

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. 04-073

MARCIA WALKER,

Claimant – Respondent

v.

GEORGETOWN UNIVERSITY HOSPITAL.

Employer/Carrier – Petitioner.

Appeal from a Compensation Order of
Administrative Law Judge Amelia G. Govan
OHA No. 03-599, OWC No. 584965

William S. Hopkins, Esquire, for the Petitioner

Neil J. Fagan, Esquire, for the Respondent

Before FLOYD LEWIS, SHARMAN J. MONROE 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 March 24, 2003, the Administrative Law Judge (ALJ) awarded Claimant-Respondent (Respondent) benefits for a schedule loss of seventeen percent (17%) of the right upper extremity pursuant to D.C. Official Code § 32-1508(a)(3). Employer-Petitioner (Petitioner) now seeks review of that Compensation Order.

As grounds for this appeal, Petitioner alleges as error that the award of a 17% permanent partial disability is not supported by substantial evidence and is not in accordance with the law. Respondent did not file an opposition to Petitioner's appeal.

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 to award Respondent a 17% permanent partial disability of the right upper extremity based on the report of Dr. H.S. Pabla is not supported by substantial evidence and is not in accordance with the law. Specifically, Petitioner argues that the report of Dr. Pabla shows that the physician found no symptoms in Respondent's upper extremity, as all of his findings relate to Respondent's shoulder. Thus, Petitioner contends that the ALJ erred in rejecting the findings of Dr. John Delahay, of Petitioner's orthopedic department and that the ALJ's conclusion is based on a mistaken interpretation that the 17% impairment in Dr. Pabla's report is attributable to the right upper extremity.

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.

Respondent suffered a torn rotator cuff of her right shoulder when she fell on a broken step at work. At the hearing, Respondent sought an award for 35% impairment of the right upper extremity under D.C. Official Code § 32-1508(a)(3). ALJ awarded Respondent benefits for a schedule loss of 17%, concluding that, basically, Dr. Pabla provided a rating of 17% of the right upper extremity.

Concerning Dr. Pabla's report, the ALJ stated:

Dr. Pabla, in essence, provided a rating of seventeen percent of the right upper extremity. He discussed the objective physical findings related to the shoulder injury, then addressed the actual impairment which affects claimant's right arm.

The ALJ later explained that:

The "Discussion and Disposition" section of his report details the specific characteristics of claimant's upper extremity condition, and correlates those characteristics with the AMA guidelines. As stated earlier, the undersigned reads Dr. Pabla's report as providing a rating of 17% impairment of the right arm.

Compensation Order at 7-8.

Then, the ALJ, specifically referenced the humanitarian purposes of the Act which has been sanctioned by District of Columbia Court of Appeals (*see Harris v. Dist. of Columbia Dep't. of Employment Servs.* 660 A.2d 404 (D.C. 1995) and concluded that any error by Dr. Pabla in assessing the extent of Petitioner's use of her right extremity should be interpreted in Petitioner's favor. Thus, the ALJ found that there was sufficient reason to read Dr. Pabla's report as providing a 17% impairment of the right arm and accord Dr. Pabla's opinion more weight than the 1-5% rating of Dr. Delahay, whose opinion the ALJ found lacked consistency, cogency and medical rationale.

Dr. Pabla's January 6, 2003 report concerning Respondent reads:

She continues to experience pain in the right shoulder. She has reached the point of maximum medical improvement. Using the *American Medical Association Guides to the Evaluation of Permanent Impairment, 4th Edition*, page 3/42, figures 36-44, there is 6% impairment of the right shoulder for loss of shoulder range of motion. She has weakness of the abductor and external rotator, grade IV, 12% impairment. She has weakness with loss of endurance. She is unable to do outdoor work. She has difficulty pruning and using the lawn mower. She cannot do heavy lifting or overhead work, 17% impairment. Hence, the total permanent partial impairment for the work-related injury on April 23, 2002 for the right upper extremity is 35%.

Thus, the ALJ concluded that Dr. Pabla provided right upper extremity ratings of 18% (right shoulder) and 17% (right arm) for a combined rating of 35%. Ultimately, the ALJ interpreted Dr. Pabla's report as providing a 17% impairment of the right arm, concluding that the physician discussed the objective physical findings related to the shoulder injury, then gave the actual impairment which affected Respondent's right arm.

After reviewing the record as a whole, this Panel concludes that the ALJ's approach in awarding Respondent a 17% impairment of the right arm is quite consistent with the broad discretion a fact-finder needs in reaching a conclusion as to the fact of the degree of disability under the Act. The CRB has held that there is no impediment to an ALJ making an award that is different than the specific figure requested by a claimant or argued by an employer. *See Wormack v. Fischbach & Moore Electric, Inc.*, CRB No. 03-159, OHA No. 03-151 (July 22, 2005).

In the instant matter, this Panel must reject Petitioner's arguments that the ALJ erred in awarding a 17% impairment of the right arm, as the ALJ fully explained the reasons for making such an award. As such the Compensation Order under review is supported by substantial evidence, is in accordance with the law and should be affirmed.

CONCLUSION

The Compensation Order of March 24, 2003 is supported by substantial evidence in the record and is in accordance with the law

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

