

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 No. 05-15

BRENDA LAMPKINS,

Claimant – Respondent

v.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY,

Self-Insured Employer – Petitioner.

Appeal from a Compensation Order of
Administrative Law Judge Anand K. Verma
OHA No. 03-509; OWC No. 577630

Donna J. Henderson, Esq., for the Petitioner

Matthew Peffer, Esq., for the Respondent

Before SHARMAN J. MONROE, LINDA JORY AND JEFFREY P. RUSSELL, *Administrative Appeals Judges*.

SHARMAN J. MONROE, *Administrative Appeals Judge*, on behalf of the 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

¹ Pursuant 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 D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, sec. 1102 (Oct. 1, 1994), *codified at* D.C. Code Ann. § 32-1521.01 (2005). In accordance with the Director's Policy Issuance, the CRB replaces the Office of the Director in providing administrative appellate review and disposition of workers' and disability compensation claims arising under the D.C. Workers' Compensation Act of 1979, as amended, D.C. Code Ann. §§ 32-1501 to 32-1545 (2005) and the D.C. Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Code Ann. §§ 1-623.1 to 1.643.7 (2005), including responsibility for

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 October 24, 2004, the Administrative Law Judge (ALJ) awarded the Claimant-Respondent (Respondent) authorization for medical treatment for her left thumb and payment of related medical expenses. The Employer-Petitioner (Petitioner) now seeks review of that Compensation Order.

As grounds for this appeal, Petitioner alleges as error that the decision below is not supported by substantial evidence in the record and not in accordance with the law.

ANALYSIS

As an initial matter, the standard 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. D.C. Official Code § 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. District of Columbia Department of Employment Services*, 834 A.2d 882 (D.C. App. 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 the Respondent was originally diagnosed with left trigger thumb in July 2001 while off from work. With respect to the alleged February 19, 2002 thumb injury, the Petitioner asserts that, after the statutory presumption was rebutted, the ALJ erred in his weighing the evidence. Specifically, the Petitioner avers that rather than requiring the Respondent to carry her burden of proving the work-relatedness of her left thumb condition, the ALJ relied on a concession from the independent medical examiner that hitting a thumb could aggravate a pre-existing trigger thumb condition and, consequently, found that the Respondent incurred an aggravation of the left trigger thumb that arose out of and in the course of her employment. The Petitioner maintains that there is no medical evidence in the

administrative appeals filed prior to October 1, 2004, the effective date of the D.C. Workers’ Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004.

record indicating that the Respondent further injured her thumb on February 19, 2002 while performing her duties as a station manager.²

Under the Act, an injured worker is accorded a presumption that an injury arose out of and in the course of employment if the injured worker presents evidence of an injury and of a work-related event which has the potential of causing the injury. Once the presumption attaches, the employer can rebut the presumption by producing substantial evidence showing that the injury is not work-related. If the employer rebuts the presumption, the burden of persuasion shifts to the injured worker to show by a preponderance of the evidence a causal connection between the disability and the work related event. *Young v. District of Columbia Department of Employment Services*, 865 A.2d 535 (D.C., 2005).

In the instant case, the ALJ found, and his findings are supported by substantial evidence, that the Respondent was accorded the presumption that her current left trigger thumb condition arose out of and in the course of her employment, and that the Petitioner rebutted the presumption. With the presumption rebutted, the ALJ was required to determine whether the Respondent's thumb injury was work-related via a weighing of the parties' evidence. In other words, the ALJ was required to determine whether the Respondent carried her burden of persuasion. The ALJ failed to do this.

An examination of the Compensation Order shows that the ALJ reviewed the medical reports of the treating physician, and the deposition testimony of Dr. Richard Barth, the independent medical examiner, and then concluded that "claimant has met her burden of producing the quantum of proof necessary to meet the requirement for invoking the statutory presumption of compensability." Compensation Order at 5. There is no indication that the ALJ weighed, or performed an assessment of, the evidence of the parties as a whole to decide the work-relatedness, if any, of the Respondent's left trigger thumb injury. This matter must be remanded to the ALJ for further review. On remand, the ALJ must state which evidence, including medical, that he is relying on to determine the work-relatedness, or lack thereof, of the Respondent's left trigger thumb injury, and why he is persuaded by that evidence.

CONCLUSION

The Compensation Order of October 24, 2004 is not in accordance with the law. This matter is remanded for a full application of the presumption of compensability consistent with the above discussion.

² The Respondent was advised, via Notice of Application for Review dated May 4, 2005, to file any opposition within fifteen (15) calendar days of the filing of the Application for Review. To date, no opposition has been filed.

ORDER

The Compensation Order of October 24, 2004 is VACATED AND REMANDED.

FOR THE COMPENSATION REVIEW BOARD

SHARMAN J. MONROE
Administrative Appeals Judge

June 10, 2005

DATE