

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

**VINCENT C. GRAY**  
**MAYOR**



**LISA M. MALLORY**  
**DIRECTOR**

**Compensation Review Board**

**CRB No. 12-063**

**JAMAL K. EVANS,**  
**Claimant–Respondent,**

**v.**

**CHILDREN’S NATIONAL MEDICAL CENTER AND AVIZENT RISK CO.,**  
**Employer/TPA-Petitioner**

Appeal from a Compensation Order on Remand by  
The Honorable Anand K. Verma  
AHD No. 11-194, OWC No. 678657

Benjamin T. Boscolo, Esquire, for the Claimant/Respondent  
Jeffrey W. Ochsman, Esquire, for the Employer-TPA/Petitioner

Before: HENRY W. MCCOY, JEFFREY P. RUSSELL,<sup>1</sup> AND LAWRENCE D. TARR, *Administrative Appeals Judges*.

HENRY W. MCCOY, *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 §§ 32-1521.01 and 32-1522 (2004), 7 DCMR § 230, *et seq.*, and the Department of Employment Services Director’s Directive, Administrative Policy Issuance 05-01 (February 5, 2005).

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<sup>1</sup> Judge Russell has been appointed by the Director of the DOES as an interim CRB member pursuant to DOES Administrative Policy Issuance No. 12-01 (June 20, 2012).

## OVERVIEW

This appeal follows the issuance on March 28, 2012 of a Compensation Order on Remand (COR) from the Hearings and Adjudication Section, Office of Hearings and Adjudication in the District of Columbia Department of Employment Services (DOES). In that COR, Claimant's request for temporary total disability benefits for the period March 3, 2011 to March 22, 2011 was again denied. For the reasons stated below, we affirm the COR.

## BACKGROUND FACTS OF RECORD AND PROCEDURAL HISTORY

Claimant worked for Employer as a Special Police Officer. Prior to his work injury, Claimant was placed in a light duty position with lifting restrictions due to medical reasons unrelated to his employment. On February 12, 2011, Claimant hurt his back while restraining an unruly patient.

Claimant came under the care and treatment of Dr. Jeffrey Phillips who kept him off work until releasing him to light duty on June 30, 2011, which Employer was able to accommodate on July 6, 2011. A formal hearing was convened on September 8, 2011 where Claimant sought wage loss benefits for the periods February 3, 2011 to February 23, 2011 and February 25, 2011 to July 5, 2011. At the hearing and in defense of the claim, Employer asserted that Claimant's claim was barred pursuant to D.C. Code § 32-1521(4)<sup>2</sup> because Claimant had willfully intended to injure himself.

In a Compensation Order (CO) issued on October 31, 2011, the presiding Administrative Law Judge (ALJ) rejected Employer's argument that Claimant intentionally injured himself and proceeded to grant in part the claim for temporary total disability benefits for the period February 17, 2011 to July 5, 2011.<sup>3</sup> Employer timely appealed arguing that the ALJ erred in not finding that Claimant willfully intended to injure himself and that Claimant was only entitled to TTD benefits from February 17, 2011 to February 23, 2011 and from March 23, 2011 to June 29, 2011.

On February 29, 2012, the CRB issued a Decision and Remand Order where it affirmed the ALJ's ruling that Claimant had not willfully intended to injure himself but reversed and remanded the award for TTD benefits for further findings of fact on the issue of the nature and extent of Claimant's disability between March 3, 2011 and March 22, 2011.<sup>4</sup>

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<sup>2</sup> D.C. Code § 32-1521 (4) states:

In any proceeding for the enforcement of a claim of compensation under this chapter it shall be presumed, in the absence of evidence to the contrary:

(4) That the injury was not occasioned by the willful intention of the injured employee to injure or kill himself or another.

<sup>3</sup> *Evans v. Children's National Medical Center*, AHD No. 11-194, OWC No. 678657 (October 31, 2011).

<sup>4</sup> *Evans v. Children's National Medical Center*, CRB No. 11-136, AHD No. 11-194, OWC No. 678657 (February 29, 2012) (DRO).

On March 28, 2012, the ALJ issued a COR granting Claimant TTD benefits from February 17, 2011 to March 2, 2011 and from March 23, 2011 to July 5, 2011.<sup>5</sup> The ALJ determined that while the evidence from Claimant's treating physician supported his inability to return to work for the period February 17, 2011 to March 2, 2011, it did not support his inability to return to work for the period March 3, 2011 to March 22, 2011.<sup>6</sup> Employer filed a timely appeal. There is no record of Claimant filing in opposition.

