

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. 05-228

EUGENE HODGE, SR.,

Claimant – Respondent

v.

HOWARD UNIVERSITY,

Self-Insured Employer – Petitioner

Appeal from a Compensation Order of
Administrative Law Judge Amelia G. Govan
AHD No. 05-034, OWC No. 603293

John F. Ward, Esq., for the Petitioner

Heather C. Leslie, Esq., for the Respondent

Before SHARMAN J. MONROE and JEFFREY RUSSELL, *Administrative Appeals Judges* and FLOYD LEWIS, *Acting Administrative Appeals Judge*.

SHARMAN J. MONROE, *Administrative Appeals Judge*, on behalf of the Review Panel:

DECISION AND 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 (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

BACKGROUND

This appeal follows the issuance of a Compensation Order 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, which was filed on March 21, 2005, the Administrative Law Judge (ALJ) granted the Claimant-Respondent's request for temporary total disability benefits from August 2, 2004 to the present and continuing with interest thereon and medical benefits for treatment of his low back and left leg complaints. The Employer-Petitioner now seeks review of that Compensation Order.

As grounds for this appeal, the Employer-Petitioner alleges as error that the Compensation Order is not supported by substantial evidence and is not in accordance with the law.

ANALYSIS

As an initial matter, the standard 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. *See* D.C. Workers' Compensation Act of 1979, as amended, D.C. Official Code § 32-1501 *et seq.*, at § 32-1521.01 (d)(2)(A). "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. App. 2003). 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.

Turning to the case under review herein, the Employer-Petitioner alleges that, on weighing the medical evidence, the ALJ failed to consider evidence which contradicted the credibility of, and the preference for, the opinion of the treating physician. Specifically, the Employer-Respondent asserts that Dr. Terry Thompson, the treating orthopedic surgeon, did not render an opinion on the presence of a medical causal relationship between the Claimant-Respondent's July 25, 2003 work injury and his current low back and left leg complaints. It also asserts that Dr. Gary Dennis, the treating neurologist, presented inconsistent reports on findings and was not aware of the Claimant-Respondent's history of medical treatment for low back pain. The Claimant-Respondent, however, asserts that the ALJ's decision to accord more weight to the opinion of the treating physician is supported by substantial evidence and consistent with the case law in this jurisdiction. The Claimant-Respondent maintains that having used the preference for the opinion of the treating physician, the ALJ was not required to discuss why the opinion of the IME was rejected.

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.

In this jurisdiction, it is well-established that great weight is to be given to the opinion of the treating physician and that such opinion is, in the absence of persuasive reasons to the contrary, to be preferred over the opinion of a physician retained for litigation purposes. *See Kralick v. District of Columbia Department of Employment Services*, 842 A.2d 705, 711 (D.C., 2004). Although she did not specifically state that she was applying the treating physician preference, the ALJ found the opinion of the Dr. Dennis, the Claimant-Respondent's treating neurologist, most persuasive.

The record shows that Dr. Thompson initially treated the Claimant-Respondent for low back pain. When the complaints persisted despite treatment, Dr. Thompson referred the Claimant-Respondent to Dr. Dennis, a neurologist. Dr. Dennis first examined the Claimant-Respondent and reviewed the results of his diagnostic tests on December 22, 2003. At that time, Dr. Dennis diagnosed the Claimant-Respondent's condition as lumbar stenoses with radiculopathy related to July 25, 2003 work injury. Dr. Dennis opined that the Claimant-Respondent was disabled from his work until he was re-trained or transferred to another position; he also imposed restrictions on the Claimant-Respondent's physical activity. The record shows that the Claimant-Respondent continued to treat with Dr. Dennis and also began complaining of weakness in his lower extremities. In his last report in the record, Dr. Dennis reiterated his opinion that the Claimant-Respondent's current condition was causally related to his work injury. After a review of the totality of the evidence, including the reports of Drs. Robert Gordon and James Howe, the independent medical examiners, the Panel can discern no reason to set aside the ALJ's decision.

CONCLUSION

The Compensation Order of March 21, 2005 is supported by substantial evidence in the record and is in accordance with the law.

ORDER

The Compensation Order of March 21, 2005 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD

SHARMAN J. MONROE
Administrative Appeals Judge

June 2, 2005
DATE