

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**Department of Employment Services**

**Labor Standards Bureau**

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



**(202) 671-1394-Voice**

**(202) 673-6402-Fax**

**CRB (Dir. Dkt.) No. 03-111**

**ABDUL CONTEH,**

**Claimant–Petitioner,**

**v.**

**MAJOR LEAGUE SOCCER, T/A D.C. UNITED, AND GAB ROBINS NORTH AMERICA,**

**Employer and Insurer/Respondent.**

Appeal from a Compensation Order of  
Administrative Law Judge Amelia G. Govan  
OHA/AHD No. 03-250, OWC No. 581392

Benjamin T. Boscolo, Esquire, for the Petitioner

Joel E. Ogden, Esquire, for the Respondent

Before JEFFREY P. RUSSELL, SHARMAN J. MONROE, and FLOYD LEWIS, *Administrative Appeals Judges*.

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).<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 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 administrative appeals filed prior to October 1, 2004, the effective date of the District of Columbia Workers'

## 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 July 18, 2003, the Administrative Law Judge (ALJ) denied the relief requested by Petitioner, being temporary total disability benefits and unspecified medical benefits in connection with an injury sustained by Petitioner while employed as a professional soccer player by Respondent. Petitioner now seeks review of that Compensation Order. In his Application for Review (AFR) and Memorandum of Points and Authorities in Support of Claimant's Application for Review (Petitioner's Memorandum), Petitioner seeks reversal of the denial of temporary total disability benefits. In neither the AFR nor the Memorandum does Petitioner seek reversal of the denial of medical care, limiting the specific claim for relief from this body to an award of the denied wage loss benefits.

As grounds for this appeal, Petitioner alleges as error that the ALJ's finding that the work related injury, which was to Petitioner's shoulder, did not prevent Petitioner from performing his pre-injury job as a professional soccer player, is unsupported by substantial evidence and is not in accordance with the law.

Respondent opposes this appeal, and asserts that the ALJ's decision is based upon substantial evidence and is in accordance with the law.

## 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). "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. Dist. 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, Petitioner alleges that the ALJ's decision to deny the claimed wage loss benefits is unsupported by substantial evidence and is not in accordance with the law. In support of this argument, Petitioner makes multiple assertions such as the following: "First, Mr. Conteh's physical restrictions prevented him from working as a professional soccer player.

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Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004.

Second, the only cause for his wage loss other than his work-related injury is his termination from employment” (Memorandum, page 1 – 2); “Therefore, the sole legally valid cause of Mr. Conteh’s wage loss subsequent to July 2, 2002 is the combination of his injury and [Respondent’s] failure to show the availability of work commensurate with his physical limitations” (*id.*, page 2); “Here, the [ALJ] found that Mr. Conteh’s unsuccessful effort to return to work in his pre-injury employment *after being terminated by an employer which was aware of his need for medical care* constitutes a voluntary limitation of income. This holding is in direct contravention of the District of Columbia Court of Appeals’ decision in *Upchurch v. District of Columbia Dep’t. of Empl. Servs.*, 783 A.2d 623 (D.C. 2001)” (*id.*, page 5, emphasis in original); “The uncontroverted record evidence shows that Mr. Conteh attempted to return to work in his pre-injury employment. He was relatively successful in his effort. However, he knew that he was not able to compete at the level required of an elite professional athlete. He then sought medical care. The uncontroverted medical evidence establishes that Mr. Conteh was unable to return to work as a professional soccer player after July 2, 2002. ... No analysis of the record evidence supports the conclusion that an unsuccessful attempt to return to work constitutes a voluntary limitation of income” (*id.*, page 6); “[C]laimant’s physical condition renders him unable to perform the duties of his pre-injury employment” (*id.*, page 7); and other similar statements.

