

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. 07-022

WANDA VANHOOSE,

Claimant – Petitioner,

v.

RESPICARE HOME RESPIRATORY CARE AND CRAWFORD & COMPANY,

Employer/Carrier – Respondent.

Appeal from a Compensation Order of
Administrative Law Judge Terri Thompson Mallett
AHD No. 06-342, OWC No. 626066

Joseph H. Koonz, Jr., Esq., for the Petitioner

Douglas A. Seymour, Esq., for the Respondent

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

SHARMAN J. MONROE, *Administrative Appeals Judge*, on behalf of the Review Panel:

DECISION AND REMAND 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 (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

BACKGROUND

This appeal follows the issuance of a Compensation Order from the Administrative Hearings Division (AHD) of the Office of Hearings and Adjudication (OHA), District of Columbia Department of Employment Services (DOES). In that Compensation Order, which was filed on December 7, 2006, the Administrative Law Judge (ALJ) denied the request for temporary total disability benefits from March 6, 2006 to April 23, 2006 and causally related medical expenses on the basis that the Petitioner failed to timely file a notice of injury pursuant to D.C. Official Code § 32-1513. The ALJ also found, *assuming arguendo* that notice was in fact timely, that the claim was untimely filed pursuant to D.C. Official Code § 32-1514. The Claimant-Petitioner (Petitioner) now seeks review of that Compensation Order asserting that the Compensation Order is not supported by substantial evidence and is not in accordance with the law.²

On March 13, 2007, the Panel issued an Order Scheduling Oral Argument and Briefing pursuant to 7 DCMR § 263. On initial review of the record, the Panel determined that in the instant case, involving a claim purportedly based upon a cumulative trauma, fixing the time of injury was critical to resolution of the question of jurisdiction and coverage under D.C. Official Code § 32-1503(a), as well as the questions of timeliness of notice under D.C. Official Code § 32-1513 and the timeliness of the Petitioner's claim under D.C. Official Code § 32-1513. In the Order, the Panel directed the parties to take into consideration the D.C. Court of Appeals decision in *King v. D.C. Department of Employment Services*, 742 A.2d 460 (D.C. 1999), wherein the Court explored alternative legal standards for resolving the question of "time of injury" but left to the Director upon remand the proper rule to be applied.³ Oral argument proceeded on April 19, 2007.

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 D. C. 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 standard of review, the CRB and this Review Panel are constrained to uphold a compensation

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 Along with her Application for Review, the Petitioner filed two (2) exhibits that were not submitted into evidence before the ALJ at the formal hearing. Pursuant to 7 DCMR § 266.1, the CRB is limited in its review to the record made before the ALJ. Therefore, the exhibits filed by the Petitioner will not be considered in rendering this decision.

³ A review of agency files reveals that after the Court remanded *King* to the agency, the parties settled the matter, thereby abrogating the need for further proceedings.

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.

It is also well settled in this jurisdiction that, in order to conform to the requirements of the D.C. Administrative Procedures Act (DCAPA), D.C. Official Code § 2-501 *et seq.* (2006), for each administrative decision in a contested case, (1) the agency's decision must state findings of fact on each material, contested factual issue, (2) those findings must be based on substantial evidence, and (3) the conclusions of law must follow rationally from the findings. *Perkins v. D.C. Department of Employment Services*, 482 A.2d 401, 402 (D.C. 1984); D.C. Official Code § 2-509. Thus, when an ALJ fails to make factual findings on each materially contested issue, an appellate body is not permitted to make its own finding on the issue; it must remand for the proper factual finding. *See Jimenez v. D.C. Department of Employment Services*, 701 A.2d 837, 838-840 (D.C. 1997). As the Court of Appeals explained in *King, supra*, 742 A.2d. at 465, basic findings of fact on all material issues are required, for "[o]nly then can this court determine upon review whether the agency's findings are supported by substantial evidence and whether those findings lead rationally to its conclusions of law." *See also Sturgis v. D.C. Department of Employment Services*, 629 A. 2d 547 (D.C. 1993). The CRB is no less constrained in its review of compensation orders issued by AHD. *See WMATA v. D.C. Department of Employment Services (Juni Browne, Intervenor)*, DCCA No. 06-AA-27 (June 14, 2007). *Accord, Hines v. Washington Metropolitan Area Transit Authority*, CRB No. 07-004, AHD No. 98-263D (December 22, 2006). Thus, where an ALJ fails to make express findings on all contested issues of material fact, the CRB can no more "fill the gap" by making its own findings from the record than can the Court of Appeals upon review of a final agency decision, but must remand the case to permit the ALJ to make the necessary findings. *See Mack v. D.C. Department of Employment Services*, 651 A.2d 804, 806 (D.C. 1994).

