

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA M. MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 11-124

**KELVIN JOHNSON,
Claimant–Petitioner,**

v.

**DISTRICT OF COLUMBIA OFFICE OF PROPERTY MANAGEMENT,
Self-Insured Employer–Respondent.**

Appeal from a Compensation Order by
The Honorable Fred D. Carney, Jr.

AHD No. PBL05-021E, DCP No. 761023000620050001

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2012 FEB 28 PM 2 19

Matthew Peffer, Esquire for Petitioner
Pamela Smith, Esquire for Respondent

Before MELISSA LIN JONES, HENRY W. MCCOY, and JEFFREY P. RUSSELL,¹ *Administrative Appeals Judges.*

MELISSA LIN JONES, *Administrative Appeals Judge*, for the Compensation Review Board.

DECISION AND ORDER

JURISDICTION

Jurisdiction is conferred upon the Compensation Review Board (“CRB”) pursuant to D.C. Code §1-623.28, 7 DCMR §118, and Department of Employment Services Director’s Administrative Policy Issuance No. 05-01 (February 5, 2005).

FACTS OF RECORD AND PROCEDURAL HISTORY

On April 27, 2005, Mr. Kelvin Johnson worked as a pipe insulator for the District of Columbia Office of Property Management (“Employer”). On that day, he injured his left shoulder when he picked up a heavy metal door.

¹ Judge Russell has been appointed by the Director of the DOES as a temporary CRB member pursuant to DOES Administrative Policy Issuance No. 11-01 (June 23, 2011).

Mr. Johnson's claim was accepted as compensable, and he received medical and wage loss benefits until January 25, 2011. The Public Sector Workers' Compensation Program suspended Mr. Johnson's benefits from that date through February 22, 2011 due to his alleged failure to comply with medical treatment.

The parties proceeded to a formal hearing before an administrative law judge ("ALJ"). On October 7, 2011, the ALJ denied Mr. Johnson's request for disability compensation benefits from January 25, 2011 to February 22, 2011.²

On appeal, Mr. Johnson asserts "substantial evidence does not support the determination that [he] refused to comply with his treatment plan: substantial evidence in the form of [his] uncontradicted testimony"³ because he "presented evidence as to why he was unable to comply with the treatment plan provided for him by his treating physician."⁴ Mr. Johnson argues his testimony suffices to entitle him to his claim for relief.

Employer asserts that based upon the evidence presented at the formal hearing, the ALJ properly concluded Mr. Johnson is not entitled to disability compensation benefits during the closed period in question. Employer requests the October 7, 2011 Compensation Order be affirmed because it is supported by substantial evidence in the record.

ISSUE ON APPEAL

Is the October 7, 2011 Compensation Order supported by substantial evidence in the record and in accordance with applicable law?

ANALYSIS

First, Mr. Johnson's position on appeal muddles the applicable standards of proof. It is undisputed that as a result of his work-related injury, Mr. Johnson received medical and wage loss benefits; however, on January 25, 2011, the Public Sector Workers' Compensation Program issued a Notice of Determination Regarding Temporary Total Disability suspending Mr. Johnson's benefits. Thus, at the formal hearing, as the ALJ noted,

Once a claim for disability compensation has been accepted and benefits paid, in order to prevail at a formal hearing, the employer must adduce persuasive evidence sufficient to substantiate the modification or termination of an award of benefits. *Jones v. D.C. Superior Court*, CRB No. 10-003, AHD No. PBL09-026, DCP No. 7610460001199-0002 (March 11, 2011) citing *Lightfoot v. D. C. Department of Consumer and Regulatory Affairs*, ECAB No. 94-25 (July 30, 1996). *Angela Ashton v. DMV*, CRB No. 10-193, PBL 10-065, DCP No. 30100438785-0001 (July 7, 2011). Since this matter involves the suspension of

² *Johnson v. D.C. Office of Property Management*, AHD No. PBL05-021E, DCP No. 761023000620050001 (October 7, 2011).

³ Memorandum of Points and Authorities in Support of Application for Review, unnumbered at p. 3.

⁴ *Id.* at unnumbered p. 4.

benefits for a claim that has been accepted as compensable, Employer has the burden of proof.^{5]}

After weighing the evidence in the record as a whole, the ALJ determined that Employer had met its burden of proving that Mr. Johnson had failed to comply with recommended medical treatment prescribed by his treating physician. Even assuming Mr. Johnson had presented substantial evidence in the form of his testimony, that evidence would not necessarily suffice to entitle him to the disability compensation benefits he had requested.

