

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

Department of Employment Services

VINCENT C. GRAY  
MAYOR



F. THOMAS LUPARELLO  
INTERIM DIRECTOR

**COMPENSATION REVIEW BOARD**

**CRB No. 13-153**

**SUKESH CHOPRA,  
Claimant–Respondent,**

v.

**DISTRICT OF COLUMBIA DEPARTMENT OF CORRECTIONS,  
Employer–Petitioner.**

Appeal from a Compensation Order by  
Administrative Law Judge Fred D. Carney, Jr.  
AHD No. PBL12-023A, DCP No. 761032-0001-1999-0059

Margaret P. Radabaugh for the Petitioner  
William J. Howard for the Respondent

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

MELISSA LIN JONES for the Compensation Review Board.

**DECISION AND REMAND ORDER**

**FACTS OF RECORD AND PROCEDURAL HISTORY**

On September 4, 1987, Ms. Sukesh Chopra fell while working for the District of Columbia Department of Corrections (“Employer”). As a result of accepted, bilateral knee injuries, she received wage loss benefits and medical benefits until January 12, 2012 when those benefits were suspended for failure to attend an additional medical examination. Following a formal hearing, Ms. Chopra’s benefits were reinstated pursuant to a Compensation Order.<sup>1</sup>

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<sup>1</sup> *Chopra v. D.C. Department of Corrections*, AHD No. PBL12-023, DCP No. 761032-0001-1999-0059 (January 30, 2013).

On August 9, 2012, the Public Sector Workers' Compensation Program terminated Ms. Chopra's benefits on the grounds that Ms. Chopra's disability had resolved. The parties proceeded to a second formal hearing, and on November 5, 2013, an administrative law judge ("ALJ") issued a Compensation Order granting Ms. Chopra permanent total disability benefits from January 12, 2012 to the date of the formal hearing and continuing plus medical expenses.<sup>2</sup>

Employer appeals this Compensation Order on multiple grounds. First, Employer contends the ALJ did not properly apply the burden-shifting scheme required in a public sector workers' compensation case; specifically, Employer is not required to present evidence of suitable alternative employment or vocational rehabilitation unless the claimant cannot return to pre-injury employment. Employer also takes issue with the ALJ's failure to rely upon any medical evidence to rule that Ms. Chopra's current disability is work-related. Employer requests the CRB reverse the Compensation Order and affirm the termination of Ms. Chopra's disability compensation benefits.

In response, Ms. Chopra summarizes the posture of her claim as well as the exhibits submitted by both parties but gives no cognizable reasons why the Compensation Order should be affirmed.

#### ISSUES ON APPEAL

1. Did the ALJ properly apply the burden of production and burden of persuasion?
2. Did the ALJ rely upon medical evidence to reach reasonable conclusions regarding causation?
3. Was it error for the ALJ to consider that Employer has not offered Ms. Chopra modified duty?
4. Is the November 5, 2013 Compensation Order supported by substantial evidence in the record and in accordance with the law?

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<sup>2</sup> *Chopra v. D.C. Department of Corrections*, AHD No. PBL12-023A, DCP No. 761032-0001-1999-0059 (November 5, 2013).

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

In a public sector case, once a claim for disability compensation has been accepted and benefits have been paid, the government must adduce persuasive evidence sufficient to substantiate a modification or termination of an award of benefits;<sup>4</sup> the modification/termination may be based on any of a number of grounds including but not limited to the claimant's current disability is not work-related, the claimant is capable of returning to work on full or modified duty, or the claimant has voluntarily limited his or her income. Employer does not dispute Ms. Chopra was paid disability compensation benefit as a result of her compensable knee injuries; therefore, having paid disability compensation benefits for work-related injuries, Employer initially had to present substantial and recent medical evidence to support a modification or termination of benefits payable as a result of disability caused by those injuries.<sup>5</sup>

At this stage in the burden-shifting analysis, depending on the asserted basis for the modification/termination, the government does not necessarily have to prove the availability of suitable, alternative employment. For example, in *Jones v. D.C. Superior Court*, the claimant had received disability compensation benefits; therefore, as in this case, the initial burden was on the government to adduce persuasive evidence to substantiate the modification or termination of the award of benefits.<sup>6</sup> The ALJ determined that the government had met that burden through its additional medical evaluation, but in *Jones* the ALJ then added another requirement for the government to satisfy its initial burden; the ALJ as part of the government's burden of production required proof of suitable, alternative employment. That ruling at that stage of the analysis in that case was in error.

