

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 (Dir.Dkt.) No. 03-148

LARICE BOSEMAN,

Claimant - Petitioner

v.

HAWK SECURITY AND WARD NORTH AMERICAN, INC.,

Employer/Carrier - Respondent.

Appeal from a Compensation Order of
Administrative Law Judge E. Cooper Brown
OHA No. 00-514A, OWC No. 518351

Heather C. Leslie, Esquire for the Petitioner

Richard W. Galiher, Esquire for the Respondent

Before LINDA F. JORY, SHARMAN J. MONROE, and JEFFREY P. RUSSELL *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 §§ 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.

¹Pursuant 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 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. Official Code §§ 1-623.1 to 1.643.7 (2005), including responsibility for administrative appeals filed prior to October 1, 2004, the effective date of the D.C.

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 Order which was filed on November 19, 2003, the Administrative Law Judge (ALJ) concluded Petitioner's current lower back condition was not the result of, caused by, or related to the work-related injury Petitioner sustained to her left ankle on March 9, 1997.

As grounds for this appeal, Petitioner alleges the ALJ erred by failing to defer to the opinion of the treating physicians, Dr. William Dorn and Dr. Hampton Jackson, who at the time were associates in the same medical group and who Petitioner asserts related her back problems to her left ankle injury.

Respondent has not filed a response to Petitioner's Application for Review.

ANALYSIS

As an initial matter, the scope of review by the Compensation Review Board (CRB) and this Review Panel (hereafter, 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. D.C. Official Code § 32-1521.01(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 scope of review, the CRB and this 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.

As to the merits of Petitioner's appeal, the record was thoroughly reviewed and the Panel finds the ALJ's factual findings are supported by substantial evidence, and are, therefore, conclusive. *Marriott Int'l. v. District of Columbia Department of Employment Services* 834 A.2d 882 (D.C. App. 2003) D.C. Workers' Compensation Act of 1979, as amended, D.C. Code. Ann. § 32-1501 to §32-1545 (2005), at §32-1521.01 (d)(2)(A). The Panel further finds Petitioner's assertion that the ALJ erred by not affording the treating physician preference over the IME physician's opinion is misplaced. A review of the record reveals neither Dr. Dorn nor Dr. Jackson have provided a well reasoned opinion that Petitioner's low back condition resulted from the underlying ankle injury as Petitioner asserts in her Application for Review. Specifically, the Panel rejects Petitioner's argument that in his January 14, 2003 report, Dr. Dorn opined that

Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004.

Petitioner's low back condition resulted from the underlying ankle injury. The Panel finds that the reports of January 14, 2003 contain no such language but Dr. Dorn refers instead to a report he prepared on January 23, 2003. Review of the January 23, 2003 report reveals that Dr. Dorn diagnosed a lumbosacral spine with possible radiculopathies of the left lower extremity but provides no opinion as the causation between the back condition and the work injury. The Panel further notes that while Dr. Dorn provided a response to counsel's form letter of January 9, 2003, "the abnormal ambulation produced strains to the lower back", CE 1 at 11, Dr. Dorn has not provided the necessary chain of causation between Petitioner's ambulation and the work injury that occurred in 1997.

The Panel finds the ALJ properly concluded "the contemporaneous medical records pertain to claimant's visits to Dr. Dorn for her lower back complaints do not provide evidence supportive of claimant's claim". CO at 6. The Panel further agrees with the ALJ's determination that Dr. Jackson's records similarly do not support Petitioner's claim as Dr. Jackson's diagnosis is dependent upon Dr. Jackson's unsubstantiated history of Petitioner falling on her buttocks on March 9, 1997. As the record contains no evidence of Petitioner falling on her buttocks, the ALJ's conclusion Petitioner's lower back condition is not the result of, caused by or related to her work-related injury to her left ankle on March 9, 1997 is supported by substantial evidence.

CONCLUSION

The ALJ's Conclusion that Petitioner's lower back condition is not the result of, caused by, or related to the work-related injury to her ankle Petitioner sustained in March 1997, is supported by substantial evidence. The Compensation Order is in accordance with the law.

ORDER

The Compensation Order of November 19, 2003 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

LINDA F. JORY
Administrative Appeals Judge

August 16, 2005
DATE