

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 (Dir.Dkt) No. 05-253

DENISE OWENS,

Claimant–Respondent,

v.

THE NATIONAL CHILDREN’S CENTER AND CNA INSURANCE,

Employer/Carrier–Petitioner.

Appeal from a Compensation Order of
Administrative Law Judge David L. Boddie
OHA/AHD No. 02-235A, OWC No. 571507

Joseph C. Veith, III, Esquire, for the Petitioner

William S. Hopkins, Esquire, for the Respondent

Before E. COOPER BROWN, *Chief Administrative Appeals Judge*, JEFFREY P. RUSSELL, and LINDA F. JORY, *Administrative Appeals Judges*.

JEFFREY P. RUSSELL, *Administrative Appeals Judge*, for the Compensation 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

¹Pursuant 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 District of Columbia Workers’ Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, *codified at* D.C. Official Code § 32-1521.01. In accordance with the Director’s Directive, the CRB replaces the Office of the Director in providing administrative appellate review and disposition of workers’ and disability compensation claims arising under the District of Columbia Workers’ Compensation Act of 1979, as amended, D.C. Code Ann. §§ 32-1501 to 32-1545 (2005), and the District of Columbia Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Code Ann. §§ 1-623.1 to 1-643.7 (2005), including responsibility for administrative appeals filed prior to October 1, 2004, the effective date of the District of Columbia Workers’

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 followed a formal hearing conducted on June 10, 2003, and was filed on July 1, 2005, the Administrative Law Judge (ALJ) granted Respondent's claim for temporary total disability from May 28, 2002 through the date of the hearing and continuing thereafter, interest thereon, and causally related medical expenses. Petitioner now seeks review of that Compensation Order, and seeks reversal of the award of temporary total disability.

This case is now before the Compensation Review Board on Petitioner's appeal.

The record has been reviewed and we find that the ALJ's factual findings are supported by substantial evidence in the record as a whole, and are therefore conclusive. *Marriott Int'l. v. Dist. of Columbia Dep't. of Employment Servs.*, 834 A.2d 882 (D.C. 2003); D.C. Workers' Compensation Act of 1979, as amended, D.C. Code Ann. §32-1501 to 32-1545 (2005), at §32-1521.01(d)(2)(A).

Review of the Application for Review (AFR) and memorandum in support thereof reveals that the Petitioner's complaints of error relate solely² to the assertion that the evidence was insufficient to support the conclusion that Respondent had been offered a position, modified from her pre-injury job, which she refused to perform, that was within her physical capacity. Petitioner's assertions are supported, however, by arguments that the ALJ accepted medical opinion, in the form of the opinion of the treating physician, that was in its view not as compelling as that offered by Petitioner.

We defer to and accept the ALJ's fact findings, including credibility determinations. The record evidence fully supports the ALJ's thorough and reasoned decision, and identifies the evidence in the record upon which the ALJ based his factual findings. We therefore affirm the reasoning and legal analysis expressed by the ALJ in that decision, affirming the Compensation Order in all respects.

Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004.

² There is one assertion that might be viewed as an allegation of legal error, that being that Petitioner argues that "In all cases [where conflicting medical opinion evidence is presented], the Administrative Law Judge must explain his or [sic] decision to credit one medical opinion over the other", citing *Short v. District of Columbia Dep't. of Employment Serv's.*, 723 A.2d 845 (1998). Memorandum and Points of [sic] Authorities in Support of Employer and Insurer's Application for Review By Compensation Review Board, page 10. This is a misstatement of the law. There is only such an obligation where the ALJ rejects treating physician opinion, accepting contrary independent medical evaluation (IME) opinion in its stead. That did not occur in this case.

ORDER

The Compensation Order of July 1, 2005 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

JEFFREY P. RUSSELL
Administrative Appeals Judge

November 8, 2005
DATE