Moving on to step two of the burden-shifting process, after the government satisfies its burden of production, the burden of persuasion shifts to the claimant to prove entitlement by a preponderance of the evidence. In order to assess and weigh whether the claimant has met that requirement, the ALJ must consider the evidence in the record as a whole.<sup>7</sup> It is at this point that

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<sup>3</sup> 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. See D.C. Comprehensive Merit Personnel Act of 1978, as amended. D.C. Code §1-623.01 *et seq.*, at §1-623.28(a). 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> *Lightfoot v. D.C. Department of Consumer and Regulatory Affairs*, ECAB No. 94-25 (July 30, 1996); *Scott v. Mushroom Transportation*, Dir. Dkt. No. 88-77 (June 5, 1990). Although the Employees' Compensation Appeals Board was abolished in 1998, its rulings remain persuasive in deciding disability cases.

<sup>5</sup> *Jones v. D.C. Department of Corrections*, Dir. Dkt. No. 07-99, OHA No. PBL97-14, ODC No. 312082 (December 19, 2000).

<sup>6</sup> *Jones v. D.C. Superior Court*, CRB No. 10-003, AHD No. PBL09-026, DCP No. 761040001199-0002 (March 10, 2011).

<sup>7</sup> *McCamey v. DOES*, 947 A.2d 1191, 1214 (D.C. 2008) ("Where the presumption [of compensability found in the private sector workers' compensation act] is either inapplicable or has been rebutted, the burden falls on the claimant to prove by a preponderance of the evidence that the physical accident caused or contributed to the

if the claimant proves an inability to return to pre-injury employment, an ALJ must consider whether suitable, alternative employment is available; consideration of suitable alternative employment is necessary only if the claimant is capable of returning to modified duty.<sup>8</sup>

In this case, to analyze whether Employer had satisfied its burden of production, the ALJ relied upon Dr. David Johnson's March 1, 2012 additional medical examination report:

Dr. Johnson noted that Claimant was 75 years old at the time of his examination. He reported that he did not believe that Claimant[']s current medical condition was not [*sic*] causally related to her work duties. (EE 3) He stated that Claimant may have had pre-existing osteoarthritis that was aggravated by the multiple falls. He opined that a total knee replacement does not result from a fall unless there is pre-existing degeneration. He saw no indication why Claimant could not return to work as a secretary at this time with restrictions on squatting[,] repetitive climbing[,] and kneeling. He further stated that:

“These restrictions are secondary to the presence of total knee replacements which were preformed because of the preexisting osteoarthritis that had been aggravated by multiple falls. She is a candidate for vocational rehabilitation if her secretarial job is not available for her at this time.”<sup>[9]</sup>

Based upon this evidence, the ALJ ruled Employer had satisfied its initial burden, and the ALJ shifted the burden to Ms. Chopra to prove by “a preponderance of the evidence that she continues to suffer with an impairment of condition resulting from her employment that causes her a wage loss.”<sup>10</sup>

Importantly, although an aggravation of a pre-existing condition may be compensable,<sup>11</sup> an employer is not a guarantor of health and is only responsible for compensating a claimant for work-related injuries and disabilities, and to reach a conclusion regarding whether Ms. Chopra continues to have an impairment as a result of a work-related condition requires findings of fact and conclusions of law on issues of causation as well as the nature and extent of any causally-

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psychological injury.” There is no reason to depart from this standard when the injury is physical rather than psychological.)

<sup>8</sup> D.C. Code §1-623.47

<sup>9</sup> *Chopra v. D.C. Department of Corrections*, AHD No. PBL12-023A, DCP No. 761032-0001-1999-0059 (November 5, 2013), p. 4.

