocally expressed opinion that Respondent's condition was aggravated by the work incident, the ALJ's determination to that effect is supported by substantial evidence and must therefore be affirmed.

Regarding Petitioner's other assignment of error, that being that the ALJ should not have received into evidence a post-hearing letter from Dr. Jeng in which he apparently explains the source of the error in his operative report, suffice it to say that this document is nowhere referred to in the Compensation Order, is nowhere cited as the basis for any factual finding, and by all appearances had no impact on the ALJ's decision making. As such, to the extent that it may have

been error to receive the document, in light of the lack of any indication that the document was considered and relied upon by the ALJ, such error was harmless.

CONCLUSION

The Compensation Order of January 28, 2005 is supported by substantial evidence in the record and is in accordance with the law, and is therefore affirmed.

ORDER

The Compensation Order of January 28, 2005 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

JEFFREY. P. RUSSELL
Administrative Appeals Judge

April 14, 2005
DATE