

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

Department of Employment Services

MURIEL BOWSER  
MAYOR



DEBORAH A. CARROLL  
DIRECTOR

COMPENSATION REVIEW BOARD

**CRB No. 16-003**

**JEFFREY RHODEN,**  
**Claimant-Petitioner,**

v.

**MEGABUS and**  
**SEDGWICK CLAIMS MANAGEMENT SERVICES,**  
**Employer/Third-Party Administrator-Respondent.**

Appeal from a December 9, 2015 Compensation Order by  
Administrative Law Judge Douglas A. Seymour  
AHD No. 15-304, OWC No. 723793

DEPT. OF EMPLOYMENT  
SERVICES  
COMPENSATION REVIEW  
BOARD  
2016 JUN 7 AM 10 30

(Decided June 7, 2016)

David J. Kapson for Claimant  
Julie D. Murray for Employer<sup>1</sup>

Before LINDA F. JORY, JEFFREY P. RUSSELL, *Administrative Appeals Judges* and *Lawrence D. Tarr, Chief Administrative Law Judge.*

LINDA F. JORY for the Compensation Review Board.

**DECISION AND ORDER**

FACTS OF RECORD AND PROCEDURAL HISTORY

The following findings of facts of the appealed Compensation Order (CO) have not been challenged by either party:

Claimant, 57 years old, is a high school graduate, and has worked for Employer since 2011 as a coach driver. As a coach driver, Claimant drove point-to-point trips and those trips changed every 3 months. The bus yard is located in Landover, Maryland (hereinafter, Landover) where he picks up his bus each day. From the Landover bus yard, [Claimant] drove his bus to Union Station, which took

<sup>1</sup> Zachary L. Erwin represented Employer before the Administrative Hearings Division and on January 26, 2016 filed Employer's brief on appeal with the Compensation Review Board. Julie D. Murray entered her appearance on behalf of the Employer in this appeal with the Compensation Review Board on May 4, 2016.

approximately 30 minutes. He then spent 20 minutes loading his bus. He made this trip 5 to 6 days per week. Claimant estimated that he spent 2 hours per shift per day in D.C. HT 27-30.

On July 16 2014, Claimant was pulling luggage from the luggage bay in the rear of his bus, when he began to experience cramps and numbness on his left side, from his neck down to his hand. Claimant experienced immediate pain. Claimant called dispatch and told them he had injured his hand and arm. He then drove one-handed back to Landover. Two days later, Claimant went to Concentra, where he was given Ibuprofen and was told not to lift over 15 pounds. HT 32-38.

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Claimant applied for, and was hired for, his current position at the facility in Landover. Claimant's supervisor is located in Landover. Each morning Claimant spent 15 minutes performing a pre-trip inspection and lives in Maryland. The [C]laimant has stops in Baltimore and White Marsh on his trips to New York City. Claimant also drove a Virginia route to Richmond and back, which took approximately 4 hours round trip. His New York City trip took approximately 9 hours round trip, ½ (one half) hour of which was spent in D.C. traffic. HT at 57-64.

*Rhoden v. Megabus*, AHD No. 15-304, OWC No. 723793 (December 9, 2015) at 3.

The issues presented to the Administrative Law Judge (ALJ) at the October 20, 2015 formal hearing were:

- (1) Is there jurisdiction under the Act?
- (2) Did Claimant sustain an injury to his neck which arose out of and in the course of his employment?
- (3) The nature and extent of claimant's disability, if any, related to Claimant's neck condition?
- (4) Did Claimant voluntarily limit his income after February 22, 2015?

The Compensation Order (CO) denied Claimant's claim for relief as the ALJ concluded there was no jurisdiction for the claim under the Act. The ALJ concluded that although Claimant's accident occurred within the District of Columbia, Claimant had more substantial contacts with Maryland than the District of Columbia and that Claimant's employment was principally localized in the State of Maryland.

Claimant filed an application for review asserting the CO is not supported by substantial evidence. Employer filed a timely response arguing that the CO should be affirmed.

## ISSUE ON APPEAL

Is the November 20, 2015 CO supported by substantial evidence and in accordance with the law?

