

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. 08-009

CLAUDE MILLER,

Claimant–Respondent,

v.

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY AND PMA INSURANCE,

Employer/Carrier–Petitioner.

Appeal from a Compensation Order on Remand of
Administrative Law Judge Belva D. Newsome
AHD No. 05-291, OWC No. 607485

Douglas A. Datt, Esquire, for the Petitioner

Howard B. Ackerman, Esquire, for the Respondent

Before JEFFREY P. RUSSELL, SHARMAN J. MONROE, *Administrative Appeals Judges*, and E. COOPER BROWN, *Chief 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).¹

¹Pursuant 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 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

BACKGROUND

A Compensation Order was issued by an Administrative Law Judge (ALJ) in the Administrative Hearings Division (AHD) of the Office of Hearings and Adjudication (OHA) in the District of Columbia Department of Employment Services (DOES) on May 8, 2007, awarding benefits for temporary total disability and causally related medical care for a work injury found to have been sustained by Respondent on November 9, 2004. Petitioner appealed that Compensation Order to the CRB, which found that the ALJ had failed to properly assess the evidence presented by Petitioner in opposition to the presumption that the claimed disability is causally related to the November 9, 2004 work injury, and that the ALJ had also failed to adequately address the medical evidence that Petitioner had presented in opposition to Respondent's evidence relating to the nature and extent of disability. Despite Petitioner's claims in that appeal that the ALJ had also erred in finding that an accidental injury occurred on November 9, 2004, asserting a lack of sufficient credible evidence to support such a finding, the CRB did not disturb that finding; rather, the CRB remanded the matter to the ALJ for further consideration of the claim for causally related disability benefits, weighing the evidence, by a preponderance standard, and without reference to the presumption, but considering the record and determining whether Respondent had established that the claimed disability is causally related to the work injury, and if so, for further consideration of the nature and extent of disability claim, including in that consideration evaluation of Petitioner's medical evidence.

This appeal follows the issuance of the Compensation Order on Remand by AHD pursuant to the remand from CRB. In that Compensation Order on Remand, which was filed on September 6, 2007, the ALJ, upon finding that the claimed disability was causally related to the work injury, granted Respondent's claim for temporary total disability benefits and causally related medical care. Petitioner filed an Application for Review (AFR) on October 5, 2007, seeking review of that Compensation Order on Remand.

As grounds for this appeal, Petitioner alleges as error that "the decision is arbitrary, capricious, and that the findings and conclusions of [the ALJ] are not in accordance with the law and facts of this case and are not fully supported by the substantial evidence of record". Following a 9 page recitation of its view of the facts of the case, Petitioner framed its specific objections as a contention that the ALJ erred in concluding that an accidental injury occurred and that Respondent's condition was causally related to any incident on November 9, 2004, the ALJ erred by "discounting" the medical evidence of Petitioner in opposition to both causal relationship and nature and extent of disability, and the ALJ erred in finding that Respondent was a credible witness.

Because the ALJ fully and completely followed the instructions of the CRB in the Compensation Order on Remand, and because the ALJ's findings are supported by substantial evidence and are in accordance with the law, we affirm the Compensation Order on Remand.

ANALYSIS

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.

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). "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 International v. District of Columbia Dep't. of Employment Serv's.*, 834 A.2d 882 (D.C. 2003). Consistent with this standard of review, the CRB and this Review Panel are constrained 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 herein, without going into great detail, we note that the question of Respondent's having sustained a work related injury on November 9, 2004 was determined in the prior Compensation Order, and despite Petitioner's appeal of that finding, the CRB left it undisturbed in the prior review, and remanded the matter solely for the limited purposes of determining whether the claimed disability was causally related to that injury, and if so, the nature and extent of that disability. Thus, we are not faced with and will not reconsider the question of whether Respondent sustained a work related injury on that date.

Regarding the complaint that the ALJ was somehow bound, as a matter of law, to find that Respondent was not a credible witness is a remarkable and unsupportable legal proposition, which the CRB did not accept in the first appeal when Petitioner raised it then, and which we reject summarily now. Suffice it to say that it is a long established rule in this agency and throughout the law of this and virtually every other jurisdiction in this country that the fact finder alone is charged with making credibility determinations. We will not intervene in that area. Petitioner's specific complaints in that regard are based upon the assertion that the ALJ who issued the Compensation Order and the Compensation Order on Remand is a different ALJ from the one who heard the evidence. However, that is a not uncommon circumstance in this and other agencies, where ALJs sometimes leave a position prior to completing all their assigned cases. In this case, as in all other cases of which we are aware, the parties were given the opportunity, under a show cause order, to object to the reassignment, and neither did so.

Finally, regarding the complaints relating to the degree to which the ALJ accepted or rejected medical evidence relating to causality and relating to the nature and extent of disability, Petitioner complains that the ALJ erred by accepting the medical evidence presented by Respondent, in the form of medical opinions expressed in reports of treating physicians, rather than accepting the medical opinions of a non-treating independent medical examiner (IME) contained in his reports and presented by Petitioner. However, review of the Compensation Order on Remand reveals that the ALJ did precisely what she was instructed to do in the remand order from CRB: on page 6 of the Compensation Order on Remand, the ALJ properly notes the mandate that the evidence be considered without reference to the presumption, which the CRB had determined had been overcome as a matter of law, and the ALJ proceeded to give multiple reasons for accepting Respondent's treating physicians' opinions in preference to those of the IME physician. Her reasons

included but were not limited to the established treating physician preference rule under *Short v. District of Columbia Department of Employment Services*, 723 A.2d 845 (1998) and many other cases, which would in and of itself have been sufficient. Rather, the ALJ also pointed out shortcomings in the rejected IME opinion, including a failure of the IME physician to have reviewed all of the relevant medical records, among other factors. See, Compensation Order on Remand, pages 6 – 8, *passim*.

In general, Petitioner's complaints in this appeal are the repetition of arguments presented to but not accepted by the CRB in the prior appeal, and/or mere disagreements with the weight that the ALJ assigned to the evidence considered. They are insufficient to form the basis of a reversal.

CONCLUSION

The Compensation Order on Remand of September 6, 2007 is supported by substantial evidence in the record and is in accordance with the law.

ORDER

The Compensation Order on Remand of September 6, 2007 is affirmed.

FOR THE COMPENSATION REVIEW BOARD:

JEFFREY P. RUSSELL
Administrative Appeals Judge

November 7, 2007
DATE