

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 No. 08-003

GLORIA ESTES,

Claimant – Petitioner

v.

BEST WESTERN CAPITOL SKYLINE,

Self-Insured Employer –Respondent.

Appeal from a Compensation Order on Remand of
Administrative Law Judge Anand K. Verma
AHD No. 06-143, OWC No. 611820

Jessica G. Bhagan, Esquire, for the Petitioner

Gerard J. Emig, Esquire for the Respondent

Before: LINDA F. JORY, FLOYD LEWIS AND SHARMAN J. MONROE, *Administrative Appeals Judges.*

FLOYD LEWIS, *Administrative Appeals Judge*, on behalf of the Review Panel:

DECISION AND REMAND 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 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.

BACKGROUND

This appeal follows the issuance of a Compensation Order on Remand 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 on Remand, which was filed on August 31, 2007, the Administrative Law Judge (ALJ) denied the request by Claimant-Petitioner (Petitioner) for temporary total disability benefits from October 9, 2005 to November 11, 2005, concluding that light duty employment consistent with Petitioner's physical restrictions was available and Petitioner voluntarily limited her income by failing to accept the available, suitable employment. On September 28, 2007, Petitioner appealed that Compensation Order.

As grounds for this appeal, Petitioner alleges that the ALJ's decision 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). "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. District of Columbia Department of Employment Services*, 834 A.2d 882 (D.C. 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.

On October 13, 2006, the ALJ issued a Compensation Order denying Petitioner's claim for temporary total disability benefits, concluding that Petitioner voluntarily limited her income. In a Remand Order, dated February 6, 2007, the CRB found that the Compensation Order was not supported by substantial evidence and was not in accordance with the law. The CRB specifically reversed the ALJ's finding that Petitioner had failed to accept suitable alternative employment, as Employer-Respondent (Respondent) had not carried its burden of demonstrating the availability of suitable alternative employment. In the Compensation Order on Remand, the ALJ again concluded that Petitioner failed to perform alternative employment commensurate with her physical restrictions and as such, concluded that Petitioner voluntarily limited her income.

In her appeal, Petitioner asserts that despite the clear remand instruction from the CRB in reversing the prior Compensation Order's finding that Petitioner failed to accept suitable alternative employment, the ALJ refused to follow the CRB's finding and directive on this issue, as the ALJ came to the same conclusion set forth in the Compensation Order of October 13, 2006. Petitioner

asserts that that the CRB's legal determination that the prior Compensation Order was not in accordance with the law constituted the law of the case. As such, Petitioner contends that the ALJ had no jurisdiction to deny Petitioner's claim for relief, that the Compensation Order on Remand is void as a matter of law. It is Petitioner's position that the Compensation Order on Remand must be vacated and that her request for relief be granted. Respondent did not file an opposition to Petitioner's appeal.

This Panel must agree with Petitioner's arguments in this matter. As the CRB emphasized in its June 6, 2007 decision in *Rovinski v. American Combustion Industries*, CRB No. 07-91, AHD No. 06-341 (June 5, 2007), the CRB has the ultimate responsibility within the agency for interpreting the statute the agency administers. The previous Panel reversed the October 13, 2006 Compensation Order's finding that Petitioner failed to accept suitable alternative employment, concluding that Respondent did not carry its burden of demonstrating the availability of suitable alternative employment.

Thus, after reviewing the findings of fact and legal conclusions reached by the ALJ, the CRB determined that they were not supported by substantial evidence and were not in accordance with the Act. The Compensation Order of October 13, 2006 was reversed outright, as contrary to the law. The ALJ was not directed to conduct further proceedings and therefore, the ALJ was without jurisdiction to issue this Compensation Order on Remand.

The District of Columbia Court of Appeals, in *WMATA v. Dist. of Columbia Dep't. of Employment Servs.*, 926 A.2d 140 (D.C. 2007), addressed a situation somewhat similar to the instant matter, and emphasized that the CRB has no authority to issue an award of benefits in accordance with the law. However, the Court expressly held that this Panel can "remand the matter to the ALJ with instructions that the latter issue such an order." *WMATA, supra* at 148.

The Compensation Order on Remand must be vacated. This matter is remanded for the sole purpose of the issuance of an Order granting Petitioner's request for relief, as Petitioner did not fail to accept suitable alternative employment and did not voluntarily limit her income.

CONCLUSION

The Compensation Order on Remand of August 31, 2007 is not supported by substantial evidence and is not in accordance with the law and this matter must be remanded for issuance of an Order granting Petitioner's request for relief.

ORDER

The Compensation Order on Remand of August 31, 2007, is hereby VACATED and this matter is REMANDED to the Administrative Hearings Division for the issuance of an Order granting Petitioner's request for relief.

FOR THE COMPENSATION REVIEW BOARD:

FLOYD LEWIS
Administrative Appeals Judge

December 21, 2007
DATE