

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



ODIE DONALD II
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 17-100

**CURTIS EVANS,
Claimant–Petitioner/Cross-Respondent,**

v.

**G4S SECURE SOLUTIONS, INC./WACKENHUT SERVICES and
GALLAGHER BASSETT SERVICES,
Employer/Third-Party Administrator-Respondents/Cross-Petitioners.**

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2017 NOV 15 PM 12 33

Appeal from a September 13, 2017 Compensation Order on Remand by
Administrative Law Judge Gerald Roberson
AHD No. 09-364C, OWC No. 643140

(Decided November 15, 2017)

Curtis Evans Claimant *pro se*
Kelly D. Fato for Employer

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

HEATHER C. LESLIE for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

The procedural history and outline in our prior Decision and Remand Order has not changed. As we stated:

The procedural history, including a summary of the injury Claimant sustained as well as medical treatment, is described by the Compensation Review Board (“CRB”) in a March 26, 2014 Decision and Order (“DO”):

On October 9, 2007, Mr. Curtis Evans injured his head, right shoulder, arm, and elbow when the chair he sat in collapsed. Mr. Evans’ injuries required surgery in December 2009, and almost one year later, Mr. Evans completed work hardening; he was capable of light duty work on a full-time basis.

Dr. Mark Scheer examined Mr. Evans on February 28, 2011 at the request of G4S Secure Solutions, Inc./Wackenhut Services, Inc., (“G4S”), Mr. Evans’ employer. Dr. Scheer recommended permanent light duty with no lifting, pushing, or pulling greater than ten pounds as well as no repetitive overhead activities, reaching crawling, or climbing.

Unable to return to his pre-injury work, in August 2011, Mr. Evans started vocational rehabilitation with Ms. Cheryl Wyngarden of Ascend Services. Before leaving Ascend Services in June 2012, Ms. Wyngarden advised Mr. Evans that she had located an Associate of Arts program in Computer Science and Information Systems Management at the Community College of Baltimore County (“CCBC”).

Ms. Barbara Wright replaced Ms. Wyngarden. After determining that the computer training at CCBC was physically appropriate in terms of both the classes and the possible jobs Mr. Evans may be offered after completing that training, Ms. Wright outlined a proposed schedule of five classes and two certification exams over the course of one year.

Shortly thereafter, Ms. Wright realized the agreed-upon courses did not include a prerequisite. Ms. Wright made arrangements for Mr. Evans to take his classes, including the prerequisite, out of sequence so he still could complete the coursework in one year.

Ms. Wright asked Mr. Evans to complete a registration form, and she indicated she would call him with additional information. Mr. Evans went to the CCBC campus to register, but the registrar thwarted his attempt to register for multiple classes. After Ms. Wright learned of these events, Mr. Evans returned to CCBC and spoke to Ms. Wright’s contact (Mr. Noelle Damron) to express his concerns about completing the program in one year. Thus far, Mr. Evans has completed only the prerequisite class.

Because Mr. Evans allegedly did not cooperate with job placement activities and allegedly did not register for the classes chosen for him by Ms. Wright, the parties proceeded to a formal hearing on the issue of whether Mr. Evans had failed to cooperate with vocational rehabilitation. In a Compensation Order dated December 31, 2013, an administrative law judge (“ALJ”) in the Administrative Hearings Division (“AHD”) ruled Mr. Evans had cooperated. Both parties appeal that order.

In its appeal, G4S asserts the ALJ based her decision solely on Mr. Evans' testimony and a "clear misreading of the Employer's evidence." G4S also contends the ALJ failed to consider large portions of its evidence. If the ALJ had considered this evidence, G4S asserts the ALJ would have reached a different conclusion. G4S's arguments are detailed in the Analysis section of this Decision and Remand Order, but ultimately, G4S requests the CRB reverse the December 31, 2013 Compensation Order or, in the alternative, remand the matter for the ALJ to address Mr. Evans' request for additional retraining.

Mr. Evans is interested in completing the Information Systems Security Certificate program which includes at least one class beyond the coursework previously incorporated into his vocational rehabilitation. In his appeal, Mr. Evans argues the ALJ failed to address his request for additional retraining classes. He requests the CRB remand this matter for the ALJ to rule on his request.

Evans v. G4S, CRB No. 14-012, 1-2 (March 26, 2014) (footnotes omitted).

