

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. 06-02

HOWARD THOMPSON,

Claimant – Respondent,

v.

COOLING TOWERS HEAT EXCHANGE AND FIREMAN’S FUND INSURANCE, Co.,

Employer/Carrier – Petitioner.

Appeal from a Compensation Order of
Administrative Law Judge Anand K. Verma
OHA No. 02-320B, OWC No. 574047

Bonnie J. Brownell, Esquire, for the Petitioner

Jessica G. Bhagan, Esquire, for the Respondent

Before LINDA F. JORY, FLOYD LEWIS and SHARMAN J. MONROE, *Administrative Appeals Judges.*

FLOYD LEWIS, *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, 32-1522 (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 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 September 22, 2005, the Administrative Law Judge (ALJ) denied Respondent's claim for continued permanent partial disability from December 9, 2003 to November 8, 2004 and granted Respondent's claim for 20% permanent partial disability benefits from November 9, 2004 to the present and continuing.

As grounds for this appeal, Petitioner alleges as error that that Compensation Order is not supported by substantial evidence and is not in accordance with the law.

ANALYSIS

As an initial matter, the scope 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 §32-1522(d)(2). "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. 2003). Consistent with this scope 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 alleges that the ALJ's decision is not in accord with the law, contains mistakes of law and fact and must be overturned. However, Petitioner has not made any specific arguments in support of its contention. Respondent requests that this matter be remanded to the Administrative Hearings Division so that the ALJ may clarify the relief granted in the instant Compensation Order.

In this matter, Respondent requested an award of permanent partial disability of 20% impairment to his left upper extremity and 20% impairment to the right lower extremity from December 9, 2003 to the present. In the Compensation Order, the ALJ awarded Respondent "continued 20% permanent partial disability benefits from November 9, 2004 along with all causally related medical expenses already incurred."

However, as Respondent points out, the ALJ did not specify to which extremity he attributed the 20% permanent partial disability. Thus, the parties are not able to determine the body part or parts to which Respondent is entitled to permanent partial disability. As a result, this matter must be remanded to the ALJ for clarification of the relief granted in Compensation Order

CONCLUSION

The Compensation Order of September 22, 2005 must be remanded to the ALJ for clarification of the relief granted to enable the parties to determine the body part or parts to which Respondent was granted permanent partial disability benefits.

ORDER

The Compensation Order of September 22, 2005 is hereby REMANDED to the Administrative Hearings Division for further proceedings consistent with the above discussion.

FOR THE COMPENSATION REVIEW BOARD:

FLOYD LEWIS
Administrative Appeals Judge

April 19, 2006
DATE