With the foregoing principles of appellate review in mind, we turn to the issues raised by the present application for review:

The Compensation Order herein appealed denied the Petitioner's claim for temporary total disability benefits and causally related medicals. A review of the record reveals that the following issues were raised before AHD for resolution: (1) jurisdiction under the Act, (2) whether the Petitioner provided the Respondent with timely notice of her injury, (3) whether the Petitioner's claim was timely filed, (4) whether the Petitioner's injury arose out of and in the course of her employment, and (5) the nature and extent of the Petitioner's injury, if any. The presiding ALJ, having first determined that the Petitioner's claim was not exempt from jurisdictional coverage pursuant to D.C. Official Code § 32-1503(a-3), dismissed the Petitioner's claim based upon the determination that the Petitioner failed to provide timely notice of her injury to the Respondent or otherwise prove that the Respondent had actual notice of the Petitioner's injury within the 30-day time period mandated by D.C. Official Code § 32-1513. The ALJ further held that, assuming the notice requirements of D.C. Official Code § 32-1513 were met, the Petitioner's claim was not timely filed within the one year period prescribed by D.C. Official Code § 32-1514.

In our review of the Compensation Order herein, we are called upon not only to analyze whether the ALJ properly rejected the Petitioner's claim under D.C. Official Code §§ 32-1513 and 32-1514, we must also analyze whether the ALJ properly applied the jurisdiction provision of the Act, D.C. Official Code § 32-1503. As hereafter discussed, both as to the timeliness issues and with respect to the matter of the Act's jurisdictional, the ALJ failed to make necessary findings of material fact, while misapprehending and failing to construe applicable law. We are, thus, constrained to reverse the dismissal of the Petitioner's claim and to remand to AHD for further proceedings consistent with this decision. As hereinafter more fully explained, on remand the ALJ must first readdress the issue of jurisdictional coverage under the Act, which necessarily also requires a determination of whether the Petitioner sustained a compensable injury. Findings are necessary as to whether the Petitioner's disability was, in fact, caused by her employment, and whether that disability, if work-related, was the result of a discrete injury or cumulative trauma. If the ALJ finds that the Petitioner sustained a job-related cumulative traumatic injury, then a further finding of fact is required establishing the date of the Petitioner's injury pursuant to the rule for fixing "time of injury" in cumulative trauma cases in order to properly determine coverage under the Act. Upon remand, the ALJ must also make necessary findings of material fact under applicable law relevant to the notice requirements of D.C. Official Code § 32-1513 and the timeliness requirements of D.C. Official Code § 32-1514.

