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. 04-72

ARCHIE RAGLAND,

Claimant – Petitioner,

v.

DIGITALNET GOVERNMENTAL SOLUTIONS AND AIG CLAIMS SERVICES,

Employer/Carrier – Respondent.

Appeal from a Compensation Order of
Administrative Law Judge Jeffrey P. Russell
OHA No. 01-182A, OWC No. 550642

Michael P. Deeds, Esquire, for the Petitioner

Raymond C. Baldwin, Esquire, for the Respondent

Before E. COOPER BROWN, *Chief Administrative Appeals Judge*, FLOYD LEWIS and SHARMAN J. MONROE, *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 June 9, 2004, the Administrative Law Judge (ALJ) denied the claim for relief requested by Claimant-Petitioner (Petitioner), concluding that Employer-Respondent (Respondent) did not terminate Petitioner or otherwise discriminate against Petitioner in retaliation for claiming or attempting to claim benefits under the Act.. Petitioner now seeks review of that Compensation Order.

As grounds for this appeal, Petitioner alleges as error that that the Compensation Order is not supported by substantial evidence and is not in accordance with the law.

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 clearly erred in holding that Petitioner had not established a *prima facie* case of workers' compensation retaliation, as he clearly demonstrated that Respondent's legitimate business reason was pretextual and the real reason for Petitioner's termination was retaliation. Respondent counters that Petitioner did not demonstrate retaliatory animus and that Respondent had legitimate business reasons for its actions. As such, Respondent argues that the Compensation Order is supported by substantial evidence and should be affirmed.

On June 11, 2000, Petitioner suffered a work-related bilateral carpal tunnel syndrome injury while employed on the computer staff of another employer, Getronics. In June of 2001, the Office of Workers' Compensation approved a full and final settlement of Petitioner's claim for

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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.

workers' compensation benefits against Getronics. After the settlement, Getronics was acquired by Respondent and all of the employees of Getronics, including Petitioner, became employees of Respondent. On July 31, 2003, Petitioner's employment with Respondent was terminated and as a result, Petitioner sought compensation for retaliatory discharge under D.C. Official Code § 32-1542,

Under D.C. Official Code § 32-1542, in this type of claim, the burden on Petitioner is to establish, by substantial and credible evidence, a *prima facie* case that (1) he made or attempted to make a claim for benefits under the Act, and (2) that his employment was terminated or that he was otherwise discriminated against in his employment with Respondent in retaliation for and because of his making or attempting to make a workers' compensation claim. *Abramson Assoc.'s Inc. v. Dist. of Columbia Dep't. of Employment Servs.*, 596 A.2d 549 (1991), citing *Lyles v. Dist. of Columbia Dep't. of Employment Servs.*, 577 A.2d 81 (D.C. 1990).

As correctly pointed out by the ALJ, under *Lyles*, this standard requires that Petitioner must show that Respondent's decision to terminate him was motivated by "animus' towards him, which resulted wholly or in part from his pursuit of a workers' compensation claim. The "animus" requirement is satisfied where Petitioner offers proof that Respondent's decision was motivated, wholly or in part, by a desire or intent to intimidate, harass or punish Petitioner for pursuing a workers' compensation claim. After a claimant meets this burden, the burden of production shifts to an employer to produce substantial and credible evidence that the termination was for a legitimate business reason. It is not part of an employer's burden to establish that the legitimate business reason was the actual motivation for the termination, but simply that the facts support the termination for that reason. *Abramson, supra,* at 553. Moreover, as emphasized by the ALJ, even if an employer's action is not reasonable, there is not a violation of the Act without the specific intent to retaliate for a workers' compensation filing. *Lyles* at 84-85.

