

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services



VINCENT C. GRAY
MAYOR

LISA MARÍA MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 10-126 (R)

**MARTA ECHEVERRIA,
Claimant-Respondent**

v.

**RITZ-CARLTON HOTEL and MARRIOTT CORPORATION
Employer and Insurer-Petitioners.**

Upon Remand from the District of Columbia Court of Appeals
DCCA No. 12-AA-00011(February 21, 2013)

Benjamin T. Boscolo, Esquire, for the Claimant
Alan D. Sundburg, Esquire, for the Employer and Insurer

Before LAWRENCE D. TARR, *Chief Administrative Appeals Judge*, HENRY W. MCCOY, and
JEFFREY P. RUSSELL, *Administrative Appeals Judges*.

LAWRENCE D. TARR, *Chief Administrative Appeals Judge*, for the Compensation Review Board.

REMAND ORDER

This case is before the Compensation Review Board (CRB) pursuant to the February 21, 2012, Memorandum Opinion and Judgment of the District of Columbia Court of Appeals (DCCA). Consistent with the remand instructions in that decision, we REMAND this matter to the Administrative Hearings Division (AHD) of the District of Columbia's Department of Employment Services (DOES).

BACKGROUND FACTS OF RECORD AND PROCEDURAL HISTORY

The background facts and procedural history were fully described and explained in our previous decision and only will be briefly stated here.

The claimant, Marta Echeverria, sustained injuries to her neck and both shoulders as the result of a July 27, 1997, accident at work. At the time of her injury, the claimant held two jobs. She worked as a housekeeper for this employer and was self-employed as a housekeeper for two other employers.

After several attempts at light duty, the claimant stopped working for this employer in 2000, but continued to work at her secondary employment. However, after the 1997 injury at work, the

nature of the claimant's secondary employment changed. The claimant stopped working as a housekeeper and became a supervisor of two housekeepers.

In a June 1, 2005, Compensation Order, an ALJ held the claimant proved she sustained 16% permanent partial losses to both her arms, and also had a (non-schedule) permanent partial disability due to cervical problems from the work accident that caused an ongoing partial wage loss. The ALJ did not award a dollar amount for the claimant's losses. On review, the CRB affirmed the ALJ's decision not to award a dollar amount but remanded the case to the ALJ so that the claimant could establish the compensation rate to which she was entitled for any wage loss caused by her cervical condition.

In 2007, the claimant filed a request for a supplementary compensation order awarding penalties and declaring the employer in default. By Order dated May 1, 2008, an ALJ denied the request, which was affirmed by the CRB on December 17, 2009. In its decision, the CRB noted that the claimant could make application for a judicial determination of the specific dollar amount to which she may be entitled under D.C. Code § 32-1508 (V) (ii) (I) or (II), but that the claimant would have the burden of presenting evidence that is sufficient to establish each element of the statutory formula.

The present dispute concerns the ALJs April 30, 2010, Supplemental Compensation Order, issued after the claimant filed a claim seeking penalties for the alleged failure to pay the permanent partial disability benefits and for a determination of her earnings in the secondary housekeeping work so that she could receive benefits under §32-1508 (3) (V) (ii) (I) or (ii) (II).

The ALJ held the claimant did not prove the requisite elements for calculating a permanent partial disability award under either D.C. Code §32-1508 V) (ii) (I) or (II), but nevertheless found the claimant entitled to benefits. On review, the CRB vacated the Award.

The CRB agreed with the ALJ that the claimant had not established the necessary statutory components of both statutes but vacated the award because the ALJ awarded benefits pursuant to a formula not stated in any statute or regulation. *Echeverria v. Ritz-Carlton Hotel*, CRB 10-126, AHD NO. 02-005C, OWC No. 517977 (December 1, 2011).

The claimant appealed the CRB's decision to the DCCA. In its February 21, 2013, Memorandum Opinion and Judgment, the DCCA affirmed the CRB's decision. The DCCA further held:

Petitioner also argues, in the alternative that the average weekly wage of her post-injury housekeeping business, had it existed at the time of her injury, could have been determined by adjusting for the rate of inflation and replacing the 2004 value of the dollar with the 1997 value of the dollar. This alternative method of calculation was not presented to the numerous ALJs who reviewed this matter, nor to the CRB. We have discretion to decide whether to entertain arguments made for the first time on appeal. *Bautista v. United States*, 10 A. 3d 154, 159 (D.C. 2010). In this case, we choose not to decide petitioner's alternative argument.

In sum, because we defer to the CRB as to its interpretation of the compensation calculation method provided in the statute, we remand the case so that it can be further remanded to an administrative law judge to conduct a fact-finding hearing, utilizing one of the alternative methods set forth in the statute to determine and make a specific award to the petitioner given the ALJ's

unchallenged finding that the petitioner is entitled to compensation for wage loss due to her permanent partial disability.

Therefore, in accordance with the DCCA's decision, the CRB must remand this case.

ORDER

This case is remanded to the Administrative Hearings Division so that an ALJ can conduct a formal hearing consistent with the DCCA's remand instructions.

FOR THE COMPENSATION REVIEW BOARD:

LAWRENCE D. TARR
Chief Administrative Appeals Judge

March 20, 2013
Date