Turning first to the issue of jurisdictional coverage under the Act, in the instant case the ALJ determined that jurisdiction over the Petitioner's claim existed based upon an analysis of the inapplicability of D.C. Official Code § 32-1503(a-3). *See* Compensation Order at pp. 3-4. Necessary before so doing, however, is an initial determination of jurisdictional coverage pursuant to the provisions of D.C. Official Code § 32-1503(a), which provides, subject to the exceptions set forth at subsections (a-1) through (a-3),⁴ that the Act shall apply to:

- (1) The injury or death of an employee that occurs in the District of Columbia if the employee performed work for the employer, at the time of the injury or death, while in the District of Columbia; and
- (2) The injury or death of an employee that occurs outside the District of Columbia if, at the time of the injury or death, the employment is localized principally in the District of Columbia.⁵

In assessing jurisdictional coverage under either D.C. Official Code § 32-1503(a)(1) or (a)(2), "it is necessary to ascertain the 'time of injury' in order to determine if there is coverage

⁴ D.C. Official Code §§ 32-1503(a-1), (a-2) and (a-3) provide that notwithstanding satisfaction of the jurisdictional requisites of either subsection (a)(1) or (a)(2), coverage under the Act will nevertheless be rejected if the employee receives compensation under the laws of another state for the same injury, or the employee is a "causal employee", or the employee's employment is "temporarily or intermittently within the District of Columbia."

⁵ Where the injury or death is found to have occurred outside the District, a three-pronged test for determining whether employment is "localized principally" in the District, thereby invoking coverage pursuant to subsection (a)(2), has been articulated in *Hughes v. WMATA*, H&AS No. 83-60, OWC No. 7116 (March 6, 1984), *aff'd sub nom. Hughes v. D.C. Department of Employment Services*, 498 A.2d 567 (1985). *See also, Petrilli v. D.C. Department of Employment Services*, 509 A.2d 629 (D.C. 1986).

under the Act.” *King*, 742 A.2d at 467. As the Court of Appeals explained, “the question of coverage cannot be resolved without first determining the time (and place) of injury. It is necessary to make that determination in order to decide whether subsection (a)(1) or subsection (a)(2) governs coverage.” *Id.*

However, before any finding as to the time (and place) of injury can be made, there must be a determination of whether, as a factual matter, the claimant’s injury constitutes a discrete injury or is the result of a cumulative work-related trauma.⁶ *King*, 742 A.2d at 468, 470. If the Petitioner sustained a discrete work-related injury, there will be no problem in determining whether her injury occurred within or without the District of Columbia and thus whether the Act provides coverage. If, on the other hand, the Petitioner’s injury is due to work-related cumulative trauma, whether coverage exists under subsection (a)(1) or (a)(2) will depend upon a determination as to the “time of injury”. Whether the Petitioner sustained a discrete or a cumulative trauma injury is a factual matter, as is the question of whether the injury is or is not work-related. As such, neither can be assumed, but require express findings of fact that were not in the instant case made. 742 A.2d at 468, 470.

The Compensation Order herein appealed does not contain an express finding as to which type of injury the Petitioner sustained. The only findings pertaining to the Petitioner’s injury state that the Petitioner “was involved in a work-related incident on December 13, 2004 at which time [Petitioner] was delivering D-size oxygen tanks to Employer’s client in the District of Columbia when the cart turned over scattering the tanks onto the sidewalk”, and that the Petitioner “experienced pain in her left chest and right hand, which subsided.” Compensation Order at pp. 2-3. Subsequently, in conjunction with the ensuing discussion by which the ALJ concluded that the Petitioner’s claim is not exempted from coverage under D.C. Official Code § 32-1503(a-3), the ALJ states that the Petitioner “has resided in the District . . . more than eight months prior to [her] injury” and that “the record evidence is sufficient to prove that Claimant’s employment at the time of her injury required her to regularly and continually worked [sic] in the District of Columbia.” Compensation Order at pp. 4-5. This discussion, coupled with the singular finding of fact of a work-related incident that resulted in pain to her right hand, suggests that the Petitioner’s injury was discrete in nature.

