

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. 05-49

JACOB KLEIN,

Claimant–Petitioner,

v.

UNITED SHEET METAL AND LIBERTY MUTUAL INSURANCE COMPANY,

Employer/Carrier– Respondent.

Appeal from a Compensation Order of
Administrative Law Judge Anand K. Verma
OHA/AHD No. 04-464, OWC No. 603001

David M. Schloss, Esquire, for the Petitioner

Chanda Stepney, Esquire, for the Respondent

Before JEFFREY P. RUSSELL, FLOYD LEWIS and LINDA F. JORY, *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 responsibility for administrative appeals filed prior to October 1, 2004, the effective date of the District of Columbia

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 January 24, 2005, the Administrative Law Judge (ALJ) denied Petitioner's claim for temporary total disability and causally related medical benefits from July 26, 2004 through August 12, 2004, and from September 26, 2004 through the date of the formal hearing and continuing, alleged to be the result of a stipulated work injury occurring April 26, 2004, for which Respondent had previously and voluntarily provided such benefits from April 29, 2004 through July 13, 2004, and from September 14, 2004 through October 11, 2004. In the Compensation Order, the ALJ based the denial of benefits upon a determination that Petitioner's evidence was insufficient to invoke the statutory presumption that Petitioner's complained of injuries and disabilities from and after July 26, 2004 are causally related to the stipulated work injury.

As grounds for this appeal, Petitioner alleges as error that he had produced sufficient evidence, under District of Columbia Code § 32-1521 (1), *Whittaker v. District of Columbia Department of Employment Services*, 531 A.2d 844 (D.C. 1995), and , *Ferreira v. District of Columbia Department of Employment Services*, 531 A.2d 651 (D.C. 1987), to invoke the presumption that the complained of injuries and disabilities were causally related to the work injury, rendering the Compensation Order erroneous for not being 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. *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.

Turning to the case under review herein, Petitioner alleges that he has provided sufficient evidence, medical in nature, as well as by reference to his own testimony, that his complained of lumbar condition, including radiating right sided "electrical" type shooting sensations, a similar condition in his neck and head, and the occurrence of "seizure type symptoms", are causally related to the stipulated work injury.

Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004.

Regarding the low back condition, including the radiating sensory symptoms, Petitioner points to an initial medical evaluation report from his treating orthopaedic physician, authored three days post-injury, in which the physician notes the existence of “mid to low back pain”; a September 14, 2004 report in which the doctor opines that Petitioner had “developed an acute lumbosacral strain with right sided radicular symptoms related to the injury of 4/26/04” and the October 28, 2004 report of his consulting neurologist in which it is stated that Petitioner “has evidence of persistent post-traumatic radiculopathy as a result of the 4/26/04 accident.” Review of the referenced reports, being CE 2 (Report of April 29, 2004), CE 2 (Report of September 14, 2004) and CE 5 (Report of October 28, 2004) confirms that they do, indeed, contain the referenced statements.

In its opposition, Respondent describes various reasons expressed by the ALJ in the Compensation Order for doubting a causal relationship, and asserts that they support the conclusion that the evidence was insufficient to invoke the presumption.

We disagree. D.C. Code §32-1521 (1) provides claimants with a rebuttable presumption that the claim for workers’ compensation benefits comes within the provisions of the Act. This presumption exists “to effectuate the humanitarian purposes” of the compensation statute, and evidences a strong legislative policy favoring awards in close or arguable cases. *Parodi v. District of Columbia Department of Employment Services*, 560 A.2d 524 (D.C. 1989). See also, *Spartin v. District of Columbia Department of Employment Services*, 584 A.2d 564 (D.C. 1990); and, *Muller v. Lanham Company*, Dir. Dkt. 8601, H&AS No. 85-36, OWC No. 0700456 (March 15, 1988).

The statutory presumption is invoked upon a showing by the claimant of an injury and a work place incident, condition or event that has the potential of causing the injury. *Parodi, supra*; see also, *Ferreira, supra*. This presumption extends not only to the occurrence of an accidental work place injury, but also to the medical causal relationship between an alleged disability and the accidental injury. *Whittaker, supra*.

The evidence described above is certainly sufficient to invoke the presumption that Petitioner’s complained-of low back and radiating sensory symptoms (the existence of which are not challenged by Respondent in its opposition to this appeal) are causally related to the stipulated work injury. The ALJ’s contrary conclusion is therefore not in accordance with the law, and must be reversed.

Regarding the neck, head and what he describes in his appeal as “seizure type symptoms”, Petitioner points to the progress note/report of Dr. Jennifer Drake, his treating neurologist, where the doctor wrote:

I have explained the diagnosis and possible causes for it to the pt in detail, stating: What was seen on the MRI inside the head may indicate that he was more likely to have this nerve hyperactivity on the L side of his face, and it could have eventually happened to him without the injury, but since the symptoms started in direct relation to the head injury, this trauma may very well have induced the problem.

CE 4, Progress note/report, September 8, 2004. Review of the exhibit in its entirety reveals that this note represents the third examination date by Dr. Drake or her professional neurological colleagues, and the exhibit also includes a note of July 29, 2004, the first from Dr. Drake, in which the history includes a description of Petitioner's having sustained head trauma in the work accident. In conjunction with that report, although not referred to by Petitioner, we also note that the initial history described in the treating orthopaedic report includes a description of Petitioner having been catapulted "into the air approximately 7 to 8 feet when he hit a steel and concrete column and then fell to the ground face down on top of the Johnson Bar". CE 2, Report of April 29, 2004. We also note that, in his testimony concerning the details of the accident, Petitioner stated that, while he has difficulty remembering the details of the accident because "it was so fast and horrendous", he "was told that the front part of [his] chest and [his] head hit the column." HT page 35.

Again, while Respondent asserts that there are sufficient reasons for the ALJ's having rejected the causal relationship of these head and brain complaints, (the lack of a reported "shooting head injury" prior to the July 29, 2004 report being chief among them), the evidence, being the testimony of Petitioner and the medical reports cited above is sufficient to invoke the presumption that Petitioner sustained head trauma in the course of the stipulated work accident and that these complaints are causally related to that head trauma. Accordingly, the ALJ's determination that Petitioner had failed to present sufficient evidence to invoke the presumption that these conditions are causally related to, or aggravated by, the work injury, is not in accordance with the law.

CONCLUSION

The Compensation Order of January 24, 2005, to the effect that Petitioner had failed to present sufficient evidence to invoke the presumption that his low back head and brain complaints during the period claimed are not causally related to the stipulated work injury is not in accordance with the law.

ORDER

The Compensation Order of January 24, 2005 is hereby reversed and remanded with instructions to accord Petitioner the presumption that the complaints as described in the foregoing Decision and Order are causally related to the work injury, and to further consider the claim for the requested benefits, and evaluate the evidence, including whether Respondent has provided sufficient evidence to overcome that presumption in regard to the specific injuries claimed.

FOR THE COMPENSATION REVIEW BOARD:

JEFFREY P. RUSSELL
Administrative Appeals Judge

August 9, 2005
DATE