

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services
Labor Standards Bureau

Office of Hearings and Adjudication
COMPENSATION REVIEW BOARD



(202) 671-1394-Voice
(202) 673-6402-Fax

CRB No. 05-10

SIDNICE HUGHES AMOUIIN,

Claimant – Respondent

v.

SUPERCUTS AND ATLANTIC MUTUAL INSURANCE, Co.,

Employer/Carrier – Petitioner.

Appeal from a Compensation Order of
Administrative Law Judge Anand K. Verma
OHA No. 04-344; OWC No. 570067

Alan M. Carlo, Esquire, for the Petitioner

Alan M. Perlman, Esquire for the Respondent

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

FLOYD LEWIS, *Acting Administrative Appeals Judge*, on behalf of the Review Panel:

DECISION AND ORDER OF REMAND

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

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 October 8, 2004, the Administrative Law Judge (ALJ) ordered that Employer-Petitioner (Petitioner) pay Claimant-Respondent (Respondent) temporary partial disability benefits from June 16, 2001 to the present and continuing, as well as causally related medical expenses. Petitioner now seeks review of that Compensation Order.²

As grounds for this appeal, Petitioner alleges that the ALJ's conclusion that Respondent is temporarily and partially disabled from June 16, 2001 to the present and continuing is not supported 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)(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. Dist. of Columbia Dep't. of Employment Servs.* 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 committed error by failing to delineate the nature of Respondent's disability, which was one of the issues at the hearing, thus Petitioner argues that the Compensation Order should be remanded for the ALJ to articulate the nature of Respondent's disability. In addition, Petitioner alleges that Respondent has never been disabled due to her work injury, and as a result, the ALJ's decision awarding temporary partial disability benefits should be reversed. Respondent counters that substantial evidence in the record supports the ALJ's decision to award temporary partial disability benefits and grant Respondent's request for surgery.

responsibility for administrative 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 In addition to the Application for Review filed by Petitioner, Respondent also filed a timely Application for Review contending that the ALJ failed to correctly determine her compensation rate.

An employee's claim is presumed to come within the provisions of the Act. D.C. Official Code § 32-1521(1). Upon presentation of credible evidence of an injury and a work-related event or activity that has the potential of resulting in or contributing to the injury, a claimant invokes the protection of the presumption. *Ferriera v. Dist. of Columbia Dep't. of Employment Servs.*, 531 A.2d 651, 655 (D.C. 1987). The focus then shifts to the employer to produce evidence specific and comprehensive enough to sever the presumed connection between the employment-related event and the injury. Without this production by an employer, the claim will be presumed to fall within the scope of the Act. *Parodi v. Dist. of Columbia Dep't. of Employment Servs.*, 560 A.2d 524, 526 (D.C. 1989). In addition, the scope of the application for the presumption has been expanded to include the causal relationship between the current disabling condition and the injury. *Whittaker v. Dist. of Columbia Dep't. of Employment Servs.*, 668 A.2d 844, 846-847 (D.C. 1995).

Initially, Petitioner contends that the ALJ committed error by not making findings of fact on the materially contested issue of the nature of Respondent's disability, as required under the Act. Petitioner argues that the ALJ did not specify in the Findings of Fact section or anywhere in the Compensation Order what Respondent's medical conditions were or how they were caused by her employment. At the hearing, Petitioner contended that Respondent had right arm tendonitis as a result of her employment, whereas Respondent argued that her injuries were more substantial and she sought authorization for surgery to her neck and for her carpal tunnel syndrome.

A review of the record reveals that the ALJ simply stated that Respondent "had pre-existing conditions of her right shoulder and neck which were exacerbated by the requirements of her work [for Petitioner]." Compensation Order at 3. Petitioner's argument that the ALJ did not specify the nature of Respondent's injury is misplaced, as in essence, Petitioner is contending that that ALJ did not clearly describe Respondent's specific injuries. However, this Panel notes that the ALJ does not have to give a specific diagnosis of the injury, as it is sufficient if it is shown that "something unexpectedly goes wrong within the human frame" to meet the requirement of an accidental injury under the Act. *Jones v. Dist. of Columbia Dep't. of Employment Servs.*, 519 A.2d 704, 709 (D.C. 1987).

In addition, Petitioner argues that the ALJ's conclusion to award Respondent temporary partial disability benefits from June 16, 2001 to the present and continuing is not supported by substantial evidence. The ALJ determined that Respondent was unable to return to her usual employment from June 16, 2001, as "claimant's testimony in conjunction with the contemporaneous findings of her treating physician, Dr. Pineda unequivocally corroborated her inability to continue in her rigorous, full time employment with [Petitioner]." Compensation Order at 5.