However, the ALJ also found that the Petitioner began experiencing numbness in her hands in December 2004, that she “sought medical attention related to her hand complaints in January 2005”, that the Petitioner “has bilateral tingling and numbness in her fingers and hands”, that she “was diagnosed with possible median nerve entrapment of the wrist in January 2005 and with carpal tunnel syndrome in February 2005”, and that she “ceased working for Employer effective March 6, 2006”. Compensation Order at p. 3. These findings, coupled with the ensuing discussion in the Compensation Order as to the date by which the Petitioner became aware of the relationship between the carpal tunnel syndrome and her work duties, alternatively suggest that the ALJ viewed the Petitioner’s injury as cumulative traumatic in nature. *See* Compensation Order at p. 5

⁶ An injury which is discrete in nature becomes manifest because of a “distinct identifiable accident,” whereas an injury which is cumulative traumatic in nature “becomes manifest only after the body's repeated exposure to individually minor traumas, insults, or harmful employment-related conditions.” *King*, 742 A.2d at 469-470.

Reading the Compensation Order as a whole, it appears that the ALJ viewed the Petitioner's disability as one arising from cumulative trauma. Nevertheless, the lack of an express finding of fact⁷ as to whether the injury for which the Petitioner seeks relief was of a discrete or of a cumulative traumatic nature constitutes reversible error. As previously noted, it is not enough that the ALJ assume that the Petitioner sustained a cumulative traumatic injury. *King* requires an explicit factual determination as to the nature of the injury sustained, for without that determination the date (and place) of injury cannot be properly ascertained. If the ALJ finds that the Petitioner sustained a discrete injury, then the finding as the date of injury is simply the date of the "distinct identifiable accident." If that date is December 13, 2004, as the Compensation Order suggests, then it can be readily ascertained that the Petitioner's claim is covered under subsection (a)(1) of D.C. Official Code § 32-1503 barring any exception under subsections (a-1) through (a-3). If, on the other hand, the ALJ finds that the Petitioner sustained a cumulative traumatic injury, then before it can be properly determined whether there is coverage under the Act the ALJ must make a further finding fixing the date of injury pursuant to the applicable rule for fixing the date in cumulative trauma cases. Where a cumulative trauma injury is found to have occurred, establishing the date of injury is crucial "for purposes of determining under [D.C. Official Code § 32-1503(a)] whether the injury occurred in the District [thus invoking jurisdiction pursuant to subsection (a)(1)] or outside the District [thus requiring a determination of jurisdiction under (a)(2)]". *King*, 742 A.2d at 472.

The rule for fixing the time of injury in cumulative trauma cases had not as of the time of the Court of Appeals' decision in *King* been firmly established by DOES. Consequently, after an examination of the possible rules that might apply, *see King*, 742 A.2d at 471-473, the Court remanded *King* to the agency to articulate the applicable rule of law. Because the parties settled the *King* case upon remand, there was no final resolution of this matter, at least within the context of the *King* case. Nevertheless, the Director has in several other decisions embraced the manifestation rule first articulated in *Franklin v. Blake Realty Company*, H&AS No. 84-26, OWC No. 25856 (Director's Decision, August 18, 1985), *i.e.* the date the employee first seeks medical treatment for his/her symptoms or the date the employee stops working due to his/her symptoms, whichever first occurs. *See e.g., Walton v. Woodward & Lothrop*, Dir. Dkt. No. 88-152, H&AS No. 88-533 (May 16, 1989); and *Washington v. Pro-Football, Inc.*, Dir. Dkt. No. 98-37, H&AS No. 97-186 (July 16, 1999). The Compensation Review Board has similarly embraced the *Franklin* rule in fixing the "time of injury" under D.C. Official Code § 32-1503(a) for cumulative traumatic injury claims. *See Bagbonon v. Africare*, CRB No. 03-121, OHA No. 03-340 (November 1, 2005); and *Hall v. Daughters of Charity*, CRB No. 05-245, OHA No. 01-094A (January 5, 2006). Based upon the pleadings filed in the instant matter, the supplemental briefing specifically addressing this issue, and the oral arguments presented by legal counsel for the parties at hearing, this Panel finds no persuasive reason for departing from this case authority. Thus, upon remand the ALJ is to apply the manifestation rule adopted by the Director in *Franklin*, *supra*, and the CRB for determining "time of injury" under D.C. Official Code § 32-

⁷ At oral argument before the CRB counsel for both parties treated the instant claim as one based upon a cumulative trauma injury, although both conceded that the Compensation Order does not contain an express finding to that effect.

