GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services

VINCENT C. GRAY
MAYOR

LISA M. MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 12-016

BESSIE HILL,

Claimant–Petitioner,

v.

HOWARD UNIVERSITY,

Self-Insured Employer–Respondent.

Appeal from a Compensation Order on Remand of
Administrative Law Judge Anand K. Verma
AHD No. 10-117A, OWC No. 657973

Benjamin T. Boscolo, Esquire, for the Petitioner

William H. Schladt, Esquire, for the Respondent

Before JEFFREY P. RUSSELL,[1] HEATHER C. LESLIE[2] AND MELISSA LIN JONES, *Administrative Appeals Judges*.

JEFFREY P. RUSSELL, for the Compensation Review Board. MELISSA LIN JONES, *concurring in part and dissenting in part.*

DECISION AND REMAND ORDER

OVERVIEW

Following a formal hearing conducted on June 21, 2011, an Administrative Law Judge (ALJ) in the Department of Employment Services (DOES) issued a Compensation Order on July 21, 2011 in which the ALJ awarded Bessie Hill (Petitioner) 12% permanent partial disability (ppd) under the schedule to her left leg, for which Petitioner had sought an award of 29%, and denied any award to the right leg, for which Petitioner had sought an award of 7%.

[1] Judge Russell is appointed by the Director of the District of Columbia Department of Employment Services (DOES) as a Board Member pursuant to DOES Administrative Policy Issuance No. 12-01 (June 20, 2012).

[2] Judge Leslie is appointed by the Director of DOES as a Board Member pursuant to DOES Administrative Policy Issuance No. 12-02 (June 20, 2012).

Petitioner appealed both awards, arguing numerous errors on the part of the ALJ. The Compensation Review Board (CRB) rejected Petitioner's contentions that the ALJ erred by failing to make specific findings as to each of the five "Maryland factors" denominated as being relevant to ppd awards in D.C. Code § 32-1508 (U-i).

However, relying upon then-current law, the CRB agreed that the ALJ erred by making an explicit finding that Petitioner had not suffered any actual loss of wages (or rather, wage earning capacity) as a result of her injuries, and relied upon that finding in considering the extent of Petitioner's schedule disability. The CRB also agreed with Petitioner that the ALJ erred in denying any award to the right leg based upon the ALJ's apparent determination that any claimed disability to that scheduled member was not causally related to the work injury, in contravention of the stipulation of the parties to the issue of medical causal relationship.

The CRB vacated the awards on those grounds, and remanded the matter with instructions to reconsider the claim on the record as a whole but (1) without regard to the issue of medical causal relationship, and (2) without consideration of any actual specific wage loss that was or was not suffered by Petitioner as a result of the injuries. The first directive was premised upon the parties having stipulated to medical causal relationship, while the second directive was premised upon the CRB's application of the principals enunciated in *Corrigan v. Georgetown University Hospital*, CRB No. 06-094 (September 14, 2007), in which the CRB established the principal that it is reversible error for an ALJ to consider a claimant's comparative pre- and post-injury wages as part of the evaluation of the extent of a schedule disability.

On January 26, 2012, the ALJ issued a Compensation Order on Remand (COR), in which he made the same award, i.e., 12% to the left leg and no award to the right. Petitioner again appealed, which appeal is the matter presently before us.

In her appeal, Petitioner argues (1) that the ALJ erred in concluding that she was, from an evidentiary standpoint, bound by the opinion of her treating physician with regard to the extent of her medical impairment, (2) that the ALJ again improperly denied an award based upon a finding that there was no medical causal relationship between the right leg disability and the work injury, and (3) that even if the issue of medical causal relationship was properly before the ALJ, the finding that there was no such relationship is not supported by the record evidence.

Respondent opposes the appeal, arguing that the COR does not rely upon consideration of wage loss, and is not based upon a finding that the right leg disability, if any, is not medically causally related to the work injury, and that COR is therefore in accordance with the directive of the CRB in its Decision and Remand Order, and must be affirmed.

STANDARD OF REVIEW

The scope of review by the CRB, as established by the Act and as contained in the governing regulations, is generally 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. *See*, D.C. Workers' Compensation Act of 1979, as amended, D.C. Code § 32-1501, *et seq.*, (the Act) at § 32-1521.01

(d)(2)(A), and *Marriott International v. DOES*, 834 A.2d 882 (D.C. 2003). Consistent with this standard of review, the CRB must affirm 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 this panel might have reached a contrary conclusion. *Id.*, at 885.

