

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. 12-99

JAMAL RASHAD,

Claimant – Petitioner

v.

D.C. OFFICE OF THE CORPORATION COUNSEL,

Employer – Respondent.

Appeal from a Compensation Order of
Administrative Law Judge Robert R. Middleton
OHA No. PBL 97-070B, DCP No. LT4-DMH000400

Jamal Rashad, Esq., for the Petitioner, *Pro Se*

Thelma Chichester Brown, Esq., for the Respondent

Before E. COOPER BROWN, *Chief Administrative Appeals Judge*, SHARMAN J. MONROE and JEFFREY P. RUSSELL, *Administrative Appeals Judges*.

SHARMAN J. MONROE, *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 (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 responsibility for administrative appeals filed

BACKGROUND

This appeal follows the issuance of a Final Compensation Order by the Assistant Director for Labor Standards of the District of Columbia Department of Employment Services, approving and adopting a Recommended Compensation Order from the Office of Hearings and Adjudication (OHA).² In that Recommended Compensation Order, which was filed on June 25, 2004, the Administrative Law Judge (ALJ) denied the request of the Claimant-Petitioner (Petitioner) for continuing temporary total disability and for job placement assistance. The ALJ also determined that AHD lacked both statutory and inherent authority to restore the Petitioner to his position as a supervisory trial attorney, that in 1996, the Petitioner sustained a new injury thereby limiting his compensation rate to his rate of pay at that time. However, the ALJ awarded outstanding medical expenses. The Petitioner now seeks review of that Final Compensation Order.

On or about July 26, 2004, the Petitioner filed a Request for an Enlargement of Time to File Brief in Support of Petition and a Memorandum in support thereof. In his Memorandum, the Petitioner indicated there are “multiple and several assignments of error in the case which need to be briefed.” Via letter dated March 10, 2006, the parties were informed that the case file in this matter was being prepared for review by the CRB and that, given the lapse of time since the appeal had been filed, each could file a supplemental brief by March 22, 2006 as deemed warranted. The Respondent timely filed a Motion for Enlargement of Time to Respond to Petition for Review or in the Alternative Employer’s Motion to Dismiss the Petition for Review. The Petitioner did not respond to the letter.

ANALYSIS

As an initial matter, the standard 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 §§ 1-623.28(a) and 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. 2003). Consistent with this standard 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.

The Panel will first address the Respondent’s Motion for Enlargement of Time. In this Motion, the Respondent requested additional time after the receipt of the Petitioner’s Memorandum to file a

prior to October 1, 2004, the effective date of the D.C. Workers’ Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004.

² Pursuant to the Director’s Directive, Administrative Policy Issuance 05-01, the functions of the Office of Hearings and Adjudication have been assigned to the Administrative Hearings Division (AHD). Throughout this decision, the new office names, CRB and AHD, will be used.

response to the aforesaid Memorandum. Given that the Petitioner did not file a Memorandum supporting his Petition for Review, there is nothing for the Respondent to respond to and the Motion for Enlargement is moot. As to the Motion to Dismiss, the Respondent's basis therefor is the Petitioner's failure to file a Memorandum of Points and Authorities. However, under the private sector Act,³ the failure to file a Memorandum with an Application for Review does not automatically require a dismissal of a case. See *Short v. D.C. Department of Employment Services*, 723 A.2d 845, 849 (D.C. 1998); *Stevens, v. The Washington Post*, Dir. Dkt. No. 98-61, H&AS No. 97-281, OWC No. 264774 (October 18, 1999). The Panel determines that this standard is rational as explained in *Short* and should also be applicable to appeals filed pursuant to the D.C. Code Official §§ 1-623.01 through 1-623.47. The Respondent's Motion to Dismiss is denied.

The record in this case was reviewed in its entirety. The Panel determines that the ALJ's factual findings are supported by substantial evidence on the record as a whole, and are conclusive, and that the ALJ's legal conclusions are in accordance with the law. *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). The record fully supports the ALJ's thorough, well reasoned decision, and the Panel, therefore, adopts the reasoning and legal analysis expressed by the ALJ in that decision in affirming the Compensation Order in all respects.⁴

CONCLUSION

The Final Compensation Order of June 25, 2004 is supported by substantial evidence in the record and is in accordance with the law.

ORDER

The Final Compensation Order of June 25, 2004 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

SHARMAN J. MONROE
Administrative Appeals Judge

May 18, 2006
DATE

³ The private sector Act can be found at D.C. Official Code §§ 32-1501 through 32-1545.

⁴ 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)(B) requires a more detailed and thorough written order than the instant Decision and Order where there is a reversal of the Compensation Order.