

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

Department of Employment Services

VINCENT C. GRAY  
MAYOR



LISA MARÍA MALLORY  
DIRECTOR

COMPENSATION REVIEW BOARD

**CRB No. 13-010**

**INES BONILLA-ABREGO,  
Claimant–Petitioner,**

v.

**CLARK CONSTRUCTION GROUP, LLC AND SEDGWICK CMS  
Employer/Insurer-Respondent**

Appeal from a December 31, 2012 Compensation Order by  
Administrative Law Judge Gerald R. Roberson  
AHD No. 12-442, OWC No. 689817

Michael J. Kitzman, Esquire for the Petitioner  
Todd S. Sapiro, Esquire for the Respondent

Before MELISSA LIN JONES, HEATHER C. LESLIE, and JEFFREY P. RUSSELL *Administrative Appeals Judges*.

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

**DECISION AND ORDER**

FACTS OF RECORD AND PROCEDURAL HISTORY

In early 2012, Mr. Ines Bonilla-Abrego was employed as a laborer for Clark Construction Group, LLC (“Clark Construction”). He alleged he sustained a compensable injury, but his employer contested the claim.

On November 15, 2012, the parties proceeded to a formal hearing before an administrative law judge (“ALJ”). The ALJ issued a Compensation Order on December 31, 2012 denying Mr. Bonilla-Abrego’s claim for relief on the grounds that Mr. Bonilla-Abrego had not sustained a compensable injury.<sup>1</sup>

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<sup>1</sup> *Bonilla-Abrego v. Clark Construction Group, LLC*, AHD No. 12-442, OWC No. 689817 (December 31, 2012).

On appeal, Mr. Bonilla-Abrego contends that by including in the Compensation Order issues for resolution other than accidental injury the ALJ committed reversible error because accidental injury was the only issue for adjudication. In addition, Mr. Bonilla-Abrego asserts that the conclusion that he did not sustain an accidental injury is not in accordance with the law and is not supported by substantial evidence because he felt pain in January 2012. Mr. Bonilla-Abrego requests the Compensation Review Board (“CRB”) reverse the Compensation Order.

Clark Construction opposes Mr. Bonilla-Abrego’s appeal. Because the only issue resolved by the ALJ was accidental injury and because the Compensation Order is supported by substantial evidence, Clark Construction requests the CRB affirm it.

#### ISSUE ON APPEAL

Is the December 31, 2012 Compensation Order’s ruling that Mr. Bonilla-Abrego did not sustain an accidental injury supported by substantial evidence and in accordance with the law?

#### ANALYSIS<sup>2</sup>

At the formal hearing, the ALJ acknowledged that the only issue for resolution was whether Mr. Bonilla-Abrego had sustained an accidental injury:

Not contested for today’s hearing is causal relationship, medical causal relationship, a timely notice of injury, as well as nature and extent. The only outstanding issue is whether or not the Claimant had an accidental injury, and we’ll get into whether or not it was on January 14<sup>th</sup>, 2012, later on.<sup>[3]</sup>

In the Compensation Order, however, the ALJ listed the following issues for resolution:

1. Did Claimant sustain an accidental injury on January 14, 2012?
2. Did Claimant's injury arise out of and in the course of his employment, and is it medically related to his employment?
3. Did Claimant provide timely notice of an injury?<sup>[4]</sup>

Even so, the ALJ only resolved the one issue in dispute, and any error in listing additional issues in the Compensation Order is harmless.

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<sup>2</sup> 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 in the record and whether the legal conclusions drawn from those facts are in accordance with applicable law. Section 32-1521.01(d)(2)(A) of the District of Columbia Workers’ Compensation Act, as amended, D.C. Code §32-1501 to 32-1545, (“Act”). 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. *Marriott International v. DOES*, 834 A.2d 882, 885 (D.C. 2003).

<sup>3</sup> Hearing Transcript, p. 7.

<sup>4</sup> *Bonilla-Abrego, supra*, p. 2.

In order for Mr. Bonilla-Abrego to be eligible for workers' compensation benefits, he must have sustained an accidental injury arising out of and in the course of his employment. As the ALJ explained, the requirement of an accidental injury is satisfied when something unexpectedly goes wrong with the human frame.<sup>5</sup> Moreover, the issues of accidental injury and injury arising out of and in the course of employment are inextricably intertwined; the claimant "has the initial burden of introducing persuasive evidence of basic facts tending to establish coverage under the Act before the other facts necessary to establish the claimant's coverage under the Act are presumed."<sup>6</sup>

The Compensation Order provides a detailed summary of the conflicting information Mr. Bonilla-Abrego provided to his health care providers and to his employer. The number of contradictions is so great that rather than reproduce the Compensation Order here in toto, we adopt its well-documented and thoroughly explained contents because those contents are supported by the record. As a result, the conclusion that Mr. Bonilla-Abrego failed to prove his case flowed naturally from those contents, and we endorse the ruling that

[g]iven Claimant has provided conflicting testimony regarding the date of his accidental injury, his testimony regarding how he sustained an injury does not appear to be credible or corroborated by the evidence of record. Given the inconsistent testimony regarding the date of the accidental injury and how the injury occurred, Claimant failed to establish the requirements of accidental injury. As such, Claimant has failed to establish he sustained an accidental injury on January 14, 2012 or January 26, 2012 in connection with events of his employment.<sup>[7]</sup>

Finally, Mr. Bonilla-Abrego's argument that

it is not in dispute that Mr. Bonilla has sustained some type of injury to his low back. Further, the testimony of Mr. Bonilla's supervisor corroborates the conclusions that he was suffering from back pain while at work, as the supervisor specifically testified that the claimant has reported back pain to him<sup>[8]</sup>

is not sufficient to cause us to overturn the decision below. It was in dispute that Mr. Bonilla had sustained "some type of injury to his low back,"<sup>9</sup> and pain alone is not the equivalent of a compensable injury.<sup>10</sup>

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<sup>5</sup> *WMATA v. DOES*, 506 A.2d 1127 (D.C. 1986).

<sup>6</sup> *Booker v. George Hyman Construction Co.*, H&AS No. 85-5, OWC No. 049406 (Director's Decision August 2, 1988).

<sup>7</sup> *Bonilla-Abrego, supra*, p. 8.

<sup>8</sup> Petitioner's Memorandum of Points and Authorities in Support of Application for Review, unnumbered p. 4.

<sup>9</sup> *Id.*

<sup>10</sup> See §32-1501(12) of the Act; *Stancil v. Massey*, 436 F.2d 274, 276-277 (D.C. Cir. 1970) (Under the Longshore and Harbor Workers' Compensation Act, "injury" is not synonymous with "accident" or with "disability." "Accident" refers to the event causing the harm, 'injury' to the harmful physical. . . consequences of that event which need not occur or become obvious simultaneously with the event. [O]nce the man has been put on alert (*i.e.*,

CONCLUSION AND ORDER

The December 31, 2012 Compensation Order's determination that Mr. Bonilla-Abrego did not sustain a compensable injury is supported by substantial evidence, is in accordance with the law, and is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

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MELISSA LIN JONES  
*Administrative Appeals Judge*

March 28, 2013  
DATE

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once he knows or has reason to know) as to the likely impairment of his earning power, there is an 'injury;' before that time, while there may have been an accident, there is as yet no 'injury' for claim or filing purposes.")