DISCUSSION AND ANALYSIS

Turning to the contention that the ALJ again improperly considered wage loss in connection with the determination of the nature and extent of the schedule disabilities, we note initially that during the pendency of this appeal, the District of Columbia Court of Appeals (DCCA) issued a decision in *Jones v. DOES*, 41 A.3rd 1219 (D.C. 2012) (*Jones*). In *Jones*, the DCCA wrote as follows:

> We can agree with the basic premise expressed by the CRB that the determination of disability is not an exact science, and that it necessarily involves a certain amount of "prediction," in making a schedule award […]. But whether or not the measure for such a disability award, expressed by the statute in terms of weeks of pay […] may be described as "arbitrary," it cannot be countenanced that the ALJ's decision-making itself can be arbitrary [ftnt. 4 omitted]. There is a qualitative difference between recognizing that in making a legal determination of disability, the ALJ comes to a conclusion based on a complex of factors, taking into account physical impairment and potential for future wage loss, and the application of judgment based on logic, experience and even "prediction," and considering that any disability determination by the ALJ, once made, is impermeable to review. We cannot accept "the predictive nature of the judgment 'as though it were a talisman under which any agency decision is by definition unimpeachable'". *Int'l. Ladies Garment Workers' Union v. Donovan, 722 F.2d 795, 821, 232 U.S. App. D.C. 309 (D.C. Cir. 1983)* (quoting *Motor Vehicle Mfrs. Ass'n, Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 50, 103 S. Ct. 2856, 77 L. Ed. 2d 443 (1983)).*
>
> ...
>
> In this case, we know that the ALJ resolved the conflict between the two doctors and found that petitioner had suffered a permanent impairment to her left leg of 6%. We also know that the ALJ was properly aware that the disability determination was not the same as physical impairment, and required a determination of economic wage loss. *Washington Post Co.[v. DOES], 675 A.2d [37] at 40* (quoting *American Mut. Ins. Co. v. Jones, 426 F.2d 1263, 1265, 138 U.S. App. D.C. 269 (D.C. Cir. 1970)).* There is evidence in the record that petitioner established such a loss because she could not perform her part-time work.[ftnt. 7, to be quoted *post*]. Petitioner claims that her impairment restricted her to sedentary work, resulting in an economic impairment in excess of 20% [ftnt. 8 omitted]. The ALJ stated in conclusory terms, with apparent contradiction, that, "In consideration of the evidence in the record as detailed above, and *setting aside any consideration of wage loss but presuming an effect an [c]laimant's wage earning capacity,*[c]laimant qualifies for a 7% permanent partial disability award for her left leg disability." How the ALJ

> determined that the disability award should be 7%-- and not, for example, 1%, 10% or 30%-- is a complete mystery, however.
>
> On this record, therefore, we are unable to affirm the CRB's conclusions that the ALJ's determination flowed rationally from the factual findings, and that the ALJ in fact applied the law taking into account the entirety of the record. We remand this case so that the agency can, in further proceedings, make such additional findings of fact and reasoned conclusions of law, as will support the determination of the disability award.

Id., 1224 and 1226 (emphasis in original).

Footnote 7 reads as follows:

> Although neither the ALJ nor the parties have referred to the relative amounts petitioner received from her full-time and part-time employment, we note there are documents in the record (one from employer's counsel) that petitioner's part-time work comprised approximately 20% of her overall earnings.

Id.

From this language in *Jones,* including the fact that the court considered a calculation of the claimant's lost earnings resulting from her inability to perform her part-time job post-injury, (20% of her pre-injury earnings), we conclude that the DCCA is of the view that comparing pre- and post-injury earnings is not proscribed. And, coupled with the court's command that consideration of a schedule award "tak[e] into account the entirety of the record", it appears that the court deems it entirely appropriate to consider the effect of the injury on a claimant's actual earnings, where the record contains such evidence.