After reviewing the parties' arguments, the CRB concluded:

The law and substantial evidence in the record support that Mr. Evans cooperated with the retraining portion of vocational rehabilitation, and that portion of the Compensation Order is AFFIRMED; however, the Compensation Order does not address Mr. Evans' alleged failure to cooperate with job placement efforts. Thus, the CRB must REMAND this matter for analysis of that issue. Because the ALJ lacks authority to direct the details of Mr. Evans' vocational rehabilitation, she adequately addressed Mr. Evans' request for additional classes.

DO at 5.

A Compensation Order on Remand was issued on May 22, 2015 which determined Claimant had cooperated with vocational rehabilitation. That decision was not appealed.

Pertinent to the present appeal, since the December 2013 Compensation Order referenced above, Claimant has continued treatment for his injuries. Claimant sought treatment with Dr. Charles Schnee for back complaints. Dr. Schnee recommended microsurgical decompression from L2 to L5 which Claimant underwent on January 24, 2014.

Thereafter, Claimant came under the care and treatment of Dr. Michael Franchetti. Dr. Franchetti diagnosed the Claimant with status post anterior

cervical discectomy and fusion with persistent cervical radiculopathy, right shoulder strain with impingement syndrome, status post lumbar decompression and right and leg lower extremity radiculopathy. Dr. Franchetti opined Claimant's conditions were medically causally related to the work injury. Dr. Franchetti recommended continued conservative care, including physical therapy, trigger point injections, and medications.

After reviewing the results of a functional capacity evaluation ("FCE"), Dr. Franchetti opined Claimant was unable to return to his pre-injury job as an electrician. Dr. Franchetti further concluded that Claimant would need to "undergo retraining/vocational rehabilitation for a sedentary type of job and these restrictions are permanent due to his injuries of October 9, 2007." Claimant's exhibit 15 at 87.

Claimant also continued with vocational rehabilitation efforts. Claimant began to work with Mr. Steven Hudak on July 16, 2014. Employer suspended job placement services in June of 2016, alleging Claimant failed to cooperate with vocational rehabilitation.

A formal hearing occurred on August 8, 2016.

Evans v. G4 Solutions, CRB No. 16-162 (March 22, 2017) ("DOR") at 1-4.

After the Formal Hearing on August 8, 2016, a Compensation Order was issued on November 23, 2016 which denied Claimant's request for disability benefits. This order was appealed by both parties. That Compensation Order was remanded on March 22, 2017 as the Compensation Review Board ("CRB") could not determine with certainty what the claim for relief was or what issues were raised for adjudication.

A Compensation Order on Remand ("COR")¹ was issued on September 13, 2017, granting Claimant reimbursements in the amount of \$1,835.57 in costs and \$303.50 in travel expenses. However, the ALJ determined Claimant had failed to cooperate with vocational rehabilitation and suspended Claimant's benefits effective November 23, 2015, thus Employer was granted a credit for benefits paid after Claimant's suspension. Employer was also further ordered to "pay causally related medical expenses consistent with the accepted findings from the utilization review report." COR at 25-26.

Claimant appealed. Claimant argues that: the ALJ failed to apply the burden shifting scheme outlined in *Logan v. DOES*, 805 A.2d 237 (D.C. 2002) ("*Logan*"); the ALJ erred in determining the need for back surgery was not medically causally related to the work injury; the Employer failed to file a Notice of Accidental or Occupational Injury; the COR failed to address Claimant's request for adequate vocational rehabilitation services; the COR did not address Claimant's request for payment of outstanding medical bills and expenses; the ALJ failed to

¹ Consistent with the remand instructions, the COR outlined the claim for relief and the issues to be adjudicated on page 4-5.

allow Claimant to testify and did not conduct a fair hearing; the COR erred “by failure to consider Adjudicating one title but not the other in a concurrent claim” [sic]; the ALJ failed to consider relevant medical evidence; the ALJ did not address Claimant’s request for relief nor identify the claim for relief and issues to be raised; and the ALJ failed to address Claimant’s request for authorization to switch physicians.

