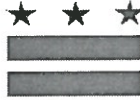


**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

Department of Employment Services



MURIEL BOWSER  
MAYOR

ODIE A. DONALD II  
ACTING DIRECTOR

COMPENSATION REVIEW BOARD

**CRB No. 16-136**

**SANTINO QUARANTA,  
Claimant-Petitioner,**

**v.**

**D.C. UNITED C/O MAJOR LEAGUE SOCCER  
and GREAT DIVIDE INSURANCE COMPANY,  
Employer and Insurer-Respondents.**

Appeal from a Compensation Order issued September 16, 2016  
By Administrative Law Judge Douglas Seymour  
AHD No. 13-355A, OWC No. 680357

DEPT. OF EMPLOYMENT  
SERVICES  
COMPENSATION REVIEW  
BOARD  
2017 FEB 3 PM 12:36

(Decided February 3, 2017)

Benjamin T. Boscolo for Claimant  
David O. Godwin, Jr., for Employer

Before LINDA F. JORY HEATHER C. LESLIE and GENNET PURCELL, *Administrative Appeals Judges.*

LINDA F. JORY for the Compensation Review Board.

**DECISION AND ORDER**

**FACTS OF RECORD AND PROCEDURAL HISTORY**

The procedural history pertinent to the current appeal is described by the Compensation Review Board (CRB) in a prior Decision and Remand Order:

Claimant was employed as a forward and midfielder for Employer. As described in the Compensation Order (CO) and uncontested by the parties:

On May 25, 2011, Claimant, during a practice held at RFK Stadium, was accidentally struck on the right temple by the elbow of a teammate, Perry Kitchen. Claimant immediately experienced "black spots" and received medical treatment. Claimant became nauseous, droopy-eyed, and experienced pressure and headaches.

Claimant did not improve and Dr. Kevin Gilbert, the team physician, referred him to Dr. Crutchfield in Baltimore. Dr. Crutchfield administered three (3) steroid injections, which provided relief for 7 to 10 days before the headaches returned. HT 35-40, 62, 63

CO at 3.

Claimant returned to work and finished the season. At the end of the season, Claimant underwent an exit exam and indicated he was “physically able to perform all of the duties required in a professional soccer player.” Employer’s exhibit 4. Claimant also indicated his concussion symptoms had resolved. *Id.* Claimant’s contract with Employer ended on December 31, 2011. Claimant had other opportunities to play but instead Claimant announced his retirement.

Claimant followed up with Dr. Crutchfield on April 30, 2013. In the follow-up note generated from this visit, Dr. Crutchfield noted Claimant had “retired and got better when he initially rested, but as he has slowly increased his physical activity and workouts, he still gets intermittent dizziness and unsteadiness with headaches.” Claimant’s exhibit 1. Dr. Crutchfield recommended medication and possibly nerve blocks. *Id.* In a follow-up visit on January 8, 2014, Dr. Crutchfield noted Claimant “sustained too many concussions while playing, so he decided to stop playing.” *Id.*

In a letter dated April 8, 2014, Dr. Crutchfield opined:

It is with a high degree of medical probability given the lack of other traumatic injuries in this patient’s medical history given to me, that his injuries while playing professional soccer have led to a chronic recurrent inflammatory condition of the occipital nerve which leads to recurrent headaches that at times may be debilitating and prevent him from performing his job.

Claimant’s exhibit 2.

On October 15, 2014, Claimant was seen by Dr. Richard Restak at Employer’s request for the purpose of an independent medical evaluation (IME). Employer’s exhibit 1. After describing his review of the medical records, the history as related by Claimant, and the results of Claimant’s physical examination, Dr. Restak opined Claimant’s current condition and symptoms are causally related to the May 2011 injury. *Id.* Dr. Restak also noted Claimant was not able to recover and return to professional soccer. *Id.*

After his professional soccer career ended, Claimant became a soccer coach and an owner/operator of Pipeline Soccer League. Claimant is also employed by NBC as an on air soccer analyst.

A full evidentiary hearing occurred on October 22, 2015. Claimant sought an award of permanent partial disability benefits based on wage loss from January 1, 2012 to the present and continuing and interest on accrued benefits. The issues presented for adjudication were 1) the average weekly wage; 2) the nature and extent of Claimant's disability; and 3) whether Claimant voluntarily limited his income. The CO was issued on December 30, 2015. The Administrative Law Judge (ALJ) determined Claimant's average weekly wage at the time of the injury was \$2,403.84. The ALJ awarded permanent partial disability based on wage loss pursuant to D.C. Code § 32-1508(3)(V)(ii)(II) at a weekly compensation rate of \$864.54 from January 1, 2012.

*Quaranta v. D.C. United*, CRB No. 16-009 (July 18, 2016)(footnotes omitted) ("DRO").