We must take exception to our colleague in dissent's characterization of our reading of *Jones* as being "tortured", and her statement that the law "hasn't changed" regarding the propriety of considering the existence and extent of an injured worker's actual, post injury wage differential when assessing the extent of the permanent injury upon that worker's earning capacity, and hence, likely future wage losses. The DCCA specifically characterized the ALJ's assertion in *Jones* that she "consider[ed] … the evidence in the record as detailed above, … *setting aside any consideration of wage loss but presuming an effect an [c]laimant's wage earning capacity*" [italics added] to be an apparent contradiction (*Jones, supra*), then proceeded itself to identify the evidence of record concerning the extent of the post-injury wage losses, and consider the percentage wage loss that had been experienced. If an ALJ had done that, under *Corrigan*, the ALJ would have been reversed.

With respect to whether the law has now changed on this subject, the following quote from *Al Robaie, supra*, which decision our colleague chaired, recognizes the change in the law (citing via footnote *Jones, supra,* and *Smith v. DOES*, 548 A.2d 95, 100 (D.C. 1988)):

> Furthermore, the ALJ's ruling that Mr. Al-Robaie is not entitled to permanent partial disability benefits because he "has not returned to any type of gainful employment" also constitutes error. Upon remand, the ALJ is directed to reconsider the Claimant's request for permanent partial disability benefits without any consideration of wage loss except to the extent that such wage loss correlates with or is indicative of loss of wage earning capacity or economic impairment.

In other words, where the evidence of a post injury wage loss *does* correlate with or is indicative of loss of wage earning capacity or economic impairment, it *is* relevant, material, and it is not error to consider it. Thus, the law has now changed, the DCCA having jettisoned the underlying principals of *Corrigan*, which we now take as being no longer applicable. Evidence of post-injury wage loss is relevant to the extent of a schedule disability if it correlates with or is indicative of the injury's effect on future wage earning capacity.

In any event, whether Petitioner's argument that the ALJ again considered wage loss or Respondent's argument that the ALJ was merely discussing his view that having done so in the CO was not error is correct, we need not resolve. In light of *Jones*, to have done so would not have been error, and given that the same conclusion was reached in both the CO and COR, whether the ALJ included such considerations in the COR becomes immaterial.

What is *not* immaterial is the ALJ's apparent continuing misapprehension concerning the effect of a stipulation on the issue of medical causal relationship. In the COR, the ALJ wrote:

> On remand the CRB alleges the reliance upon the wage loss in determining the [ppd] benefits was in error. It also, perhaps erroneously, alleges the undersigned raised the stipulated issue of medical causal relationship.
>
> First to address the latter allegation, the CO listed only nature and extent as an issue for resolution and discussed it in depth in the analysis at page 4. Furthermore, the stipulated Findings of Fact at page 2 of CO unambiguously referenced that the accidental injury of March 6, 2009 arose out of and in the course of claimant's employment.

COR, page 3. The sentence beginning "Furthermore" evidences the ALJ's error regarding the difference between legal and medical causal relationship issues. While there is sometimes some overlap, as a general proposition issues involving the facts surrounding *an event* or a *workplace condition or requirement,* and whether they give rise to a compensable work injury, are relevant to *legal causation*. Examples of questions concerning legal causal relationship include whether on the one hand an employee was working when an injury occurred, or was he going and/or coming from work on the other; was a slip and fall that caused an injury idiopathic, or work related; was the claimed injury the result of a claimant's performing his job, or did it result from horseplay or some other deviation from the job. In contrast, questions concerning whether, assuming the existence of a compensable workplace injury, a given medical condition is the result of that workplace injury are referred to as the issue of *medical causal relationship*: is a claimant's C4-5 disc bulge the result of his work-related auto accident, or is it solely the result of degenerative arthritis; are a claimant's

headaches the result of a stipulated workplace accident, or are they caused by a subsequent motor vehicle collision.

In this case, the CRB determined that the ALJ denied any award to the right leg on the grounds that there was no medical causal relationship between the right leg complaints and the work injury. The CRB reached that conclusion because the ALJ wrote, in the CO, as follows:

> A careful scrutiny of the [sic] adduced at the hearing demonstrates claimant's complaint in the right leg did not surface until March 31, 2010, more than a year after the work injury of March 6, 2009. Superficial tenderness about the right knee coupled with achilles tendinopathy was first noted by Dr. Bhattacharyya in his follow up examination on November 12, 2010; it was not manifested at the time of [sic] March 6, 2009 injury. Hence, absent any causal connection between the original injury [ftnt. 5 omitted], Dr. Bhattacharyya most likely did not think prudent to apportion any impairment to the right knee.

