

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Department of Employment Services

VINCENT C. GRAY  
MAYOR



LISA M. MALLORY  
DIRECTOR

CRB No. 12-144

JERAL LUCAS,  
Claimant–Respondent,

v.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY and XCHANGING,  
Employer/Carrier–Petitioner.

Appeal from a Compensation Order on Remand by  
The Honorable Karen R. Calmeise  
AHD No. 12-130, OWC No. 685297

Sarah O. Rollman, Esquire for the Petitioner  
Justin M. Beall, Esquire for the Respondent

Before MELISSA LIN JONES, HEATHER C. LESLIE,<sup>1</sup> and JEFFREY P. RUSSELL,<sup>2</sup> *Administrative Appeals Judges*.

MELISSA LIN JONES, *Administrative Appeals Judge*, for the Compensation Review Board.<sup>3</sup>

**DECISION AND REMAND ORDER**

FACTS OF RECORD AND PROCEDURAL HISTORY

For 7 years, Mr. Jeral Lucas was employed by the Washington Metropolitan Area Transit Authority (“WMATA”) as a bus driver. Beginning in 2007, Mr. Lucas began treating for anxiety and depression. Although he continued to receive treatment, after August 2010, he did not lose time from work as a result of his psychological condition.

On August 24, 2011 while driving a bus, Mr. Lucas was stopped by a police officer. The situation degenerated to the point that Mr. Lucas was handcuffed and arrested on multiple charges and was

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<sup>1</sup> Judge Leslie has been appointed a temporary Compensation Review Board (“CRB”) member pursuant to the Department of Employment Services’ Director’s Administrative Policy Issuance No. 12-02 (June 20, 2012).

<sup>2</sup> Judge Russell has been appointed a temporary CRB member pursuant to the Department of Employment Services’ Director’s Administrative Policy Issuance No. 12-01 (June 20, 2012).

<sup>3</sup> Jurisdiction is conferred upon the CRB pursuant to D.C. Code §§32-1521.01 and 32-1522 (2004), 7 DCMR §250, *et seq.*, and the Department of Employment Services’ Director’s Administrative Policy Issuance 05-01 (February 5, 2005).

issued multiple citations.<sup>4</sup> As a result of the events of August 24, 2011, Mr. Lucas filed a workers' compensation claim for a mental-mental injury.

Following a formal hearing, an administrative law judge ("ALJ") determined Mr. Lucas had sustained a compensable injury on August 24, 2011; the ALJ also determined Mr. Lucas had provided timely notice of that injury. Consequently, in a Compensation Order dated August 10, 2012, Mr. Lucas was awarded medical benefits and temporary total disability benefits from August 24, 2011 to March 17, 2012 (with a credit to WMATA for wages paid).<sup>5</sup>

On appeal, WMATA states it "denied the claim on the grounds that the injury did not arise out of the employment, that it was not caused by the incident at work and that [Mr. Lucas] failed to provide timely notice of an alleged injury;"<sup>6</sup> specifically, WMATA argues Mr. Lucas' injury did not arise out of a work requirement or activity. In addition, WMATA argues Mr. Lucas should have provided notice of injury within 30 days of the date of his arrest. For these reasons, WMATA requests the CRB reverse the Compensation Order.

In response, Mr. Lucas asserts substantial evidence supports the ALJ's rulings that his injury arose out of and in the course of his employment because it was WMATA's failure to maintain proper records that led to his licensure problem and that he provided timely notice because he gave notice within 30 days of his treating physician's written statement connecting his symptoms with the event on August 24, 2011. Mr. Lucas requests the CRB affirm the Compensation Order.

#### ISSUES ON APPEAL

1. Did the ALJ err in ruling on the causal relationship issue raised by WMATA?
2. Does substantial evidence support the ruling that Mr. Lucas provided timely notice of injury to WMATA?

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<sup>4</sup> The details regarding the exact events of August 24, 2011 are not detailed in the Compensation Order to the same degree they are detailed in the record. Based upon the disposition of this appeal, we leave any further fact finding to the ALJ on remand.

<sup>5</sup> *Lucas v. Washington Metropolitan Area Transit Authority*, AHD No. 12-130, OWC No. 685297 (August 10, 2012).

<sup>6</sup> Memorandum in Support of Application for Review, unnumbered p. 1.

## ANALYSIS<sup>7</sup>

The first issue for resolution as stated in the Compensation Order is “Whether the Claimant’s depressive disorder and anxiety condition is medically causally related to the work injury of August 24, 2012, or arose out of an in the course of her [*sic*] employment.”<sup>8</sup> Standing alone, this portion of the Compensation Order does not clarify whether WMATA raised the issue of medical causal relationship, legal causal relationship, or both. Review of the hearing transcript, however, clarifies WMATA’s position:

Ms. Rollman: Your Honor, very briefly also, this incident arises out of an August 24, 2011, traffic stop that occurred while Mr. Lucas was operating a Metro bus. He was arrested, and he claims that was due to driving without a valid driver’s license. The evidence will show otherwise.

He also claims that his pre-existing major depression and anxiety disorders became symptomatic, and, finally, claims he was unable to work due to his psychiatric condition.

WMATA raised a couple of defenses. The first is arising out of and in the course of employment. The medical causal relationship and arising out of are sort of the same arguments. I just checked both on the stipulation sheet as an - - out of an abundance of caution.

It is WMATA’s contention that the arrest was not for driving without a license, and that he lacked sufficient evidence linking his depression and anxiety to a work event.<sup>[9]</sup>

Furthermore, in closing arguments, WMATA specifically argued

Your Honor, the Claimant [*sic*] has raised a number of defenses. First, let’s start out with arising out of and in the course of/causal relationship.