Employer opposed Claimant’s appeal and concurrently filed a cross appeal. As summarized by Employer:

The Employer/Insurer submit that the Compensation Order, however, failed to address the specific issue of whether the Claimant’s low back condition (not just surgery) is causally related to the work accident. Additionally, the Employer/Insurer assert that Compensation Order failed to suspend the Claimant’s medical benefits, in addition to suspending the Claimant’s temporary total disability benefits for his failure to cooperate with vocational rehabilitation pursuant to D.C. Code Section 32-1507.

Employer’s brief at 1.

Claimant opposes Employer’s cross appeal.

ANALYSIS

We address Claimant’s appeal first. We note, in reviewing Claimant’s brief, many arguments presented are disjointed and confusing. The summary of Claimant’s arguments, outlined above, is gleaned from the beginning of Claimant’s brief and the numbered sections in the accompanying memorandum as well as Claimant’s brief in opposition to Employer’s cross appeal. We have reviewed the COR as a whole to determine if the COR is supported by the substantial evidence and in accordance with the law, not limiting our review to solely the apparent issues raised by Claimant.

First, we address several of Claimant’s arguments which can be summarily disposed. Claimant asserts that the COR did not address Claimant’s request for payment of outstanding medical bills and expenses. This is inaccurate as the COR did address this specific claim on pages 23-25, and ordered Employer to pay the discussed outstanding medical bills and to reimburse Claimant some costs and expenses. Based on a thorough review of the record on appeal, without a more specific argument, we affirm the ALJ’s conclusions and award regarding this issue as being supported by substantial evidence and in accordance with the law.

As to Claimant’s argument that the COR erred “by failure to consider Adjudicating one title but not the other in a concurrent claim” we are uncertain exactly what Claimant means. Claimant’s Application for Review, unnumbered, section 8. Without greater specificity, we are unable to address this argument as it is unclear what Claimant is alleging is in error.

Claimant also argues the COR failed to address Claimant’s request for relief or identify the claim for relief and issues raised. We disagree. Page 4 of the COR summarizes the claim for relief and the issues to be adjudicated. We also point out, contrary to Claimant’s argument that the ALJ

did not consider Claimant's request for adequate vocational rehabilitation, that issue was listed in the claim for relief and is addressed more fully below.

Further Claimant argues that the COR erred in not considering his request for authorization to switch physicians. The ALJ did not have jurisdiction to entertain this issue. It is well established, under the District of Columbia Court of Appeals decision in *Renard v. DOES*, 731 A.2d 413 (D.C. 1999)², requests for authorization to change an attending or treating physician are within the sole province of the Office of Workers Compensation ("OWC"). Stated another way, if Claimant is seeking an authorization to switch physicians, Claimant must seek such authority from OWC.

Claimant also argues that the ALJ failed to allow Claimant to testify and did not conduct a fair hearing. We point out that as to the case before us presently, Claimant took part in three hearings, the *Snipes*³ hearing and two Formal Hearings. At the end of the second Formal Hearing on July 27, 2017, the ALJ specifically inquired whether there was "anything else" to address before the parties left. The Claimant answered "nothing further, your honor." Hearing transcript at 50.

The Claimant was allowed to present and develop his case fully. If Claimant felt any further testimony was necessary or any further issues should have been addressed, Claimant had ample opportunity to do so in front of the ALJ, including at the last Formal Hearing and by post-hearing requests.

We next address Claimant's contention that the COR erred in not awarding him permanent total disability benefits. In so arguing, Claimant argues that the ALJ applied the burden shifting scheme in *Logan* incorrectly and erred in "not finding Claimant had met his burden for prima facie case when he established he was incapacity [sic] to return to the pre-injury job." Claimant's brief at 39.

As we have stated in the past, permanent total disability is a term of art.

It must be understood that "permanent total disability" is a statutory construct, and in many senses, it is a term of art which has the meaning that the legislature and the D.C. Court of Appeals have ascribed to it; as such, the meaning may be somewhat at odds with the meaning the phrase would have if the words were understood in their vernacular sense. Thus, a person is permanently and totally disabled if (1) he or she has reached permanency in connection with the medical condition caused by the work injury, (2) he or she is unable to return to the pre-injury job because of the effects of that medical condition, and (3) there is no suitable alternative employment available in the relevant labor market.

² In *Renard*, the court ruled that, under the statutory and regulatory scheme, there is no right to a "trial type" hearing in connection with requests for a change of an attending physician, and concluded that such questions are not appealable to that court, under the District of Columbia Administrative Procedure Act, because under D.C. Code § 1-1502 (8), such agency proceedings do not constitute a "contested case". Thus, by determining that there was no right under the Act to a formal hearing on this issue, the court has necessarily ruled that Administrative Hearings Division does not have jurisdiction to hear such claims.