CO, page 6. The most reasonable interpretation of this phrasing is that the ALJ was explaining Dr. Bhattacharyya's failure to render a right leg rating as being the result of the doctor's opinion that the right leg complaints were unrelated to the stipulated workplace injury. The use of the term "apportionment" here appears to be the ALJ's way of saying that no portion of the present right leg complaints are related to the workplace accident; they are 100% "apportioned" to some other, unrelated and otherwise un-described cause. In other words, the ALJ interpreted the failure of the treating physician to render a rating to the right leg as an expression by the treating physician of the opinion that Petitioner's right leg complaints are not medically causally related to the workplace injury.

Not only was the sole issue in contest indentified to be the "nature and extent of disability", the issue of "medical causal relationship" was explicitly stipulated to on the record at the time of the formal hearing by the ALJ himself. HT 5, line 18 – 19. On remand, the ALJ was required to make a determination based upon the record evidence as to the extent of the present disability to Petitioner's left leg, and to take as a matter of the stipulated law of the case that such disability is medically causally related to the workplace injury. The ALJ did not do this. We are therefore compelled to remand the case once again.

Lastly, we note that the ALJ wrote the following, in explaining why he accepted the treating physician's rating in preference to a separate IME rating provided by Petitioner which Petitioner argued was more in keeping with her real disability:

> [T]he record contains [sic] preponderance of evidence to support the schedule rating by claimant's treating physician […] and negate Dr. Phillips' rating solely based on his isolated October 5, 2010 examination. Dr. Bhattacharyya's apportionment of claimant's schedule loss is consistent with the treating physician preference rule long established in the District of Columbia [citation omitted]. The undersigned notes that claimant would have argued contrary if Dr. Bhattacharyya's rating would have been higher than the IME physician's on whom he [sic] relies in this instance. [footnote

> omitted]. Thus, claimant has to accept the opinion of the doctor with whom she elected to treat and expressed no dissatisfaction with the quality of his treatment.

COR, unnumbered page 5.

While it is *possible* to read the final sentence of this passage as nothing more than the ALJ making the point that sometimes the treating physician preference cuts against a claimant's interests, it is equally possible that the final sentence represents a misunderstanding of the weight to which treating physician opinion is entitled. That is, the literal meaning of the sentence is an erroneous statement of the law: a claimant does *not* have to accept the opinion of his or her treating physician on the subject of the degree of medical impairment suffered as a result of an injury.

Because we can not tell from the ALJ's phraseology what exactly he meant and are unable therefore to discern whether he was of the view that where a treating physician renders a rating with which a claimant disagrees, the treating physician's opinion trumps the claimant-provided IME opinion as a matter of law, we must vacate the award of 12% to the left leg, and remand for further consideration, applying the proper standards of evaluating competing medical opinion. To remind the ALJ, that standard is that treating physician opinion is to be accorded great weight and is to be generally preferred to IME opinion, but it may be rejected, and IME opinion accepted, where there are persuasive, record based reasons for doing so, and where those reasons are identified by the ALJ in the Compensation Order.

Lastly, we point out that the DCCA in *Jones* was critical of and reversed the CRB for affirming a schedule award that the court deemed inadequately explained. In order to withstand such a reversal in this case, the ALJ is urged to be as explicit as possible in making his findings of fact and legal conclusions on further consideration of this case.

In summary and so that there is no misunderstanding, on remand the ALJ is to make a specific finding as to the extent of disability to *each* of Petitioner's legs, not just the left leg, and is to identify the evidence upon which each such disability determination is based. In doing so, the ALJ is free to consider the extent to which the impairments to the legs have or have not affected Petitioner's actual earnings, insofar as such earnings correlate with and are indicative of the effect of the injuries upon Petitioner's wage earning capacity. The ALJ is *not* to deny an award to the right leg based upon a conclusion that any existing disability is not causally related to the work injury: medical causal relationship of any existing right leg disability to the workplace injury has been stipulated.

CONCLUSION

The denial of an award under the schedule to the right leg based upon a conclusion that any such disability is not causally related to the workplace injury is not supported by substantial evidence and is not in accordance with the law. The ALJ's characterization of the binding effect of a treating physician's opinion relating to the degree of medical impairment is not in accordance with the law.

