GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR

ODIE DONALD II
ACTING DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 17-006

CHARLENE PYLES-KANE,
Claimant-Petitioner,

v.

WEICHERT COMPANY,
and THE PHOENIX INSURANCE CO. C/O TRAVELERS,
Employer/Carrier-Respondent

Appeal from a December 21, 2016 Compensation Order
by Administrative Law Judge Donna J. Henderson
AHD No. 16-398, OWC No. 742196

(Decided April 19, 2017)

Charlene Pyles-Kane, *pro se* Petitioner
Scott E. Snyder for Employer

Before GENNET PURCELL, LINDA F. JORY and HEATHER C. LESLIE, *Administrative Appeals Judges*.

GENNET PURCELL for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

Charlene Pyles-Kane ("Claimant") was employed in the District of Columbia by Weichert Company ("Employer"). On January 29, 2016, Claimant alleges that after parking in the Employer parking lot, due to snow flurries and wintery weather conditions, she slipped and fell on ice. Claimant alleges further that as a result of the slip-and-fall, she twisted her leg injuring herself.

At 8:35 AM that morning, Claimant sent a text message to Employer stating "I just fell down on ice and really twist [sic] my leg. I'm heading back home."

Notwithstanding Claimant's claim of a work-related injury, date-stamped video footage of the Employer parking lot (which included all but one parking space) did not show Claimant, Claimant's vehicle or any evidence supporting Claimant's claim of a slip and fall in that lot. At no time on the security video did Claimant's vehicle appear. Further, the video footage of the Employer parking lot displayed dry pavement conditions and a mix of clouds and sun, but not rain, snow, nor ice.

A dispute arose as to whether Claimant sustained a compensable injury on January 29, 2016. A formal hearing was held before an Administrative Law Judge ("ALJ") in the Administrative Hearings Division ("AHD") of the Department of Employment Services ("DOES"). The issues to be decided at the hearing and as described by the ALJ were:

> **ISSUES**
>
> 1. Did Claimant sustain an accidental injury which arose out of and in the course of her employment on January 29, 2016?
>
> 2. Was Claimant's employment terminated in retaliation for filing a workers' compensation claim?
>
> 3. What is the nature and extent of Claimant's disability, if any.

Pyles-Kane v. Weichert Company, et al., AHD No. 16-398, OWC No. 742196 (December 21, 2016) ("CO") at 2.

The CO issued on December 21, 2016, denying Claimant's claim for relief.

Claimant timely appealed the CO to the Compensation Review Board ("CRB") by filing Claimant's Application for Review ("AFR") and Memorandum in Support of the Application for Review ("Claimant's Brief"). Claimant also submitted a Motion to Add Additional Evidence in Support of the Application for Review ("Motion to Add") requesting permission to submit additional exhibit evidence to the record for consideration by the CRB.

Employer opposed the appeal by filing Employer/Insurer's Opposition to Claimant's Application for Review and Motion to Add ("Employer's Brief"). In its opposition, Employer asserts the ALJ properly concluded that the Claimant did not sustain a compensable injury arising out of and in the course of her employment and that items which Claimant seeks to add via her Motion to Add would not alter the basis for the ALJ's decision in this matter. Employer's Brief at unnumbered page 6.

ANALYSIS[1]

As an initial matter we address Claimant's Motion to Add. In the Motion to Add, Claimant seeks to have the CRB re-open the record for receipt of 7 additional exhibits consisting of:

1. An email from Arthur Houghton, dated February 17, 2016.
2. A letter from the District of Columbia, Office of Human Rights, dated July 4, 2016.
3. Climatological observations for January 29, 2016.
4. An email from Melanie Paggioli.
5. An email to Melanie Paggioli.
6. An email from Claimant to Arthur Houghton dated January 29, 2016.
7. A Letter of Employment Termination from Employer to Claimant dated March 11, 2016.

Claimant seeks to add these additional exhibits into the record as:

> 1) the additional evidence is material [,] and [;]
>
> 2) there existed reasonable grounds for the failure to present the evidence while the case was before [the] ALJ [.]

Claimant's Motion to Add at 2.

