

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



ODIE DONALD II
ACTING DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 16-139

SAMUEL SMITH,
Claimant–Petitioner,

v.

DISTRICT OF COLUMBIA HOUSING AUTHORITY,
Employer-Respondent.

Appeal of a September 22, 2016 Compensation Order on Remand
by Administrative Law Judge Fred D. Carney, Jr.
AHD No. PBL 13-011, DCP No. 761020-0001-1999-0014

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2017 FEB 23 PM 2 07

(Decided February 23, 2017)

Andrew J. Hass for Claimant
Frank Mc Dougald and Andrea G. Comentale for Employer

Before JEFFREY P. RUSSELL, LINDA F. JORY, and GENNET PURCELL, *Administrative Appeals Judges*.

JEFFREY P. RUSSELL for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL BACKGROUND

We need not recount the factual or procedural history in detail. It is sufficient to state the following:

This case was originally heard at a formal hearing on February 14, 2013 before an Administrative Law Judge (“ALJ”) in the Administrative Hearings Division (“AHD”) of the Office of Hearings and Adjudications (“OHA”) within the District of Columbia Department of Employment Services (“DOES”). Following that formal hearing, on March 20, 2014, the ALJ issued a Compensation Order (“CO”) which upheld the Public Sector Workers’ Compensation Program’s (“PSWCP”) decision to terminate Claimant’s ongoing benefits under D.C. Code § 1-623.01 *et seq.*, the statute governing public sector workers’ compensation claims (the “Act”).

That decision was appealed to the Compensation Review Board (“CRB”) by Claimant, and was affirmed on January 28, 2015. *Smith v. District of Columbia Housing Authority*, CRB No. 14-

044 (January 28, 2014). Claimant appealed the CRB's decision to the District of Columbia Court of Appeals ("DCCA").

Prior to issuing its decision affirming the CO, the CRB enunciated a 3-step burden-shifting approach in *Mahoney v. District of Columbia Public Schools*, CRB No. 14-067 (November 12, 2014) ("*Mahoney*") for use in evaluating cases involving termination or reduction of compensation benefits where a claim has previously been accepted as compensable and benefits have been paid to a claimant. On October 29, 2015, *Mahoney's* paradigm was affirmed by the DCCA in *Ross v. D.C. Department of Employment Services*, 125 A.3d 698(D.C. 2015).

In the instant case, Respondent filed a motion with the court to have the matter remanded to the CRB for further consideration of the CO, taking into consideration the *Mahoney* standard. On January 11, 2016, the court granted the motion and remanded the matter to the CRB with the following language:

On consideration of respondent's motion to remand the petition for review, to which no opposition has been filed, it is

ORDERED that respondent's motion is granted and the order on review is hereby vacated and the case is remanded to the agency for further proceedings in light of *Ross v. D.C. Department of Employment Services*, No. 14-AA-200 (D.C. Oct. 29, 2015).

Smith v. DOES, DCCA No. 15-AA-227 (December 23, 2015).

On remand, the CRB issued "Decision On Remand" in which it was determined that the matter required further remand to the ALJ to permit consideration employing the *Mahoney* paradigm, and to analyze the case without regard to any treating physician preference. In addition, the CRB wrote:

The ALJ's decision does not explain why he did not believe Claimant's testimony with respect to the referral to a specialist and treatment with Dr. Wright. These findings, without explanation, appear to be inconsistent with his finding that Claimant was credible.

To be clear, we are not saying that the ALJ must find that Dr. Wright's opinion is persuasive. We are saying that his reasons for accepting one medical report over the other should be consistent with his other factual and credibility findings.

* * *

[T]here are significant concerns regarding the ALJ's decision regarding several findings of fact that underpinned his decision that Claimant did not meet his burden of proof. Until those inconsistencies are *reconciled or eliminated*, we cannot say that the ALJ's errors are harmless errors.

Smith v. District of Columbia Housing Authority, CRB No. 14-044 (R) (March 8, 2016) ("DOR"), at 4 (emphasis added).

On September 22, 2016, the ALJ issued a Compensation Order on Remand ("COR"), in which the ALJ applied the *Mahoney* analysis, did not apply a treating physician preference, and determined that Claimant's claim for reinstatement of benefits should be denied because Employer had met its step-3 burden under *Mahoney* of showing, by a preponderance of the evidence, that Claimant's condition had changed such that benefits should be terminated.

Claimant appealed the COR to the CRB by filing an Application for Review and Memorandum of Points and Authorities in Support of Petitioner's Application for Review ("Claimant's Brief"). Employer responded in opposition by filing Employer's Memorandum of Points and Authorities in Opposition to Claimant's Application for Review ("Employer's Brief").

Because the facts as found in the COR are not challenged as being unsupported by substantial evidence, and because the conclusions reached flow rationally therefrom, the COR is in accordance with the law. We affirm the denial of reinstatement of benefits.

ANALYSIS

Claimant raises no complaint in this appeal concerning the ALJ's application of *Mahoney* in the COR. Nor does Claimant allege that the facts as found by the ALJ in the COR are unsupported by substantial evidence, or that the conclusions drawn from those facts do not flow rationally therefrom.

Rather, Claimant's complaint in this appeal is that, while in the CO the ALJ made a determination that Claimant was credible, which in the first appeal the CRB felt was inconsistent with the ALJ's apparent rejection of Claimant's testimony concerning whether he had been referred to a neurologist for evaluation, the COR fails to make any credibility finding regarding Claimant's testimony and is therefore defective.

It is Claimant's position in this appeal that in failing to make such a determination, the ALJ did not follow the mandate of the CRB. We disagree.

The mandate is as set forth above. The ALJ was tasked with reconsidering the case under a different legal framework than had been employed in the CO, to do so without reference to a treating physician preference, and to reconcile or eliminate from consideration reliance upon inconsistent factual findings. Our review of the COR satisfies us that the ALJ did as instructed. While the ALJ felt a credibility determination was needed in the first CO, it appears that the ALJ did not find a specific credibility finding to be required when analyzing the case under *Mahoney*.

Nothing in the DOR instructed the ALJ to make any specific finding. All that it required was that the ALJ perform a legally sufficient, consistent analysis of whatever record evidence was needed to reach a rational conclusion concerning the claim. This the ALJ did.

CONCLUSION AND ORDER

The factual findings in the Compensation Order on Remand are unchallenged in this appeal, and there is no argument that the legal conclusions reached do not flow rationally therefrom. They are therefore in accordance with the law. The Compensation Order on Remand is AFFIRMED.

So ordered.