

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA MARÍA MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 13-039

**TRACEY HORTON,
Petitioner,**

v.

**WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY,
Employer/Insurer-Respondent.**

Appeal from a March 8, 2013 Compensation Order By
Administrative Law Judge Karen Calmeise
AHD No. 12-380, OWC No. 635573

David Kapson, Esquire, for the Claimant
Donna Henderson, Esquire, for the Employer

Before HEATHER C LESLIE, HENRY W. MCCOY, *Administrative Appeals Judges* and LAWRENCE D. TARR, *Chief Administrative Appeals Judge*.

HEATHER C. LESLIE for the Compensation Review Board.

DECISION AND REMAND ORDER

OVERVIEW

This case is before the Compensation Review Board (CRB) on the request for review filed by the Claimant - Petitioner (Claimant) of the March 8, 2013, Compensation Order (CO) issued by an Administrative Law Judge (ALJ) in the Hearings and Adjudication Section of the District of Columbia Department of Employment Services (DOES). In that CO, the ALJ denied the Claimant's request for temporary total disability benefits, interest on accrued benefits, and payment of causally related medical treatment. We VACATE and REMAND.

BACKGROUND AND FACTS OF RECORD

The Claimant is a bus driver for the Employer, a position she held since 2003. The Claimant alleged that she suffered a work related mental injury on December 18, 2006. The Claimant alleges she suffered from a mental injury due to driving through dangerous bus routes in the District of Columbia which exposed her to "dope fiends, drunks, and passengers engaged in

misconduct.” CO at 6. Because of this stress, the Claimant did not work from December 19, 2006 through July 22, 2010.

The Claimant came under the care and treatment of Dr. Satira S. Streeter, a psychologist. On January 10, 2007, Dr. Streeter opined that the Claimant was being treated for “stress and depression related to her work situation, namely negative interactions initiated repeatedly by passengers on her bus.” Dr. Streeter summarized her treatment of the Claimant on September 25, 2007, stating that she is treating the Claimant for “anxiety regarding her job as a Metro Bus Driver and the danger entailed within.”

The Employer sent the Claimant for an evaluation with Dr. Beverly Reader. Dr. Reader took a history of the Claimant’s complaints and diagnosed the Claimant several disorders, including problems with her occupation. Dr. Reader indicated that the Claimant could go back to work gradually, to which the Claimant agreed.

A full evidentiary hearing was held on December 19, 2012. The Claimant sought an award of temporary total disability benefits from December 19, 2006 through July 22, 2010 and for payment of causally related medical treatments. The issues raised were 1) did the Claimant suffer a work related accident on December 18, 2006 which arose out of and in the course of the Claimant’s employment¹; 2) medical causal relationship; 3) timely filing; and, 4) the nature and extent of the Claimant’s disability, if any. On March 8, 2013, a CO was issued which denied the Claimant’s claim for relief. The ALJ found the Claimant failed to invoke the presumption of a work related injury occurring on December 18, 2006.

The Claimant timely appealed. The Claimant argues that the CO’s finding that the Claimant did not suffer a psychiatric stress injury arising out of and in the course of her employment is not supported by the substantial evidence in the record and must be reversed and remanded.

The Employer opposed the Claimant’s Application for Review.² The Employer argues the CO is “supported by the substantial evidence in the record because the finding that Claimant failed to meet the requirements in *Ramey* is supported by the lack of probative evidence.” Employer’s argument at 3.

THE STANDARD OF REVIEW

The scope of review by the Compensation Review Board (“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, even if there also is contained within the record under review

¹The CO describes the issue as whether the claimant suffered a work related injury which arose out of *or* in the course of Claimant’s employment. The correct terminology for this issue is whether or not the Claimant suffered a work injury which arose out of *and* in the course of Claimant’s employment. We will treat this as a typographical error as it is clear, based on the conclusion of law, the ALJ recognized that both arising out of *and* in the course of her employment was necessary.

² The Employer did not appeal the CO’s finding that the Claimant had filed a timely claim pursuant to D.C. Code §32-1514.

substantial evidence to support a contrary conclusion and even if the CRB might have reached a contrary conclusion. *Marriott International v. DOES*, 834 A.2d 882, 885 (D.C. 2003).

