

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. 05-237

MARISSA CARTER,

Claimant–Respondent

v.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY,

Self-Insured Employer–Petitioner

Appeal from a Compensation Order of
Administrative Law Judge Anand K. Verma
OHA/AHD No. 03-601A, OWC No. 589818

Jeffrey G. Ashin, Esquire, for the Respondent

Donna J. Henderson,¹ Esquire, for the Petitioner

Before JEFFREY P. RUSSELL, LINDA F. JORY, *Administrative Appeals Judges*, and FLOYD LEWIS,
Acting Administrative Appeals Judge.

JEFFREY P. RUSSELL, *Administrative Appeals Judge*, for the Compensation 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).²

¹ While Eugene I. Kane, Jr., Esquire represented Petitioner at the formal hearing, Ms. Henderson filed the Application for Review and supporting memoranda on Petitioner's behalf.

² 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 District of Columbia Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, *codified at* D.C. Official Code § 32-1521.01. In accordance with the Director's Directive, the CRB replaces the Office of the Director in providing administrative appellate review and disposition

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 March 31, 2005, the Administrative Law Judge (ALJ) granted medical benefits requested by respondent, having found that Respondent's stipulated injuries arose out of and occurred in the course of her employment with Petitioner. Petitioner now seeks review of that Compensation Order.

As grounds for this appeal, Petitioner alleges as error that the ALJ committed legal error by not addressing Petitioner's claim that Respondent's injury did not occur in the course of her employment because her conduct constituted a deviation from that employment.

ANALYSIS

As an initial matter, the scope of review by the Compensation Review Board (CRB) and this Review 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. See, 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).

Turning to the case under review herein, at the formal hearing, Petitioner raised two specific defenses to the causal relationship of the stipulated injury to the stipulated employment with Petitioner. Although both defenses were couched within the ambit of "whether the injury arose out of and in the course of her employment", one dealt with whether at the time of the injury Respondent was no longer working as a temporal matter, in that she was alleged to have "clocked out" prior to the incident that caused her injury; the second was related to Petitioner's contention that, because the injury occurred due to Respondent's being arrested by a WMATA police officer, the circumstances leading up to that arrest and the possibility that her injury resulted from Respondent's resisting arrest, constituted a deviation from employment such that the injury did not occur in the course of the employment. See, Hearing Transcript (HT) 7, lines 1 – 5, and 19 – 22; HT 8, lines 1 – 2, 21 to HT 9, line 2; HT 24, line 10 to HT 25, line 3.

In the Compensation Order, the ALJ resolved the temporal issue adversely to Petitioner, but Petitioner does not seek reversal of that finding. See, "Self Insured Employer's Memorandum of Law in Support of the Application for Review" (Employer's Memorandum), page 3, "For the

of workers' and disability compensation claims arising under the District of Columbia Workers' Compensation Act of 1979, as amended, D.C. Code Ann. §§ 32-1501 to 32-1545 (2005), and the District of Columbia Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Code Ann. §§ 1-623.1 to 1-643.7 (2005), including responsibility for administrative appeals filed prior to October 1, 2004, the effective date of the District of Columbia Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004.

purpose of this appeal, WMATA does not dispute the finding and conclusion of the ALJ on the first prong, that Claimant had ‘clocked out’ but had not left the employer’s premises.”

Rather, Petitioner contends that it was entitled to a decision by the ALJ on the second aspect of its defense, the deviation argument, and that the failure to address that defense constitutes legal error. Petitioner seeks either a reversal and order determining that Respondent was indeed not in the course of her employment at the time of the injury, or “[a]t a minimum”, remand to the ALJ for further consideration to address the deviation defense. Employer’s Memorandum, page 6.

Respondent opposes this appeal, asserting erroneously that the ALJ found that Petitioner had not rebutted the presumption of compensability, and asserting further that the ALJ had properly concluded that Respondent was engaged in activities in furtherance of Petitioner’s interests at the time of the injury. See, “Claimant’s Opposition to Employer’s Application for Review”, para. 6. By implication, but not explicitly, Respondent is arguing that the ALJ did in fact address the deviation defense, by finding that Respondent’s conduct at the time of the injury was in furtherance of Petitioner’s interests and therefore was not a deviation therefrom.

The ALJ made the following findings of fact as they relate to the nature of the activities Respondent was engaged in when she was injured:

As a Station Manager, claimant had a duty to ensure proper functioning of equipment at the station. ... I find claimant had a duty to report any fights or suspicious activities at the station. Also, I find claimant’s duty required her to make announcements ordering cessation of activities, such as running around, hollering and playing, at the station. In addition, I find claimant was required to maintain order and crowd control at the station. ...I find claimant, while chatting with a metrobus supervisor outside the station, witnessed a fight between two young girls.

I find claimant went inside the metro station to inform two on-site transit police officers. I find the transit officers arrested three girls for fighting. I find shortly thereafter the fighting spread inside the metro station. I find a little girl therein was crying because she was not able to get the house key from her sister, who had been arrested. I find the girl asked claimant to help her obtain the house key for [sic] her sister so she could get in the house. I find as claimant was walking in the direction of the arrested girl in an attempt to retrieve the house key for her [sic] sister, [one of the metro police officers] ordered her not to speak to the arrested girls. I find when claimant continued to speak to the arrested girl with the key, [the officer] tried to arrest claimant by getting a hold of her arm. I find [the officer] with the assistance of another officer handcuffed claimant [footnote omitted]. ... I find immediately after she was taken into custody, claimant complained of pain in her neck shoulders as well as in her back and both wrists.

Compensation Order, page 2 – 3.

In the discussion section of the Compensation Order, the ALJ wrote “employer has not proffered any reliable evidence that following the purported ‘clock out’ claimant was beyond the course of her employment. ... the duties, i.e., crowd control, she carried out subsequent [to clocking out at 3:58 p.m.] thereto and prior to her arrest at 4:10 p.m. were entirely incidental to her usual duties as Station Manager”. Compensation Order, page 4.

This language indicates that the ALJ determined, despite the finding that Respondent ignored an order from the police officer to desist from engaging in conversation with a detained individual, this persisting in the conversation was in furtherance of Respondent’s job and of Petitioner’s interests, by assisting a distressed patron, e.g., the crying sister. While this activity is not necessarily laudable or wise, and while it might subject an employee in Respondent’s position to possible personnel actions for questionable decision making or even misconduct, the Act contains no exclusion from liability for injuries that result from poor judgment or misconduct. In the absence of any such statutory exclusion, it is not as a matter of law erroneous for the ALJ to have awarded the benefits sought. See, *Larson’s Workers’ Compensation Law*, Part 5, “Misconduct of Employee” Chapter 42 and 34, Matthew Bender & Co. 2004. Similarly, it is also recognized that injuries sustained while performing acts outside the scope of one’s normal duties are potentially compensable where the acts are intended to assist or benefit customers of the employer. *Larson’s*, *supra*, Part 4, “Course of Employment”, Chapter 27, section 27.02, “Acts Benefiting Customers or Strangers”.

CONCLUSION

The Compensation Order of March 31, 2004 is supported by substantial evidence in the record and is in accordance with the law.

ORDER

The Compensation Order of March 31, 2004 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

JEFFREY. P. RUSSELL
Administrative Appeals Judge

June 21, 2005

DATE