

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



ODIE DONALD II
ACTING DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 16-162

**CURTIS EVANS,
Claimant-Petitioner,**

v.

**G4S SECURE SOLUTIONS, INC./WACKENHUT SERVICES and
GALLAGHER BASSETT SERVICES,
Employer/Insurer-Respondents.**

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2017 MAR 22 AM 8 49

Appeal from a November 23, 2016 Compensation Order by
Administrative Law Judge Gerald Roberson
AHD No. 09-364C, OWC No. 643140

(Decided March 22, 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 REMAND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

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. On November 23, 2016, a Compensation Order (“CO”) issued. The CO concluded:

Conclusions of Law

Claimant failed to establish his back surgery is medically causally related to the work injury of October 9, 2007. Claimant failed to establish entitlement to permanent total disability benefits. While the record establishes retraining failed, Claimant failed to cooperative [sic] with vocational rehabilitation, and his compensation benefits shall be suspended. In terms of utilization review, the record establishes entitlement to quarterly orthopedic visits, ongoing pain management, 4 acupuncture treatments, and the continued use of medication. Claimant failed to establish the need for physical therapy, aquatic therapy and use of a TENS unit as reasonable and necessary.

Decision

Based upon the record herein, and the applicable law, it is hereby ordered, that:

1. Claimant's claim for relief is hereby Denied. Claimant's Compensation benefits are hereby suspended for failure to cooperate with vocational rehabilitation.

CO at 20.

The Claimant timely appealed. Claimant argues the following:

1. The CO erred in determining Claimant had failed in presenting a prima facie case of permanent total disability.
2. The CO erred and applied the analysis outlined in Logan incorrectly.
3. The CO erred in not addressing the nature and extent of Claimant's injury.
4. The CO erred in concluding Employer had not failed to file a Notice of Accidental or Occupational Injury (Form 8).
5. The CO erred in failing to address Claimant's request for authorization to switch physicians.
6. The CO erred as it did not address “Claimant's request for adequate vocational rehabilitation services, and reimbursement for out-of-pocket expenses (payments for classes, books and bills.)” Claimant's brief, unnumbered at 3.
7. The CO erred in failing to address Claimant's request for payment of outstanding medical bills and expenses causally related to the work injury.

8. The CO erred in not addressing Claimant's request for adequate vocational rehabilitation services.

Employer opposes Claimant's appeal. Employer also filed a cross-appeal, arguing the conclusion that Claimant's back condition arose out of and in the course of his employment is not supported by the substantial evidence in the record or in accordance with the law. Claimant opposes Employer's cross-application for review.

ANALYSIS¹

Prior to addressing the arguments raised, we note that the CO fails to state what Claimant's claim for relief is and what issues were raised by the parties for adjudication. At the Formal Hearing, the ALJ made a reference to the issues raised at the Snipes² Hearing, held on August 8, 2016. A review of that hearing transcript reveals the ALJ outlined the issues as 1) whether Claimant's back condition arose out of and in the scope of Claimant's employment, 2) the nature and extent of Claimant's disability if any, 3) whether Claimant cooperated with vocational rehabilitation, 4) whether Claimant voluntarily limited his income, 5) the reasonableness and necessity of medical treatment, 6) and whether there was an unauthorized change in physicians.

The claim for relief, as outlined by the ALJ at the Snipes hearing, was described as:

Claimant's claim for relief is quite extensive. I'm not going to try to read the entire thing, but it appears that he has outstanding and future medical bills, unpaid bills and expenses from his October 9th, 20—from October 9th, 2007, to the present.

He wants reimbursements of out-of-pocket expenses. Claimant's indicated adequate vocational rehabilitation services, reimbursement for out-of-pocket payments for classes, bills and books. Reimbursement of mileages, travel expenses. I just think it's just mileage reimbursement though. Authorization to change position [sic], and it looks like he said adjudicate a compensation order from January 29th, 2010, from ALJ Leslie Meek and permanent total disability benefits and future earnings.

Snipes hearing transcript at 8-9.

