

**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. 03-108**

**TIMOTHY LEWIS,**

**Claimant - Petitioner**

v.

**D. C. WATER & SEWER AUTHORITY AND GALLAGHER BASSETT SERVICES INC.,**

**Employer/Carrier - Respondent**

Appeal from a Compensation Order of  
Administrative Law Judge Anand K. Verma  
OHA No. 03-142, OWC No. 576685

Matthew J. Peffer, Esquire for the Petitioner

Douglas A. Datt, Esquire for the Respondent

Before LINDA F. JORY, SHARMAN J. MONROE, *Administrative Appeals Judges* and Floyd Lewis,  
*Acting Administrative Appeals Judge.*

LINDA F. JORY, *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).<sup>1</sup>

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<sup>1</sup> 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 20024, Title J, the 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. Official Code §§ 1-623.1 to 1.643.7 (2005),

## 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 July 29, 2003, the Administrative Law Judge (ALJ), concluded claimant had failed to establish entitlement to permanent partial disability benefits as a result of his January 14, 2002 work injury and failed to establish entitlement to ongoing medical expenses as of February 5, 2002.

Claimant-Petitioner's (Petitioner) Petition for Review alleges as grounds for its appeal that the ALJ's decision is inconsistent with the substantial record evidence that establishes he is entitled to permanent partial disability benefits in an amount equal to 15% of the right hand. Employer-Respondent (Respondent) has filed a response asserting the ALJ's denial of permanent partial disability benefits is in full accordance with the law as the ALJ properly rejected the treating physician's opinion in favor of the cogent and comprehensive opinion of the independent medical evaluator.

## ANALYSIS

As an initial matter, the scope of review by the Compensation Review Board (CRB) and this Review Panel (hereafter, the 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 scope of review, the CRB and this panel are bound 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 initially asserts that the ALJ erred by considering evidence associated with a subsequent claim not before him and making findings associated with that claim which was not presented, as no records regarding Petitioner's separate injury of October 23, 2002 were before the ALJ. A review of the ALJ's Findings of Fact and Discussion reveals the ALJ did make the following findings with regard to the subsequent injury, "I find claimant to be an incredible witness insofar as his subsequent injury to his right hand in October 2002. I find claimant's supervisor was not notified of claimant's alleged October 2002 injury." CO at 2.

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including 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.

Nevertheless, a thorough review of the ALJ's analysis reveals that in rendering his conclusion regarding the nature and extent of Petitioner's disability, specifically rejecting the treating physician's PPD rating, the ALJ did not rely on his prior finding that claimant lacked credibility. Instead, the ALJ provided the following as his reasons for rejecting Dr. Peter S. Trent, orthopedic and the treating physician's finding of permanent impairment's PPD rating:

Even a cursory scrutiny makes Dr. Trent's opinion suspect and unworthy of credence because of its inherent inconsistency. [I]n his February 5, 2002 follow-up examination, he opined that claimant's injury resulting from the January 14, 2002 work incident had 'almost completely resolved'. And in a subsequent examination, about seven months later, on August 21, 2002, Dr. Trent noted tenderness and pain in claimant's right hand without explaining how the pain, which had been in remission since February 5, 2002 reoccurred. Further Dr. Trent's note certifying claimant's disability from January 15, 2002 to February 12, 2002 reflected a diagnosis of "left wrist sprain", a complete departure from his earlier diagnosis showing only claimant's right hand injury resulting from the January 14, 2002 work incident. (CE 1 ). In fact, none of Dr. Trent's subsequent medical records makes any reflection of this new diagnosis of "left wrist sprain". Hence the 15% disability rating assigned by Dr. Trent on October 14, 2002 without any elaboration as to how he calculated the percentage, coupled with the aforesaid inconsistency in his diagnoses must also be discredited.

CO at 5.

The ALJ further referred to Dr. Trent's failure to provide a detailed evaluation of the five factors, i.e., (i) pain, (ii) weakness, (iii) atrophy, (iv) loss of endurance, and (v) loss of function, ascribing an appropriate percentage to each factor as his reason to accord Dr. Herbert Joseph's opinion more weight. Moreover, in according Dr. Joseph's opinion greater weight, the ALJ found Dr. Joseph's opinion to be more cogent, comprehensive and well reasoned insofar as assessing Petitioner's disability when compared with the opinion of Dr. Trent, whose 15% disability rating of Petitioner's right hand without any objective testing was predicated primarily on Petitioner's subjective complaints of soreness and pain.

Recently, the CRB in great detail reiterated how it is quite proper to reject the opinion of the treating physician if persuasive reasons are given to accept the independent medical examination opinion of an employer's physician. *Taylor v. Verizon Communications, Inc.*, CRB No. 05-232, OHA No. 03-216B, OWC NO. 571165 (June 16, 2005). After reviewing the record, it is clear that the ALJ detailed the reasons for rejecting the opinion of Petitioner's treating physician, Dr. Trent in favor of Dr. Joseph. As a result, there is no reason to disturb the ALJ's determination on this issue, nor is there any error in the ultimate conclusion that Petitioner has not met his burden of establishing by substantial credible evidence entitlement to permanent partial disability benefits under D.C. Official Code § 32-1508. See *Otis Dunston v. District of Columbia Department of Employment Services*, 509 A.2d 109 (D.C. 1986).

CONCLUSION

The ALJ's conclusion that Petitioner has not met his burden of establishing by substantial credible evidence entitlement to permanent partial disability benefits is supported by substantial evidence and the July 29, 2003 Compensation Order is in accordance with the law.

**ORDER**

The Compensation Order of July 29, 2003 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD

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LINDA F. JORY  
Administrative Appeals Judge

July 15, 2005

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DATE