

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 (Dir.Dkt.) No. 03-153

YOLANDA DIXON,

Claimant – Petitioner,

v.

SODEXHO MARRIOTT AND CRAWFORD RISK MANAGEMENT,

Employer/Carrier – Respondent.

Appeal from a Compensation Order of
Administrative Law Judge Anand K. Verma
OHA No. 01-410A, OWC No. 555989

Benjamin T. Boscolo, Esquire, for the Petitioner

Douglas A. Seymour, Esquire, for the Respondent

Before: LINDA F. JORY, FLOYD LEWIS and JEFFREY P. RUSSELL, *Administrative Appeals Judges*.

FLOYD LEWIS, *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, and the Department of Employment Services Director's Directive, Administrative Policy Issuance 05-01 (February 5, 2005).¹

¹ 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 D.C. 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 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. Code Ann. §§ 1-623.1 to 1.643.7 (2005), including

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 November 26, 2003, the Administrative Law Judge (ALJ) granted the request of Employer-Respondent (Respondent) for modification of an earlier award, in which Claimant-Petitioner (Petitioner) was awarded temporary total disability benefits from February 22, 2001 to the present and continuing. Petitioner now seeks review of that Compensation Order.

As grounds for this appeal, Petitioner alleges as error that the evidence offered by Respondent in support of its request for modification was not adequate to grant the modification.

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. D.C. Official Code §32-1522(d)(2). “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 Servs.*, 834 A.2d 882 (D.C. App. 2003). Consistent with this scope 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 Administrative Law Judges’ decision is erroneous because the evidence submitted by Respondent was not adequate to grant the request for modification or even look at the original Compensation Order, citing *Snipes v. District of Columbia Department of Employment Services*, 542 A.2d 832, 835 (D.C. 1988). In addition, Claimant-Petitioner contends that the modification is erroneous because it is based on part of the record which is not new and which led to the issuance of the original Compensation Order. On appeal, Petitioner also asserts that the Administrative Law Judge improperly rejected the treating physician’s opinion and the modification is not supported by substantial evidence. Respondent counters that *Snipes* is not applicable to the instant matter, a new independent medical examination was conducted well after the original Compensation Order was issued and the Administrative Law Judge properly rejected the opinion of Petitioner’s treating physician.

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.

Requests for modification are governed by D.C. Official Code § 32-1524(a). Under this section of the Act, the burden is on the party asserting that a change of circumstances warrants modification of a previous compensation order to prove the change. In order to meet this burden, Respondent must present substantial evidence that Petitioner has no residual evidence of disability that warrants the continuation of her temporary total disability benefits. See *Washington Metropolitan Area Transit Authority v. District of Columbia Department of Employment Services*, 703 A.2d 1225 (D.C. 1997) (*Anderson*).

Addressing Petitioner's *Snipes* argument, the ALJ stated that the *Snipes* rationale is only applicable in those cases in which an employer has failed to offer suitable alternative employment to an employee whose disability has only partially resolved and the employee, although unable to return to the pre-injury employment, is able to engage in a suitable alternative employment position. The ALJ then noted that the instant case is completely different to the situation addressed in *Snipes*, persuasive medical evidence clearly established that Petitioner had completely recovered from her work-related muscular strain and is capable of returning to her pre-injury employment position. As such, since Petitioner has completely recovered from her work injury and can return to her pre-injury job, the ALJ concluded that Petitioner's reliance on *Snipes* is misplaced. Compensation Order at 6. However, after reviewing the record, this Panel concludes that the ALJ erred in concluding that the *Snipes* requirements do not apply to this matter.

In *Snipes*, the District of Columbia Court of Appeals held that to obtain an evidentiary hearing on a modification petition under D.C. Official Code § 32-1524, a party must make a threshold showing that "there is reason to believe that a change in conditions has occurred." 542 A.2d at 835. In *Anderson*, the Court of Appeals clarified its holding in *Snipes*, stating: "In *Snipes*, this court upheld, as a reasonable interpretation of the Act, the agency's two-step procedure requiring (1) a determination that there is reason to believe that a change in the claimant's condition has occurred, and (2) an evidentiary hearing if that test is met. The initial determination requires a preliminary examination of the evidence which will be submitted at the evidentiary hearing." 703 A.2d at 1228 (citations omitted).

In addition, in *Blanken v. Blanken & Co.*, Dir.Dkt. No. 99-14, H&AS No. 97-163A (December 10, 2003), the Director held that regardless of whether the nonmoving party requests such an examination, an ALJ must conduct this preliminary examination of the moving party's evidence to determine whether, based upon the evidence submitted, there is reason to believe a change of condition has occurred prior to conducting a full evidentiary hearing on the merits under D.C. Official Code § 32-1524.

As such, in this case, first the ALJ must hold a *Snipes* hearing and after conducting this preliminary review, issue findings of fact and conclusions of law on whether the evidence offered by Respondent meets the "reason to believe" standard established in *Snipes*. Only after this preliminary examination should the ALJ proceed to the full evidentiary hearing on the merits of a modification request, to avoid violating *Snipes*.

Therefore, this matter must be remanded for the ALJ to first identify what evidence that Respondent presented is "some evidence" of a change of condition, and evaluate whether that

evidence meets the *Snipes* requirements, before proceeding to evaluate the record as a whole to determine whether a change of condition has, in fact, occurred since the prior formal hearing. Moreover, the ALJ must make a specific *Snipes* ruling, such as by separate order or as a specific analysis in the Compensation Order, etc.

Finally, this Panel notes that recently the CRB discussed, in great detail, the requirements surrounding the preliminary *Snipes* examination in *Johnson v. Greater Southeast Community Hospital*, CRB No. 05-224, OHA No. 03-541B (June 9, 2005).

CONCLUSION

The ALJ's determination that a *Snipes* review was not required is not in accordance with the law, as a *Snipes* preliminary hearing must be conducted before proceeding to a full hearing on the merits of a modification request.

ORDER

The Compensation Order of November 26, 2003 is hereby VACATED and this matter is REMANDED for further proceedings consistent with the above discussion.

FOR THE COMPENSATION REVIEW BOARD:

FLOYD LEWIS
Administrative Appeals Judge

August 26, 2005

DATE