³ *Snipes v. DOES*, 542 A.2d 832 (D.C. 1988)

While a permanently and totally disabled person remains under an obligation to cooperate with an employer's efforts to return that person to the labor market and while that person's entitlement to ongoing permanent total disability benefits is contingent upon that cooperation, that person is nonetheless permanently and totally disabled until such time as that person is employable. Then, the person's condition may be said to have changed, rendering him or her either only partially disabled or not disabled at all, depending upon the level of wage earning capacity that has been recovered.

Braswell v. Greyhound Lines, Inc., CRB No. 12-120, (November 13, 2012)(“*Braswell*”).

In *Renwick v. WMATA*, CRB No. 13-159 (April 9, 2014)(“*Renwick*”) the CRB not only quoted *Braswell*, but also explained how *Logan* applies when permanent total disability is sought. As we summarized in *Renwick*,

The DCCA disagreed with the ALJ in *Logan*, holding that once a claimant has met the burden under *Dunston* [509 A.2d 109 (D.C. 1986)] on the question of inability to return to the pre-injury job, the law presumes that the claimant cannot perform any other job either. And, under the ruling, the inquiry into the nature of a disability (i.e., whether it is permanent or temporary) is totally distinct from the determination of its extent (i.e., partial or total), and there is no difference in assessing “extent” in cases of temporary as opposed to permanent disability. The Court continued in its practice of expressing a strong affinity for interpreting the Act in a fashion consistent with the LWHCA, in this instance even where the language of the two acts differ.

The effect of the court’s approach is that, rather than consider what might happen at some time in the future, where a claimant’s condition “has continued for a lengthy period, and [...] appears to be of lasting or indefinite duration, as distinguished from one in which recovery merely awaits a normal healing period”, the time is ripe for consideration of the extent of claimant’s disability. If a claimant demonstrates the inability to return to the pre-injury employment, claimant has made a *prima facie* showing of entitlement to an award of permanent total disability, shifting to the employer the obligation of showing that claimant is (not “may become”) “employable” under LWHCA standards, as expressed in *Washington Post v. DOES and Mukhtar, Intervenor*, 675 A.2d 37 (D.C. 1996) and *Joyner v. DOES*, 502 A.2d 1027 (D.C. 1986).

The *Logan* court explicitly adopted this approach and explained that claimant could overcome the employer’s showing of employability by “showing that he has diligently sought appropriate employment but has been unable to secure it”.

Renwick at 3-4.

The ALJ acknowledged, and Employer conceded, that Claimant could not return to his pre-injury employment because of his work injury. Claimant's argument that the ALJ erred in concluding that Claimant failed in his burden under *Logan* in determining he could not go back to his pre-injury job is based on a misreading of the COR. The ALJ acknowledged that Employer did not dispute that he could not go back to his pre-injury job. COR at 15. Thus, Claimant's argument on this point is misplaced as his inability to return to his pre-injury job was not at issue as it was conceded by Employer.

As Claimant could not return to his pre-injury employment, the Employer instituted vocational rehabilitation efforts to return Claimant to employment within his restrictions. Employer subsequently suspended these efforts, alleging Claimant failed to cooperate with vocational rehabilitation. At the Formal Hearing, Claimant disputed this and alleged not only did he cooperate with vocational rehabilitation, but argues the ALJ failed to address his request for adequate vocational rehabilitation, arguing that the vocational rehabilitation provided to date was being sabotaged by Employer. Claimant's brief in opposition to Employer's Cross Application for Review unnumbered at 17.

