

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. 04-75

DARNESE S. MERRITT,

Claimant - Petitioner

v.

CLARK CONSTRUCTION, ET AL AND AIG CLAIM SERVICES,

Employer/Carrier - Respondent

Appeal from a Compensation Order of
Administrative Law Judge Jeffrey P. Russell
OHA No. 03-368A, OWC No. 577161

Heather C. Leslie, Esquire for the Petitioner

Michael S. Levin, Esquire, for the Respondent

Before LINDA F. JORY, SHARMAN J. MONROE AND FLOYD LEWIS, *Administrative Appeals Judges*.

LINDA F. JORY, *Administrative Appeals Judge*, on behalf of the 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 (1994), and the Department of Employment Services Director's Directive, Administrative Policy Issuance 05-01 (February 5, 2005)¹. Pursuant to 7 D.C.M.R § 230.04, the authority of the Compensation

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 Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, sec. 1102 (Oct. 1, 1994) *codified at* D. C. Code Ann. §§ 32-1521.01, 32-1522 (2005). In accordance with the Director's Policy Issuance, the CRB replaces the Office of the Director in providing administrative appellate review and disposition of workers' and disability compensation claims arising under the D.C. Workers' Compensation Act of 1979, as

Review Board extends over appeals from compensation orders including final decisions or orders granting or denying benefits by the Administrative Hearings Division (AHD) or the Office of Workers' Compensation (OWC) under the public and private sector Acts.

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 June 15, 2004, the Administrative Law Judge (ALJ), concluded Claimant – Petitioner (Petitioner) was temporarily totally disabled from June 9, 2002 through August 6, 2002, that her disability ended on August 7, 2002 upon being able to return to her pre-injury job without restriction, that the medical care provided prior to June 3, 2003 was reasonable and necessary as a result of the work injury, and that no further medical care thereafter is reasonable or necessary.

Petitioner has filed an Application for Review contending that the decision is arbitrary, capricious, unsupported by substantial evidence in the record and not in accordance with the law and should therefore be reversed. Respondent has not filed any opposition to the Application for Review.

ANALYSIS

As an initial matter, the scope of review by the Compensation Review Board (CRB) and this Review Panel (hereafter, the 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. D.C. Official Code § 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. District of Columbia Department of Employment Services* 834 A.2d 882 (D.C. 2003). Consistent with this scope of review, the CRB and this panel are bound 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.

The Panel notes Petitioner has not accompanied her Application for Formal Review with a Memorandum of Points of Authority which sets forth the legal and factual basis for the review or the opposition thereto pursuant to D.C. Code §32-1522(2)(B).

amended, D.C. Code Ann. §§ 32-1501 to 32-1545 (2005) and the D.C. Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Official Code §§ 1-623.1 to 1.643.7 (2005), including responsibility for administrative appeals filed prior to October 1, 2004, the effective date of the D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004.

As to the merits of the Petitioner's appeal, the record was thoroughly reviewed and the Panel finds that the ALJ's factual findings are supported by substantial evidence on the record as a whole, and are, therefore, conclusive. See *Marriott Int'l v. District of Columbia Department of Employment Services*, 834 A.2d 882 (D.C. 2003); D.C Code §32-1501 to 322-1545(2005) at §32-1521.01 (d)(2)(A). Further the ALJ's conclusions of law are in accordance with the law.

Inasmuch as the parties stipulated to the causality of Petitioner's injury and condition, the ALJ stated Petitioner had the burden of proving entitlement to the requested benefits by a preponderance of the evidence without the aid of the statutory presumption, *Citing Dunston v. D.C. Dept. of Employment Services.*, 509 A.2d 109 (D.C. App. 1986). The ALJ weighed the medical evidence, i.e., opinions of Dr. Hampton Jackson and testimony put forth by Petitioner against the cross-examination testimony of Petitioner and IME opinions of Drs. Robert Collins and Louis E. Levitt. The ALJ stated in detail the reasons for rejecting Dr. Jackson's opinion, thereby complying with the case precedence established by *Short v. District of Columbia Department of Employment Services*; 723 A.2d 845 (D.C. 1998); *Stewart v. District of Columbia Department of Employment Services*, 606 A.2d 1350 (D.C. 1992). Specifically the ALJ explained that Dr. Jackson's reports were inconsistent, including but not limited to, the frequently changing recommendations regarding the need for surgery. The ALJ also acknowledged Dr. Jackson's professional censure which has been acknowledged by this forum consistently of late and as the ALJ states is "a factor clearly of relevance in an adjudicatory proceeding such as this, where his reports constitute expert evidence rendering the professional shortcomings of the expert a matter of interest." CO at 7.

Similarly with regard to Petitioner's request for medical benefits beyond August 7, 2002, the ALJ relied on what the ALJ described as an unequivocal statement of Dr. Levitt that no additional care is indicated and therefore treatment after August 7, 2002 was denied.

After a review of the record, the Panel has determined the record fully supports the ALJ's thorough, well reasoned decision, and the Panel, therefore adopts the reasoning and legal analysis expressed by the ALJ in that decision in affirming the Compensation Order in all respects.

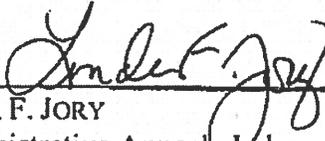
CONCLUSION

The Compensation Order of June 15, 2004 is supported by substantial evidence of record, and is in accordance with the law.

ORDER

The Compensation Order issued on June 15, 2004 is hereby **AFFIRMED**.

FOR THE COMPENSATION REVIEW BOARD:



LINDA F. JORY
Administrative Appeals Judge

January 19, 2006

DATE