<sup>10</sup> *Id.* Although the ALJ briefly references testimony from Ms. Sophronia Smith, there is no evidence in the record that Ms. Smith actually testified in this case. Because the ALJ did not rely on this alleged testimony, the reference to it is harmless error.

<sup>11</sup> *McCamey*.

related disability;<sup>12</sup> however, to address these issues, the ALJ relied solely on Ms. Chopra's testimony. The ALJ never made any actual findings regarding whether Ms. Chopra's current condition remains medically-causally related to her on-the-job accident; it is not enough to rely on principle when medical evidence is needed to prove a point. In addition, the ALJ fails to analyze whether Ms. Chopra's current disability is causally related to a compensable injury; it is not enough to find a permanent impairment based upon aggravation without setting forth some medical evidence of causation relied upon to reach that conclusion. Finally, the ALJ fails to rule on Ms. Chopra's current work capacity; it is not enough to say she cannot return to her regular duties without ruling on what duties (if any) she can perform. Without such findings, the CRB is without the ability to adequately review this Compensation Order.

In order to conform to the requirements of the D.C. Administrative Procedures Act ("APA"),<sup>13</sup> (1) the agency's decision must state findings of fact on each material, contested factual issue; (2) those findings must be based on substantial evidence; and (3) the conclusions of law must flow rationally from the findings.<sup>14</sup> Thus, when an ALJ fails to make factual findings on each materially contested issue, an appellate court is not permitted to make its own finding on the issue; it must remand the case for the proper factual findings.<sup>15</sup>

The CRB is no less constrained in its review of Compensation Orders.<sup>16</sup> Moreover, the determination of whether an ALJ's decision complies with the APA requirements is a determination that is limited in scope to the four corners of the Compensation Order under review. Thus, when, as here, an ALJ fails to make express findings on all contested issues of material fact, the CRB can no more "fill the gap" by making its own findings from the record than can the Court of Appeals but must remand the case to permit the ALJ to make the necessary findings.<sup>17</sup> Thus, the law requires we remand this matter.

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<sup>12</sup> Throughout the Compensation Order, the ALJ mistakenly appears to use the terms injury, impairment, and disability interchangeably. In workers'-compensation lexicon each of these terms has a distinct, legal meaning, and each plays a particular an important role in assessing entitlement to workers' compensation benefits; therefore, for purposes of remaining in accordance with the law, it is important to use the correct vocabulary. Any impairment or disability Ms. Chopra suffers would be the result of her injury, not her employment.

<sup>13</sup> D.C. Code §2-501 *et seq.* as amended.

<sup>14</sup> *Perkins v. DOES*, 482 A.2d 401, 402 (D.C. 1984).

<sup>15</sup> *King v. DOES*, 742 A.2d. 460, 465 (Basic findings of fact on all material issues are required; only then can the appellate court "determine upon review whether the agency's findings are supported by substantial evidence and whether those findings lead rationally to its conclusions of law.")

<sup>16</sup> See *Washington Metropolitan Area Transit Authority v. DOES*, 926 A.2d 140 (D.C. 2007).

<sup>17</sup> See *Mack v. DOES*, 651 A.2d 804, 806 (D.C. 1994).

CONCLUSION AND ORDER

Although the ALJ properly applied the correct burden of production, the ALJ failed to make findings of fact supported by appropriate evidence and sufficient to reach reasonable conclusions of law; therefore, the November 5, 2013 Compensation Order is not supported by substantial evidence, is not in accordance with the law, and is VACATED. Absent such findings of fact and conclusions of law, the CRB is unable to exercise appellate review of whether it was error for the ALJ to consider that Employer has not offered Ms. Chopra modified duty. This matter is REMANDED for the ALJ to make findings of fact and to reach reasonable conclusions of law based upon a legal analysis of those facts.

FOR THE COMPENSATION REVIEW BOARD:

/s/ *Melissa Lin Jones*

MELISSA LIN JONES

*Administrative Appeals Judge*

March 25, 2014

DATE