ORDER

The Compensation Order on Remand of January 6, 2012 is vacated. The matter is remanded. On remand the ALJ is to make a specific finding as to the extent of disability to *each* of Petitioner's legs, not just the left leg, and is to identify the evidence upon which each such disability determination is based. In doing so, the ALJ is free to consider the extent to which the impairments to the legs have or have not affected Petitioner's actual earnings, insofar as such earnings correlate with and are indicative of the effect of the injuries upon Petitioner's wage earning capacity. The ALJ is *not* to deny an award to the right leg based upon a conclusion that any existing disability is not causally related to the work injury: medical causal relationship of any existing right leg disability to the workplace injury has been stipulated.

FOR THE COMPENSATION REVIEW BOARD:

_____
JEFFREY P. RUSSELL
Administrative Appeals Judge

_____September 5 2012_____
DATE

MELISSA LIN JONES, *concurring in part and dissenting in part.*

In July 2001, the presiding ALJ issued a Compensation Order awarding Ms. Bessie S. Hill no permanent partial disability benefits to her right leg and 12% permanent partial disability benefits to her left leg. In reaching his conclusion regarding Ms. Hill's right leg, the ALJ determined "absent any causal connection between the right knee symptoms and the original injury, Dr. Bhattacharyya most likely did not think prudent to apportion any impairment of the right knee"[3] and in reaching his conclusion regarding Ms. Hill's left leg, the ALJ considered "after resuming her pre-injury employment [there is no evidence] claimant suffered any loss of wages in comparison to what she earned prior to her injury."[4]

On appeal, the CRB vacated the Compensation Order because

[3] *Hill v. Howard University*, AHD No. 10-117A, OWC No. 657973 (July 21, 2011).

[4] *Id*.

[a]s the claim for relief is for a scheduled member governed by D.C. Code §32-1508(3)(B), wage loss is not a consideration. It is clear, however, that the ALJ did take into consideration wage loss in the ultimate conclusion. The CO states,

> Furthermore, it has not been alleged nor made apparent from the proffered evidence that after resuming her pre-injury employment claimant suffered any loss of wages in comparison to what she earned prior to her injury. "Disability is an economic and not a medical concept and any injury that does not result in loss of wage earning capacity cannot be the foundation for a finding of disability. See *Upchurch v. District of Columbia Department of Employment Services*, 783 A. 2d 623, 627 (D.C. 2001)(quoting *Washington Post v. District of Columbia Department of Employment Services*, 675 A. 2d 37, 40-41 (D.C. 1996)). Schedule award is intended to compensate only for economic, not physical impairment" *Smith, supra*, 548 A. 2d at 101. It has been held that there is nothing in the plain words of statutory provisions stating explicitly, or even implicitly, that the determination of disability is the sole function of a medical doctor. And, the legislative history of the D.C. Code provision cautions against the notion that only doctors may determine disability, as defined in the statute. See Council of the District of Columbia, Committee on Government Operations, Report on Bill 12-192, the "Workers" Compensation Act of 1988," October 29, 1998 ("Committee Report"), at page 5 of the original bill.
>
> The D.C. Court of Appeals has held that "ALJs have discretion in determining disability percentage ratings and disability awards without having "to choose a disability percentage rating provided either by the claimant's or the employer's medical examiner." See *Negussie v. District of Columbia Department of Employment Services*, 915 A. 2d 391 (2007).

Hill, supra at 6-7.

As this passage shows, the ALJ erroneously considered wage loss when awarding permanent partial disability to the left and right leg. [Footnote omitted.] This error requires the CO to be remanded to the ALJ for reconsideration of the Claimant's entitlement to permanent partial disability regardless of any wage loss the Claimant may, or may not have suffered.[5]

Importantly, the CRB distinguished this case from another the ALJ had issued:

> We are aware of the Decision and Remand Order issued in *Parran v. Cash Management Solutions*, CRB No. 11-080, AHD No. 11-053, OWC No. 669891

[5] *Hill v. Howard University*, CRB No. 11-081, AHD No. 10-117A, OWC No. 657973 (December 22, 2011).