On this point the ALJ, after quoting D.C. Code 32-1507(d) and analyzing the evidence and arguments presented, concluded:

In this case, Claimant's actions demonstrate he unreasonably refused to accept vocational rehabilitation within the meaning of Section 32-1507(d). The record is replete with instances of Claimant's failure to cooperate with vocational rehabilitation. The most obvious examples concerns Claimant's unwillingness to meet with the vocational rehabilitation counselor and apply for jobs since November 2015. HT1, p. 132. The record reveals Employer has complied with the May 22, 2015 CO and provided adequate vocational services. Claimant has retained the services of a number of attorneys during the vocational rehabilitation process. He hired Attorney Allen Lowe in March 2016. A letter from Mr. Lowe, dated March 18, 2016, agreed to 90 day placement period for vocational rehabilitation, and indicated Claimant would initiate a claim for permanent and total disability following the 90 day period. He offered to settle the claim as well. EE 16, pp. 471-472. At the October 31, 2016 hearing, Claimant readily admitted he had not met with the vocational rehabilitation counselor since November 2015. HT1 p. 48. Claimant also testified he had not applied for any jobs since November 2015. HT1 p. 132. Claimant did not offer any reasonable justification for his noncompliance. Claimant did recall he was hospitalized in December 2015 for issues not stemming from the work injury, but he could not reference any medical evidence to support his noncompliance. Claimant stated no doctor had instructed him not to participate in vocational rehabilitation. HT1, p. 47. Given Claimant's lack of participation, Employer justifiably suspended vocational rehabilitation services in June 2016. HT, p. 65.

COR at 17-18.

As to Claimant's argument that the vocational rehabilitation was inadequate, the ALJ did acknowledge the failed training as inadequate. However, Claimant's vocational rehabilitation

did not solely entail training, but also involved meeting with the vocational counselor and continued job search. Notably, the ALJ concluded Claimant failed to meet with the vocational counselor since November 2015 or apply for any jobs. The ALJ also found persuasive Employer's argument that the jobs Claimant applied for prior to November 2015 were government jobs Claimant was not qualified for, inhibiting vocational rehabilitation efforts. These conclusions are supported by the substantial evidence in the record and are in accordance with the law, thus, the ALJ's conclusion to suspend benefits is affirmed.

As Claimant has failed to participate in vocational rehabilitation services, the ALJ rightfully suspended benefits until such time as Claimant has expressed a willingness to cooperate. Pursuant to *Logan, Braswell* and *Renwick*, while the ALJ found Claimant's disabling condition to be permanent and the Claimant was unable to return to the pre-injury employment due to that condition, Claimant failed to participate in vocational rehabilitation services or show that he has diligently sought out employment and failed to obtain employment. Thus, the COR's denial of Claimant's request for permanent total disability benefits is supported by the substantial evidence in the record and in accordance with the law.

Employer, in its cross-appeal, argues the ALJ failed to address the issue of whether Claimant's low back condition is medically causally related to the work injury. A review of the COR reveals that the ALJ acknowledged the January 29, 2010 Compensation Order awarded medically causally related expenses to the Claimant for the back. In so arguing, Employer challenges the Compensation Order issued on January 29, 2010, wherein Claimant was awarded causally related medical expenses was specifically for his upper back and neck condition. Claimant opposes, saying the issue of whether the low back condition was medically causally related was decided in the January 29, 2010 Compensation Order and as such, the issue is *res judicata*. We agree with Claimant.

In argument, Employer contends that in the January 29, 2010 Compensation Order, the ALJ used the term "back" to refer to the upper back and neck. We cannot agree with this interpretation. The ALJ used the term "back" throughout the Compensation Order and did not delineate between the lower back, mid-back or upper back in the order section as Employer urges us to infer.

Indeed, contrary to Employer's argument that the ALJ only meant to refer to the upper back, the only time the ALJ referred to a particular part of the back was when it was noted Dr. Joseph Jamaris treated Claimant specifically for his lumbar back complaints and opined Claimant's back condition was medically causally related to his work injury.

A review of the administrative file indicates Employer did not appeal this Compensation Order. Had the Employer wanted to limit the award to the back to solely the upper back, it was incumbent for Employer to appeal the Compensation Order to the CRB. This Employer failed to do. Pursuant to the Compensation Order of January 2010, Claimant did injure his back in his work-related injury.

This brings us to Claimant's argument that the ALJ erred in concluding his 2014 back surgery was not medically causally related to the work injury. In so arguing, Claimant relies heavily on the January 29, 2010 Compensation Order, pointing out the medical records the ALJ in that

hearing used to support the conclusion that the back injury is medically causally related to the work injury.

At this juncture it is important to point out that although the ALJ in the January 2010 Compensation Order concluded that the back condition was medically causally related to the work injury, it does not mean that the later surgery is necessarily related to the work injury. Claimant still has the burden to prove by a preponderance of the evidence that his need for back surgery is related to the work injury.