Initially, the ALJ stressed it is not clear that Petitioner demonstrated the first required element of a retaliatory claim, that he filed a claim or was otherwise attempting to seek the protection of the Act, before he was discharged by Respondent. Petitioner argued that his earlier injury while he was employed by Getronics constituted a claim against Respondent, as when Respondent acquired Getronics, Respondent left all general personnel matters intact, used the same workers and provided the same services to clients. Petitioner argued that this continuity overcomes the fact that he never filed a claim against Respondent, in Respondent's name, until the retaliatory discharge claim was filed.

The ALJ noted that he was not aware of any authority that supported Petitioner's argument and none was cited by Petitioner. Petitioner also argues that although no claim for an injury was made by him against Respondent, Petitioner's request for an ergonomic keyboard and Respondent's receipt of a note from Dr. Carol Ring on this subject constituted a claim against Respondent. The ALJ also stressed that at his deposition and under cross-examination at the hearing, Petitioner conceded that these events were not viewed or intended by him to constitute a claim for benefits under the Act.

Thus, the ALJ stated that "[o]n this record, Claimant's evidence appears to fall short of the *Lyles* standard for finding that Clamant made a claim." However, the ALJ continued by stating that:

> "even giving Claimant the benefit of the doubt on this question, and assuming without deciding that this threshold showing has been made, the evidence is still insufficient to support the claim of illegal retaliation under the Act, because Claimant has failed to establish the requirement that the person who made the decision not to bring him back to the State Department contract had any knowledge of the facts constituting the alleged claims. Without such evidence, there can be no "animus."

Compensation Order at 7.

Rose O'Connor, Respondent's operations manager, was the person responsible for not offering Petitioner a position at the State Department. Due to the termination of Respondent's contract with the Postal Service, Petitioner was one of approximately 52 employees who were informed that they would lose their jobs if they did not find a different position with Respondent. Ms. O'Connor testified that Respondent provided assistance to employees to locate other jobs, but Petitioner did not use this assistance and Ms. O'Connor selected another candidate for the position at the State Department. The ALJ specifically noted that all of her reasons for hiring the other candidate had a genuine and legitimate business purpose. There is substantial evidence in the record to support this finding by the ALJ.

The ALJ found and the record reveals that Petitioner did not tell Ms. O'Connor of his request for the ergonomic keyboard and that she had no knowledge of Petitioner's earlier work injury and workers' compensation claim at Getronics or the note from Dr. Ring concerning the keyboard. The ALJ emphasized that Petitioner did not allege that he informed Ms. O'Connor of these matters and Ms. O'Connor credibly denied having knowledge of any of this information.

Moreover, the ALJ specifically found incredible and rejected Petitioner's testimony that he was advised by Peter Hardwick, a human resources specialist for Respondent, that Petitioner would not be able to return to the State Department because of his "hands." The ALJ noted that Petitioner's various e-mails to Mr. Hardwick and others do not mention any such statements, despite Petitioner's own testimony that he used e-mails to create "something in writing." The ALJ added:

> If he [Petitioner] had been so "stunned" that he was being denied a position at the State Department because of his CTS [carpal tunnel syndrome], surely the "something in writing" that he was insuring be created would contain a reference to the statements. For these reasons, I accept Mr. Hardwick's credible denial of making any such statements.

Compensation Order at 8.

This Panel must emphasize that it is well settled that the credibility determinations of the fact-finder are entitled to great weight. *Dell v. Dist. of Columbia Dep't. of Employment Servs.*, 499 A.2d 102, 109 (D.C. 1985). Therefore, deference should be give to the ALJ's credibility findings in this matter.

As such, this Panel can find no error in the ALJ's determination that Petitioner failed to demonstrate that Ms. O'Connor had any knowledge that Petitioner sustained or claimed to have sustained a work related injury when she decided not to offer Petitioner a position at the State Department and thus, the ALJ's ultimate conclusion to deny Petitioner's claim should not be disturbed.

CONCLUSION

The Compensation Order of June 9, 2004 is supported by substantial evidence in the record and is in accordance with the law.

ORDER

The Compensation Order of June 9, 2004 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

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FLOYD LEWIS
Administrative Appeals Judge

March 17, 2006
DATE