1503(a) in cumulative trauma cases, assuming the ALJ first finds, as a factual matter, that the Petitioner sustained a cumulative traumatic injury.

If, after fixing the date of injury, it is determined that the Petitioner's claim is covered under the Act, the next inquiry that is required, which was not made in the instant case, is whether the Petitioner's injury arose out of and in the course of her employment.⁸ As noted in *King*, this too cannot be assumed, but is a matter that requires an analysis of the compensability of the Petitioner's injury pursuant to *Ferreira v. D.C. Department of Employment Services*, 531 A.2d 651 (D.C. 1987).

We next turn to the question of whether the Petitioner complied with the notification requirements of D.C. Official Code § 32-1513(a) or if not, whether such failure was or should have been excused. An injured employee is required to provide written notice to an employer of a work injury either "within 30 days after the date of such injury" or "within 30 days after the employee . . . is aware or in the exercise of reasonable diligence should have been aware or a relationship between the injury . . . and the employment." D.C. Official Code § 32-1513(a). An employee's failure to provide such notice will nevertheless not bar a claim where either the employer has actual knowledge of the injury and has not been prejudiced by the claimant's failure to provide written notice, or where the claimant's failure is excused upon a showing of a satisfactory reason for not submitting the required notice. *See* D.C. Official Code §§ 32-1513(d)(1) and (d)(2).

Under D.C. Official Code § 32-1513(a), required in the first instance is a finding of fact as to the date of injury, which in the instant case would be the same date of injury as found under D.C. Official Code § 32-1503(a). However, as the Court in *King* noted, the question of when the time begins to run for an injured employee to give notice to her employer, and whether that period of time has elapsed, requires more than an express finding establishing the date of injury in a cumulative trauma case. Applying the "discovery" rule, a further factual determination is required establishing when the injured employee was aware or by the exercise of reasonable diligence should have been aware of a relationship between his injury and her employment. *King*, 742 A.2d at 471, n. 11 (citing *Jimenez v. D.C. Department of Employment Services*, 701 A.2d 837 (D.C. 1997)).

It appears that the ALJ appropriately applied the "discovery" rule in the instant case to conclude that the Petitioner failed to provide the Respondent with timely notice of her injury. Nevertheless, the ALJ failed to make express findings of material fact both with respect to the question of the Petitioner's compliance with D.C. Official Code § 32-1513(a) and with respect to the question of whether the Respondent had timely actual notice within the meaning of D.C. Official Code § 32-1513(d)(1). As hereinafter discussed, the Court's recent decision in *Dillon v. D.C. Department of Employment Services*, 912 A.2d 556 (D.C. 2006) further warrants remand.

⁸ A determination of whether an injury is work-related is necessary notwithstanding a claimant's failure to comply with D.C. Official Code § 32-1513 (*see* discussion, *infra*), as failure to comply with the notice requirements of Section 1513 will not bar an award of causally-related medical benefits. *Safeway Stores v. D.C. Department of Employment Services*, 832 A.2d 1267, 1271 (D.C. 2003); *Washington v. Pro-Football, Inc.*, Dir. Dkt. No. 02-05, OHA No. 97-186 (Oct. 16, 2003); *Olga Perez v. Morgans, Inc.*, CRB No. 02-107, OHA No. 02-119 (June 21, 2006).