On this issue, the record reveals that Respondent testified that her pre-existing conditions were exacerbated by her work requirements for Petitioner, and the ALJ found that Respondent's complaints of pain and her inability to do the required 90 haircuts per week, which requires continuous standing, were credible. Compensation Order at 3. Thus, the ALJ made a finding that Respondent was credible in her testimony concerning the effect of the injuries on her ability

to work. It is well settled that credibility findings are entitled to great deference. *Dell v. Dep't. of Employment Servs.*, 499 A.2d 102, 109 (D.C. 1985).

Petitioner argues that while Dr. Julia Pineda noted Respondent's neck, right shoulder and arm pain, none of Dr. Pineda's reports stated that Respondent's problems prevented her from working with Petitioner. Respondent's exh. no. 7; Petitioner's exh. no. 3. Since Dr. Pineda did not opine that Respondent's problems were causally related to her employment with Petitioner, Petitioner contends that the ALJ's conclusion to award Respondent temporary partial disability benefits based on Dr. Pineda's opinion is not supported by substantial evidence in the record.

While we acknowledge that it is possible to read the ALJ's statement about Dr. Pineda as Petitioner suggests, it is reasonable to conclude that this statement reflects the ALJ's finding that Dr. Pineda's reports confirm that Respondent does have these ailments and pain, which Respondent alleges prevents her from working. A review of the record indicates that it is quite evident that Dr. Pineda's reports do not state Respondent's problems prevent her from working with Petitioner. However, her treating physician's medical findings corroborate Respondent's testimony that she suffers from the conditions that she testified interfered with her work capacity. Furthermore, it must be emphasized that the record reveals, as the ALJ noted, that even Petitioner's physician, Dr. Louis Levitt, who conducted an independent medical examination, stated that Respondent's clinical complaints represented a pre-existing condition, which to some extent was contributed to by her repetitive use activities as a hairdresser. Petitioner's exh. no. 1, March 28, 2002 addendum to the report of February 26, 2002. After reviewing the evidence as a whole, the ALJ's conclusion to award Respondent temporary partial disability benefits is supported by substantial evidence and is affirmed.

Although the ALJ's determination to award Respondent temporary partial disability benefits from June 16, 2001 to the present and continuing is supported by substantial evidence and is in accordance with the law, this case must be remanded to the ALJ for further findings of fact and conclusions of law on the issue of authorization for surgery. In the Conclusions of Law section of the Compensation Order, the ALJ indicated that Respondent had met her burden in establishing authorization for surgery. However, the ALJ did not discuss what kind of surgery was requested or make any specific findings on the question of reasonableness and necessity for surgery in the Compensation Order. Moreover, the Order section does not specifically state whether Respondent's request for authorization for surgery is granted.

The record does indicate that Respondent submitted the records of Dr. Bernaard Stopak, who recommended "an anterior cervical discectomy and fusion at the C5-C6 level." Respondent's exh. no. 1. Thus, Respondent presented evidence to support her request for authorization for surgery. To rebut this evidence, as required in *Washington Post v. Dist. of Columbia Dep't of Employment Servs.*, 852 A.2d 909, 910 (D.C. 2004), Petitioner needed to present a qualified medical expert who, after examining Respondent, makes an unambiguous opinion that surgery is not necessary. Petitioner's physician, Dr. Levitt, in his report of October 14, 2003, opines that there is no need for any cervical surgery, stating "there is no role for surgical management of her clinical complaints referable to the cervical spine." As such, the ALJ was faced with conflicting medical opinions on Respondent's request for authorization for surgery and was required to weigh the evidence and make specific findings of fact and conclusion of law to resolve the issue.

of Respondent's request for authorization for surgery. These conflicting opinions must be resolved by the ALJ on remand, by weighing the evidence as a whole under established principles governing the resolution of conflicting medical opinions.

As a result, the Compensation Order of October 8, 2004, which awarded Respondent temporary partial disability benefits from June 16, 2001 to the present and continuing, as well as causally related medical expenses is supported by substantial evidence and is in accordance with the law. However, this matter is remanded for further findings of fact and conclusions of law on the reasonableness and necessity of Respondent's request for authorization for surgery.

Finally, since the issue raised in Respondent's Application for Review concerning the compensation rate was not initially presented to the ALJ, this Panel will not consider it on appeal.

CONCLUSION

The portion of the Compensation Order of October 8, 2004 that concluded that Respondent is entitled to temporary partial disability benefits and causally related medical expenses is supported by substantial evidence and is in accordance with the law. However, this case is remanded to the Administrative Hearings Division for further findings of fact and conclusions of law on Respondent's request for authorization for surgery.

ORDER

The Compensation Order of October 8, 2004 is hereby AFFIRMED to the extent that it awarded Respondent temporary partial disability benefits and causally related medical expenses 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
Acting Administrative Appeals Judge

June 27, 2005

DATE