### ANALYSIS

The scope of review by the CRB as established by the District of Columbia Workers' Compensation Act (the Act) and as contained in the governing regulations is limited to making a determination whether the factual findings of a Compensation Order on appeal are based upon substantial evidence in the record, and whether the legal conclusions flow rationally from those facts and are otherwise in accordance with applicable law. D.C. Code § 32-1521.01(d)(2)(A). "Substantial evidence" as defined by the District of Columbia Court of Appeals (DCCA), is such evidence as a reasonable person might accept to support a particular conclusion. *Marriott Int'l. v. DOES* 834 A.2d 882 (D.C. 2003) (*Marriott*). Consistent with this scope of review, the CRB is bound 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 members of the CRB review panel considering the appeal might have reached a contrary conclusion. *Marriott*, 834 A.2d at 885.

Claimant argues in his Memorandum of Points and Authorities in Support of Claimant's Application for Review (Claimant's Brief) that the finding that jurisdiction is not properly vested in the District of Columbia is not supported by substantial evidence. In support of his position Claimant asserts:

Contrary to the finding of the ALJ, Mr. Rhoden has made a showing by substantial evidence that he has regular and continuous contact with the District in his job position as a regional bus operator with Megabus to properly vest jurisdiction pursuant to the Act. It is clear from a review of the facts that Mr. Rhoden meets the requirements set forth under § 32-1503(a)(1) and (2) as the accident in question occurred in the District and Mr. Rhoden performed his regular job duties in Washington, D.C. on a daily basis, during every single one of his shifts. Substantial evidence in the record demonstrates that Mr. Rhoden's employment relationship with the District has contacts more substantial there, than in any other place. *Petrilli v. DOES*, 509 A.2d 629 (D.C. 1986) [(*Petrilli*)].

It is undisputed that the work incident of July 16, 2014 in which Mr. Rhoden was injured, occurred in Washington, D.C. Specifically, the testimony provided by Mr. Rhoden demonstrates that the injury occurred at Union Station, in Northeast, Washington, D.C. The only evidence that the injury occurred elsewhere is the Employer's First Report of Injury, which erroneously lists Baltimore, Maryland as the location of the injury. CE 9. All of the testimony provided by Mr. Rhoden proves that the incident occurred in Washington, D.C. Moreover, the employer is not raising the jurisdiction defenses based on the location of the injury, rather on Mr. Rhoden's contact with the District. However, the facts of Ms. Rhoden's

employment demonstrate that he has regular and continuous contact with Washington, D.C. on a daily basis.

Mr. Rhoden's employment position as a bus operator required him to drive the northeast regional route along the interstate 95 corridor from New York City to Washington, D.C. Mr. Rhoden testified that he would start each shift in Landover, Maryland where he would board his bus and drive to Union Station in Washington, D.C. to pick up passengers. Mr. Rhoden testified that this was his routine during every single shift as a bus operator. Depending on his arrival time, Mr. Rhoden could spend between fifteen to thirty minutes in Union Station, and also spent time driving through the District each shift, including during rush hour and periods of heavy traffic volume. On those occasions, Mr. Rhoden could sit in traffic in D.C. for over an hour in addition to his regular drive time and time spent at Union Station. The nature of Mr. Rhoden's bus operator position requires him to travel and go from point to point along the route. Mr. Rhoden's daily contact with the District satisfies the requirements for jurisdiction under the Act, especially since the work injury in question occurred squarely within the District itself. The ALJ's denial of jurisdiction being properly vested is not supported by substantial evidence.

Claimant's Brief at 5, 6.

Employer responded asserting;

Claimant argues that he has made a showing that his [sic] has regular and continuous contacts with the District and thus jurisdiction is appropriate. This argument fails as it attempts to apply a legal standard for which there is not authority. *Hughes [v. DOES]*, 498 A.2d 567 (D.C. 1985 (*Hughes*)) has clearly delineated the legal standard and test applicable when determining jurisdiction and that test does not involve analysis of the regularity and continuity of contacts with the District. Claimant further argues that his contacts with the District are more substantial than another other [sic] jurisdiction. ALJ Seymour considered this argument and properly determined that Claimant had more substantial contacts with Maryland than the District as detailed above.

