

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. 04-058

LATRELE WATSON,

Claimant – Petitioner,

v.

WORLDWIDE SECURITY SERVICE AND GALLAGHER BASSETT SERVICES,

Employer/Carrier – Respondent.

Appeal from a Compensation Order of
Administrative Law Judge Linda F. Jory
OHA No. 03-189A, OWC No. 583281

Heather C. Leslie, Esquire, for the Petitioner

Stephanie S. Ryan, Esquire, for the Respondent

Before: E. COOPER BROWN, *Chief Administrative Appeals Judge*, FLOYD LEWIS and JEFFREY P. RUSSELL, *Administrative Appeals Judges*.

FLOYD LEWIS, *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, 32-1522 (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

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 13, 2004, the Administrative Law Judge (ALJ) denied the relief requested by Claimant-Petitioner (Petitioner), concluding that any impairment from which Petitioner now suffers is not causally related to the cellulitis which, in an earlier Compensation Order, was found to be related to Petitioner's employment with Employer-Respondent (Respondent).

As grounds for this appeal, Petitioner alleges as error that ALJ's decision is arbitrary, capricious, unsupported by substantial evidence and is not 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. D.C. Official Code §32-1522(d)(2). "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. 2003). Consistent with this scope 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 ALJ's decision is erroneous, contending that Petitioner's current permanent impairment is medically causally related to his work injury of September 2002. Petitioner argues that the ALJ failed to incorporate the findings already established in the prior Compensation Order, specifically that Petitioner's condition is medically causally related to his employment related injury.

In the earlier Compensation Order of June 27, 2003, Petitioner's left leg swelling and cellulitis was found to have risen out of and in the course of his employment with Respondent, however, it was concluded that Petitioner had not established that he sustained a work related wage loss due to that condition. The evidence of record supports the finding that since the issuance of the earlier Compensation Order, Petitioner began working full-time with another employer and has not been actively medically treated for his leg swelling. At the hearing which

responsibility for 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.

is the subject of the instant appeal, Petitioner alleged that he retains a permanent impairment due to vascular problems that are related to the boots that he wore while working for Respondent.

To support his claim for relief, Petitioner relies on the Independent Medical Evaluation (IME) of Dr. Joel Fetcher, who examined Petitioner once, for the purpose of providing a permanent partial impairment rating. Dr. Fetcher opined that Petitioner was entitled to a 42% impairment of the left lower extremity. However, the ALJ specifically noted that Dr. Fetcher fails to explain how a cellulitis condition that occurred in September 2002 could cause venous insufficiency or how venous insufficiency was the result of Petitioner wearing tight military boots. Compensation Order at 5.

At the hearing, Respondent relied on the opinion of Dr. Joseph Linehan, who examined Petitioner on January 14, 2004 and found that Petitioner suffers from idiopathic venous insufficiency of the left extremity and clearly opined that there was absolutely know way that wearing tight boots causes venous insufficiency. The ALJ found that Dr. Linehan's opinion was more persuasive and relied on his report.

It is well settled that in cases of conflicting medical opinions, the fact-finder may draw any reasonable inference from the evidence presented. *George Hyman Construction Co. v. Dist. of Columbia Dep't. of Employment Servs.* 498 A.2d 563, 566 (D.C. 1985). Moreover, as the ALJ pointed out, Dr. Fetcher was not Petitioner's treating physician and the opinion of an IME physician retained by a claimant to provide a pre-hearing opinion is not given any special preference over an employer's rebuttal IME physician. As such, this Panel can find no reason to disturb the ALJ's reliance on the opinion of Dr. Linehan in this matter.

In response to Petitioner's argument that the earlier Compensation Order established that his current condition arose out of and in the course of his employment, this Panel notes that the ALJ emphasized that the prior Compensation Order specifically indicated that the period of time in which Petitioner's cellulitis and swelling were related to his employment with Respondent was from September 23, 2002 through October 2002 only. The ALJ then detailed the reasons for concluding that any impairment Petitioner now suffers in the lower extremity is not causally related to the work injury of September 23, 2002, stating:

Absent any evidence of claimant's medical treatment after the initial Formal Hearing or any opinion that affirmatively establishes a relationship between claimant's boot wearing and standing to his venous insufficiency, the undersigned is unable to distinguish claimant's current swelling from being on his feet at his current employment selling shoes at Foot Locker and there is nothing in the medical records submitted that connect the current swelling to the cellulitis the undersigned found was work related. Moreover, as the only causation opinion of record, Dr. Linehan's well reasoned explanation that venous insufficiency could not be related to wearing tight boots, it is accorded more weight.

Compensation Order at 5.

After a complete review of the record, this Panel concludes that the ALJ's determination that any impairment that Petitioner now suffers from in his lower left extremity is not causally related to his work injury, is supported by substantial evidence and is in accordance with the law.

CONCLUSION

The Compensation Order of May 13, 2004 is supported by substantial evidence in the record and is in accordance with the law

ORDER

The Compensation Order of May 13, 2004 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

FLOYD LEWIS
Administrative Appeals Judge

February 17, 2006
DATE