After reviewing the parties' arguments, the CRB vacated and remanded the CO, concluding:

... It is uncontested by the parties and acknowledged by the ALJ that Claimant did return to his pre-injury employment during the 2011 season. Moreover, Claimant neither sought temporarily total disability benefits nor argued he was temporarily and totally disabled after January of 2012. Until such time as the ALJ properly applies D.C. Code § 32-1508(3)(V)(ii)(II), we cannot determine if the CO is supported by the substantial evidence or in accordance with the law.

DRO at 5.

A Compensation Order on Remand (COR) issued on September 16, 2016 which denied Claimant's Claim for Relief. In the COR, the ALJ concluded pursuant to D.C. Code § 32-1508(3)(V)(ii)(II), that Claimant is entitled to a \$0.00 (zero) wage loss because Claimant went back to work on August 6, 2011, playing professional soccer, earning the same wage he was earning before the May 25, 2011 accident. The ALJ further concluded that Claimant has failed to prove, by a preponderance of the evidence, that Claimant was disabled as a result of his head injury, as opposed to Employer's decision not to re-sign him. The ALJ also concluded that by voluntarily retiring, at a time when he had no physical restrictions from any doctor, but had offers from other professional soccer teams, Claimant voluntarily limited his income pursuant to D.C. Code § 32-1508(3)(V)(iii).

Claimant appealed. Claimant argues the COR is arbitrary, capricious, unsupported by substantial evidence in the record and not in accordance with the law and should therefore be reversed.

Employer opposes the review arguing the COR is supported by substantial evidence in accordance with the law.

### ANALYSIS<sup>1</sup>

Claimant argues he did not voluntarily limit his income because he could not play professional soccer as a result of a concussion he sustained on May 25, 2011. In support of his position that he could not play professional soccer as a result of a concussion, Claimant asserts:

Mr. Quaranta, through his testimony and the reports of Dr. Crutchfield indicated that the May 25, 2011 caused sufficient neurological trauma that he could not play professional soccer any longer after his attempts to return to work in August of 2011. The contemporaneous medical reports of Dr. Shapiro demonstrated Mr. Quaranta was suffering from cognitive performance issues as outlined in the MLS post-concussion regimen, and his visual motor speed composite was below average. Mr. Quaranta also testified what happened when he attempted to return to the field, the speed of the soccer game was too fast for him to comprehend mentally. COR at 4. Furthermore, the Compensation Order on Remand conceded that Mr. Quaranta “struggled” through the remainder of the 2011 season. *Id.* Even the Employer’s physician, Dr. Gilbert, noted that Mr. Quaranta could not play after the 2011 season. EE at 30.

Claimant’s Brief at 13.

Employer responds:

Claimant has not demonstrated a *prima facie* case of disability as he has not submitted substantial credible evidence establishing that he is unable to return to his pre-injury employment. In fact, both the contemporaneous medical evidence and the Claimant’s testimony is to the contrary.

Employer’s Brief at 10.

Consistent with the DRO, the ALJ analyzed the evidence of record to determine if claimant was entitled to wage loss benefits pursuant to D.C. Code § 32-1508(3)(V)(ii)(II). The ALJ determined:

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<sup>1</sup> The scope of review by the CRB is generally 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. *See* D.C. Workers’ Compensation Act of 1979, as amended, D.C. Code § 32-1501, *et seq.*, (the Act) at § 32-1521.01 (d)(2)(A), and *Marriott International v. DOES*, 834 A.2d 882 (D.C. 2003). Consistent with this standard of review, the CRB and this review panel must affirm 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 this panel might have reached a contrary conclusion. *Id.* at 885.

However, I do find persuasive, and rely on Employer's argument that pursuant to D.C. Code Section § 32-1508(3)(V)(ii)(II), Claimant did not initially return to work on January 1, 2012. Rather, I find Claimant returned to work on August 6, 2011, when he returned to D.C. United and then played out the remainder of the 2011 season. HT 40-43 at deposition pages 17-19.

I further find Claimant's argument, that his wage loss benefits should begin upon his return to work on January 1, 2012, and not on August 6, 2011, inconsistent with § 32-1508(3)(V)(ii)(II) which provides that said election begins "... at the time the employee returned to work." In this matter, it is undisputed that Claimant returned to work on August 11, 2011 [sic] when he returned playing soccer for D.C. United. Moreover, and most significantly, at the time Claimant returned to work for D.C. United on August 6, 2011, he was not under light duty restrictions. CE 1.

Thus, I find that because Claimant elected to receive permanent partial disability benefits pursuant to § 32-1508(3)(V)(ii)(II), Claimant is entitled to a \$0.00 (zero) wage loss because Claimant went back to work on August 6, 2011 earning the same wages he was earning before the May 25, 2011 accident.

COR at 7.