Claimant further argues that because the parties stipulated that the accident occurred in the District of Columbia, *Hughes* is inapplicable and jurisdiction is already properly vested. This argument too is misplaced and disregards applicable case law. Both D.C. Code § 32-1503 and the Court of Appeals opinion in *Petrilli* make clear that an accident occurring in DC does not automatically lead to a conclusion that the District has jurisdiction over a claim. Furthermore, *Petrilli* held that jurisdiction was not appropriate in a claim in which the accident happened in the District.

Employer's Brief at 7, 8.

We agree with Employer. The Court in *Petrilli* agreed with the conclusion of Director of this agency that an injury that occurs within the District is not of itself a basis for coverage.

The *Petrilli* court also cites what is now §32-1503(a-3) and held:

D.C. Code §36-303(a) provides that coverage extends to an employee of an employer, as defined in paragraphs (9) and (10) of D.C. Code §36-301, who is killed or injured “irrespective of the place where the injury or death occurs provided that at the time of such injury or death this employment is principally localized in the District of Columbia . . .” (Emphasis added.) The Director concluded that the plain meaning of this provision, examined against the backdrop of its legislative history, rules out the occurrence of the injury in the District as a separate basis of coverage.

*Petrilli, supra*, 509 A.2d at 632. (Emphasis in original).

It is unclear how Claimant’s reliance on *Petrilli* supports his argument.

The ALJ correctly referred to the three-step test outlined in *Petrilli* and earlier adopted by the DCCA in *Hughes* for determining what is *principally localized* employment:

- (1) The place of the employer’s business office or facility at which or from which the employee performed the principal service for which he was hired or
- (2) If there is no such office or facility at which the employee works, the employee’s residence, the place where the contract is made and the place of performance, or
- (3) If neither (1) nor (2) is applicable, the employee’s base of operations.

*Hughes, supra*, 498 A.2d at 569.

The ALJ determined:

In this matter, neither of the first 2 prongs of *Hughes* is applicable. Claimant did not perform his principal service at the employer’s facility in Landover, Maryland. Although Claimant is a Maryland resident and the contract for hire was made in Maryland, the place of performance was not exclusively in Maryland, nor for that matter, in any other single jurisdiction. Rather, relying on the 3<sup>rd</sup> prong of *Hughes*, I find the claimant’s base of operations was in Landover, Maryland.

Accordingly, because Claimant’s base of operations was in Landover, Maryland, I find that there were more substantial contacts with Maryland than with any other jurisdiction. I further find that Claimant performed a limited amount of the work in the District of Columbia of no more than 1 to 1½ hour (one to one and a half)

hours per day. I further find that Employer had worker's compensation coverage in Maryland ECA at 9.

Therefore, I find Claimant's employment was principally localized in Maryland, and pursuant to the holding in *Petrilli*, supra and §32-1503(a-3), I find there is no jurisdiction for this claim under the Act.

CO at 7.

We reject Claimant's assertion that "Mr. Rhoden's daily contact with the District satisfies the requirements for jurisdiction under the Act, especially since the work injury in question occurred squarely within the District itself". Claimant's Brief at 6. We further reject Claimant's assertion that the *Hughes* test is not necessary because the site of the injury was Washington, D.C.

D.C. Code §32-1503 (a-3) specifically provides:

An employee and his employer who are not residents of the District of Columbia and whose contract of hire is entered into in another state shall be exempted from the provisions of this chapter while such employee is temporarily or intermittently within the District of Columbia doing work for such nonresident employer if such employer has furnished workers' compensation insurance coverage under the workers compensation or similar laws of such other state, so as to cover such employee's employment while in the District of Columbia.

The ALJ's conclusion that Claimant's employment was principally localized in Maryland is supported by substantial evidence and in accordance with the law. *Cf. Hamilton v. Megabus*, CRB No. 15-030 (June 25, 2015).

#### CONCLUSION AND ORDER

For the reasons explained herein, we find the December 9, 2015 Compensation Order is supported by substantial evidence in the record and is in accordance with the law and is AFFIRMED.

*So ordered.*