Claimant asserts further that due to a substitution of counsel, her first counsel failed to forward these additional exhibits to the court prior to the date of the formal hearing and that her second counsel "failed to provide the ALJ [] with material evidence needed to rule appropriately in her case." [2] Motion to Add at 3. Claimant also asserts her counsel failed to appropriately object to the admission of video clips by Employer, failed to submit her employment termination documentation, and "substantial evidentiary communications between myself and my employer which were in direct contradiction to my employers [sic] position statement filed with the court." Motion to Add at 3.

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[1] The scope of review by the CRB as established by the District of Columbia Workers' Compensation Act ("Act") and as contained in the governing regulations is limited to making a determination as to whether the factual findings of a Compensation Order on appeal are based upon substantial evidence in the record, and whether the legal conclusions drawn from those facts flow rationally from those facts and are otherwise in accordance with applicable law. D.C. Code §32-1521.01(d)(2)(A). "Substantial evidence" as defined by the District of Columbia Court of Appeals ("DCCA"), is such evidence as a reasonable person might accept to support a particular conclusion. *Marriott Int'l. v. DOES*, 834 A.2d 882 (D.C. 2003) ("*Marriott*"). Consistent with this scope of review, the CRB is also 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 members of the CRB review panel considering the appeal might have reached a contrary conclusion. *Marriott*, 834 A.2d at 885.

[2] Claimant argues that the attorney who appeared at the formal hearing was not Allen J. Lowe, the attorney she hired, but Jillian Petrella, another attorney from the law firm of Ashcraft and Gerel, LLP.

In opposition to Claimant's Motion to Add, Employer argues that the items submitted by Claimant "do not alter or change the basis for the reasoned decision against the claim in this matter." Employer's Brief at unnumbered page 5.

We agree with Employer argument on the issue of Claimant's Motion to Add.

Chapter 7, § 264 of the District of Columbia Municipal Regulations, entitled "Submission of Additional Evidence", provides:

> 264.1 Where a party requests leave to adduce additional evidence the party must establish:
>
> (a) that the additional evidence is material, and
>
> (b) that there existed reasonable grounds for the failure to present the evidence while the case was before the Administrative Hearings Division or the Office of Workers' Compensation (depending on which authority issued the compensation order from which appeal was taken).

We determine that the evidence Claimant seeks to admit is immaterial, otherwise duplicative of evidence already submitted to the record. Further, Claimant has failed to sufficiently demonstrate that there were reasonable grounds for her failure to present the evidence while the case was before the AHD. With regard to each request made in the Motion to Add:

1. An email from Arthur Houghton, dated February 17, 2016. This email presents no new evidence for this panel's consideration and has already been made a part of the record via Claimant's testimony at the formal hearing.

2. A letter from the District of Columbia, Office of Human Rights, dated July 4, 2016. Claimant submits a Notice of Charge of Discrimination and Mandatory Mediation letter issued by the Office of Human Rights for the District of Columbia. Without opining as to the validity of Claimant's charges of race-based discrimination against Employer, this document and the existence of Claimant's claims before OHR have no relevance, and provide no evidentiary weight, to the issue of Claimant's workers' compensation-related claims before the AHD and the CRB.

3. Climatological observations for January 29, 2016. Claimant's submission of climatological observations serves to contradict Claimant's statement that there were snow flurries at the time of her claimed work injury. Further, the ALJ noted the specific weather conditions in the CO; this submission supports the ALJ's findings on this issue.

4. An email from Melanie Paggioli. This email presents no new evidence for this panel's consideration and has already been made a part of the record via Claimant's testimony at the formal hearing.

5. An email to Melanie Paggioli. This email presents no new evidence for this panel's consideration and has already been made a part of the record via Claimant's testimony at the formal hearing.

6. Text messages to and from Claimant to Arthur Houghton dated January 29, 2016. These text messages present no new evidence for this panel's consideration and have already been made a part of the record via Claimant's testimony at the formal hearing.

7. A Letter of Employment Termination from Employer to Claimant dated March 11, 2016. This letter presents no new evidence. While Claimant's counsel stated she did not have the termination letter at the formal hearing, both parties stipulated to her termination on the record during the formal hearing, and Claimant provided testimony regarding the date of, and reason for, her termination from Employer.

Accordingly, Claimant's Motion to Add is denied.