> (December 22, 2011) where another panel found the same ALJ not in error when mentioning the Claimant (in *Parran*) returned to work making the same wages. This case is distinguishable from *Parran* as the CRB in that case determined the mention of wages was in the context of the Claimant's work capacity, not actual earnings. Such is not the case here where the ALJ considered wage loss, as explained above.[6]

On remand, the ALJ was directed to reconsider Ms. Hill's request for schedule awards without consideration of her actual wage loss. The ALJ also was directed to consider the nature and extent of Ms. Hill's right leg disability without disregarding the parties' stipulation that Ms. Hill's right knee injury is related to her on-the-job accident.

The ALJ issued a Compensation Order on Remand on January 6, 2012. With little explanation but inappropriate consideration of case law from outside the District of Columbia, the ALJ awarded the same relief he had awarded previously.

The ALJ provided no explanation or analysis regarding how he reached his conclusions, applied the treating physician preference ambiguously, and rejected the parties' stipulation regarding the causal relationship of Ms. Hill's right knee injury to her employment. For these reasons, I concur with the outcome of the majority opinion; however, I dissent from the majority's position that the current state of the law permits an ALJ to consider a claimant's actual wage loss *per se* as a factor in assessing permanent partial disability.

The majority finds that excluding consideration of actual wage loss from a determination of permanent partial disability originates from the principals enunciated in *Corrigan*.[7] *Corrigan*, however, relies upon binding decisions from the D.C. Court of Appeals, and these principles clearly render consideration of actual wage loss as a factor of schedule-member permanency only insofar as that loss is indicative of an effect upon future wage earning capacity (which the majority concedes). They do not permit consideration of "the effect of the injury on a claimant's actual earnings" (as the majority asserts). It can be no clearer than what the Court has stated in *Smith v. D.C. Department of Employment Services*:

> While schedule benefits for permanent partial disability are payable regardless of actual wage loss, [footnote omitted] and while the number of weeks of compensation applicable to each loss of member is arbitrary, [footnote omitted]
>
> > the historical evidence is quite clear that the schedule was never intended to be a departure from or an exception to the wage-loss principle. The typical schedule, limited to obvious and easily-provable losses of members, was justified on two grounds: the gravity of the impairment supported a conclusive presumption that actual wage loss would sooner or later result; and the conspicuousness of the

[6] *Id*. at nt. 6.

[7] *Corrigan v. Georgetown University*, CRB No. 06-094, AHD No. 06-256, OWC No. 604612 (September 14, 2007).

> loss guaranteed that awards could be made with no controversy whatsoever.

2 LARSON §57.14(c), at 10-54. Although impaired earning capacity need not be proved to receive schedule benefits,

> this is not . . . to be interpreted as an erratic deviation from the underlying principle of compensation law -- that benefits relate to loss of earning capacity and not to physical injury as such. The basic theory remains the same; the only difference is that the effect on earning capacity is a conclusively presumed one, instead of a specifically proved one based on the individual's actual wage-loss experience.

Id. §58.11, at 10-323 -324 (footnotes omitted).[8]

Furthermore, a tortured reading of *Jones*[9] is required to reach the majority's interpretation of that case. When the D.C. Court of Appeals remanded the *Jones* case for additional explanation regarding how the ALJ in that case had reached her conclusion as to the precise percentage of disability awarded, it recognized

> the ALJ comes to a conclusion based on a complex of factors, taking into account physical impairment and potential for wage loss, and the application of judgment based on logic, experience and even "prediction."[10]

It failed to mention actual wage loss, and it failed to fault the ALJ's omission of that factor. "[C]omparing pre- and post-injury earnings is not proscribed" only insofar as it relates to future wage loss, but not in and of itself.

The law has now changed regarding the degree of specificity an ALJ must provide when explaining how a permanent partial disability schedule award has been reached. The law has not changed regarding the factors to be considered in reaching that award. Thus, I must dissent in part.

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MELISSA LIN JONES
Administrative Appeals Judge

____September 5, 2012_____
DATE

[8] *Smith v. D. C. Department of Employment Services*, 548 A.2d 95, 101 (D.C. 1988) (Emphasis added); see also, *Deshazo v. D.C. Department of Employment Services*, 638 A.2d 1152, (D.C. 1994).

[9] *Jones v. D.C. Department of Employment Services*, 41 A.3d 1219 (D.C. 2012).

[10] *Id*. at 1224.