Then, on appeal, the scope of review by the CRB is limited to making a determination as to whether the factual findings of the appealed Compensation Order are based upon substantial evidence⁶ in the record and whether the legal conclusions drawn from those facts are in accordance with applicable law.⁷ Consistent with this standard of review, the CRB is constrained to uphold a Compensation Order that is supported by substantial evidence, even if there also is contained within the record under review substantial evidence to support a contrary conclusion and even if the CRB might have reached a contrary conclusion.⁸

After reciting reasons for missing several medical appointments, Mr. Johnson concludes that he had good cause for missing those appointments and, consequently, his benefits should not have been suspended. Mr. Johnson has not included any references to the record to demonstrate these reasons were presented to the ALJ at the formal hearing, but the ALJ has provided thorough substantiation for determining Mr. Johnson's failure to attend medical appointments warranted suspension of his disability compensation benefits:

- Mr. Johnson did not follow-up with Dr. Magee as directed in October 2010.⁹
- Mr. Johnson failed to attend his November 11, 2010 physical therapy session.¹⁰
- Mr. Johnson did not attend his November 18, 2010 appointment at NovaCare.¹¹
- Mr. Johnson did not attend his November 23, 2010 appointment at NovaCare.¹²

⁵ *Johnson, supra*, at p. 3.

⁶ "Substantial evidence" is relevant evidence a reasonable person might accept to support a conclusion. *Marriott International v. DOES*, 834 A.2d 882, 885 (D.C. 2003)

⁷ Section 32-1521.01(d)(2)(A) of Act.

⁸ *Marriott International, supra*.

⁹ *Johnson, supra*, at p. 2.

¹⁰ *Id.* at pp. 2-3.

¹¹ *Id.* at p. 3.

¹² *Id.* at p. 4.

- Mr. Johnson cancelled his December 6, 2010 appointment with Dr. Magee due to inclement weather; he rescheduled this appointment to January 5, 2011.¹³
- Mr. Johnson failed to attend his January 5, 2011 appointment with Dr. Magee.¹⁴

At the formal hearing, the ALJ clearly considered the alleged reasons Mr. Johnson offered regarding his failure to comply with medical treatment:

On his behalf Claimant introduced the taxi cab receipts. (CE 2) These receipts are for cab fares on October 2010, January 2011 and February 2011. None of the receipts are on the dates Claimant allegedly failed to attend his scheduled sessions. Claimant also testified in his own behalf. Claimant testified he always tried to keep his appointments so that he can get better. (HT 27) Claimant testified he saw Dr. Magee on October 22, 2010. He testified that Dr. Magee recommended he undergo physical therapy and that Dr. Magee wanted him to follow up after the physical therapy was complete. (HT 23) However there is no documentation or adminicular evidence to support Claimant's assertion that he was not to return to Dr. Magee until the therapy was complete. Claimant testified he did not remember why he missed the appointment for November 11, 18, and 23, 2010. (HT 23) Claimant testified further that he was scheduled to see Dr. Magee on December 6, 2010 but he could not keep the appointment because of bad weather. (HT 24) Claimant once again had no adminicular [*sic*] evidence to corroborate his testimony that there was inclement weather that day. Further, Claimant did not represent that the weather was anymore than "snow or something like that," and did not indicate that streets were unpassable [*sic*] or that the weather was extreme. Claimant testified he rescheduled the appointment to January 5, 2010 however he did not keep the appointment because the doctor cancelled. Once again there is no corroboration for Claimant's testimony that the appointment was cancelled by the physician's office because he was out of town. The appointment was rescheduled to a dated [*sic*] in January 2011. He was not specific as to the date yet Claimant represents he made that appointment. Claimant further testified he has missed one appointment in January because of a death in his family. He offered no evidence, or details to corroborate his testimony on that point.^[15]

Without corroboration the ALJ did not find Mr. Johnson's testimony persuasive or credible, and on appeal, when properly supported, as here, an ALJ's credibility findings are entitled to great weight.¹⁶

¹³ *Id.* at p. 3.

¹⁴ *Id.* at p. 5.

¹⁵ *Id.*

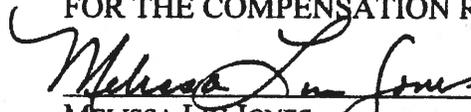
¹⁶ *Dell v. DOES*, 499 A.2d 102, 106 (D.C. 1985).

In essence, Mr. Johnson requests the CRB reweigh the evidence in his favor. The CRB simply lacks the authority to review the evidence in the way Mr. Johnson would like.

CONCLUSION AND ORDER

The October 7, 2010 Compensation is supported by substantial evidence in the record and is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:



MELISSA LIN JONES
Administrative Appeals Judge

February 28, 2012

DATE