

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. 02-064

LEROY PALMER,

Claimant – Respondent

v.

GEORGE WASHINGTON UNIVERSITY MEDICAL AND LIBERTY MUTUAL INSURANCE CO.,

Employer/Carrier – Petitioner.

Appeal from a Compensation Order of
Administrative Law Judge E. Cooper Brown
OHA No. 01-061C, OWC No. 166387

Chanda Stepney, Esq., for the Petitioner

Benjamin T. Boscolo, Esq., for the Respondent

Before FLOYD LEWIS, SHARMAN J. MONROE 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 May 21, 2004, the Administrative Law Judge (ALJ) awarded a supplemental allowance to the Claimant-Respondent (Respondent), declared permanently totally disabled as of October 4, 2000, to begin January 1, 2001 subject to the statutory 5% limitation to begin January 2, 2002. The Employer-Petitioner (Petitioner) now seeks review of that Compensation Order.

As grounds for this appeal, the Petitioner alleges as error that the decision below is 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, the Petitioner alleges that the ALJ’s decision is in opposition to the controlling on the payment of supplemental allowances in this jurisdiction. The Petitioner asserts that the payment of the Respondent’s supplemental allowance should begin October 4, 2001 and that the 5% limitation of D.C. Official Code § 32-1506(d) is applicable in the first year of the Respondent’s entitlement to a supplemental allowance. As authority for its assertions, the Petitioner cites *Long v. Plaza Realty Investors*, Dir. Dkt. No. 97-45, OHA No. 92-462B, OWC No. 104068 (October 14, 1998) wherein the Director, DOES held that a supplemental allowance is to be applied at the beginning the second year a claimant is determined to be permanently and totally disabled and that the supplemental allowance cannot exceed the 5% limitation after the first year.²

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.

² The Director’s holding on the 5% limitation was enunciated in *Long v. Plaza Realty Investors*, Dir. Dkt. No. 97-45B, OHA No. 92-462B, OWC No. 104068 (October 20, 2000).

As previously indicated, the City Council of the District of Columbia passed the D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, D.C. Official Code § 32-1521.01 (2005), in which the Compensation Review Board (CRB) was established to replace the Director in providing administrative appellate review of workers' compensation claims. With this change, the existing precedent from the Director became persuasive authority to the CRB. *See* 7 DCMR § 255.7 (Notice of Final Rulemaking, December 23, 2005).³ Therefore, the holding of *Long, supra* is not binding upon the CRB and it is free to revisit legal issues decided by the Director and, if reasonable and sound, either adopt or reject them.⁴

The Panel reviewed the record in this case in its entirety. The Panel determines that the ALJ's factual findings are supported by substantial evidence on the record as a whole, and are conclusive, and that the ALJ's legal conclusions are in accordance with the law. *Marriott Int'l. v. D.C. Department of Employment Services*, 834 A.2d 882 (D.C. 2003); D.C. Official Code §§ 32-1501 to 32-1545 (2005), at § 32-1521.01(d)(2)(A). The record fully supports the ALJ's thorough and well reasoned decision. The ALJ cited to *Thomas v. Metro Carpet Services*, OHA No. 99-48, OWC No. 034893 (March 5, 2003) which addressed the same issues presented herein and contained a cogent legal analysis of the issues. The Panel agrees with the discussion and analysis contained in *Thomas*. The Panel, therefore, adopts the reasoning and legal analysis expressed by the ALJ herein and affirms the Compensation Order in all respects.⁵

CONCLUSION

The Compensation Order of May 21, 2004 is supported by substantial evidence in the record and is in accordance with the law.

ORDER

The Compensation Order of May 21, 2004 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

³ 7 DCMR § 255.7 states: "Decisions issued by the Director prior to establishment of the Board shall be accorded persuasive authority by the Board."

⁴ The Panel is aware of the decision *Haggerty v. The John F. Kennedy Center for the Performing Arts*, CRB No. 04-32, OHA No. 90-972D, OWC No. 143207 (November 29, 2005) wherein *Long* was cited. As the issue presented in *Haggerty* was whether the Petitioner was entitled to a supplemental allowance for the period during which he was temporarily totally disabled, an issue not addressed in *Long*, and as reliance upon *Long* was not required to decide the issue presented, the citation to *Long* was dicta. *See generally Pannell-Pringle v. D.C. Department of Employment Services*, 806 A.2d 209, 215 (D.C. 2002) (since court did not apply cited statute in resolution of the issue before it, the court's interpretation of the cited statute is dictum).

⁵ 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)(B) requires a more detailed and thorough written order than the instant Decision and Order where there is a reversal of the Compensation Order.

SHARMAN J. MONROE
Administrative Appeals Judge

January 23, 2006
DATE

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2006 a copy of the foregoing
DECISION AND ORDER was mailed by certified mail to the following:

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Gregory E. Lamb
Clerk of the Board

ORDER

The Compensation Order of March 24, 2003 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

FLOYD LEWIS
Administrative Appeals Judge

January 23, 2006
DATE

