

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 (Dir.Dkt.) No. 05-265

PATRICIA HUGHES,

Claimant – Respondent

v.

GIANT FOODS, INC. AND MAC RISK MANAGEMENT, INC.,

Employer/Carrier – Petitioner.

Appeal from a Compensation Order of
Administrative Law Judge Fred D. Carney
OHA/AHD No. 01-373, OWC No. 562661

Michael L. Dailey, Esq., for the Petitioner

Heather Leslie, Esq., for the Respondent

Before LINDA JORY, FLOYD LEWIS and SHARMAN J. MONROE, *Administrative Appeals Judges*.

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 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 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 August 19, 2005, the Administrative Law Judge (ALJ), after finding that the Claimant-Respondent's (Respondent) right carpal tunnel syndrome was causally related to her December 10, 2002 work injury, granted the requested relief for temporary total disability benefits continuing from November 26, 2000 and authorization for medical treatment.² The Employer/Carrier (Petitioner) now seeks review of that Compensation Order.

As grounds for this appeal, the Petitioner alleges that the Compensation Order as issued violated its due process rights and that the decision is based upon a legal error.³

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. D.C. Official Code § 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 Petitioner alleges that the ALJ's decision was issued without holding a new formal hearing which amounts to "a taking without due process." The Petitioner argues that given the time lapse between the issuance of the first Compensation

² The August 19, 2005 Compensation Order resulted from a Remand Order issued by the Director, Department of Employment Services. Therein, the Director concluded that the ALJ failed to apply the statutory presumption of compensability to the Respondent's carpal tunnel syndrome and remanded this matter to AHD for proper application of the presumption. See *Hughes v. Giant Food*, Dir.Dkt. No. 02-04, OHA No. 01-373, OWC No. 562661 (March 06, 2003).

³ In its Application for Review, the Petitioner requested additional time to submit a Memorandum in support thereof. Although the regulations previously governing appeals required that the memorandum be filed with the Application for Review, it was the policy of the Director, Department of Employment Services to routinely grant requests for extension of time to file a memorandum. However, the policy was abolished with the institution of the CRB, which assumed the appellate responsibilities of the Director. In light of the new statutorily imposed time constraints for issuing decisions, the Petitioner's request is denied.

Order, the issuance of the Remand Order and the issuance of the instant Compensation Order, the ALJ was required to set this matter for a new hearing to take additional evidence arising since the first hearing on September 20, 2001. As to the merits of the decision, the Petitioner asserts that the ALJ incorrectly applied the presumption of compensability because he did not incorporate the undisputed medical testimony in his analysis.

As to its first alleged error in the Compensation Order, the Petitioner does not cite any provision of the law or the regulations that mandates a formal hearing be held when a matter is remanded. Nor is the Panel aware of any such provision. The Remand Order stated, “[this] case is remanded to the ALJ for proper application of the presumption to Claimant's claim of carpal tunnel syndrome, and to make findings of fact on all remaining issues.” Remand Order at p. 4. The Remand Order did not direct the ALJ to conduct a new formal hearing. At best, particularly given that the ALJ who conducted the September 20, 2001 formal hearing had resigned from AHD, it was in the ALJ's discretion to schedule a new formal hearing. Assuming *arguendo* that scheduling a new hearing was discretionary, on review of the record, the Panel discerns no evidence that the ALJ either abused his discretion or was arbitrary or was capricious in deciding this case on the record before him. Accordingly, the Panel rejects the Petitioner's due process argument.⁴

As to its second alleged error in the Compensation Order, the Petitioner asserts that the ALJ did not incorporate the undisputed medical testimony in his analysis of the statutory presumption. The Petitioner, however, did not specify which medical testimony was incorporated.

A review of the records shows that the Respondent was the only individual to present testimony at the formal hearing. The Petitioner submitted the four exhibits: the January 5, 2001 report of Dr. Robert Gordon; the December 29, 2000 report of Dr. Easton Manderson; the Employer's First Report of Injury; and the Notice of Controversion. The Respondent submitted five exhibits: medical reports of Dr. Manderson; medical reports of Dr. G. Hudson Drakes; medical reports of Dr. Robert Collins; Giant Food report from Dr. Manderson; and a wage statement.

A review of the Compensation Order shows that in rendering his decision, the ALJ considered all of the above evidence. The ALJ found, and his findings are supported by substantial evidence, that the Respondent's carpal tunnel syndrome was causally related to her work injury. In so finding, the ALJ correctly applied the statutory presumption of compensability. The Respondent's testimony that she broke her fall on October 10, 2000 with her right wrist, and the medical reports of Drs. Manderson and Easton indicating that the Respondent presented with complaints of right wrist pain, are sufficient to invoke the presumption. Likewise, as the ALJ determined the Petitioner presented the quantum of evidence sufficient to rebut the presumption, to wit: the medical report of Dr. Gordon wherein he opined that the Respondent's disabilities related to her work injury had resolved. At this juncture of the analysis, the presumption falls and the ALJ was required to weigh the parties' evidence, with the

⁴ D.C. Official Code § 32-1524 provides for the modification of awards where there is reason to believe that a change of conditions has occurred with respect to the fact or degree of disability or the amount of workers' compensation benefits payable.

burden of persuasion on the Respondent, to determine whether the Respondent's right carpal tunnel syndrome was causally related to her October 10, 2000 work injury. The ALJ accorded great weight to the opinion of Dr. Drakes, the Respondent's treating physician, in conformance with the general rule in this jurisdiction. *See Stewart v. D.C. Department of Employment Services*, 606 A.2d 1350 (D.C. 1992). Indeed, the ALJ stated that he found no specific articulable reason for rejecting the opinion of the treating physician. *See* Compensation Order at p. 7. The evidence shows that Dr. Drakes opined that the Respondent's carpal tunnel syndrome resulted from her October 10, 2000 fall at work. Claimant Exhibit No. 2. With the acceptance of Dr. Drakes' opinion, the ALJ's analysis pursuant to the statutory presumption was complete.

Consistent with the preference accorded treating physicians in this jurisdiction and the application of that preference herein, the ALJ relied upon Dr. Drakes' opinion to find that the Respondent was temporarily totally disabled. After a review of the record, the Panel detects no reason to disturb the ALJ's determination.

CONCLUSION

The Compensation Order of August 19, 2005 is supported by substantial evidence in the record and is in accordance with the law.

ORDER

The Compensation Order of August 19, 2005 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

SHARMAN J. MONROE
Administrative Appeals Judge

November 16, 2005
DATE