DISCUSSION AND ANALYSIS

The Claimant's principal argument is that the ALJ erred in not affording the Claimant the presumption that a work related injury occurred which arose out of and in the scope of her employment. The Claimant specifically argues that the Claimant did present a work place condition that could have caused her psychological injury and that the medical evidence supports this testimony. The Employer argues that the Claimant failed to establish actual work place conditions necessary to prove a psychological condition citing *Bush v. United Healthcare Services*, 2011 DC Wrk. Comp LEXIS 461 (CRB 2011)(hereinafter *Bush*). The Employer further argues that the Claimant also failed to present competent medical evidence to support a finding that the alleged event could have caused the claimed psychological injury.

A review of the CO shows that the ALJ correctly relied upon the CRB decision in *Ramey v. PEPCO*, CRB No. 06-038, AHD No. 03-035C (July 24, 2008) which established the following standard for such cases:

An injured worker alleging a mental-mental claim invokes the presumption of compensability by showing a psychological injury and actual workplace conditions or events which could have caused or aggravated the psychological injury. The injured worker's showing must be supported by competent medical evidence. The ALJ, in determining whether the injured worker invoked the presumption, must make findings that the workplace conditions or events existed or occurred, and must make findings on credibility. If the presumption is invoked, the burden shifts to the employer to show through substantial evidence, the psychological injury was not caused or aggravated by workplace conditions or events. If the employer succeeds, the presumption drops out of the case entirely and the burden reverts to the injured worker to prove by a preponderance of the evidence that workplace conditions or events caused or aggravated the psychological injury.

After correctly noting the standard, the ALJ then analyzed the Claimant's testimony and evidence to determine if the Claimant had invoked the presumption, thus shifting the burden to the Employer. The ALJ found the Claimant had failed to invoke the presumption of compensability. We find this in error.

The ALJ found the Claimant testified to "dealing with a lot of misconduct, people, dope fiends, drunks, people who don't like to follow the rules" when discussing the day to day stress she experienced. CO at 6. After reciting this testimony, the ALJ stated,

Claimant's testimony does not prove actual work place conditions or events which could have caused the complained of condition. Pointing out the bus routes and types of passengers she would encounter on a daily basis is not enough to prove that work stressors or events complained of. I find that Claimant's general and vague working condition complaints are insufficient to support a finding that the claimed workplace conditions or events existed or occurred.

CO at 7.

We find this to be in error and not supported by the substantial evidence in the record. The Claimant testified to interacting with specific types of day to day stress she experienced in December 2006 in the form of people with drug problems, alcohol problems, and people who do not follow the rules on a daily basis. We cannot agree that this above description is “general and vague.”

The Employer refers us to *Bush, supra*, for the proposition that the “mere perception of a work place condition or event as stressful is insufficient” and that the Claimant had denied that any actual specific incidents or actual conditions caused her to leave work. Employer’s argument at 2. First, contrary to the Employer’s assertion, the statute does not require a specific traumatic event for there to be a compensable injury under the Act.³ Second, a review of *Bush*, reveals the CRB remanded the case to the ALJ, concluding that the scant finding of facts failed to identify what the alleged work place conditions were and what the actual work place conditions were.⁴ Here, the ALJ did acknowledge the Claimant’s testimony describing the daily stressors she encountered; the daily interactions with people, dope fiends, drunks, people who don’t like to follow the rules. Thus, contrary to Employers position, we find *Bush* dissimilar to the case at bar in this respect.

Compounding the above, we also find the ALJ failed to make findings on the Claimant’s credibility, a requirement outlined above in *Ramey, supra*. Such a credibility finding can support the Claimant’s assertion that the above stressors did arise out of and in the course of the Claimant’s employment, the same way a finding that the Claimant was incredible can be a basis to find the alleged stressors did not arise out of and in the course of the Claimant’s employment, thereby defeating the claim. However, based upon the CO before us, we cannot make that

³ See *Ferreira v. DOES*, 531 A.2d 651 (D.C. 1987) (A specific traumatic injury is not necessary to establish a prima facie case of an accidental injury.)