In concluding that the Petitioner failed to timely notify the Respondent of her injury and that the Respondent did not otherwise have timely actual notice thereof, the ALJ placed the burden of proof on the Petitioner. *See* Compensation Order at pp. 5-6. However, it is not the Petitioner's initial burden to prove that she provided the Respondent with timely written notice pursuant to D.C. Official Code § 32-1513(a) or that the Respondent otherwise had timely actual notice of the Petitioner's injury under D.C. Official Code § 32-1513(d)(1). Rather, as the Court in *Dillon* held, D.C. Official Code § 32-1521(2)⁹ affords the Petitioner a rebuttable presumption that the Respondent had timely notice of the Petitioner's injury. "The [Workers'] Compensation Act incorporates a rebuttable presumption that claimant gave her employer notice of her injury in a timely fashion[,] in accordance with the humanitarian purposes of the Act." 912 A.2d at 559 (quoting *Washington Hospital Center. v. D.C. Department of Employment Services*, 859 A.2d 1058, 1061 (D.C. 2004)). This presumption, the Court noted, "applies both to the written notice requirement and to the alternative provision for actual knowledge by the employer." *Dillon*, 912 A.2d at 560 n. 6 (citing *Howrey & Simon v. D.C. Department of Employment Services*, 531 A.2d 254, 256 n.2 (D.C. 1987)).

In holding that D.C. Official Code § 32-1521(2) affords the claimant a rebuttable presumption of compliance with the notice requirements of D.C. Official Code § 32-1513, the Court was mindful of the importance and purposes to be served by timely notice to the employer. As the CRB has noted, the notice requirement of D.C. Official Code § 32-1513 "serves two purposes: it enables an employer to provide immediate medical diagnosis and treatment with a view to minimizing the seriousness of the injury; and it facilitates the earliest possible investigation of the facts surrounding the injury." *Dillon v. D.C. Water & Sewer Authority*, CRB No. 05-256, AHD No. 05-032 (January 25, 2007) (quoting *Teal v. D.C. Department of Employment Services*, 580 A.2d 647 (D.C. 1990)). "[A]pplying the presumption to the timeliness requirement, however, creates no realistic disincentive to filing timely notice, because the presumption operates only 'in the absence of evidence to the contrary' and, once rebutted, 'drops out of the case entirely,' *Washington Post v. D.C. Department of Employment Services*, 852 A.2d 909, 911 (D.C. 2004), leaving the burden on the employee to prove timely notice." *Dillon*, 912 A.2d at 560.

Accordingly, upon remand the ALJ must revisit the issue of the Petitioner's compliance with D.C. Official Code §§ 32-1513(a) and (d)(1), extending to the Petitioner the benefit of the presumption required by *Dillon*. Moreover, assuming the ALJ determines upon remand that the Petitioner failed to provide timely notice and that the Respondent did not otherwise have timely actual notice, the ALJ must then make a determination under D.C. Official Code § 32-1513(d)(2) as to whether or not such failure is nevertheless excused. Contrary to the ALJ's assertion in the Compensation Order that the analysis required under D.C. Official Code § 32-1513 ends once it is established that the claimant failed to provide the employer with timely written notice and that the employer did not otherwise have timely actual notice, *see* Compensation Order at 6, the ALJ must determine "whether that failure was forgiven by the provision [at § 32-1513(d)(2)] allowing

⁹ D.C. Official Code § 32-1521(2) states that, "[i]n any proceeding for the enforcement of a claim for compensation . . . it shall be presumed, in the absence of evidence to the contrary . . . [t]hat sufficient notice of such claim has been given."

the agency to ‘excuse[] such failure on the ground that for some satisfactory reason . . . notice could not be given.’” *Dillon*, 912 A.2d at 562 (quoting *Jimenez*, *supra*, 701 A.2d at 840).

Finally, we turn to the question of the Petitioner’s compliance with D.C. Official Code § 32-1514(a).¹⁰ The Panel notes that the Petitioner requested both compensation and causally related medical expenses. Thus, while a determination that the Petitioner has failed to comply with the notice requirements of D.C. Official Code § 32-1513, and that such failure is not excused pursuant to subsection (d)(2) thereof, will serve to bar the claim for compensation, it does not bar the Petitioner’s claim for payment of causally-related medical benefits.¹¹ *Safeway Stores, Inc. v. D.C. Department of Employment Services*, 832 A.2d 1267, 1271 (D.C. 2003). In such an eventuality, the Petitioner’s claim for medical benefits will only be barred should it be determined that the Petitioner also failed to timely file her claim.

