

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. 05-39

KELLI DENISE MINOR,

Claimant – Petitioner

v.

VERIZON,

Self-Insured Employer – Respondent

Appeal from a Compensation Order of
Administrative Law Judge Anand K. Verma
OHA No. 04-112, OWC No. 589813

Sean E. Underwood, Esquire for the Petitioner

Catherine H. McQueen, Esquire, for the Respondent

Before LINDA F. JORY, SHARMAN J. MONROE , *Administrative Appeals Judges* and E. COOPER BROWN, *Acting Chief 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 (1994), 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 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),

Pursuant to 7 D.C.M.R § 230.04, the authority of the Compensation Review Board extends over appeals from compensation orders including final decisions or orders granting or denying benefits by the Administrative Hearings Division (AHD) or the Office of Workers' Compensation (OWC) under the public and private sector Acts.

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 December 28, 2004, the Administrative Law Judge (ALJ), concluded Claimant – Petitioner's (Petitioner) claim for relief should be denied as Petitioner had failed to establish jurisdiction for his claim rested in the District of Columbia. Petitioner has filed an Application for Review of the Compensation Order asserting the ALJ erred by not finding Petitioner's employment was principally localized in the District of Columbia. Employer - Respondent (Respondent) has filed a response asserting the ALJ correctly applied the law by analyzing the location of Petitioner's employment at the time of her work injury.

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, Petitioner asserts that the ALJ misapplied the meanings of "principally localized" and "substantial". Specifically, Petitioner asserts the ALJ erred by looking at the six months of work that preceded the injury and asserts that "the entire work history must be evaluated including where claimant was hired, if the question of "principally localized is to be applied and not just the last few months or days before the injury." In asserting the contrary, Respondent has cited the Court of Appeals decision in *Petrilli v. District of Columbia Department of Employment Services*, 499 A.2d 102 (D.C. 1985) (*Petrilli*). According to Respondent, *Petrilli* also asserted that her entire employment history with employer should be analyzed to determine whether her employment was "principally localized". The Court of

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.

Appeals, however, affirmed the Director's adoption of OHA's "qualitative" determination that the relevant employment is that which is held by the injured at the time of the injury. *Petrilli* at 108. The Panel further acknowledges that in affirming the Director's "principally localized" analysis, the Court did not contest the Director's practice of examining the "employment relationship" Petitioner had with her employment and the District of Columbia. The Court made clear that the "employee relationship" is a set of substantial and legitimate contacts between the employment and the District and, contrary to the instant Petitioner's position, not the entire "work history" which Petitioner asserts can not be marginalized. In concluding the ALJ did not err by considering Petitioner's claimant's employment relationship based on her employment at the time of her injury, the Panel rejects Petitioner's definition of a employment relationship and the notion that "substantial" means the number of years that Petitioner has invested in the District of Columbia.

The Compensation Order reveals Petitioner testified she had been a Maryland resident since 1979 and, prior to the injury on April 10, 2003 had worked for approximately six months out of Respondent's Waldorf, MD office to which she had voluntarily transferred (HT at 32, 33); CO at 4, and had no contact with the District of Columbia at the time of the injury. Inasmuch as Petitioner has not argued to the contrary, the Panel concludes that the ALJ's conclusion that Petitioner's employment was not principally localized in the District of Columbia at the time of the injury must be affirmed as it is supported by substantial evidence.

Counsel for Petitioner's remaining argument is that "The District of Columbia has a moral obligation to accept [Petitioner's] claim." In support of this argument, Petitioner asserts that Respondent's "callous disregard for the laws of the three states affected, for the rights of the injured worker should not be ignored and sanctioned by any jurisdiction either. At this late date to bar this claim (which was properly and timely filed) would in essence bar the claimant from pursuing a claim in any other jurisdiction."

Respondent has responded to Petitioner's theory, asserting that Petitioner has had legal counsel since at least August 2003; Petitioner has been aware of Respondent's defense of jurisdiction; Respondent has taken no steps to prevent Petitioner from filing her claim in another forum; and Petitioner has inexplicably chosen to proceed in the District of Columbia. The parties positions shall not be analyzed further inasmuch as, this forum lacks jurisdiction to consider this argument in conjunction with the matter on appeal.

As so stated by the Court of Appeals in *Ramos v. District of Columbia Dept. of Consumer & Regulatory Affairs*, 601 A.2d 1069 (January 9, 1992):

Administrative law tribunals -- created by the legislature to serve dispute resolution and rulemaking-by-order functions within agencies of the executive branch—by definition and design do not have the inherent "equitable authority" that courts in the judicial branch have derived from common law traditions and powers. Administrative Law Judges only possess narrowly defined statutory and regulatory powers; they do not have the traditional equity power of courts to formulate remedies. The sanctioning authority of an agency may include a specific sanction, or may be stated in general terms. In either case, the agency

may exceed neither the specific nor general grant of power authorized by the legislature.

CONCLUSION

The ALJ's conclusion that Petitioner failed to sustain her burden of establishing that her employment at the time of her injury was principally localized in the District of Columbia is supported by substantial evidence, and the finding that jurisdiction does not properly rest with the District of Columbia is in accordance with the law.

ORDER

The Compensation Order issued on December 28, 2004 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD

LINDA F. JORY
Administrative Appeals Judge

July 28, 2005

DATE