

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Department of Employment Services**

**VINCENT C. GRAY**  
**MAYOR**



**LISA M. MALLORY**  
**DIRECTOR**

**CRB No. 13-099**

**ANTHONY BROWN,**  
**Claimant–Petitioner,**

**v.**

**WASHINGTON HOSPITAL CENTER and SEDGWICK CLAIMS MANAGEMENT,**  
**Employer-Respondent.**

Appeal from a July 18, 2013 Compensation Order by  
Administrative Law Judge Karen R. Calmeise  
AHD No. 08-213A, OWC No. 603289

Michael J. Kitzman, Esquire for the Petitioner  
William S. Hopkins, Esquire for the Respondent

Before MELISSA LIN JONES and HENRY W. MCCOY *Administrative Appeals Judges*, and LAWRENCE D. TARR, *Chief Administrative Appeals Judge*.

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

**DECISION AND ORDER**

**FACTS OF RECORD AND PROCEDURAL HISTORY**

In 1993, Mr. Anthony Brown worked for Washington Hospital Center (WHC) as a special police officer. On August 24, 1993, Mr. Brown was slammed between two doors while pursuing an alleged thief.

Mr. Brown initially treated with Dr. James Tozzi for complaints of pain and swelling in his knees. Dr. Tozzi's August 25, 1993 report references no complaints or treatment for Mr. Brown's right wrist.

Mr. Brown was examined by Dr. David Johnson at WHC's request in May 2008. Dr. Johnson's report does not reference any complaints of right wrist pain or discomfort.

Mr. Brown treated with Dr. Joel Fechter in 2005, 2007, and 2008. Dr. Fechter did not document any right wrist complaints or findings. Nonetheless, on March 30, 2011, Dr. Fechter opined Mr. Brown has sustained a 9% impairment of his right arm due to pain, weakness, loss of endurance, and loss of function of his right wrist as a result of the August 24, 1993 work-related accident.

Dr. Robert E. Collins examined Mr. Brown in November 2011. A detailed review of Mr. Brown's medical history noted no reports of medical treatment for Mr. Brown's right wrist.

The parties proceeded to a formal hearing to address whether Mr. Brown's right wrist injury is causally related to his August 24, 1993 work-related accident and whether he is entitled to permanency benefits. In a Compensation Order dated July 18, 2013, an administrative law judge (ALJ) weighed the evidence presented and ruled Mr. Brown is not entitled to a permanency award because his right wrist complaints are not causally related to his on-the-job accident.<sup>1</sup>

On appeal, Mr. Brown contends the ALJ "erred in concluding the [right wrist] complaints are not medically causally related."<sup>2</sup> On the other hand, WHC contends the Compensation Order is supported by substantial evidence and is in accordance with the law.

#### ISSUE ON APPEAL

1. Is the July 18, 2013 Compensation Order supported by substantial evidence and in accordance with the law?

#### ANALYSIS<sup>3</sup>

Pursuant to § 32-1521(1) of the Act, a claimant may be entitled to a presumption of compensability ("Presumption").<sup>4</sup> In order to benefit from the Presumption, the claimant initially must show some evidence of a disability and the existence of a work-related event, activity, or requirement which has the potential to cause or to contribute to the disability.<sup>5</sup> "[O]nce an employee offers evidence demonstrating that an injury was potentially caused or aggravated by work-related activity, a presumption arises that the injury is work-related and therefore compensable under the Act."<sup>6</sup> There is no dispute the ALJ appropriately ruled the Presumption properly had been invoked.

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<sup>1</sup> *Brown v. Washington Hospital Center*, AHD No. 08-213A, OWC No. 603289 (July 18, 2013).

<sup>2</sup> Memorandum of Points and Authorities in Support of Application for Review, p. 3.

<sup>3</sup> The scope of review by the Compensation Review Board (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 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>4</sup> Section 32-1521(1) of the Act states, "In any proceeding for the enforcement of a claim for compensation under this chapter it shall be presumed, in the absence of evidence to the contrary: (1) That the claim comes within the provisions of this chapter."

<sup>5</sup> *Ferreira v. DOES*, 531 A.2d 651 (D.C. 1987).

<sup>6</sup> *Washington Hospital Center v. DOES*, 744 A.2d 992, 996 (D.C. 2000).

Once the Presumption was invoked, it was WHC's burden to come forth with substantial evidence "specific and comprehensive enough to sever the potential connection between a particular injury and a job-related event."<sup>7</sup> Only upon a successful showing by WHC would the burden return to Mr. Brown to prove by a preponderance of the evidence, without the benefit of the Presumption, his right wrist injury arose out of and in the course of employment.<sup>8</sup>

Mr. Brown does not appeal the ALJ's ruling that WHC rebutted the Presumption:

Here, the employer produced evidence that the claimant's right wrist complaints are not related to a 1993 work injury. The presumption, therefore, does not attach and claimant must prove by substantial evidence that the condition is causally related to the accidental injury without the benefit of the presumption.<sup>[9]</sup>

Mr. Brown's argument critiques WHC's evidence and highlights his own evidence to reach the conclusion that the evidence of record should have been weighed in his favor. The ALJ could have viewed the evidence as Mr. Brown does and could have drawn the inferences that Mr. Brown draws, but the ALJ did not.

The ALJ's findings of fact are supported by substantial evidence in the record, and the ALJ's conclusions of law rationally flow from those supported facts; therefore, because the role of this tribunal is not a *de novo* review of the evidence, so long as the Compensation Order 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, the CRB is constrained to affirm the Compensation Order.<sup>10</sup>

#### CONCLUSION AND ORDER

The July 18, 2013 Compensation Order is supported by substantial evidence and is in accordance with the law. The Compensation Order is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

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MELISSA LIN JONES  
Administrative Appeals Judge

\_\_\_\_\_  
September 24, 2013  
DATE

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<sup>7</sup> *Waugh v. DOES*, 786 A.2d 595, 600 (D.C. 2001) (Citations omitted).

<sup>8</sup> See *Washington Hospital Center v. DOES*, 821 A.2d 898 (D.C. 2003).

<sup>9</sup> Memorandum of Points and Authorities in Support of Application for Review, p. 4. (Citation omitted.)

<sup>10</sup> *Marriott, supra*.