

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA M. MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 12-080

JEFFREY BOWERSOX,
Claimant–Petitioner,

v.

WASHINGTON GAS LIGHT COMPANY,
Self-Insured Employer-Respondent.

Appeal from a Compensation Order on Remand by
The Honorable Amelia G. Govan
AHD No. 10-145B, OWC No. 276286

Danny Seidman, Esquire for the Petitioner
L. Edward Funk, Esquire for the Respondent

Before MELISSA LIN JONES, HENRY W. MCCOY, and HEATHER C. LESLIE,¹ *Administrative Appeals Judges.*

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

DECISION AND ORDER

JURISDICTION

Jurisdiction is conferred upon the Compensation Review Board (“CRB”) pursuant to §§32-1521.01 and 32-1522 of the District of Columbia Workers’ Compensation Act of 1979, D.C. Code, as amended, §32-1501 *et seq.*, (“Act”), 7 DCMR §250, *et seq.*, and the Department of Employment Services Director’s Administrative Policy Issuance 05-01 (February 5, 2005).

FACTS OF RECORD AND PROCEDURAL HISTORY

On October 1, 1994, Mr. Jeffrey Bowersox injured his right ankle while working for Washington Gas Light Company. Since then, he has undergone 17 surgeries to address his initial injury and

¹ Judge Leslie has been appointed as a temporary CRB member pursuant to the Department of Employment Services Director’s Administrative Policy Issuance No. 12-02 (June 20, 2012).

subsequent medical problems arising from that injury. None of his treatment has resolved his pain or dysfunction.

On December 12, 2011, a formal hearing was held to adjudicate Mr. Bowersox's entitlement to permanent total disability benefits from March 29, 2001 to the date of the formal hearing and continuing. On April 27, 2012, an administrative law judge ("ALJ") issued a Compensation Order awarding Ms. Bowersox ongoing, permanent total disability benefits beginning on April 21, 2009.

On appeal, Mr. Bowersox concedes "there was certainly sufficient evidence upon which to find that the Claimant was permanently totally disabled on April 21, 2009;"² however, he disputes April 21, 2009 as the appropriate date for commencement of his permanent total disability. Washington Gas Light Company asserts the Compensation Order is supported by substantial evidence and should be affirmed.

ISSUE ON APPEAL AND ANALYSIS³

The issue raised by Mr. Bowersox is a narrow one. Is the selection of April 21, 2009 as the commencement date for Mr. Bowersox's entitlement to permanent total disability benefits supported by substantial evidence and in accordance with the law?

In order to prove entitlement to permanent partial disability benefits, a claimant must prove (1) his condition has reached maximum medical improvement and (2) he is unable to return to either his usual or any other employment as a result of his injury.⁴ In this case, the ALJ relied upon the opinion of Mr. Bowersox's treating physician, Dr. Alan G. Schreiber, in selecting April 21, 2009 as the date Mr. Bowersox reached maximum medical improvement and became entitled to permanent total disability benefits.

On April 21, 2009, Dr. Schreiber assigned permanency ratings to several of Mr. Bowersox's body parts. Although Dr. Schreiber did not specifically state that Mr. Bowersox had reached maximum medical improvement, in order to assign a permanency rating, the claimant must have reached maximum medical improvement;⁵ therefore, the ALJ's reliance upon Dr. Schreiber's April 21, 2009 opinion assigning permanency ratings as the date Mr. Bowersox reached maximum medical improvement is supported by substantial evidence.

² Memorandum of Points and Authorities in Support of Application for Review, unnumbered p. 3.

³ 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 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).

⁴ See *Logan v. DOES*, 805 A.2d 237, 241 (D.C. 2002).

⁵ *Williams v. Steel Contractors*, Dir. Dkt. No. 95-68, H&AS No. 91-965, OWC No. 177546 (May 29, 1998).

In his Memorandum of Points and Authorities in Support of Application for Review, Mr. Bowersox argues for a different date (March 29, 2001 or February 13, 2001) as the appropriate start date for an award of permanent total disability. We are not persuaded by his arguments.

In support of the March 29, 2001 date, Mr. Bowersox relies upon Dr. Mark S. Myerson's statement, "It is obvious that Mr. Bowersox is completely disabled."⁶ Dr. Myerson's statement does not constitute a medical opinion; it is a comment outside the scope of his medical expertise, and the ALJ had no obligation to rely upon it to conclude the commencement date for Mr. Bowersox's entitlement to permanent total disability benefits, a legal determination.⁷

In support of the February 13, 2001 date, without much explanation, Mr. Bowersox relies upon Dr. C. Chris Stroud's recommendation for amputation because of Mr. Bowersox's "severe and incapacitating pain."⁸ Although Dr. Stroud indicated Mr. Bowersox had reached maximum medical improvement in February 2001, Dr. Stroud also recommended additional treatment. This evidence from Dr. Stroud is not a sufficient basis for us to find the ALJ was in error to rely upon the date Dr. Schreiber opined Mr. Bowersox had reached maximum medical improvement. In essence, Mr. Bowersox has requested we reweigh the evidence in his favor, but to do so is beyond the scope of our authority.⁹

CONCLUSION AND ORDER

The selection of April 21, 2009 as the commencement date for Mr. Bowersox's entitlement to permanent total disability benefits supported by substantial evidence and is in accordance with the law. The April 27, 2012 Compensation Order is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

MELISSA LIN JONES
Administrative Appeals Judge

August 30, 2012

DATE

⁶ Memorandum of Points and Authorities in Support of Application for Review, unnumbered p. 4.

⁷ See *Darden v. DOES*, 911 A.2d 410 (D.C. 2006).

⁸ Memorandum of Points and Authorities in Support of Application for Review, unnumbered p. 4.

⁹ *Marriott, supra*.