⁴ Specifically, the CRB concluded:

In this case, there are no findings as to (1) what the workplace events or conditions were that Ms. Bush and her health care personnel allege caused the disabling psychological condition, (2) whether Ms. Bush, on the one hand, or UHS's witnesses, on the other, or both, were credible, or (3) whether the alleged workplace events or conditions were in fact the actual events or conditions of her workplace. In this context it is necessary to remember that the medical evidence in this case is to the effect that Ms. Bush suffered a psychological injury due to a "heavy work load" and a "hostile work environment", and not merely a "perception" of such conditions. That is, Ms. Bush's social worker and her psychiatrists all appear to have accepted as true Ms. Bush's assertions that she was subjected to hostility and was overworked. Thus, it is necessary that the ALJ make findings of fact on what the alleged conditions were, what the actual conditions were, and in so doing, make credibility findings and a determination as to whether the medical causal relationship evidence includes "competent medical evidence" that the actual workplace conditions had the potential to cause the disabling psychological condition. The failure to make specific findings on the actual work conditions or events renders the Compensation Order's conclusions unsupported by substantial evidence requiring a remand for further consideration.

Bush, supra.

determination as the ALJ failed to specifically find the Claimant to be credible or incredible. As we have stated before, we cannot “fill the gaps” of the CO and make our own findings, especially where credibility determinations are involved, a determination uniquely in the hands of the ALJ. Upon remand, the ALJ is directed to make a credibility finding.

We also cannot agree with the ALJ that the Claimant failed to present competent medical evidence of an injury that should cause her psychological condition. The ALJ references Claimant’s exhibit 1 pages 2 and 3 for support, stating that the two contemporaneous medical reports do not reference the claimed workplace stressors alleged to have caused her condition. Inexplicably, the ALJ ignores page 4 of the Claimant’s exhibits, a document titled Certification of Health Care.⁵ That document specifically states that,

Ms. Horton has been dealing with stress and depression related to her work situation, namely negative interactions initiated repeatedly by passengers on her bus.

Claimant’s exhibit 1 at 4.

While we are aware that ALJ’s need not inventory the evidence in the record, the ALJ’s statement that the contemporaneous evidence does not reference any claimed workplace stressors is in error and not supported by the substantial evidence in the record. Upon remand, the ALJ is to reconsider whether or not the Claimant presented competent medical evidence taking into consideration the Certification of Health Care we referenced above, authored on January 10, 2007.

CONCLUSION

The ALJ’s conclusion that the Claimant’s description of her work related stressor as general and vague is in error. Upon remand, the ALJ is to reconsider the Claimant’s description of her work place conditions and specific examples of day to day stressors and make a credibility determination regarding the veracity of the Claimants testimony. The ALJ is also to reconsider the Claimant’s medical evidence, taking into consideration the January 10, 2007 record. After reconsidering the above, if the ALJ determines that the Claimant invoked the presumption of compensability, then the ALJ is to determine if the Employer rebutted that presumption. If the Employer rebutted the presumption, then the ALJ is to weigh all the evidence without benefit of the presumption and determine if the Claimant proved that an accidental injury occurred in the course and scope of her employment. If this occurs, then the ALJ shall consider the remaining three issues identified.

⁵We are aware of what appears to be confusion surrounding some of the dates listed on the document. The document is signed by Dr. Streeter on January 10, 2006. It also asserts that the Claimant’s intake date was December 28, 2007 and that the Claimant was to be off from this date to January 15, 2007. We will assume that the document was actually signed on January 10, 2007 and that the Claimant’s first visit was on December 28, 2006. This is more in line with a return to work date of January 15, 2007, the Claimant’s testimony, and the medical evidence submitted.

ORDER

The March 8, 2013 Compensation Order is VACATED and REMANDED for further findings of fact and conclusions of law consistent with the above discussion.

FOR THE COMPENSATION REVIEW BOARD:

HEATHER C. LESLIE
Administrative Appeals Judge

July 1, 2013
DATE