

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. 03-102

BARBARA DOZIER,

Claimant – Petitioner

v.

LIFE STRIDE AND LIBERTY MUTUAL INSURANCE, Co.,

Employer/Carrier – Respondent.

Appeal from a Compensation Order of
Administrative Law Judge Linda F. Jory
OHA No. 03-232; OWC No. 582870

Matthew Peffer, Esquire, for the Petitioner

Anthony D. Dwyer, Esquire, for the Respondent

Before: E. COOPER BROWN, *Acting Chief Administrative Law Judge*, JEFFREY P. RUSSELL,
Administrative Law Judge and FLOYD LEWIS, *Acting Administrative Appeals Judge*.

FLOYD LEWIS, *Acting 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 July 23, 2003, the Administrative Law Judge (ALJ) denied a request for temporary total disability benefits by Claimant-Petitioner (Petitioner). Petitioner now seeks review of that Compensation Order.

As grounds for this appeal, Petitioner alleges the ALJ's conclusion that she voluntarily limited her income is not supported by substantial evidence and is not in accordance with the law.

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)(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. 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 ALJ's conclusion that Petitioner's refusal to return to the suitable employment offer by Employer-Respondent (Respondent) was a voluntary limitation of income is erroneous. Petitioner contends that Respondent did not present any evidence that it had a light duty position for Petitioner and did not meet its burden of proof to establish that Petitioner engaged in a voluntary limitation of income. As a result, Petitioner asserts that the Compensation Order is inconsistent with the substantial evidence of record and the applicable law and must be reversed.

Respondent counters by arguing that there is substantial evidence to support the conclusion of the ALJ, as Petitioner admitted that she could perform the job, the job offered was within her physician's restrictions and that she had been offered the job, but she failed to appear to begin working.

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.

D.C. Official Code § 32-1508(5) provides that if an “employee voluntarily limits his income or fails to accept employment commensurate with his abilities, then his wages after becoming disabled shall be deemed to be the amount he would have earned if he did not voluntarily limit his income or did accept employment commensurate with his abilities.”

The ALJ found, based on specific evidence in the record, that Petitioner’s physician, Dr. Warren Yu, after treating Petitioner’s work injury, released her to return to work on August 14, 2002, with restrictions of no heavy lifting, no prolonged standing and no bending. Respondent told its Director of Human Resources, Ms. Vashti Myers, to contact Petitioner and assign her to a facility where she was able to work light duty. Ms. Myers spoke to Petitioner and gave her the address of the 616 -14th Street facility, where she was supposed to report for work. Then Petitioner’s case manager, Ms. Rheesha Williams, contacted Petitioner on August 14, 2002 and told her to report to work on August 19, 2002, as Respondent was able to accommodate her work restrictions. Petitioner agreed with the proposal, however, she did not appear for work and instead, she applied for unemployment benefits.

In the Compensation Order, the ALJ emphasized that contrary to the credible testimony of Ms. Myers that she spoke with Petitioner and gave her the address for her return to work, Petitioner’s counsel, at the hearing, asserted that Respondent did not contact Petitioner concerning a light duty position. While rejecting this argument by Petitioner’s counsel, the ALJ also pointed out “claimant testified that Ms. Rheesha Williams, her case manager, ‘specifically’ told her that she was to report to work on August 19, 2002.” Compensation Order at 3.

In rejecting Petitioner’s counsel’s assertions that the work made available by Respondent was unsuitable and required Petitioner to bend, stand for long periods of time and perform heavy lifting, the ALJ again referred to Petitioner’s own testimony. Petitioner testified that she felt that she could, in fact, perform the duties of a night shift operator, as the position involved working at night when the clients were sleeping, heavily medicated and involved no heavy lifting. Hearing transcript at 54. Also, despite counsel’s claims that Respondent did not have light duty work, the record clearly supports, as the ALJ found, that “employer was aware claimant had restrictions, and that a conscious effort was made to accommodate her restrictions by moving her job location to another facility, which did not involve elderly patients. *See* HT at 68 and 86; RE at 7.” Compensation Order at 4. After reviewing the record as a whole, this Panel concludes that these findings are supported by substantial evidence and should not be disturbed.

Finally, in addition to Petitioner’s own testimony that she was told to report to work on August 19, 2002 and that she believed that she was able to perform the duties of a night shift counselor at the 616 14th Street facility, the ALJ found that the record contained no medical documentation after Dr. Yu’s release for Petitioner to return to work, to support a conclusion that Petitioner remained unable to return to her pre-injury duties after September 9, 2002. After a thorough review of the evidence of record, this Panel agrees with the ALJ that there is no medical evidence to support Petitioner’s claim that she was unable to perform her pre-injury employment duties after September 9, 2002.

As such, the ALJ concluded that Petitioner did not present substantial credible evidence that she was entitled to ongoing temporary total disability benefits. *Dunston v. Dist. of Columbia Dep't. of Employment Servs.*, 509 A.2d 109, 111 (D.C. 1986). After completely reviewing the record on appeal, there is no reason to disturb the ALJ's conclusion that Petitioner's refusal to return to suitable employment, made available by Respondent, was a voluntary limitation of income.

Accordingly, the Compensation Order of July 23, 2003 is supported by substantial evidence and is in accordance with the law.

CONCLUSION

The Compensation Order of July 23, 2003 that denied Petitioner's request for relief is supported by substantial evidence in the record and is in accordance with the law.

ORDER

The Compensation Order of July 23, 2003 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD

FLOYD LEWIS
Acting Administrative Appeals Judge

June 28, 2005

DATE