

**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. 05-210**

**MURANDA WILLIS,**

**Claimant–Respondent**

**v.**

**DISTRICT OF COLUMBIA PUBLIC SCHOOLS,**

**Employer–Petitioner**

Appeal from a Compensation Order of  
Administrative Law Judge Robert R. Middleton  
AHD/OHA No. PBL 00-039B, DCP No. LTBOEud001641

Barbara Wooten, Esquire, for Claimant-Respondent

Kevin J. Turner, Esq., for Employer-Petitioner

Before JEFFREY P. RUSSELL, SHARMAN J. MONROE, *Administrative Appeals* Judges, and FLOYD LEWIS, *Acting Administrative Appeals Judge*.

JEFFREY P. RUSSELL, *Administrative Appeals Judge*, on behalf of the Compensation Review Panel:

**DECISION AND ORDER**

**JURISDICTION**

Jurisdiction is conferred upon the Compensation Review Board pursuant to Jurisdiction is conferred upon the Compensation Review Board pursuant to D.C. Official Code §1-623.28, §32-1521.01, 7 DCMR §118, and DOES Director's Directive Administrative Policy Issuance No. 05-01 (Feb. 5, 2005), and the Department of Employment Services Director's Directive, Administrative Policy Issuance 05-01 (February 5, 2005).<sup>1</sup>

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<sup>1</sup> 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 Ant-Fraud Amendment Act of 2004, D.C. Official Code §32-1521.01. In accordance with the Director's Directive, the CRB replaces the Office of the Director in providing 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

## BACKGROUND

This appeal follows the issuance of a Final Compensation Order by the Assistant Director for Labor Standards of the District of Columbia Department of Employment Services, approving and adopting a Recommended Compensation Order from the former Office of Hearings and Adjudication, currently the Administrative Hearings Division (AHD) of the Office of Hearings and Adjudication (OHA). In that Recommended Compensation Order (the Compensation Order), which was filed on January 28, 2005, the Administrative Law Judge (ALJ) granted Respondent's claim, by reinstating her temporary total disability benefits retroactively, to the present and continuing, from the date that Petitioner had terminated those benefits.

Petitioner's Petition for Review requests the following action be taken in connection with his appeal: that the Compensation Order be reversed, and that Petitioner's initial decision to terminate benefits by Petitioner be affirmed.

The issue presented is as follows: Whether there is substantial evidence in the record to support the ALJ's determination that the Respondent remains disabled as a result of her work-related injury.<sup>2</sup>

## ANALYSIS

As an initial matter, the scope of review by the Compensation Review Board (CRB) and this Compensation 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. *See* D.C. Workers' Compensation Act of 1979, as amended, D.C. Official Code §32-1501 *et seq.*, at §32-1522(d)(2)(A), *and* D.C. Comprehensive Merit Personnel Act of 1978, as amended, D.C. Official Code § 1-623.01, *et seq.*, at § 1-623.28 (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 Compensation 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.

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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.

<sup>2</sup> In the "Agency's Application For Review" (AFR), Petitioner inaccurately described the issue presented as follows: "Whether Claimant Declination [sic] of Suitable Employment Due to Personal Inconvenience Is Substantial Evidence to Support A Modification of Her Disability Benefits". AFR, page 4. The issue as posed does not accurately describe what CRB must decide. Rather, it presumes a fact that Petitioner wishes the ALJ had found, and poses the question of whether if that fact had been found by the ALJ, the Respondent would be subject to a modification of her disability payment amount.

Turning to the case under review herein, Petitioner alleges that Respondent admitted that in her testimony at the formal hearing that “she had been provided vocational rehabilitation and located suitable alternative employment” yet nonetheless that “she refused said employment because it required her to arrive for duty earlier than she could using the Metro system for transportation”. AFR, page 4. Because of this testimony, Petitioner asserts that the general rule requiring that an employer adduce medical evidence of the medical suitability of jobs alleged to be suitable by the employer<sup>3</sup> does not apply. *Id.* Petitioner provides no legal support for its position.

Even assuming the possible validity of the argument that an injured worker’s testimonial admission as to the suitability of certain alternative positions could, under some circumstances, relieve an employer of its procedural and evidentiary obligations under *Queen*, the record in this case supports no such argument because there is no such admission. Rather, as pointed out by Respondent, her testimony about the two jobs and their suitability in light of her physical limitations and training was not an admission of suitability. Regarding one of the two jobs about which she testified and for which she applied, that of a phlebotomist, a position that she located on her own using skills learned through vocational rehabilitation, she testified without contradiction that the position turned out to be beyond her skills as a phlebotomist, in that it included the more physical demands of a medical assistant, which demands were not only beyond her physical capacity, but also were not skills for which she had been trained or had experience performing. *See generally*, Hearing Transcript (HT) 63 – 66. Regarding the only other position upon which Petitioner relies, another phlebotomist position (at Washington Hospital Center), Respondent’s testimony that she had no viable transportation options for, in the words of *Queen*, “commuting” to that position, given that “commuting” encompasses not only distance, but available transportation, was uncontradicted. HT 29 – 36.

Accordingly, we reject Petitioner’s appeal that the ALJ’s decision as contained in the Compensation Order is unsupported by substantial evidence, and we affirm.

### CONCLUSION

The Compensation Order of January 28, 2005 is supported by substantial evidence and is in accordance with the law, and is affirmed.

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<sup>3</sup> Although not identified by the ALJ, that rule is properly noted by Respondent as being described in *Queen v. District of Columbia Department of Human Services*, ECAB No. 95-13, 1996 D.C. Workers’ Compensation LEXIS 393, wherein it was held that, in order for Employer to properly obtain a modification of an injured workers’ disability benefits based upon a claim by Employer that there exist suitable alternative jobs in the relevant marketplace for which the worker could compete and earn wages, Employer “must refer [the worker] along with their medical history and file to a physician for an opinion regarding whether [the worker] can perform [the position]. The physician’s opinion should include whether [the worker] would be able to perform the duties given [the] restrictions impose upon [the worker]. The [Employer’s] investigation should not, however, end with the doctor’s opinion. After the physician renders a determination whether [the worker] can perform the duties of a certain position, the [Employer] should [...] do a [labor] market survey to determine if there are positions in the commuting area which are commensurate with [the worker’s] limitations. Thereafter, [Employer] should provide [the worker] with the identified positions and schedule interviews with the prospective employers.” *Id.*

**ORDER**

The Compensation Order of January 28, 2005 is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

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JEFFREY P. RUSSELL  
Administrative Appeals Judge

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April 14, 2005  
DATE