After reviewing the medical evidence submitted by Claimant, including the medical opinions of Dr. Cohen, Dr. Franchetti and Dr. Kroopnick, the ALJ concluded Claimant had invoked the presumption that the surgery was medically causally related to the work injury. Thereafter, the ALJ shifted the burden to Employer to rebut the presumption. We conclude the ALJ correctly relied on Dr. Sheer's opinion in finding Employer rebutted the presumption. Dr. Sheer specifically stated that the need for medical surgery was not related to the work injury.

As Employer rebutted the presumption, the presumption falls from the case and the evidence is weighed without reference thereto. The ALJ concluded:

In this case, Claimant has not demonstrated his back surgery is medically causally related to the work injury of October 9, 2007. Claimant has relied on the opinion of Dr. Franchetti, who failed to provide any medical history explaining how the surgery was causally related to the work incident. Additionally, Dr. Franchetti does not explain why Claimant did not become symptomatic with bilateral leg numbness until five years after the October 9, 2007 work incident. Similarly, Dr. Kurlanzik related Claimant's bilateral S1 radiculopathy to the work injury without any supporting medical rationale. Dr. Kurlanzik and Dr. Franchetti essentially ignored the findings of Dr. Cohen who had provided treatment for the work injury since April 10, 2008 until his death in 2014. Dr. Cohen opined the lumbar radiculopathy was not related to the work injury of October 9, 2007. EE 2, p. 55. Additionally, Dr. Schnee, who performed the surgery on January 24, 2014, did not offer an opinion regarding whether the work incident caused Claimant's symptoms and the need for surgery. Given the fact Dr. Scheer has reviewed the initial medical records, and found Claimant's current complaints to be unrelated to the work injury of October 9, 2007, the record does not establish a medical causal relationship between Claimant's back surgery and the work injury of October 9, 2007. At the hearing, Employer argued the treatment with Dr. Schnee was unauthorized, and constituted an unauthorized change in physician. Given the back surgery is not medically causally related to the October 9, 2007 work incident, a determination regarding whether the treatment was an unauthorized change in physician is not necessary. At the July 27, 2017 formal hearing, Claimant stated he was not attempting to change to a certain physician, and Employer stated it was no longer an issue. HT2, pp. 46-47.

COR at 12-13.

Claimant, in arguing the ALJ's conclusion is in error, points this panel to the prior January 2010 Compensation Order as well as relying on D.C. Code §§ 32-1532(f) and (g), 32-1514(a) and 7 DCMR § 203.

We first point out that the prior Compensation Order is not evidence. While the prior ALJ found some reports lacking, the ALJ in the case at bar is not bound to come to the same conclusions regarding physicians and the weight to be accorded to their opinions. The ALJ summarized the medical evidence submitted and concluded Claimant had failed in his burden, largely based on the opinions of Dr. Cohen and Dr. Schnee. We conclude the above summary is supported by the substantial evidence in the record and in accordance with the law.

In referring this panel to D.C. Code §§ 32-1532(f) and (g), 32-1514(a) and 7 DCMR § 203 as the basis for the argument that the ALJ's conclusion above is wrong, Claimant also relies on these statutory provisions to argue that "Employer's failure to file a timely Notice of Accidental or Occupational Injury (Form 8) and Compensation Order are not supported by the substantial evidence in the record and are not in accordance with the law." Claimant's brief at 48. Claimant's arguments are confusing. The statutes referred to address the time for filing a claim and Employer reports. Timely claim is not an issue as Claimant has timely filed his claim and Employer did not raised untimely claim as an issue to be addressed by the ALJ. . Claimant's arguments are rejected.

Finally, in referring to specific testimony and evidence in his brief, Claimant is asking this panel to reweigh the evidence in his favor. This we cannot do. The scope of review by the CRB is limited to making a determination as to whether the factual findings of the appealed Compensation Order on Remand are based upon substantial evidence in the record and whether the legal conclusions drawn from those facts are in accordance with applicable law. Section 32-1521.01(d)(2)(A) of the District of Columbia Workers' Compensation Act, as amended, D.C. Code §§ 32-1501 to 32-1545, ("Act"). 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). The COR is affirmed.

CONCLUSION AND ORDER

The September 13, 2017 Compensation Order on Remand is AFFIRMED.

So ordered.