As with D.C. Official Code § 32-1513(a), under D.C. Official Code § 32-1514(a) a finding of fact as to the date of injury is required which, in the instant case, would also be the same date of injury as found under D.C. Official Code § 32-1503(a) and 32-1513. Again, however, the question of when the time begins to run for an injured employee to file a claim, and whether that period of time has elapsed, requires more than an express finding establishing the date of injury in a cumulative trauma case. As under D.C. Official Code § 32-1513, a factual determination is required establishing when the employee was aware or by the exercise of reasonable diligence should have been aware of a relationship between her injury and her employment. *King*, 742 A.2d at 471, n. 11; *Koh System v. D.C. Department of Employment Services*, 683 A.2d 446 (D.C. 1996). However, the Act also requires that within ten days from the date of an injury or from the date the employer has knowledge thereof, the employer must file a First Report of Injury with the Mayor and DOES, and concurrently, by certified mail, send to the employee a statement of the employee’s rights and obligations under the Act, “including the right to file a claim for compensation within one year from the date of injury or death.” D.C. Official Code § 32-1532(a). Where, however, the employer fails to file this report and provide the required information to the employee within the prescribed period, D.C. Official Code § 32-1532(f) provides that the one-year limitations period for filing of the employee’s claim under D.C. Official Code § 32-1514(a) “shall not begin to run . . . until such report shall have been furnished as required by the provisions of subsection (a) of this section.” *See Whitley v. Howard University*, CRB No. 06-71, OHA No. 03-500, OWC No. 578967 (February 16, 2007). *See also*, 7 DCMR §§ 203.3 and 205.1.

In the instant case, the determination of untimeliness was made in disregard of D.C. Official Code § 32-1532(f). Thus, upon remand, not only must the ALJ make factual findings necessary to the legal analysis required under D.C. Official Code § 32-1514, but findings of fact necessary

¹⁰ D.C. Official Code § 32-1514(a) requires filing of one’s claim within one year after the date of injury, which period of time does not begin to run “until the employee or beneficiary is aware, or by the exercise of reasonable diligence should have been aware, of the relationship between the injury or death and the employment.”

¹¹ Because of this, the determination that the notice requirements of D.C. Official Code § 32-1513 have not been met does not excuse the necessity of a determination of whether a claimant’s injury arose out of and in the course of the claimant’s employment pursuant to *Ferreira*. Notwithstanding a determination of failure to comply with D.C. Official Code § 32-1513, “medical benefits are not barred if claimant’s injuries are causally related to her employment.” *Cuaical v. Marriott Hotel*, OHA No. 03-006, OWC No. 550327 (March 14, 2003).

for a proper determination of whether the one-year time period mandated there under was tolled pending the Respondent's filing of the reports and notice required by D.C. Official Code § 32-1532(a) must also be made.

CONCLUSION

For the foregoing reasons, in the absence of necessary findings of fact related to the questions of coverage under D.C. Official Code § 32-1503, the timeliness of the notice required under D.C. Official Code § 32-1513 or whether the Petitioner is excused therefrom, and the timeliness of the Petitioner's claim, the Compensation Order herein is held to be neither supported by substantial evidence of record nor in accordance with applicable law.

ORDER

The Compensation Order of December 7, 2006 is VACATED and this case is REMANDED to AHD for findings of fact and conclusions of law consistent with this Decision, and for such further proceedings, including further evidentiary proceedings, as may be necessary.

FOR THE COMPENSATION REVIEW BOARD:

SHARMAN J. MONROE
Administrative Appeals Judge

July 23, 2007
DATE