

**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. 08-017**

**ANGELA ALSTON,**

**Claimant - Petitioner**

**v.**

**D. C. DEPARTMENT OF CORRECTIONS**

**Employer**

**Employer- Respondent**

Appeal from a Compensation Order of  
Administrative Law Judge David L. Boddie  
AHD PBL No. 06-101, DCP No. 761-32-0001-1999-0056

Kirk D. Williams, Esquire for the Petitioner

Kevin Turner, Esquire, for the Respondent

Before LINDA F. JORY, JEFFREY P. RUSSELL and SHARMAN MONROE, *Administrative Appeals Judges* .

LINDA F. JORY, *Administrative Appeals Judge*, on behalf of the Review Panel

**DECISION AND ORDER**

**JURISDICTION**

Jurisdiction is conferred upon the Compensation Review Board pursuant to D.C. Official Code §1-623.28, §32-1521.01, 7 DCMR § 118, Department of Employment Services (DOES) Director's Directive, Administrative Policy Issuance 05-01(February 5, 2005)<sup>1</sup>.

---

<sup>1</sup>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 to 32-1545 (2005) and the D.C. Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Official Code §§ 1-623.1 to 1-643.7 (2005), including responsibility for

## BACKGROUND

This appeal follows the issuance of a Compensation Order (CO) by the Administrative Hearings Division (AHD) in District of Columbia Department of Employment Services (DOES). In that Order, which was filed on September 21, 2007, the Administrative Law Judge (ALJ) upheld the Disability Compensation Program's (DCOP) termination of Claimant- Petitioner's (Petitioner) wage loss benefits.

Petitioner through the assistance of counsel filed an Application for Review (AFR) on October 19, 2007 asserting the Compensation Order is unsupported by substantial evidence and contrary to law.

Employer – Respondent (Respondent) has not filed a response to the AFR.

## ANALYSIS

As an initial matter, the scope of review by the Compensation Review Board (CRB) and this Review Panel (the 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. Comprehensive Merit Personnel Act of 1978, as amended, D.C. Official Code §1-623.01, *et seq.*, at §1-623.28 (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 scope of review, the CRB and the Panel are bound 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’s primary argument on appeal is that the ALJ erred in determining that Respondent proffered sufficient evidence to substantiate the termination of Petitioner’s benefits because Petitioner asserts Respondent’s physician failed to consider Petitioner’s most recent MRI, which the Panel notes was performed after Respondent issued its notice of intent to terminate benefits.

Although not cited in the Compensation Order at hand, the Employees Compensation Appeals Board, (ECAB) has stated that once a claimant’s claim has been accepted as compensable, DCP must demonstrate that the claimant is no longer disabled before benefits can be terminated. *See*

---

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.

*Vernell Chase v. D.C. Department Human Services*, ECAB No. 92-9 (July 1992)(*Chase*)<sup>2</sup>. Consistent with the ruling in *Chase*, the Board has held that once the Third Party Administrator (TPA) pays disability benefits due to a work-related injury, the TPA must present substantial and recent medical evidence to support a modification or termination of benefits. See *Toomer v. D.C. Dep't. of Corrs.*, CRB No. 05-202, OHA No. PBL 98-048A, DCP No. LT5-DOCOO1603 (May 2, 2005); *Jones v. D.C. Dep't. of Corrs.*, Dir. Dkt. No. 07-99, OHA No. PBL No. 97-14, ODC No. 312082 (December 19, 2000); *Robinson v. D.C. Gen. Hosp.*, ECAB No. 95-8, ODCVC No. 302585 (July 8, 1997).

Although the ALJ did not cite to the applicable decisional authority just described, his analysis was nonetheless consistent therewith. After outlining the exhibits, submitted on Petitioner's behalf, the ALJ specifically turned to Respondent's evidence to determine if it supported its decision to terminate the Petitioner's compensation payments and concluded there was sufficient evidence to support a termination of benefits. Specifically, the ALJ relied upon the May 9, 2006 opinion of Respondent's IME physician, Dr. Willie Thompson, wherein Dr. Thompson determined Petitioner had reached maximum medical improvement from her September 23, 1999 work injury; was not in need of further medical treatment for those injuries and was able to return to work

In concluding that there was insufficient medical evidence in the record to support Petitioner's testimony that she continues to be disabled from the injuries suffered at work on September 23, 1999, the ALJ stated:

The sum of the medical evidence the [Petitioner] has submitted into evidence in support of her claim for reinstatement of benefits only reflects that she went to the Emergency Room on two occasions, in October 2005, presumably for treatment related to her left leg, and July 2006, for complaints of low back pain with radiation down the lower extremity, do (sic) not establish that she has any ongoing disability from her work injury. In fact, they (sic) do not even reflect that any treatment was provided or what the specific complaints were by the [Petitioner] when she came in.

Further, in addition to not being medical notes reflecting that any treatment was provided or diagnosis made, nor do they in any way support the claimant's testimony that she is receiving ongoing treatment by either of the physicians she testified regarding (sic). The January 31, 2006 and March 13, 2006 disability slips suffer from the same deficiencies. In addition to failing to indicate any diagnosis or condition that the [Petitioner] is being kept off work for, they don't show that the claimant is being held out of work on medical advice for any extended period of time, and again, by (sic) they are not issued by either of the physicians the [Petitioner] testified are treating her for her work injuries.

---

<sup>2</sup> Although the Employees Compensation Appeals Board was abolished by legislation in 1998, ECAB's rulings in the past disability compensation cases remain persuasive in deciding disability. See *Amaechi v. District of Columbia Department of Corrections*, Dir. Dkt. 12-00, PBL NO. 99-49, ODC No. 001926 (Opinion and Order of the Director, January 9, 2002).

See CO at 7.

We conclude that the ALJ's findings of fact and conclusion of law with respect to the nature and extent of Petitioner's disability are supported by substantial evidence and are in accordance with the law, particularly the burden as set forth by ECAB in *Chase*. In so concluding, we reject Petitioner's argument that the ALJ erred in accepting Dr. Thompson's report as it "failed to consider [Petitioner's] recent MRI report" Review of the record evidence reveals the "recent" MRI was performed after Dr. Thompson's examination of May 9, 2006, thus it was clearly not available to him and thus, he did not "fail" to consider it. Nevertheless, the ALJ addressed the MRI in the Compensation Order stating that because there are no treatment records to indicate that any physical examinations correlating the diagnostic findings, it is unknown the extent the findings reflected (sic) have upon the [Petitioner's] subjective complaints. CO at 7. We agree that it is pure speculation on Petitioner's part as to what, if any, disability is supported by the recent MRI without an opinion of a treating (or examining) physician.

#### CONCLUSION

The ALJ's conclusion that Respondent's August 9, 2006 Notice of Intent to Terminate Disability Compensation Payments and Further Medical Treatment should be affirmed as it is supported by substantial evidence in the record and is in accordance with the law.

#### ORDER

The Compensation Order of September 21, 2007 is hereby **AFFIRMED**.

FOR THE COMPENSATION REVIEW BOARD:

---

LINDA F. JORY  
Administrative Appeals Judge

---

November 30, 2007

Date

