GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR

F. THOMAS LUPARELLO
INTERIM DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 14-012

CURTIS EVANS,
Claimant-Petitioner,

v.

G4S SECURE SOLUTIONS, INC./WACKENHUT SERVICES, INC. and GALLAGHER BASSETT SERVICES,
Employer/Insurer-Cross-Petitioner.

Appeal from a December 31, 2013 Compensation Order By
Administrative Law Judge Nata K. Brown
AHD No. 09-364A, OWC No. 643140

Lauren E. Pisano for Petitioner
Kelly D. Fato for Cross-Petitioner

Before MELISSA LIN JONES, HENRY W. MCCOY, and HEATHER C. LESLIE, *Administrative Appeals Judges*.

MELISSA LIN JONES for the Compensation Review Board.

DECISION AND REMAND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

On October 9, 2007, Mr. Curtis Evans injured his head, right shoulder, arm, and elbow when the chair he sat in collapsed. Mr. Evans' injuries required surgery in December 2009, and almost one year later, Mr. Evans completed work hardening; he was capable of light duty work on a full-time basis.

Dr. Mark Scheer examined Mr. Evans on February 28, 2011 at the request of G4S Secure Solutions, Inc./Wackenhut Services, Inc., ("G4S"), Mr. Evans' employer. Dr. Scheer recommended permanent light duty with no lifting, pushing, or pulling greater than ten pounds as well as no repetitive overhead activities, reaching crawling, or climbing.

Unable to return to his pre-injury work, in August 2011, Mr. Evans started vocational rehabilitation with Ms. Cheryl Wyngarden of Ascend Services. Before leaving Ascend Services in June 2012, Ms. Wyngarden advised Mr. Evans that she had located an Associate of Arts

program in Computer Science and Information Systems Management at the Community College of Baltimore County ("CCBC").

Ms. Barbara Wright replaced Ms. Wyngarden. After determining that the computer training at CCBC was physically appropriate in terms of both the classes and the possible jobs Mr. Evans may be offered after completing that training, Ms. Wright outlined a proposed schedule of five classes and two certification exams over the course of one year.

Shortly thereafter, Ms. Wright realized the agreed-upon courses did not include a prerequisite. Ms. Wright made arrangements for Mr. Evans to take his classes, including the prerequisite, out of sequence so he still could complete the coursework in one year.

Ms. Wright asked Mr. Evans to complete a registration form, and she indicated she would call him with additional information. Mr. Evans went to the CCBC campus to register, but the registrar thwarted his attempt to register for multiple classes. After Ms. Wright learned of these events, Mr. Evans returned to CCBC and spoke to Ms. Wright's contact (Mr. Noelle Damron) to express his concerns about completing the program in one year. Thus far, Mr. Evans has completed only the prerequisite class.

Because Mr. Evans allegedly did not cooperate with job placement activities and allegedly did not register for the classes chosen for him by Ms. Wright, the parties proceeded to a formal hearing on the issue of whether Mr. Evans had failed to cooperate with vocational rehabilitation. In a Compensation Order dated December 31, 2013, an administrative law judge ("ALJ") ruled Mr. Evans had cooperated.[1] Both parties appeal that order.

In its appeal, G4S asserts the ALJ based her decision solely on Mr. Evans' testimony and a "clear misreading of the Employer's evidence."[2] G4S also contends the ALJ failed to consider large portions of its evidence. If the ALJ had considered this evidence, G4S asserts the ALJ would have reached a different conclusion. G4S's arguments are detailed in the Analysis section of this Decision and Remand Order, but ultimately, G4S requests the CRB reverse the December 31, 2013 Compensation Order or, in the alternative, remand the matter for the ALJ to address Mr. Evans' request for additional retraining.

Mr. Evans is interested in completing the Information Systems Security Certificate program which includes at least one class beyond the coursework previously incorporated into his vocational rehabilitation. In his appeal, Mr. Evans argues the ALJ failed to address his request for additional retraining classes. He requests the CRB remand this matter for the ALJ to rule on his request.

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[1] *Evans v. G4S Secure Solutions, Inc./Wackenhut Services, Inc.*, AHD No. 09-364A, OWC No. 643140 (December 31, 2013).

[2] Memorandum of Points and Authorities in Support of Employer and Insurer's Application for Review, unnumbered p. 14

ISSUES ON APPEAL

1. Do the law and the evidence of record support the ruling that Mr. Evans cooperated with vocational rehabilitation?

2. Did the ALJ adequately address Mr. Evans' request for additional retraining classes?

ANALYSIS[3]

Both parties appeal the December 31, 2013 Compensation Order. Although G4S filed its appeal after Mr. Evans did, based upon the issues raised by both parties, it makes more sense to address G4S's issue first.

G4S asserts that had the ALJ based her decision on its evidence, the ALJ would have reached a different conclusion. While it may be true that there may be substantial evidence in the record to support an award suspending Mr. Evans' benefits for failure to cooperate with vocation rehabilitation, that possibility is not the issue on review. So long as there is substantial evidence to support the ALJ's conclusion, even if there also is contained within the record under review substantial evidence to support a contrary conclusion, the CRB is constrained to uphold the Compensation Order even if the CRB might have reached a contrary conclusion.[4]

Regardless of who initially suggested a retraining program, a retraining program was undertaken, and at the heart of G4S's argument regarding the training component of Mr. Evans' vocational rehabilitation is that

> [t]he clear weight of the evidence establishes that the Claimant unreasonably refused to accept vocational rehabilitation and that the circumstances alleged by the Claimant to justify his refusal were manufactured by the Claimant to extend the retraining program and compensation that he already had agreed to accept.[5]

First, the ALJ unequivocally found Mr. Evans' testimony credible.[6] As such, the ALJ was free to rely upon that credible evidence to reach a reasonable conclusion (which she did), and whether Ms. Wright instructed Mr. Evans to go to campus and register for classes or Mr. Evans went to campus and attempted to register of his own initiative, this discrepancy is not of such significance as to change the outcome of this case.

