

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Department of Employment Services**

**VINCENT C. GRAY  
MAYOR**



**LISA M. MALLORY  
DIRECTOR**

**COMPENSATION REVIEW BOARD**

**CRB No. 11-145**

**KIMBERLY CHANEY,**

**Claimant–Petitioner,**

**v.**

**WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY,**

**Self-Insured Employer–Respondent.**

Appeal from a Compensation Order of  
Administrative Law Judge Joan E. Knight  
AHD No. 11-135, OWC No. 648461

David J. Kapson, Esquire, for the Petitioner

Sarah O. Rollman, Esquire, for the Respondent

Before JEFFREY P. RUSSELL,<sup>1</sup> LAWRENCE D. TARR, AND MELISSA LIN JONES, *Administrative Appeals Judges.*

JEFFREY P. RUSSELL, for the Compensation Review Board.

**DECISION AND ORDER**

**BACKGROUND**

Kimberly Chaney is employed by the Washington Metropolitan Area Transit Authority (WMATA) as a bus operator. On March 23, 2008, while operating the B2 bus in Anacostia, Ms. Chaney witnessed a shooting that occurred in the rear of the bus, with one passenger shooting another, then fleeing the scene. Ms. Chaney was psychologically traumatized by witnessing this event, and she filed a claim for psychological injury as a result. The claim was accepted by WMATA, which voluntarily paid a period of temporary total disability and provided medical care, in the nature of psychiatric care from Dr. Cynthia Majors.

---

<sup>1</sup> Judge Russell was appointed by the Director of DOES as an Interim Board Member pursuant to DOES Administrative Policy Issuance Nos. 11-02 (June 23, 2011).

After a period of time, Ms. Chaney returned to work as a bus operator. However, she alleged that she was unable to drive the B2 route any longer, and WMATA assigned her to other routes. Because she did not drive the B2, Ms. Chaney contended that she was unable to work as much overtime as before the incident, and she sought to be compensated for partial disability based upon this claimed loss of overtime wages. WMATA declined to pay such additional benefits. A formal hearing was convened on July 19, 2011 to resolve the dispute, following which a Compensation Order was issued on November 10, 2011.

In that Compensation Order, the Administrative Law Judge (ALJ) denied the claim. Ms. Chaney timely appealed the denial. WMATA filed an opposition to Ms. Chaney's appeal.

#### STANDARD OF REVIEW

The scope of review by the CRB, as established by the Act and as contained in the governing regulations, is generally 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. Code § 32-1501, *et seq.*, (the Act) at § 32-1521.01 (d)(2)(A), and *Marriott International v. DOES*, 834 A.2d 882 (D.C. 2003). Consistent with this standard of review, the CRB and this review panel must affirm 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 this panel might have reached a contrary conclusion. *Id.*, at 885.

#### DISCUSSION AND ANALYSIS

In this appeal, Ms. Chaney argues that the ALJ erred in denying the claim for partial disability based upon wage loss, asserting that she is "unable" to work as much overtime as before the incident because "due to her condition, Ms. Chaney was relegated to as [sic] a 'hold down' driver where she took other drivers' routes ... while they were on leave or on vacation [which] offered less routes for Ms. Chaney to drive and less opportunity for regular overtime". Petitioner's "Memorandum of Points and Authorities in Support of Claimant's Application for Review", unnumbered page 5. She asserts that this supposed inability to return to her pre-injury job is established because "substantial evidence in the record shows that Ms. Chaney was unable to resume her pre-injury duties as a bus operator due to Post Traumatic Stress associated with the March 28, 2008 shooting incident". *Id.*

WMATA argues that the ALJ's determination that any limitations upon Ms. Chaney's overtime work are due to her own decision to refuse to drive the route that she drove at the time of the incident, and that that decision is not based upon any medical restriction imposed by her treating physician/psychiatrist, Dr. Majors. Rather, WMATA asserts that the ALJ's finding that Dr. Majors cleared Ms. Chaney to return to work "full duty" is supported by substantial evidence, and that such a clearance, without any specific restrictions on where Ms. Chaney could perform her duties, defeats Ms. Chaney's claim that her lessening of overtime earnings, if any she has, are the result of

the work injury.<sup>2</sup> In essence, WMATA argues that by declining to drive that route, any diminution in overtime availability is the result of Ms. Chaney voluntarily limiting her income. Respondent's "Self-Insured Employer's Opposition to Claimant's Application for review", page 5.

We agree. Ms. Chaney clearly ascribed her allegedly lost overtime to her own refusal to accept work on the B2 route, despite it being offered. In her words, "when it came to a point where they would assign me to B2, I would have a fit, and they would change my work so I wouldn't have to go out there ... ." HT 31. The statement in the treatment notes of Dr. Majors (EE 4) stating that Ms. Chaney "is released to her full duty position as a bus operator 1/13/09", cited by the ALJ in the Compensation Order, supports the ALJ's determination that Ms. Chaney was not medically disabled from performing whatever duties she had performed in her pre-injury job.

#### CONCLUSION

The determination that Ms. Chaney had failed to establish entitlement to ongoing partial disability based upon wage loss during the period claimed is supported by substantial evidence and is in accordance with the law.

---

<sup>2</sup> WMATA also argues, with some support, that the claim that Ms. Chaney is working fewer overtime hours since returning to work is unfounded, and that her testimony that she worked 5 to 10 hours of overtime weekly before the injury is demonstrably false. See, Respondent's Memorandum, page 6. However, because we affirm the decision for other reasons, we need not consider this issue.

**ORDER**

The Compensation Order of November 10, 2011 is affirmed.

FOR THE COMPENSATION REVIEW BOARD:

---

JEFFREY P. RUSSELL  
Administrative Appeals Judge

February 23, 2012  
DATE