

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. 03-97,

TAVIA COVINGTON,

Claimant – Respondent

v.

METRO PET PALS, L.L.C. ,

Employer – Petitioner.

Appeal from a Compensation Order of
Administrative Law Judge Jeffrey P. Russell
OHA No. 02-448A, OWC No. 583242

Danny C. Onorato, Esq., for the Petitioner

John E. Carpenter, for the Respondent

Before E. COOPER BROWN, *Acting Administrative Appeals Judge*, SHARMAN J. MONROE, *Administrative Appeals Judge* and FLOYD LEWIS, *Acting Administrative Appeals Judge*.

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 D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, *codified at* D.C. Code Ann. § 32-1521.01 (2005). In accordance with the Director's Directive, 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. Official Code §32-1501 *et seq.*, and the D.C. Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Official Code §1-623.1 *et seq.*, 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 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 March 6, 2003, the Administrative Law Judge (ALJ) found that the Claimant-Respondent (Respondent) was an employee of the Employer-Petitioner (Petitioner) and awarded temporary total disability benefits and the payment of reasonably related medical expenses. Petitioner now seeks review of that Compensation Order.²

As grounds for this appeal, Petitioner alleges as error that the ALJ found the Respondent was an employee of the Petitioner within the meaning of the Act.

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.

Turning to the case under review herein, Petitioner asserts that the Respondent is not its employee as found by the ALJ. Specifically, the Petitioner alleges that the Respondent was an independent contractor for Respondent, that she signed an Independent Contractor Agreement when she initially contracted with Metro Pet Pals and that "the entire industry of dog-walking service providers regards all individual dog-walkers as independent contractors."

In finding that the Respondent was an employee of the Petitioner within the meaning of the Act, the ALJ applied the "relative nature of the work" test adopted in *Munson v. Hardy & Son Trucking Company, Inc.*, Dir. Dkt. No. 97-23, H&AS No. 96-176, OWC No. 0029805 (April 19, 1999). Under the "relative nature of work test" the character of the claimant's work or business and the relationship of the claimant's work or business to the purported employer's business are examined. The more likely that a claimant's

623.1 *et seq.*, 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.

² On August 11, 2003, the Respondent filed an opposition to the Petitioner's Application for Review asserting that the Application was untimely filed and should be dismissed. The motion to dismiss was denied by the Board in an Order Denying Motion to Dismiss and the matter was returned to the Board for a decision on the merits of the appeal. *Covington v. Metro Pet Pals, L.L.C.*, CRB (Dir.Dkt) No. 03-97, OHA No. 02-448A, OWC No. 583242 (March 18, 2005).

work is a regular part of an entity's regular business with the hours of work and pay controlled by the entity, the more likely the claimant is an employee. Conversely, the more likely that a claimant's work is of a specialized nature or independent business from an entity's regular business, the more likely the claimant is not an employee.

Herein, it is undisputed that the Petitioner was a dog-walking service and that the Respondent performed dog-walking services for the Petitioner. The ALJ determined that the service the Respondent performed did not require any special skills, that the service was more in the nature of general labor, that the price of the service was controlled by the Petitioner and that there was no discernable difference between the work of the Respondent and the work of the Petitioner. The ALJ ultimately concluded, and the Panel can find no error in the ALJ's conclusion, that an employer/employee existed between the parties at the time of the Respondent's work-related injury.

Finally, the Petitioner argues that the Independent Contractor Agreement that the Respondent signed was dispositive on the type of relationship which existed between the two. The ALJ was correct in rejecting the argument pursuant to D.C. Official Code § 32-1516(b).

CONCLUSION

The Compensation Order of March 6, 2003 is supported by substantial evidence in the record and is in accordance with the law.

ORDER

The Compensation Order of March 6, 2003 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:


SHARMAN J. MONROE
Administrative Appeals Judge

June 21, 2005

DATE