

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Department of Employment Services**  
**Labor Standards Bureau**

**Office of Hearings and Adjudication**  
**COMPENSATION REVIEW BOARD**



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**CRB No. 04-068**

**JALENE C. CHASE,**

**Claimant - Respondent**

**v.**

**WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY,**

**Self-Insured Employer - Petitioner**

Appeal from a Compensation Order of  
Administrative Law Judge Jeffrey P. Russell  
OHA No. 03-410A, OWC Nos. 571036, 583857

Heather C. Leslie, Esquire for the Respondent

Donna J. Henderson, Esquire, for the Respondent

Before LINDA F. JORY, SHARMAN MONROE, *Administrative Appeals Judges* and E. COOPER BROWN, *Chief Administrative Appeals Judge*.

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 (1994), and the Department of Employment Services Director's Directive, Administrative Policy Issuance 05-01 (February 5, 2005).<sup>1</sup>

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<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 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.

Pursuant to 7 D.C.M.R § 230.04, the authority of the Compensation Review Board extends over appeals from compensation orders including final decisions or orders granting or denying benefits by the Administrative Hearings Division (AHD) or the Office of Workers' Compensation (OWC) under the public and private sector Acts.

#### 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 Compensation Order, which was filed on June 9, 2004, the Administrative Law Judge (ALJ) concluded Claimant – Respondent (Respondent) did not unreasonably fail to accept vocational rehabilitation services and granted Respondent's claim for temporary total disability benefits from March 8, 2004 through May 2, 2004.

As grounds for this appeal, Petitioner alleges the Administrative Law Judge's Compensation Order imposes a burden on the employer that is not contained in either the D.C.M.R or the Act therefore it is arbitrary, capricious and not supported by substantial evidence. Respondent has filed an opposition to Petitioner's Application for Review asserting the ALJ's finding that Respondent did not unreasonably refuse to participate in vocational rehabilitation is supported by the substantial evidence in the record.

#### 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.

Turning to the case under review, Petitioner contends that the Act does not compel the employer or the Third Party Administrator to give the injured worker formal written invitation to vocational rehabilitation activities as it is sufficient that injured worker know that the activity is being offered to her through the Third Party Administrator's work hardening contractor. Petitioner further asserts that the Staff of Work Force Industrial Rehabilitation contacted Respondent three times to inform her of the start date of her work hardening program, therefore

Respondent's refusal to attend work hardening until she had received written notice was unreasonable under the Act.

Review of the Compensation Order reveals the ALJ included the following in his findings of fact with regard to the failure to attend work hardening program instantaneously with the notification that work hardening would begin.

Claimant received a phone message on her answering machine from Tara, instructing Claimant to contact her to arrange to begin the work hardening program. Claimant contacted her duty sergeant and her captain, and was advised that neither of them had been told that she was to begin participation in the work hardening program. She also called her attorney's office and was advised that they had received no word of that program being scheduled to begin.

Claimant thereupon returned the call to Tara and advised Tara that she would not attend the work hardening program unless Claimant was provided with a written notification that she was authorized by Employer to participate in the program. Claimant's insistence on having a written instruction to attend was due to a prior problem caused by the lack of documentation. Specifically, Claimant had previously been advised to participate in a similar work hardening program. When she attended the program, however, she was erroneously placed on absent with leave (AWOL) status, and her pay was suspended. The error was due to the fact that Claimant's supervisor had not been advised that Claimant would be attending the program instead of work. Although Claimant was able to quickly obtain documentation from the previous work hardening facility of her participation, there was a multi-week delay in getting her back pay.

The ALJ went on to describe another event that occurred which caused further delay in the start of work hardening which involved a death in Respondent's family.

The ALJ rejected Petitioner's argument that Respondent's failure to attend or to take affirmative steps to obtain the requested document from the Third Party Administrator demonstrates an unduly negative or passive attitude concerning her rehabilitation process. In doing so, the ALJ stated Petitioner's argument might be accepted and Respondent's benefits properly suspended if it were not for the facts that:

- (1) [Respondent] did contact her two supervisor and alert them to the fact that she had no written notification of her participation in the program;
- (2) [Respondent] continued to demonstrate a willingness to work to her capacity by fulfilling her responsibilities in the PLOP;
- (3) [Respondent] had a specific and reasonable reason for wanting the documentation; and
- (4) [Respondent] commenced attending the program as soon as was practical, in light of her personal circumstances, after obtaining the written documentation.

CO at 4. The Panel must reject Petitioner's argument that the Compensation Order imposes a duty on the "employer" to give written notice to attend vocational rehabilitation services which the Panel agrees is not contained in the Act or regulations. The Panel finds instead that the ALJ applied §32-1507(d) on a fact specific basis, specifically the undisputed fact that Respondent had previously been placed on AWOL by the Petitioner for attending a work hardening program her supervisor had not been informed of, causing her to wait weeks to receive her back pay. The Panel agrees it is reasonable for Respondent to attempt to avoid a repeat of these circumstances and concludes the ALJ's analysis that "on these facts [Respondent's] refusing to commence the program was not unreasonable", CO at 5, is supported by substantial documentary and testimonial evidence.

#### CONCLUSION

The ALJ's conclusion that Petitioner did not unreasonably fail to accept vocational rehabilitation services is supported by substantial evidence in the record and is in accordance with the law.

#### ORDER

The Compensation Order issued on June 4, 2004 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

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LINDA F. JORY  
Administrative Appeals Judge

January 24, 2006

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