

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. 07-100

ROGER L. BAILEY,

Claimant – Respondent

v.

DUDLEY & SINGLETARY PROPERTY INC. AND CAMBRIDGE INTEGRATED SERVICES GROUP,

Employer/Carrier – Respondent.

Appeal from a Compensation Order on Remand of
Administrative Law Judge Terri Thompson Mallett
AHD No. 06-411, OWC No. 624744

Jeffrey W. Ochsman, Esq., for the Petitioner

Heather Leslie, Esq., for the Respondent

Before LINDA F. JORY, FLOYD LEWIS and SHARMAN J. MONROE, *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 prior to October 1, 2004, the effective date of the D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004.

BACKGROUND

This appeal follows the issuance of a Compensation Order on Remand 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 April 18, 2007, the Administrative Law Judge (ALJ) granted the Claimant-Respondent's claim for relief on finding that an employer-employee relationship within the meaning of the Act existed between the parties. The Petitioner now seeks review of that Compensation Order.

As grounds for this appeal, the Petitioner alleges as error that the ALJ failed to make findings of fact on each materially contested issue and that the conclusions of law made do not rationally flow from the findings. The Respondent filed a Response asserting that the Compensation Order on Remand should be upheld as it is supported by substantial evidence.

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 § 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 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.

This matter is before the CRB following a remand to AHD to analyze the facts of this case using only the "relative nature of the work" test, the established test in this jurisdiction for assessing whether an employee-employer relationship exists between parties per *Munson v. Hardy & Son Trucking Co., Inc.*, Dir Dkt. No. 96-176, OWC No. 0029805 (April 19, 1999); *Munson v. District of Columbia Department of Employment Services*, 721 A.2d 623 (D.C. 1998). The ALJ had improperly analyzed the facts using both "the right to control" test and the "relative nature of the work" test indicating that the Director had adopted both for use in this jurisdiction.

Turning to the case under review herein, the Petitioner alleges that the ALJ's decision is erroneous. The Petitioner maintains that it is a company which owns and manages rental properties, including apartment complexes and houses, while the Respondent works in rehabilitation. In assessing its relationship with the Respondent under the "relative nature of the work" test, the Petitioner argues that since the Respondent engages in work which is not a

regular part of its regular work, provides his own tools, is not paid an hourly rate, and is not supervised by the Petitioner, the Respondent is not an employee, as the ALJ found, but an independent contractor.

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., supra*; D.C. Workers' Compensation Act of 1979, as amended, D.C. Official Code § 32-1501 at § 32-1521.01(d)(2)(A). The ALJ properly analyzed the facts of this case per the "relative nature of the work" test and the factors enunciated in *Munson*. The ALJ found, and the finding is supported by substantial evidence, the Respondent's rehabilitation of rental units owned and managed by the Petitioner so that the units could be put back on the market for rental is an integral part of the Petitioner's business; that the Respondent did not need certification or licensing to do the rehabilitation, but learned his skills while working for the Petitioner; that the Respondent did not have an independent business or professional service; and that the Respondent did not have workers' compensation coverage. 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.²

CONCLUSION

The Compensation Order on Remand is supported by substantial evidence in the record and is in accordance with the law.

ORDER

The Compensation Order on Remand of April 18, 2007 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

SHARMAN J. MONROE
Administrative Appeals Judge

July 20, 2007
DATE

² 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.