Claimant also makes the blanket assertion that she was "barred from presenting evidence" on her own behalf at the time of her hearing. We reject this argument as not only was Claimant represented by counsel at the formal hearing, it also appears from assertions made in her Motion to Add that the previously "barred" exhibits Claimant seeks to enter into the record were previously provided to her counsel prior to the formal hearing date, irrelevant and/or duplicative of evidence already in the record.

Finally, Claimant asserts that her counsel was unlicensed and unfamiliar with the court proceedings; that her first counsel did not provide the court with pertinent information from her file. Claimant's Brief at 4. We decline to opine on the formal qualifications of Claimant's counsel and also note that as it pertains to claimant representation at a formal hearing, § 32-1520 (d) of the Act does not require any specific licensure: "[A]t such hearing, the claimant ... may be represented by any person authorized in writing for such purpose." Moreover, as it pertains to objections not made during the formal hearing by Claimant's counsel, we defer to the ALJ having presided over the formal hearing process, her assessment of the parties, their credibility and the qualifications of their representatives, her findings regarding the sufficiency of the proceedings, the evidence presented and her conclusions of fact and law.

Addressing now Claimant's arguments on appeal, Claimant first contests the credibility conclusions reached by the ALJ in the CO. Claimant states:

> I was confused, scared and angry with my lack of legal representation. My frustration only grew throughout the proceedings as it became abundantly clear that my attorney had not provided Ms. Petrella nor the court with evidence in my file pertinent to my case. Ms. Petrella was not licensed by the DC Bar and was unfamiliar with the Courts Hearing procedures. The assumption made in the [CO] that I lacked credibility and would willfully commit a crime of perjury is unfounded [.]

Claimant's Brief at 6.
With regard to the ALJ's credibility determination, it is well-settled that the credibility findings of an ALJ are entitled to great weight. *See Murray v. DOES*, 765 A.2d 980, 984-985 (D.C. 2001) citing

Dell v. DOES, 499 A.2d 102, 106 (D.C. 1985). Under the Act, in determining whether a claimant has met his or her burden of proof the ALJ is required to weigh and consider the evidence, as well as make credibility determinations. *McCamey v. DOES,* 947 A.2d 1191 (D.C. 2008). The ALJ's duty to weigh the evidence is governed by the totality of the facts of the case as supported by the substantial evidence in the record when viewed as a whole and, after taking into consideration the reasonableness of the testimony, including whether or not any particular testimony has been contradicted or corroborated by other evidence. *Davis v. Western Union Telegraph,* Dir. Dkt. 88-84, H&AS No. 87-751, OWC No. 098216 (March 4, 1992).

Determining that a claimant is incredible, and deciding not to credit evidence submitted by that claimant is within the sole charge of the ALJ. The trier-of-fact, in this case the ALJ, is entitled to draw reasonable inferences from the evidence presented. *See George Hyman Constr. v. DOES,* 498 A.2d 563, 566 (D.C. 1985). Claimant's arguments contesting the ALJ's conclusions with regard to her credibility are not evidentiary-based but rather, related to the weight of the evidence, and her failure to credibly corroborate such evidence. We reject Claimant's argument on this point.

Claimant's remaining arguments are either misstated conclusions of law or unsupported statements of fact which have no evidentiary bearing on her entitlement to workers' compensation benefits under the Act. Claimant's Brief does not point us to any errors of law; nor does Claimant argue that the CO is unsupported by substantial evidence. Accordingly, having denied Claimant's Motion to Add, we determine that Claimant's request for review is ostensibly a request for a reweighing of the evidence in her favor. Claimant asks that the CRB reweigh the evidence and substitute its judgment for that of the ALJ. This, of course, is something we cannot do.

"Substantial evidence" is such evidence as a reasonable person might accept to support a particular conclusion. *See, Marriott Int'l v. DOES*, 834 A.2d 882 (D.C. 2003). Consistent with this scope of review, the CRB is 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, supra, 834 A.2d at 885.We are not empowered to independently review the evidence and come to our own conclusions de novo. *See Marriott, supra, see also Westbrook v. District of Columbia Public Schools*, CRB No. 14-046 (August 25, 2015).

CONCLUSION AND ORDER

The conclusion that Claimant failed to prove by a preponderance of the evidence that there was a work-related event on January 29, 2016, which resulted in her injury is based upon substantial facts in the record and is in accordance with the law. The Compensation Order is AFFIRMED.

So ordered.