

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
ACTING DIRECTOR

COMPENSATION REVIEW BOARD

CRB 14-132

**SHIRLEY MASSEY,
Claimant-Respondent,**

v.

**UNIVERSITY OF THE DISTRICT OF COLUMBIA,
Self-Insured Employer-Petitioner.**

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2015 MAR 6 PM 12 47

Appeal from an October 22, 2014 Compensation Order by
Administrative Law Judge Fred D. Carney, Jr.
AHD PBL No. 09-044B, DCP No. 761039-0001-1999-0004

Lindsay M. Neinst for Employer
Arthur P. Rogers for Claimant

Before: LAWRENCE D. TARR, *Chief Administrative Appeals Judge*, HEATHER C. LESLIE and
LINDA F. JORY, Administrative Appeals Judges.

DECISION AND REMAND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

On June 7, 1989, Claimant, Shirley Massey, was working as an administrative assistant for Employer, University of the District of Columbia. On that day, Claimant slipped and fell while at work, injuring her left elbow, hand, upper arm, hip, and a leg. Employer accepted her claim and after continuing her pay, Employer paid Claimant temporary total disability benefits.

Since then, Claimant has undergone three operations to her left arm and three operations to her left leg. Employer has paid her temporary total benefits through the years, except for the several times Employer attempted to end Claimant's benefits. Each time Employer tried to end her benefits, Claimant filed for formal hearings and each time hearing officers or administrative law judges, in decisions that were affirmed on appeal, ruled benefits should be reinstated.

The present controversy concerns Employer's most recent decision to terminate Claimant's benefits. On December 22, 2011, Employer notified Claimant that her benefits would be suspended. Claimant requested reconsideration and on February 17, 2012, Employer sent Claimant a Final Decision on Reconsideration notifying her benefits were ended.

Claimant applied for a formal hearing that was held on April 29, 2013. In his October 22, 2014 Compensation Order, an administrative law judge (“ALJ”) determined that Claimant’s benefits should be reinstated. Employer timely appealed. Claimant has not filed an Opposition.

ANALYSIS

The District of Columbia Court of Appeals has stated the role of an appellate court in reviewing administrative decisions and the need for the administrative agency to state the basis for its decisions:

As we have explained, "the function of the court in reviewing administrative action is to assure that the agency has given full and reasoned consideration to all material facts and issues," and "[t]he court can only perform this function when the agency discloses the basis of its order by an articulation with reasonable clarity of its reasons for the decision."

Brown v. DOES, 83 A.3d 739 (D.C. 2014).

Similarly, the CRB is authorized to review an ALJ’s compensation order and to decide whether the ALJ’s findings of fact are supported by substantial evidence in the record and whether the ALJ’s legal determinations are in accordance with the law. 7 DCMR § 266.

Therefore it is essential that ALJs articulate the reasons for their decisions. When the basis for a decision is not stated, the CRB is impeded from performing its responsibilities and the compensation order under review must be remanded for the requisite explanation. *Smith v. Facchina Construction*, CRB No. 14-023, AHD No. 06-015B, OWC No. 604142 (June 9, 2014), *Tiongson v. Georgetown University*, CRB No. 12-168, AHD No. 10-547, OWC No. 654487 (November 29, 2012), *Harris v. CVS Pharmacy, Inc.* CRB No. 09-100, AHD No. 08-071B, OWC No. 640016 (September 22, 2009), *Gray v. Performance Contracting Group*, CRB No. 08-115, AHD No. 08-011, OWC No. 613861 (September 17, 2008).

