

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. 008-04

ADESINA JAIYEOLA,

Claimant – Petitioner,

v.

D.C. PUBLIC SERVICE COMMISSION,

Employer – Respondent.

Appeal from a Compensation Order of
Administrative Law Judge Fred D. Carney, Jr.
OHA No. PBL 00-005B; DCP No. LT2-DPE00340

Harold L. Levi, Esquire, for the Petitioner

Gail Davis, Esquire, for the Respondent

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

FLOYD LEWIS, *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, 32-1522 (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 13., 2004, the Administrative Law Judge (ALJ) denied the request for wage loss benefits made by Claimant-Petitioner (Petitioner), concluding that Employer-Respondent (Respondent) is not obligated to reinstate Petitioner to his former job, and that Petitioner is liable to Respondent for an overpayment of the amount of all benefits paid thus far, subject to the Act's 20% limitation. Petitioner now seeks review of that Compensation Order.

As grounds for this appeal, 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 scope 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 § 1-623.28(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. Dist of Columbia Dep't. of Employment Servs.* 834 A.2d 882 (D.C. 2003). Consistent with this scope 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.

In concluding that Respondent was not obligated to reinstate Petitioner to his former job, the ALJ found that the evidence indicated that Petitioner's benefits began before February 2000 and as such, Petitioner's disability benefits began more than two years before he sought to return to work in January of 2003. The ALJ concluded that since Petitioner had been disabled from work for more than two years, he is not entitled to return to his former position with all rights as provided by D.C. Official Code § 1-624.45(b)(2).

On appeal, Petitioner asserts that the key concern is when he began receiving workers' compensation benefits, and whether that was within two years of January 28, 2003. Petitioner contends that the ALJ erroneously assumed that Petitioner had received benefits from April to June of 1998 because of a finding in an earlier June 21, 2000 Final Compensation Order that Petitioner had missed approximately six weeks from work after his April 28, 1998 injury and he had returned to duty on June 1, 1998. It is Petitioner's contention that while his claim was accepted, he did not receive any workers' compensation benefits of any type prior to October 21, 2001, which is less than two years before he was declared ready to return to work.

Petitioner applies for leave to adduce material new and additional evidence in the form of a schedule compiled by the Disability Compensation Program (DCP) on January 9, 2004, which was provided to Petitioner's counsel well after the hearing in this case was conducted. Petitioner asserts that this Supplementary Exhibit 1 clearly and unequivocally confirms the admission made by Employer's counsel at the hearing, that DCP did not pay any benefits on Petitioner's behalf until October of 2001. Hearing transcript at 25.

Thus, Petitioner notes that since he did not have access to the DCP schedule at the hearing, he could not further substantiate his argument and Respondent's admission that Petitioner recovered from his injury within two years after his first receipt of workers' compensation benefits. Petitioner argues that the ALJ's assumption that since Petitioner intermittently missed work in the first year after his injury, does not prove by competent evidence that any benefits were paid to or received by Petitioner.

This Panel must agree with Petitioner on this issue and Petitioner's request to adduce material new and additional evidence is granted. In as much as this additional evidence is material and there appears to be reasonable grounds for Petitioner's failure to adduce this evidence at the hearing before the ALJ, this evidence should be taken and made a part of the record in this case. Thus, the matter must be remanded to ALJ to consider and evaluate Petitioner's new evidence in resolving Petitioner's request for benefits.

Accordingly, this matter is hereby remanded to the ALJ to consider Petitioner new evidence make findings and fact and conclusions of law on Petitioner's claim for relief.

CONCLUSION

Petitioner's request to adduce new evidence is granted and the Final Compensation Order of August 13, 2004 is hereby remanded to the Administrative Law Judge to consider Petitioner's new evidence and make further findings of fact and conclusions of law on Petitioner's request for benefits.

ORDER

The Final Compensation Order of August 13, 2004 is hereby REMANDED to the Administrative Hearings Division for further proceedings consistent with the above discussion.

FOR THE COMPENSATION REVIEW BOARD:

FLOYD LEWIS
Administrative Appeals Judge

March 23, 2006
DATE