WMATA has rebutted the presumption here, and the basis which WMATA used to rebut the presumption is the submission of the affidavit and police report. This is not about a license issue, no matter how much Mr. Beall wants to talk about this being solely about a license suspension.

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<sup>7</sup> The scope of review by the CRB is limited to making a determination as to whether the factual findings of the appealed Compensation Order on Remand are based upon substantial evidence in the record and whether the legal conclusions drawn from those facts are in accordance with applicable law. Section 32-1521.01(d)(2)(A) of the District of Columbia Workers’ Compensation Act of 1979, D.C. Code, as amended, §32-1501 *et seq.* Consistent with this standard of review, the CRB is constrained to uphold a Compensation Order on Remand that is supported by substantial evidence, even if there also is contained within the record under review substantial evidence to support a contrary conclusion and even if the CRB might have reached a contrary conclusion. *Marriott International v. DOES*, 834 A.2d 882, 885 (D.C. 2003).

<sup>8</sup> *Lucas, supra*, at p. 2.

<sup>9</sup> Hearing Transcript, pp. 26-27.

This isn't a license suspension case. This is a disorderly conduct, inciting a riot, and failing to obey a police officer that led to the arrest here. And that is sufficient to rebut the presumption of causation.

The other this is is as much as Mr. - - Dr. Schulman did say that [t]he incident most likely led to an exacerbation of his condition. The incident is not suspension of the license; the incident is being arrested as a result of disorderly conduct, being arrested as a result of inciting a riot, and being arrested as a result of failing to obey a police officer.

I think that we can all agree without argument that disorderly conduct, inciting a riot, and failing to obey a police officer are not things that arise out of and in the course of Mr. Lucas' employment. They are certainly something that WMATA does not condone.

WMATA, because of his conduct, referred him for a drug and alcohol test, because it is something that is not acceptable behavior. So that is not - - so those are the reasons why WMATA contends that it - - that it both rebutted the presumption.<sup>[10]</sup>

In addressing "causal relationship" in the Compensation Order, the ALJ characterizes the issue as "Employer argues that the traffic dispute and altercation with the police did not cause Claimant to lose time off work after August 24, 2011."<sup>11</sup> The ALJ then goes on to find Mr. Lucas' "testimony and medical evidence are enough to invoke the presumption [of compensability]."<sup>12</sup> Shifting the burden to WMATA, the ALJ ruled

I find that Employer's evidence fails to controvert the assertion that Claimant suffered a work related injury on August 24, 2011. To the contrary, Employer's evidence included an Independent Medical Examination report by Dr. Brian Shulman dated March 3, 2012 in which the IME physician opined that the Claimant likely suffered an exacerbation of his depression and anxiety following the August 24, 2012 arrest. (EE 1)

I therefore credit the Claimant's testimony and medical evidence, as most consistent with the evidence in the record, and that his medical condition did arise out of and in the course of the employment.<sup>[13]</sup>

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<sup>10</sup> Hearing Transcript, pp. 98-100.

<sup>11</sup> *Lucas, supra*, at p. 4.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at p. 5.

Although this analysis may suffice to address medical causal relationship, it ignores WMATA's legal causal relationship defense that Mr. Lucas' injury does not arise out of and in the course of his employment. As a result, the law requires we remand this matter for consideration of that defense.

Regarding the notice issue, §32-32-1513(a) of the Act requires

Notice of any injury or death in respect of which compensation is payable under this chapter shall be given within 30 days after the date of such injury or death, or 30 days after the employee or beneficiary is aware or in the exercise of reasonable diligence should have been aware of a relationship between the injury or death and the employment. Such notice shall be given to the Mayor and to the employer.

Substantial evidence supports the ALJ's ruling that

The Claimant testified that he had concerns about his anger and depression following his arrest and suspension from work however; no evidence was presented to support a finding that he had medical confirmation of the connection between his anxiety symptoms and the work incident until he underwent medical treatment. The Act does not hold a Claimant to a standard of a medical professional to know the exact cause and effect of work related injuries or incidents. It was not until October 28, 2011 that the treating physician issued a written statement that connected the Claimant's increased depressive symptoms with the August 29, 2011 [*sic*] work incident. (CE 2, 12) Claimant filed an On the Job Injury Report on November 15, 2011, within 30 days of when he knew or could have known of medical relationship between his depression, anger, and anxiety and the August 2011 work incident.<sup>[14]</sup>

Because the notice requirement does not apply until an injury is related to work,<sup>15</sup> we have no reason to disturb these findings or the resulting conclusion that Mr. Lucas timely provided notice in relation to the date his treating doctor related his condition to the August 2011 event, particularly given that Mr. Lucas suffered from pre-existing psychological conditions.

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<sup>14</sup> *Lucas, supra*, at p. 8.

<sup>15</sup> *Acheson v. Avon Tile Co.*, Dir. Dkt. No. 87-6, H&AS No. 84-504, OWC No. 022371 (May 21, 1990).

CONCLUSION AND ORDER

Although substantial evidence supports the ruling that Mr. Lucas provided timely notice of injury to WMATA, the ALJ's failure to address the issue of legal causal relationship requires we REMAND this matter for further proceedings consistent with this Decision and Remand Order.

FOR THE COMPENSATION REVIEW BOARD:

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MELISSA LIN JONES  
Administrative Appeals Judge

November 16, 2012

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DATE