Here, the ALJ failed to state with reasonable clarity the reasons for his decision:

A review of the evidence indicates that the weight of the medical evidence, submitted at the April 29, 2013 formal hearing, is in Claimant's favor. Claimant's medical evidence of August 2011 and January 2012, outweighs Employer's contrary medical evidence of May 5, 2011. Dr. Heckman's August 16, 2011 medical report determined that Claimant had localized left shoulder pain, probably from previous surgeries. A MRI showed Claimant had inflammation around the supraspinatus tendon. The doctor did not think she was ready to go back to work full-time. He even stated he thought it would be difficult for Claimant to go back to work at all. CE #2. In the medical report on Claimant, dated January 9, 2012, Dr. Heckman's examination of Claimant indicated that she had difficulty moving her left shoulder and that the pain in her shoulder radiated into her hands. Claimant had mild swelling in the lower extremity and tenderness at her heel. The doctor determined that it would be unlikely that Claimant could

return to full-time work. He opined that she would probably need re-training because her skills were probably obsolete. CE #3. Regarding any re-training for Claimant, the record reflects that two memorandums, from persons associated with the vocational rehabilitation program Claimant was involved with, indicate that no jobs were found that Claimant could perform. CE #6, CE #7. Consequently, even the 2011 medical report submitted by Employer is not sufficient to support a decision to alter or terminate Claimant's compensation benefits. The burden of production having shifted to Claimant, she produced, by a preponderance, evidence supporting her claim, that she continues to be disabled as a result of the 1989 work injury. With Employer's evidence found to be non-persuasive, Claimant's condition remains unchanged. Claimant's compensation benefits, therefore, must be re-instated.

CO at 4.

The ALJ stated the treating physician's clinical findings and the physician's opinion that Claimant cannot work, but the ALJ failed to state his reasons why he was persuaded by the evidence submitted by Claimant over Employer's evidence.

Without any explanation as to why the ALJ preferred the treating doctor's opinion over the opinion of the AME doctor, the CRB cannot tell if the ALJ improperly relied on a treating physician preference for his decision and the CRB cannot determine if the ALJ's decision is supported by substantial record evidence and if the ALJ's legal conclusions are in accordance with the law.

Moreover, the ALJ's comments regarding the apparent inconsistency between the AME doctor's opinion that Claimant can do full work and the vocational rehabilitation reports are troubling. The CRB cannot tell if the ALJ is applying the analysis stated in *Logan v. DOES*, 805 A.2d 237 (D.C. 2002), without making the necessary *Logan* findings, or if the ALJ is utilizing vocational rehabilitation report as medical evidence and using the report to somehow impeach or discredit the AME doctor's medical opinion.

We should point out that the CRB has not determined that the ALJ decided this case incorrectly. What we are saying is that because the ALJ failed to articulate with reasonable clarity the basis and reasons for his decision, the CRB cannot fulfill its responsibilities. Therefore, we must remand this case so that the ALJ can properly analyze the claim and articulate the reasons for his decision.

Lastly, we do not fault the ALJ for not using the CRB's analyses in *Mahoney v. District of Columbia Public Schools*, CRB No. 14-067, AHD No. PBL 14-004, DCP No. 76000500012005-008, (July 22, 2014) because that decision was not issued prior to this Compensation Order. *But see Smith v D.C. Department of Public Works*, CRB 13-160, AHD PBL No. 08-035B, DCP No. 761020-0005-20004-0004 (June 3, 2014).

On remand the ALJ will have the opportunity to apply the *Mahoney* analysis.¹

CONCLUSION AND ORDER

The ALJ failed to articulate with reasonable clarity the basis and reasons for his decision. Therefore, the October 22, 2014 Compensation Order is vacated and this case remanded to the Administrative Hearings Division for a new decision consistent with this Decision and Remand Order.

FOR THE COMPENSATION REVIEW BOARD:

/s/ Lawrence D. Tarr
LAWRENCE D. TARR
Chief Administrative Appeals Judge

March 6, 2015
DATE

¹ The ALJ correctly stated that the government-employer had the ultimate burden of proving by a preponderance of the evidence that Claimant's benefits should be terminated, correctly stated the government-employer's burden at the first step, and at first, correctly stated Claimant's second step burden. However, the ALJ at page 6 misidentified the standard of proof at the second step is a preponderance of the evidence and did not identify a third step.