

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA M. MALLORY
DIRECTOR

Compensation Review Board

CRB No. 11-119

**VIRGILIO GRANADO,
Claimant–Respondent/ Cross Petitioner,**

v.

**MANGANARO CORPORATION AND AIG CLAIM SERVICES,
Employer/Insurer-Petitioner/Cross Respondent**

Appeal from a Compensation Order on Remand by
The Honorable Amelia G. Govan
AHD No. 09-270, OWC No. 645986

David J. Kapson, Esquire, for the Claimant/Petitioner
Erin E. Pride, Esquire, for the Employer-Carrier/Respondent

Before: HENRY W. MCCOY, JEFFREY P. RUSSELL,¹ 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).

¹ Judge Russell has been appointed by the Director of the DOES as an interim CRB member pursuant to DOES Administrative Policy Issuance No. 11-03 (October 5, 2011).

OVERVIEW AND FACTS OF RECORD

This appeal follows the issuance on September 30, 2011 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 from August 9, 2007 to January 28, 2009 was granted.

Claimant injured himself while working as a construction laborer for Employer in March 2006 and remained off work until returning on August 8, 2007. The following day, August 9th, while attempting to pick up a piece of sheet rock, Claimant sustained an injury to his back. Due to this injury, Claimant filed a claim for temporary total disability benefits from August 9, 2007 to the present and continuing, as well as medical treatment.

Following a formal hearing, a Compensation Order was issued on February 4, 2010 denying Claimant's request for workers' compensation benefits. The Administrative Law Judge (ALJ) ruled that although Claimant had sustained a muscular strain on August 7, 2007², that strain had resolved; that his current symptoms were not medically causally related to the claimed work injury; and, that he had no current physical restrictions to the 2007 work injury and therefore was not entitled to workers' compensation benefits.³ Claimant timely appealed to the CRB.

In an August 30, 2011 Decision and Remand Order (DRO), the CRB affirmed the denial of wage loss benefits from January 29, 2009 to the present and continuing, but vacated and remanded the denial of wage loss benefits for the period August 7, 2007 (sic) to January 29, 2009. On remand, the ALJ was instructed to weigh the record medical evidence regarding the nature and extent of Claimant's disability for the fixed period.⁴

After weighing the record medical evidence on remand, the ALJ determined that insofar as Claimant was medically restricted from returning to his work duties for the period August 9, 2007 to January 28, 2009, he was temporarily and totally disabled and entitled to wage loss benefits for that period.⁵ On October 31, 2011, Claimant and Employer each filed an Application for Review.

In his appeal, Claimant asserts that the substantial evidence in the record supports his entitlement to TTD benefits from January 29, 2009 to the present and continuing, in addition to the closed period of benefits awarded in the COR. In opposition, Employer counters that the CRB in its August 30, 2011 DRO affirmed the denial of ongoing wage loss benefits in the initial CO such that it became the law of case and therefore Claimant's appeal should be denied.

² The Compensation Order sometimes misstates the date of injury throughout the discussion as August 7, 2007, even though it was found that the injury occurred on August 9, 2007, the day after Claimant returned to work. The ALJ used the correct date, August 9, 2007, as the date wage loss benefits would commence for the fixed period in question.

³ *Granado v. Manganaro Corporation*, AHD No. 09-270, OWC No. 645986 (February 4, 2010).

⁴ *Granado v. Manganaro Corporation*, CRB No. 10-076, AHD No. 09-270, OWC No. 645986 (August 30, 2011).

⁵ *Granado v. Manganaro Corporation*, AHD No. 09-270, OWC No. 645986 (September 30, 2011) (COR).

In its appeal, Employer argues that the ALJ erred in awarding TTD from August 9, 2007 to January 28, 2009 as there is not substantial credible evidence in the record to support the award and the conclusion to award benefits does not flow rationally from the finding made. In opposition, Claimant argues to the contrary that the award is supported by substantial evidence in the record and should be affirmed.

ANALYSIS

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.⁶ See D.C. Workers' Compensation Act of 1979, as amended, D.C. Code Ann. §§ 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.

