

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Department of Employment Services**

VINCENT C. GRAY  
MAYOR



DR. ROCHELLE L. WEBB  
ACTING DIRECTOR

**COMPENSATION REVIEW BOARD**

**CRB No. 10-003**

**DEBORAH JONES,**  
**Claimant-Respondent,**

v.

**DISTRICT OF COLUMBIA SUPERIOR COURT and**  
**OFFICE OF RISK MANAGEMENT DISABILITY COMPENSATION PROGRAM,**  
**Self-Insured Employer/Administrator-Petitioner.**

Appeal from a Compensation Order by  
The Honorable Belva D. Newsome  
AHD No. PBL09-026, DCP No. 7610460001199-0002

Frank McDougald, Esquire for the Petitioner  
Deborah Jones, *pro se* Respondent

Before MELISSA LIN JONES, LAWRENCE D. TARR, and HENRY W. MCCOY, *Administrative Appeals Judges.*

MELISSA LIN JONES, *Administrative Appeals Judge*, for the Compensation Review Board.

**DECISION AND ORDER**

JURISDICTION

Jurisdiction is conferred upon the Compensation Review Board ("CRB") pursuant to D.C. Official Code §1-623.28, 7 DCMR §118, and Department of Employment Services Director's Administrative Policy Issuance No. 05-01 (February 5, 2005).

FACTS OF RECORD AND PROCEDURAL HISTORY

From 1990 until April 1996, Ms. Deborah Jones worked as a court reporter. As a result of a work-related injury on April 17, 1996, Ms. Jones began receiving disability compensation benefits. Those benefits were terminated in 2008 because Dr. Patrick Bays opined Ms. Jones was capable of returning to her employment, and a formal hearing was requested.

In lieu of a formal hearing, Ms. Jones' claim for reinstatement of disability compensation benefits was submitted on written briefs, and on September 1, 2009, the administrative law judge ("ALJ") issued a Compensation Order. Ms. Jones' claim was granted.

The District of Columbia Superior Court ("Employer") appealed the September 1, 2009 Compensation Order. Ms. Jones did not file a reply to Employer's appeal.

#### ISSUE ON APPEAL

Are the findings of fact and conclusions of law contained in the September 1, 2009 Compensation Order supported by substantial evidence in the record?

#### ANALYSIS

The scope of review by the CRB is limited to making a determination as to whether the factual findings of the Order are based upon substantial evidence in the record and whether the legal conclusions drawn from those facts are in accordance with applicable law.<sup>1</sup> § 1-623.28(a) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Official Code § 1-623.1 *et seq.* ("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, supra*.

Once a claim for disability compensation has been accepted and benefits have been paid, in order to prevail at a formal hearing, Employer must adduce persuasive evidence sufficient to substantiate the modification or termination of an award of benefits. *Lightfoot v. D.C. Department of Consumer and Regulatory Affairs*, ECAB No. 94-25 (July 30, 1996).<sup>2</sup> The September 1, 2009, Compensation Order clearly states

Employer has met the first part of its burden by showing an improvement in claimant's physical ability through the September 2, 2008 [Additional Medical Evaluation by Dr. Bays.] (Emphasis added.)

*Jones v. D.C. Superior Court*, AHD No. PBL09-026, DCP No. 7610460001199-0002 (September 1, 2009), p.6. Then, however, without citing any legal authority, the ALJ went on to create a "second part" to the burden by requiring Employer satisfy economic concepts of suitable, alternative employment.

In satisfying the actual burden placed on Employer by *Lightfoot, supra*, Employer relied upon, and the ALJ accepted, Dr. Bays' opinion that Ms. Jones "could return to full gainful employment

<sup>1</sup> Substantial evidence" is relevant evidence a reasonable person might accept to support a conclusion. *Marriott International v. DOES*, 834 A.2d 882, 885 (D.C. 2003).

<sup>2</sup> The Employees' Compensation Appeals Board was abolished in 1998. Its rulings, however, remain persuasive in deciding disability compensation cases. *See Alston v. D.C. Department of Corrections*, CRB No. 08-017, AHD No. PBL06-101, DCP No. 761-32-0001-1999-0056 (November 30, 2007).

on a reasonably continuous basis without restriction.” *Jones, supra*, p.4. In other words, the ALJ found that Employer’s evidence, namely the opinion of Dr. Bays, was sufficient to substantiate the termination of Ms. Jones’ benefits because Ms. Jones was capable of returning to employment without restriction.

The burden then shifted to Ms. Jones to show through reliable, relevant, and substantial medical evidence that her physical condition had not changed and that benefits should continue. *Perry v. D.C. Department of Child and Family Services*, CRB No. 07-074, AHD No. PBL06-038, DCP/ODC No. 761010-8-2003-3 (May 29, 2007). A review of the record shows Ms. Jones offered no such evidence. Consequently, there is but one conclusion that can be reached—reinstatement of temporary total disability from January 2009 to present and continuing; reevaluation and assessment of functional capabilities; and vocational retraining,” *Jones, supra*, p.2, must be denied.

#### CONCLUSION AND ORDER

7 DCMR §267.5<sup>3</sup> authorizes the CRB to issue an Amended Compensation Order in lieu of reversal and remand in the very limited circumstances when the Review Panel’s decision can lead to but one result before the ALJ upon remand. Here, recognizing the ALJ already has determined Employer satisfied its burden to substantiate the termination of Ms. Jones’ benefits and Ms. Jones’ failure to offer any medical evidence that her condition has not changed and that benefits should continue, there is but one result which can issue on remand.

The Compensation Order of September 1, 2009 is not supported by substantial evidence in the record and is REVERSED. There being no other possible result, pursuant to 7 DCMR 267.5, Ms. Jones’ request for reinstatement of disability compensation benefits is DENIED.

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<sup>3</sup> 7 DCMR §267.5 states

The Review Panel shall only issue an amended compensation order where a remand to the Administrative Hearings Division or the Office of Workers’ Compensation would be unnecessary (e.g. where there is but one action that the Review Panel decision would permit), and thus remand would be superfluous.

and 7 DCMR §118 states

The provisions of sections 250 to 271 of Chapter 2, 7 DCMR sections 250 to 271 concerning administrative appeals to the Compensation Order Review Board (sometimes referred to in these regulations as the Board) established pursuant to the Directive of the Director of the Department of Employment Services (Director), Administrative Policy Issuance No. 05-01 (February 5, 2005), are incorporated herein by reference as fully as if stated and set forth in their entirety in this section 118.

FOR THE COMPENSATION REVIEW BOARD:

  
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MELISSA LIN JONES  
Administrative Appeals Judge

March 10, 2011  
DATE