We glean from the hearing transcript that the ALJ determined as it pertained to the earlier Compensation Order, Claimant was seeking to modify the award from temporary total disability to an award of permanent total disability. The ALJ stated at the end of the hearing:

¹ The scope of review by the CRB is generally 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 § 32-1501, *et seq.*, ("the Act") at § 32-1521.01(d)(2)(A), and *Marriott International v. DOES*, 834 A.2d 882 (D.C. 2003). Consistent with this standard of review, the CRB and this review panel must affirm 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 this panel might have reached a contrary conclusion. *Id.*, at 885.

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

Judge Roberson: I'm not going to make a decision today. I'm going to go back and look at the evidence and see whether or not there's sufficient evidence to modify the January 29th 2010 decision as well as the May – can't remember the exact date, but May 2015 –

Mr. Evans: It was May 22nd.

Judge Roberson: -- May 22nd, 2015 decision. And some of the issues that we raised earlier, I don't think they really hinder [sic] on whether or not I make a decision on those two cases or not. But for the sake of clarity, we need to come back and revisit those other issues. We can do at a later time.

Snipes hearing transcript at 82.

A review of the administrative file as well as the CO under review does not reveal what, if any, decision was ultimately made or if the ALJ did indeed "revisit those other issues." Moreover, the administrative file is bereft of a signed joint pre hearing statement outlining the issues.

Finally, we note that in the "Decision" section at the end of the CO, the ALJ states:

Based upon the record herein, and the applicable law, it is hereby ordered, that:

1. Claimant's claim for relief is hereby Denied. Claimant's compensation benefits are hereby suspended for failure to cooperate with vocational rehabilitation.

CO at 20.

We are unclear if the ALJ meant to add more as numbering the order implies there should be more after the number one, especially in light of the fact that the ALJ did seemingly award some medical treatment in the body of the CO.

Ultimately it is unclear to us exactly what issues were raised and what the claim for relief was. While it can be ascertained what issues were adjudicated as discussed in the CO, we are unsure whether there are issues that were not decided, for instance reimbursements and payments of medical bills, in light of Claimant's Application for Review.

It is well settled in this jurisdiction that, in order to conform to the requirements of the D.C. Administrative Procedures Act ("APA"), D.C. Code § 2-501 *et seq.* (2006), for each administrative decision in a contested case, (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 follow rationally from the findings. *Perkins v. DOES*, 482 A.2d 401, 402 (D.C. 1984); D.C. Code § 2-509. Thus, when an ALJ fails to make factual findings on each materially contested issue, an appellate body is not permitted to make its own finding on the issue; it must remand for the proper factual finding. *See Jimenez v. DOES*, 701 A.2d 837, 838-840 (D.C. 1997). As the Court of Appeals explained in *King v. DOES*, 742 A.2d 460, 465 (D.C. 1999) basic findings of fact on all material issues are required, for "[o]nly then can this 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." *See also Sturgis v. DOES*, 629 A. 2d 547 (D.C. 1993).

The CRB is no less constrained in its review of compensation orders issued by AHD. *See WMATA v. DOES and Browne*, 926 A.2d 140 (D.C. 2007). *Accord, Hines v. Washington Metropolitan Area Transit Authority*, CRB No. 07-004, (December 22, 2006). The determination of whether an ALJ's decision complies with the foregoing APA requirements is a determination that is necessarily limited in scope to the four corners of the compensation order under review. Thus, where 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 upon review of a final agency decision, but must remand the case to permit the ALJ to make the necessary findings. *See Mack v. DOES*, 651 A.2d 804, 806 (D.C. 1994).

As we cannot determine with any amount of certainty what the contested issues or claim for relief are, we remand the case for the ALJ to clarify what issues are to be adjudicated and what exactly the claim for relief is that Claimant sought and make appropriate findings of facts and conclusions of law addressing all issues raised.

CONCLUSION AND ORDER

The November 23, 2016 Compensation Order is not supported by substantial evidence in the record and is not in accordance with the law. It is VACATED and REMANDED for consideration consistent with the above discussion.

So ordered.