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[3] The scope of review by the CRB is limited to making a determination as to whether the factual findings of the appealed 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. Section 32-1521.01(d)(2)(A) of the District of Columbia Workers' Compensation Act, as amended, D.C. Code §32-1501 to 32-1545 ("Act"). Consistent with this standard of review, the CRB is constrained to uphold a Compensation Order that is supported by substantial evidence. *Marriott International v. DOES*, 834 A.2d 882, 885 (D.C. 2003).

[4] *Id.*

[5] Memorandum of Points and Authorities in Support of Employer and Insurer's Application for Review, unnumbered p. 15.

[6] *Evans* at p. 2.

Next, the ALJ was not obligated to inventory the evidence.[7] Having said that, at the formal hearing, G4S took the position that Mr. Evans' failure to cooperate stemmed from deficiencies in his independent job search from June 2012 through October 2012 and in his failure to take particular retraining courses during a one year time period.[8] Although the ALJ adequately resolved the issue of failure to cooperate with the retraining program, the Compensation Order fails to address whether Mr. Evans failed to cooperate with job placement efforts, and in order to conform to the requirements of the District of Columbia Administrative Procedures Act ("APA"),[9] (1) the agency's decision must state findings of fact on each material, contested factual issue; (2) those findings must be based on substantial evidence; and (3) the conclusions of law must follow rationally from the findings.[10] Thus, when an ALJ fails to make factual findings on each materially contested issue, an appellate court is not permitted to make its own finding on the issue; it must remand the case for the proper factual finding.[11]

The CRB is no less constrained in its review of Compensation Orders.[12] Moreover, whether an ALJ's decision complies with the APA requirements is a determination limited in scope to the four corners of the Compensation Order under review. Thus, when, as here, an ALJ fails to make express findings on all contested issues of material fact, the CRB can no more "fill the gap" by making its own findings from the record than can the Court of Appeals but must remand the case to permit the ALJ to make the necessary findings.[13] For this reason, the law requires we remand this matter.

Finally, G4S mischaracterizes the posture of an apparent attempt to privately resolve the vocational rehabilitation issue. In a workers' compensation case, a written stipulation is not binding until it has been signed by both parties. Mr. Evans never signed a stipulation; therefore, there was no agreement between the parties. Nonetheless, this background is important to resolving the issue raised by Mr. Evans on appeal.

Pursuant to §32-1507(a) of the Act, employers may be responsible for providing vocational rehabilitation to claimants who are unable to return to pre-injury employment:

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[7] *Washington Hospital Center v. DOES*, 983 A.2d 961 (D.C. 2008).

[8] Hearing Transcript pp. 28-35.

[9] D.C. Code §2-501 *et seq.* as amended.

[10] *Perkins v. DOES,* 482 A.2d 401, 402 (D.C. 1984).

[11] *King v. DOES,* 742 A.2d. 460, 465 (Basic findings of fact on all material issues are required; only then can the appellate court "determine upon review whether the agency's findings are supported by substantial evidence and whether those findings lead rationally to its conclusions of law.")

[12] See *Washington Metropolitan Area Transit Authority v. DOES,* 926 A.2d 140 (D.C. 2007).

[13] See *Mack v. DOES,* 651 A.2d 804, 806 (D.C. 1994).

> The employer shall furnish such medical, surgical, vocational rehabilitation services, including necessary travel expenses and other attendance or treatment, nurse and hospital service, medicine, crutches, false teeth or the repair thereof, eye glasses or the repair thereof, artificial or any prosthetic appliance for such period as the nature of the injury or the process of recovery may require. The employer shall furnish such additional payment as the Mayor may determine is necessary for the maintenance of an employee undergoing vocational rehabilitation, not to exceed $50 a week.

The Act does not, and given the diversity inherent in workers' compensation cases likely could not, prescribe how the employer must accomplish this obligation when it is appropriate.

Mr. Evans "would like to complete the Information Systems Security Certificate (hereinafter, ISSC) program, which requires 12 classes."[14] The ALJ did not specifically grant or deny this request when determining Mr. Evans had cooperated with the retraining aspects of vocational rehabilitation; however, the ALJ could not do so because an ALJ lacks authority to direct any employer to provide specific training or other activities when complying with its requirement to deliver vocational rehabilitation services. Sometimes training may be offered; sometimes job placement may be offered; sometimes both may be offered. The details of any vocational rehabilitation plan remain within the purview of parties in their efforts to return a claimant to a pre-injury wage. It is not the ALJ's role to dictate how that is to be accomplished. It is only when a claimant does not cooperate with offered vocational rehabilitation that an ALJ can determine that such a lack of cooperation is reasonable thereby entitling the claimant to continuing benefits or unreasonable thereby suspending the claimant's entitlement to continuing benefits.

CONCLUSION AND ORDER

The law and substantial evidence in the record support that Mr. Evans cooperated with the retraining portion of vocational rehabilitation, and that portion of the Compensation Order is AFFIRMED; however, the Compensation Order does not address Mr. Evans' alleged failure to cooperate with job placement efforts. Thus, the CRB must REMAND this matter for analysis of that issue. Because the ALJ lacks authority to direct the details of Mr. Evans vocational rehabilitation, she adequately addressed Mr. Evans' request for additional classes.

FOR THE COMPENSATION REVIEW BOARD:

MELISSA LIN JONES
Administrative Appeals Judge

March 26, 2014
DATE

[14] *Evans*, at p. 4.