Inasmuch as we find the ALJ's determination that Claimant could and did return to his pre-injury position as of August 6, 2011 is supported by substantial evidence we reject Claimant's argument. We especially reject Claimant's assertion that both Dr. Crutchfield and Dr. Gilbert were of the opinion that Claimant could not return to his professional soccer playing due to the concussion. Dr. Gilbert who performed the exit physical indicated specifically that the concussion had resolved and that Claimant would need 2 to 4 weeks to recover from a right hip strain. See EE 4 at 28-30. Dr. Crutchfield opined:

The care plan outlined above should be performed to give this former professional soccer player his best chance at becoming headache free and allow him to continue coaching soccer which is his current occupation.

See CE 2 at 2.

As Claimant had already retired from playing soccer when Dr. Crutchfield saw him in 2013 and 2014, we reject Claimant's assertion that Dr. Crutchfield advised Claimant not to return to the sport.

Claimant further asserts:

The Compensation Order on Remand states that because Mr. Quaranta returned to work on August 6, 2011, and thus under the text of the statute his permanent partial disability wage loss benefits are only calculated from August 6, 2011 (when he returned to work at full duty) and thus despite the Compensation Order

on Remand's finding that Mr. Quaranta cannot return to his pre-injury employment due to his work injury, he is not entitled to any permanent partial disability wage loss benefits ever. This interpretation must be rejected as a matter of statutory interpretation. Under the D.C. Workers' Compensation Act, compensation benefits are payable when a worker becomes disabled and not before. *See* D.C. Code 32-1505(a). Disability is not a medical concept but an economic concept. Mr. Quaranta was not disabled until January 1, 2012 when D.C. United chose not to renew his MLS Contract based on his difficulties performing to the MLS playing standard and thus denied Mr. Quaranta the opportunity to return to his pre-injury employment.

Claimant's Brief at 17, 18.

Employer asserts:

There is no evidence whatsoever that the decision not to renew his contract had anything to do with his work injury or any alleged disability. His employment status as of January 1, 2012 changed due to purely business and economic reasons associated with the employment of a professional athlete. The statute is written to provide benefits as of the date the Claimant returns to work after being disabled. There is no dispute that he was disabled for a period of time following the initial injury and returned to work in August of 2011.

Employer's Brief at 12, 13.

While Claimant is correct the COR does contain a finding that "Claimant is unable to play soccer because of the headaches", based on the ALJ's discussion in his analysis, we find this statement is a re-statement of Claimant's testimony as is evidenced by reference to the hearing transcript<sup>2</sup>. Nevertheless the ALJ refers to Claimant's testimony in his analysis which we conclude makes the ALJ's failure to state that Claimant *testified* he was unable to play soccer because of his headaches a harmless error.

Citing to the DCCA decision in *Burge v. DOES*, 842 A.2d 661 (D.C. 2004) the ALJ found that compensation for lost wages was not warranted in the instant matter. The ALJ explained:

Claimant's testified [sic] at the Formal Hearing that he couldn't continue playing soccer because of [his] concussions." HT at 48. Claimant asks the undersigned to give more weight his [sic] testimony at the Formal Hearing than to his contemporaneous reports of symptoms to the doctors (EE 4 at 28 and EE 3, p. 6); the team doctor's exam report (EE 4, at 29-30) and the report of Dr. Maria B. Shapiro which provided objective evidence that his concussion symptoms had resolved. EE 3, p. 6. Claimant had been cleared to return to duty and, in fact, did return to duty after his injury and played the remainder of the season. HT at 71.

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<sup>2</sup> Further complicating this finding is the ALJ's incorrect citing to the same page of the HT (HT 77, 77). A review of the transcript reveals that Claimant testified that one of the reasons he retired was because of his symptoms. *See* HT at 74. *See also* HT at 48, wherein Claimant testified he could not continue his career because of the concussions.

Claimant was not re-signed by D.C. United, but there is no evidence that he was not re-signed because of his head injury. Claimant's testimony that he did not feel capable of returning to professional soccer is contrary to all the contemporaneous medical evidence. . . .

COR at 8.

The ALJ concluded:

Therefore, I find that Claimant has failed to prove, by a preponderance of the evidence, that his disability as a result of his head injury, as opposed to D.C. United's decision not to re-sign him, prevented him from taking the positions offered by professional soccer teams. I further find that by voluntarily retiring at a time when he had no physical restrictions from any doctor, but had offers from other professional soccer teams, Claimant voluntarily limited his income pursuant to D.C. Code §32-1508(3)(V)(iii).

*Id.*

As substantial evidence exists in the record to support the ALJ's denial of benefits, we affirm the COR.

#### CONCLUSION AND ORDER

The September 16, 2016 Compensation Order which concluded that Claimant failed to prove by a preponderance of the evidence that he is entitled to permanent partial disability benefits pursuant to D.C. Code § 32-1508(3)(V)(ii)(II) and voluntarily limited his income by voluntarily retiring from his profession is supported by substantial evidence and is in accordance with the law. The Compensation Order is accordingly AFFIRMED.

*So ordered.*