#### STANDARD OF REVIEW

The scope of review by the CRB, 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.<sup>7</sup> See D.C. Workers' Compensation Act of 1979, as amended, D.C. Code §§ 32-1501 to 32-1545 (2005), at § 32-1521.01(d)(2)(A). Consistent with this standard 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.

#### ANALYSIS

In reviewing the October 31, 2011 CO, the CRB determined that the record evidence did not show that between March 3, 2011 and March 22, 2011 any physician had opined that Claimant could not return to work. Accordingly, the CO was reversed and remanded for the ALJ to further assess the nature and extent of Claimant's disability during this period.

On remand, the ALJ incorporated by reference the findings of fact from the October 30, 2011 CO. In addition, the ALJ found, based upon the disability reports of the treating physician that while there was support for Claimant being disabled and unable to return to work for the period February 17, 2011 through March 2, 2011, there was no evidence in the record to support a similar period of disability for the period March 3, 2011 to March 22, 2011.<sup>8</sup> The ALJ then concluded that the preponderance of the evidence supported Claimant's entitlement to TTD benefits from February

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<sup>5</sup> The ALJ acknowledged that the CRB was correct in determining that "he overlooked the absence of the requisite medical evidence supporting claimant's disability between March 3, 2011 and March 22, 2011." COR at 3.

<sup>6</sup> *Evans v. Children's National Medical Center*, AHD No. 11-194, OWC No. 678657 (March 28, 2012) (COR).

<sup>7</sup> "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 International v. D.C. Dept. of Employment Services*, 834 A.2d 882 (D.C. 2003).

<sup>8</sup> COR at 3.

17, 2011 to March 2, 2011 and then from March 23, 2011 through July 5, 2011.<sup>9</sup> The ALJ granted wage loss benefits for the stated periods and, by omission, denied wage loss benefits for the period March 3, 2011 to March 22, 2011. On appeal, Employer does not contest this conclusion and award. Accordingly, this determination by the ALJ is affirmed.

In the instant appeal, Employer repeats verbatim the issue it initially raised in its appeal of the October 31, 2011 CO: that Claimant willfully intended to injure himself and therefore the resulting injury is not compensable. Employer reiterates its argument to say:

The Act does not provide for compensation where the injury is the result of a willful intent to injure oneself. Claimant's injury was due solely to his decision to ignore his physician's instructions by electing to intervene in an action where it was likely that he would sustain injury, and is thus not compensable.<sup>10</sup>

The CRB addressed this argument in its February 29, 2012 Decision and Remand Order (DRO). The CRB noted that, contrary to the argument made by Employer, the ALJ did take into consideration the argument that Claimant had willfully intended to injure himself so as to make his injury not compensable pursuant to § 32-1521(4) and found no intent to willfully injure himself. In affirming the ALJ's decision on this issue, the CRB reasoned:

We agree that responding to an emergency call while on light duty restrictions does not, by itself, show a willful intent to injure oneself. We do not agree that the actions of the Claimant "can only be viewed as a deliberate intent to place himself in a position wherein he would be injured." Employer's Argument at 6. We find no error in the ALJ's conclusion. In essence, the Employer is asking us to re-weigh the evidence in the Employer's favor which we cannot do.<sup>11</sup>

As the CRB has already reviewed and decided the issue of whether this Claimant willfully intended to injure himself, further consideration is barred by *res judicata*. To the extent Employer took issue with the CRB's resolution of the issue, the proper course of action was to file a motion for reconsideration pursuant to 7 DCMR § 268.1.<sup>12</sup> As Employer failed to request reconsideration, further review of this issue is unavailable to him in this forum.

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<sup>9</sup> *Id.* at 4

<sup>10</sup> Employer's Memorandum of Points and Authorities In Support of Its Application for Review, p. 4.

<sup>11</sup> DRO, *supra*, at 3.

<sup>12</sup> 7 DCMR § 268.1 states: "Any party may, within ten (10) calendar days from the date shown on the certificate of service of the Decision and Order of the Board or of any order issued by the Board, file a request for reconsideration thereof with the Clerk of the Board."

## CONCLUSION AND ORDER

Further consideration by the CRB of the issue of whether the Claimant willfully intended to injury himself is barred by *res judicata*. On the issue of the nature and extent of Claimant's disability for the period March 3, 2011 to March 22, 2011, the findings of fact and the conclusions of law in the March 28, 2012 Compensation Order on Remand are supported by substantial evidence in accordance with the applicable law. The Compensation Order on Remand is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

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HENRY W. MCCOY  
Administrative Appeals Judge

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July 24, 2012  
DATE