

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. 05-241

TARA JAMES,

Claimant–Respondent,

v.

PROVIDENCE HOSPITAL,

Self-Insured Employer- Petitioner.

Appeal from a Compensation Order of
Administrative Law Judge David L. Boddie
OHA/AHD No. 02-269B, OWC No. 542304

Jeffrey W. Ochsman, Esquire, for the Petitioner

Timothy J. Driscoll, Esquire, for the Respondent

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

JEFFREY P. RUSSELL, *Administrative Appeals Judge*, for the Compensation 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

¹Pursuant 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 District of Columbia Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, *codified at* D.C. Official Code § 32-1521.01. In accordance with the Director's Directive, the CRB replaces the Office of the Director in providing administrative appellate review and disposition of workers' and disability compensation claims arising under the District of Columbia Workers' Compensation Act of 1979, as amended, D.C. Code Ann. §§ 32-1501 to 32-1545 (2005), and the District of Columbia Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Code Ann. §§ 1-623.1 to 1-643.7 (2005), including

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 May 12, 2005, the Administrative Law Judge (ALJ) denied Respondent's claim for an award of temporary total disability benefits, but did find that Respondent's left knee condition and injury is causally related to the work injury stipulated by the parties to have been sustained in the course of Respondent's employment with Petitioner on June 2, 1999. Petitioner now seeks review of that Compensation Order.

As grounds for this appeal, Petitioner alleges as error that the ALJ's determination that the injury sustained to Respondent's left knee is causally related to the stipulated work injury of June 2, 1999, is unsupported by substantial evidence.

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. *See* D.C. Workers' Compensation Act of 1979, as amended, D.C. Code Ann. §32-1501 to 32-1545 (2005), 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. Dist. of Columbia Dep't. of Employment Servs.*, 834 A.2d 882 (D.C. 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.

Petitioner's complaint concerning the ALJ's determination that Respondent's left knee injury and complaints are unrelated to the stipulated right ankle injury can be summed up as follows: Respondent alleges that her left knee complaints were caused by eight months of physical therapy that she was caused to undergo due to the stipulated injury; that Respondent's evidence does not support a conclusion that Respondent underwent eight months of physical therapy; therefore, the claim is unsupported by substantial evidence.

We reject Petitioner's argument, because it is premised upon an inaccurate description of Respondent's allegations concerning the cause of her left knee injury. First, Petitioner does not identify where Respondent has made the argument that her claim is premised upon the supposed

responsibility for administrative appeals filed prior to October 1, 2004, the effective date of the District of Columbia Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004.

eight months of therapy, and we find no such claim in the record. While it is true that Respondent testified that her physical therapy activities caused problems with her left knee, she repeatedly stated that she was unclear as to how long she underwent such therapy, and never claimed that the therapy was an eight month process. Second, Respondent's evidence concerning the cause of her knee problems included her testimony that she experienced left knee pain due to her having developed a limp from her right ankle problems, the overcompensation for which caused the knee pain. This specific testimony was cited by the ALJ as a basis for his decision. Compensation Order, page 3, citing HT 19 – 22.

Without detailing the specific concerns about the ALJ's findings, suffice it to say that Petitioner has done nothing more than assert numerous reasons why the ALJ might have ruled differently, had the ALJ accepted Petitioner's views as to the weight to be accorded to the evidence presented. We may not substitute our judgment for that of the ALJ, whose decision is clearly supported by substantial evidence produced to the effect that Respondent's left knee pain and complaints are the result of the physical stresses caused not only by a period of physical therapy required following the injury to the right ankle, but by the limp developed following the right ankle injury. Petitioner wishes that we re-evaluate the evidence anew, which exercise is beyond our power and jurisdiction.

CONCLUSION

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

ORDER

The Compensation Order of May 12, 2005 is hereby affirmed.

FOR THE COMPENSATION REVIEW BOARD:

JEFFREY P. RUSSELL
Administrative Appeals Judge

August 31, 2005

DATE