

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. 04-34

PRESTON VERRINE,

Claimant – Respondent

v.

LABOR READY, INC. AND ACE USA,

Employer/Carrier – Petitioner.

Appeal from a Compensation Order of
Administrative Law Judge Reva Brown
OHA No. 03-023, OWC No. 576757

Kathryn S. McAleer, Esquire, for the Petitioner

Wanda G. Caporaletti, Esquire, for the Respondent

Before: E. COOPER BROWN, *Chief Administrative Appeals Judge*, FLOYD LEWIS and JEFFREY P. RUSSELL, *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

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 February 27, 2004, the Administrative Law Judge (ALJ) concluded that Claimant-Respondent (Respondent) sustained a compensable accidental injury on February 21, 2002, for which he was entitled to temporary total disability benefits, from February 21, 2002 to the present and continuing. Employer-Petitioner (Petitioner) now appeals that Compensation Order.

As grounds for this appeal, Petitioner alleges as error that ALJ's decision 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 erroneous, contending that Respondent's injury did not arise out of and in the course of his employment. Respondent counters by arguing that his injury did arise out of and in the course of his employment and as such, this matter is compensable.

On February 21, 2002, Respondent, a day laborer, was stabbed three times by a co-worker, near the end of the work day, as they waited for their supervisor to sign them out for the day. Due to massive blood loss, Respondent lapsed into a vegetative and unresponsive state and he died as a result of his injuries on January 4, 2004.² At the hearing, the ALJ was faced with the

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 After the parties filed a joint statement stipulating that Respondent passed away on January 4, 2004, a Compensation Order of Modification was issued on July 7, 2004.

issue of whether Respondent's injuries arose out of and in the course of his employment with Petitioner.

The ALJ noted that the Court of Appeals has held that a claimant's injury from an unexplained assault is compensable if it was related or incidental to his employment. *Kolson v. Dist. of Columbia Dep't. of Employment Servs.*, 699 A.2d 722 (D.C. 1997). In addition, under the positional-risk test, "an injury arises out of employment as long as it would not have happened *but for* the fact that conditions and obligations of the employment placed claimant in a position where he was injured." *Clark v. Dist. of Columbia Dep't. of Employment Servs.*, 743 A.2d 722 (D.C. 2000).

The ALJ conferred Respondent with the benefit of the presumption because he made an initial showing, through counsel, that he was stabbed by a co-worker while he was on duty, waiting for his time to be called in, before his shift ended. The ALJ found that Respondent's employment facilitated the assault, as the obligations of his employment put him in a specific place, at specific time, interacting with a co-worker, which led to the injury.

Next, the ALJ considered whether Petitioner had presented substantial evidence to rebut the presumption by showing that the assault was motivated by something unrelated to Respondent's employment and entirely personal to Respondent. The ALJ correctly noted that in applying this standard, doubts should be resolved in Respondent's favor. *Parodi v. Dist. of Columbia Dep't. of Employment Servs.*, 560 A.2d 534 (D.C. 1989); *Clark, supra*, at 729.

The ALJ specifically quoted the Court in *Clark*, which found that the evidence was not comprehensive and specific enough to rebut the presumption and remove doubts:

. . . for the precise reason that the motive behind the assault remains unknown and speculative. A finding that Clark's assailant had *some* motive to target her specifically is not the same as finding that he had a *personal*, non-work related motive to do so. It is possible to speculate about a multiplicity of motives for the assault, some having a relationship to Clark's employment and some not.

Id at 730.

The Court went on to stress that even if the evidence offers a motive that is partially personal in nature; there must be a reasonable basis to choose among the competing possible explanations or reasons for the assault.

In resolving the instant matter, the ALJ noted:

In this case, it cannot be determined that Mr. Williams' assault on claimant was the result of a personal vendetta *unrelated* to his employment. To the contrary, the record is devoid of any indication that these individuals even knew each other outside of the work arena. It appears if it had not been for their employment by the same company, they would not have been thrust

together. . . Employer's utilization of day laborers was predicated upon arrival at its headquarters, followed by group arrival and departure from the work sites, with return to the place of pick-up...Had it not been a condition of his employment, arising out of the ethos of day laborers, claimant would not have ridden with Mr. Williams, nor inadvertently left his jacket inside his van. Hence from the little that is known from the altercation between the claimant and Mr. Williams, it appears any animosity engendered between them arose out of claimant's employment. (An employment-related motive certainly cannot be ruled out.)

Thus, claimant has successfully established that his injury arose out of and in the course of his employment.

Compensation Order at 5.

After reviewing the record, this Panel must agree with the ALJ's conclusion and reject Petitioner's desire to speculate that the altercation and disagreement between Petitioner and Respondent was personal. As Respondent pointed out, there was no testimony from any witness or the supervisor that the employees were "off the clock" at the time of the incident. In addition, as the ALJ noted, although Mr. Williams was incarcerated, his testimony was possible by deposition, but no such evidence was presented by Petitioner.

In the instant matter, this Panel can find no reason to disturb the ALJ's conclusion that after reviewing the record, it is unknown why Mr. Williams stabbed Respondent and that an employment-related motive cannot be rejected. Thus, we affirm the ALJ's conclusion that Petitioner failed to present substantial evidence, specific and comprehensive enough, that the assault was motivated by something entirely personal to Respondent and unrelated to his employment. As such, the ALJ's conclusion that Respondent's injury arose out of and in the course of his employment must be affirmed.

CONCLUSION

The Compensation Order of February 27, 2004 is supported by substantial evidence in the record and is in accordance with the law

ORDER

The Compensation Order of February 27, 2004 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD

FLOYD LEWIS
Administrative Appeals Judge

JULY 28, 2006

DATE