

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services
Office of the Director

Gregory P. Irish
Director



(202) 671-1900-Voice
(202) 673-6976-Fax

JAMES SUBER, SR.,)	
)	
Claimant,)	
)	
v.)	Dir. Dkt. No. 02-27
)	OHA No. 96-104C
WASHINGTON METROPOLITAN)	OWC No. 292090
AREA TRANSIT AUTHORITY,)	(Private Sector)
)	
Self-Insured Employer.)	
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Appeal of the Compensation Order of Jeffrey P. Russell
Administrative Law Judge, Department of Employment Services

Matthew Peffer, Esquire, for the Claimant

Detria J. Liles, Esquire, for the Self-Insured Employer

DECISION OF THE DIRECTOR

Jurisdiction

Employer filed the above-captioned appeal from the February 28, 2002 Compensation Order of Administrative Law Judge (ALJ) Jeffrey P. Russell granting Claimant's claim for workers' compensation benefits, pursuant to the provisions of the District of Columbia Workers' Compensation Act of 1979, as amended, D.C. Law 3-77, D.C. Official Code §§ 32-1501-1545 (2001) (Act).

Background

On June 27, 1995, Claimant suffered a work related injury to his back and neck. Claimant received a schedule award for 7.5% loss of industrial use of his left arm as a result of his injury, pursuant to the terms of an October 28, 1999 stipulation between the parties.

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As a further result of his work injury, Claimant subsequently became: (1) temporarily totally disabled, from August 12, 2001 through December 6, 2001; and (2) temporarily partially disabled, from December 7, 2001 to the present and continuing (after returning to work in alternative employment that paid less than his weekly wages).

By his above-captioned claim, Claimant sought: (1) an award of temporary total disability benefits from August 12, 2001 through and including December 6, 2001; (2) temporary partial disability benefits from December 7, 2001 to the present and continuing; and (3) interest thereon. On February 12, 2002, a formal hearing regarding Claimant's benefits claim was conducted and, on February 28, 2002, ALJ Russell issued a Compensation Order wherein he granted Claimant's claim (Compensation Order). On March 29, 2002, Employer filed an Application for Review of the Compensation Order (appeal). On April 12, 2002, Claimant filed an Opposition to Claimant's Application for Review (Opposition).

Analysis

The sole issue on appeal, based upon the Application for Review, is a legal one - whether Claimant's receipt of a schedule award for the loss of industrial use of his left arm, pursuant to a stipulation, barred a subsequent claim for additional wage loss benefits, where the situs of Claimant's disability was a non-schedule part of the body.

The Director of the Department of Employment Services (Director) must affirm the Compensation Order under review if the findings of fact contained therein are supported by substantial evidence in the record considered as a whole and if the law has been properly applied. See D.C. Official Code § 32-1522 (2001); 7 DCMR § 230 (1986). Substantial evidence is such relevant evidence as a reasonable mind might find as adequate to support a conclusion. *George Hyman Construction Company v. D.C. Department of Employment Services*, 498 A.2d 563, 566 (D.C. 1985).

When a claimant suffers multiple disabilities from a single injury, that claimant is entitled to both schedule and non-schedule benefits, subject to proof that the non-schedule disability led to wage loss. *Morrison v. District of Columbia Department of Employment Services*, 736 A.2d 223, 226 (D.C. 1999) (citing *KOH Sys. v. District of Columbia Department of Employment Services*, 683 A.2d 446, 449-50 (D.C. 1996)).

By his appeal, Employer argued that the ALJ erred by concluding that Claimant's receipt of a schedule award under the Act for loss of industrial use of his left arm did not bar Claimant's subsequent claim for additional wage loss benefits.

Claimant opposed Employer's appeal and argued that the ALJ's decision is in accord with applicable law.

In support of its appeal, Employer relied upon *Smith v. District of Columbia Department of Employment Services*, 548 A.2d 95 (D.C. 1988) (*Smith*) and *Cherrydale Heating and Air Conditioning v. District of Columbia Department of Employment Services*, 722 A.2d 31 (D.C. 1998) (*Cherrydale*). Those cases involved injuries to the same body part and stand for the proposition that, except in extraordinary circumstances involving a subsequent amputation or its "functional equivalent," receipt of a schedule award bars any further claim for compensation payments based upon wage loss. In his analysis of Claimant's benefits claim, the ALJ declined to apply the above-referenced law and, instead, concluded that the authority applicable to this case is *Morrison v. District of Columbia Department of Employment Services*, 736 A.2d 223 (D.C. 1999). As discussed more fully below, ALJ Russell was correct to apply *Morrison* in his analysis of the instant claim.

The cardinal facts considered by the Court in *Morrison* are substantially similar to those facts presented in this matter. As was the case in *Morrison*, Claimant herein suffered one single injury that resulted in more than one disability (*i.e.*, both a schedule and non-schedule disability).¹ Additionally, the issue that was considered in and resolved by *Morrison* is the issue presented in this case – namely, whether an injured worker may receive benefits for more than one disability (*i.e.*, a schedule and non-schedule disability) resulting from the same injury. *See Morrison*, 736 A.2d at 225. In light of the aforementioned similarity of the factual backgrounds and issues presented in the two cases, *Morrison* was the appropriate authority to be applied in the resolution of the above-captioned benefits claim. Because none of the cases cited by Employer in support of its appeal concerned a single injury that resulted in more than one disability, those cases were inapposite.

As previously noted, the Court in *Morrison* ruled that, when a claimant suffers multiple disabilities from a single injury, that claimant is entitled to both schedule and non-schedule benefits, subject to proof that the non-schedule disability led to wage loss. *Morrison*, 736 A.2d at 226. On the basis of the record evidence in this case, ALJ Russell found that, as a result of his work injury, Claimant became temporarily totally disabled, from August 12, 2001 through December 6, 2001, and temporarily partially disabled, from December 7, 2001 to the present and continuing, as a result of a return to work in alternative employment that paid less than his average weekly wage. *See Compensation Order*, at 2. In

¹ In this case, Claimant's injury resulted in a schedule disability to his left arm, in addition to a non-schedule disability to his neck (which resulted in wage loss). In *Morrison*, the claimant suffered a schedule disability to his right arm, in addition to a non-schedule shoulder disability. *See Morrison*, 736 A.2d at 225.

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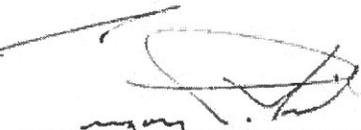
light of Claimant's wage loss, Claimant was indeed entitled to both the schedule benefits referenced in the parties' stipulation and the above-referenced wage loss benefits, pursuant to *Morrison*. The ALJ's decision is based on substantial evidence and is in accord with the law.

Conclusion

Claimant's receipt of a schedule award for the loss of industrial use of his left arm, pursuant to a stipulation, did not bar his subsequent claim for additional wage loss benefits, due to the injury to his neck.

Decision

For the reasons set forth above, the above-captioned February 28, 2002 Compensation Order is hereby **AFFIRMED**.



Gregory P. Irish
Director

JUL 24 2002

Date