What the AFR and Memorandum do not contain is an analysis of what the ALJ actually did in this case, which is to (1) acknowledge that Petitioner had sustained a shoulder injury while employed by Respondent, but (2) find that that shoulder injury did not prevent Petitioner from performing his pre-injury job as a professional soccer player. This second finding was based upon (a) the uncontroverted fact that, following the injury, Petitioner did indeed return to such employment, (b) the undisputed evidence that Petitioner continued to perform in that capacity with apparent skill and success until (c) he stopped for reasons which he and his agent described repeatedly and publicly as having nothing to do with the shoulder injury specifically or an inability to play soccer generally, but rather, as being related to non-soccer business ventures, (d) the lack of any medical opinion from his treating physician or any other physician restricting Petitioner from playing soccer or imposing other specific limitations which precluded such activity, (e) the existence of a document, post injury, executed by Petitioner, in which he acknowledged his fitness to play professional soccer, and (f) the clearance to return to work as a soccer player given by Respondent’s team physician.

Further, it is evident from the Compensation Order that the ALJ determined in certain relevant instances that Petitioner was not a credible witness. See, Compensation Order, page 6, footnote 9. That determination is one to which reviewing bodies must give special deference to the fact finder. *Short v. District of Columbia Dept. of Employment Serv’s.*, 723 A.2d 845, 851 (D.C. 1998).

Further, while what Petitioner means to convey by the numerous references to Petitioner being “terminated” is not entirely clear, to the extent that Petitioner left the employ of D.C. United, the ALJ discusses the fact that Petitioner was “placed on waivers”, which is described by the ALJ (and not contested by Petitioner on this appeal) in footnote 4, as follows: “Being place [sic] ‘on waivers’ means a Major Soccer League player is placed in a position where he is available to any team within the League for several days; if no team selects the player, he is released, and the League no longer have any contract obligation to him”. This action took place after Petitioner had returned from the injury to play for Respondent for three games, during which time he scored his first goal of

the season (Compensation Order, page 3). Although Petitioner complained of left shoulder pain prior to being placed on waivers, he also signed a “player information form” acknowledging his physical ability to continue to perform as a professional soccer player (*id.*), and then left the country (after telling his coach that he was leaving to pursue other business opportunities). The fact that Petitioner was released from D.C. United does not equate, as a matter of law, with a termination for being physically unable to perform (due to injury or otherwise) as a professional soccer player, particularly when coupled with a written acknowledgement by Petitioner to the contrary, and where such a release can be for any number of reasons, including salary cap considerations, or the availability of other players more suited to a teams needs.

The ALJ found, and Petitioner does not dispute in this appeal that, upon Petitioner’s return to the United States, he declined an offer to play for one team, the Colorado Rapids, and ultimately he resumed his career as a professional soccer player with another, the Pittsburgh Riverhounds. *Id.*, page 4. Although he testified that he felt that his shoulder injury affected his ability to play, the ALJ noted that when he quit playing for the Riverhounds, Petitioner did not advise them that his departure had anything to do with such an injury, but rather, that it was related to his desire to pursue certain business opportunities. *Id.*, page 4, and footnote 4. Although he only played two games for the Pittsburgh team, the record evidence convinced the ALJ that Petitioner’s ability to play professional soccer despite any alleged injury continued, given Petitioner’s “favorable press reviews”, and the fact that he scored a goal and set up a second. *Id.*

Although Petitioner assails Respondent’s evidence as not being “credible”, the facts upon which the ALJ relied do not appear to be in dispute. The ALJ did not, as suggested by Petitioner, “reject” the treating physician’s opinion; rather, the ALJ determined that the treating physician never specifically restricted Petitioner from performing as a soccer player, and that Petitioner actually performed as a soccer player while complaining of the injuries for which he later treated with the physician. Further, the ALJ was free to accept the truth of Petitioner’s initial statement to his coach, to the effect that he was leaving the country to pursue business opportunities, rather than accept Petitioner’s testimonial assertion that he lied to the coach when he told the coach that that was his reason for leaving (Memorandum, page 13), or that his agent’s reported statements to the same effect were untrue (*id.*, page 12).

In sum, Petitioner’s arguments on appeal appear to us to be nothing more than a discussion of the evidence and conclusions from that evidence that Petitioner would argue should have been drawn. However, we have seen nothing in what the ALJ did that was not supported by the record evidence, and which was not in accordance with the law.

#### CONCLUSION

The Compensation Order of July 18, 2003 is supported by substantial evidence in the record and is in accordance with the law.

**ORDER**

The Compensation Order of July 18, 2003 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

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JEFFREY P. RUSSELL  
Administrative Appeals Judge

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January 19, 2006  
DATE