We first address the appeal filed by Claimant. In his brief on appeal, Claimant noted that while the ALJ awarded disability benefits in the COR for the period August 9, 2007 to January 28, 2009, she left unchanged the previous denial for ongoing TTD benefits and that substantial evidence in the record establishes his entitlement to those benefits. As this issue has already been decided, we firmly disagree.

Claimant's entitlement to TTD benefits was initially addressed in the February 4, 2010 CO. At that time, the ALJ denied wage loss benefits from August 9, 2007 to the present and continuing. Claimant appealed that ruling. On August 30, 2011, the CRB vacated the denial of benefits for the period August 9, 2007 to January 28, 2009, but affirmed the denial of TTD benefits from January 29, 2009 to the present and continuing. Claimant's arguments on this issue have already been considered and rejected. The CRB's decision regarding the denial of ongoing TTD benefits has become the law of the case and not subject to further re-litigation. Accordingly, Claimant's appeal is denied.

We next turn to Employer's appeal. Employer appeals the award in the COR of TTD benefits for the period August 9, 2007 to January 28, 2009. It is Employer's position that although the ALJ found Claimant's testimony lacked credibility and accorded less weight to the treating physicians' opinions, she nonetheless awarded wage loss benefits for the closed period in question.

In the CRB's August 30, 2011 DRO, it was determined that because the ALJ gave specific reasons for rejecting the opinion of Dr. Childs, the treating physician, that ruling would not be

⁶ "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).

disturbed as it would constitute a re-weighing of the evidence.⁷ However, the ALJ's reliance on the Employer's physician, Dr. Gordon, specifically with regard to the application of his opinion to the closed period of benefits, was deemed faulty, as the CRB reasoned

Nonetheless, Dr. Gordon's opinion issued on January 29, 2009 and as written cannot constitute substantial evidence that Mr. Granado did not suffer wage loss from August 7, 2009 (sic) to January 28, 2009 as a result of his work-related accident because Dr. Gordon opines there was a muscle strain for a period of time which resolved, but his reports do not specify the duration of the strain. In the absence of such specificity, the record lacks sufficient evidence to support a finding that the strain resolved before Mr. Granado was seen by Dr. Gordon.

In response to the CRB's determination of the need for specificity on the resolution of Claimant's muscle strain, the ALJ found that Claimant's treating physicians, Drs. Annunziata and Childs, did not release him to return to his normal work duties "between August 7, 2007 and January 28, 2009."⁸ In addition and noting the CRB's reservations on the use of Dr. Gordon's opinion, the ALJ further reasoned

However, as stated by the Board, Dr. Gordon's opinion cannot be used to address the nature and extent of Claimant's disability during the period (August 7, 2007 to January 28, 2009) preceding his examination. This means that for that period, the only applicable record medical evidence is that generated by Dr. Annunziata and Dr. Childs. In his July 13, 2009 deposition testimony Dr. Childs indicated that although he saw no documentation in Claimant's chart, he "would have kept him off work" until MRI were received and reviewed. Dr. Childs further opined that based upon Claimant's complaints and MRI results, he did not think Claimant was able to return to his position at the time during his treatment. (RX 5, p. 16-18).

Because there is no record evidence to indicate he was medically released for return to full duty work, Claimant has shown, by a preponderance of the evidence, that he was unable to perform his work duties during the period at issue. The medical opinions of Claimant's treating physicians, although certainly not sufficient to free the mind wholly from all reasonable doubt, must carry the superior evidentiary weight in this case.⁹

The ALJ proceeded to conclude that Claimant had established that he was totally disabled for the period August 9, 2007 to January 28, 2009 and as Employer provided no evidence of suitable

⁷ *Granado*, CRB No. 10-076, p. 4-5.

⁸ COR, p. 5.

⁹ *Id.*, pp. 6-7.

alternative employment, Claimant was entitled to wage loss benefits for the period at issue.¹⁰ As the record evidence supports the ALJ's findings and conclusion, we find no basis to disturb her ruling.

CONCLUSION AND ORDER

The Compensation Order on Remand of September 30, 2011 is supported by substantial evidence and is in accordance with the law. Accordingly, it is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

HENRY W. MCCOY
Administrative Appeals Judge

June 25, 2012
DATE

¹⁰ See *Logan v. DOES*, 805 A.2d 237 (D.C. 2002).