

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

**VINCENT C. GRAY**  
**MAYOR**



**LISA M. MALLORY**  
**DIRECTOR**

**COMPENSATION REVIEW BOARD**

**CRB No. 11-129**

**FRANCISCA LETREN,**  
**Claimant–Respondent,**

**V.**

**DISTRICT OF COLUMBIA CHILD AND FAMILY SERVICES,**  
**Self-Insured Employer–Petitioner.**

Appeal from a Compensation Order by  
The Honorable Belva D. Newsome  
AHD No. PBL09-089A, DCP No. 30090951004-0001

Frank McDougald, Esquire for Petitioner  
Matthew Peffer, Esquire for Respondent

Before MELISSA LIN JONES, HENRY W. MCCOY, and JEFFREY P. RUSSELL,<sup>1</sup> *Administrative Appeals Judges*.

MELISSA LIN JONES, *Administrative Appeals Judge*, for the Compensation Review Board.

**DECISION AND REMAND ORDER**

**JURISDICTION**

Jurisdiction is conferred upon the Compensation Review Board (“CRB”) pursuant to D.C. Code §1-623.28, 7 DCMR §118, and Department of Employment Services Director’s Administrative Policy Issuance No. 05-01 (February 5, 2005).

**FACTS OF RECORD AND PROCEDURAL HISTORY**

The facts underlying this claim are set forth in *Letren v. D.C. Child and Family Services*, CRB No. 11-021, AHD No. 09-089A, DCP No. 30090951004-0001 (August 16, 2011). Because those facts have not changed, they are not reiterated here.

At this point in the process, the facts underlying the procedural posture of this matter are of principal importance. On February 9, 2011, the administrative law judge (“ALJ”) issued a Compensation Order awarding Ms. Francisca Letren temporary total disability compensation benefits from

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<sup>1</sup> Judge Russell has been appointed by the Director of the DOES as a temporary CRB member pursuant to DOES Administrative Policy Issuance No. 11-01 (June 23, 2011).

September 11, 2009 to the date of the formal hearing and continuing. An appeal ensued focusing on the ALJ's credibility finding:

I find that the Claimant is credible based upon her demeanor and her testimony is supported by the record developed in the March 31, 2010 hearing. I find that Employer's testimony was credible with respect to the actions of management concerning Claimant.<sup>[2]</sup>

On August 16, 2011, the CRB reversed and remanded the February 9, 2011 Compensation Order with specific instructions regarding resolution of the errors in that Compensation Order:

In the case *sub judice*, two different versions of the same event were presented via the testimony of the Claimant and the Employer's two witnesses. The Claimant testified Mr. Ward yelled and screamed at her on September 10, 2009, causing her to lose control. Mr. Ward testified he did not yell and scream at the Claimant and was always professional in his interactions with her. With two differing versions of the same event, a clear and unambiguous credibility finding of the Claimant and witnesses is necessary in ultimately determining whether or not the CO is supported by the substantial evidence in the record. Significantly, the ALJ must indicate what version of events she gives more weight to surrounding the incident of September 10, 2009. We find the credibility findings of the ALJ to be ambiguous at best.

As it pertains to the Claimant, the ALJ limits her credibility determination to the March 31, 2010 hearing. The ALJ appears to have excluded the record developed on July 13, 2010 and July 29, 2010 when determining the Claimant's credibility. By limiting her determination to just the Claimant's demeanor on one day and excluding evidence developed in the two subsequent hearings, it cannot be said that the credibility finding "hangs together" with other evidence of the record, including the testimony of the other witnesses.

Moreover, it is also questionable what the ALJ meant when she indicated that she found the "Employer's testimony credible with respect to the actions of management concerning Claimant." There were two witnesses presented by the Employer. We cannot discern whether or not the ALJ found both witness credible based upon their demeanor at the Formal Hearing and whether the ALJ credits the witness testimony surrounding the events of September 10, 2009 over that of the Claimant. The ALJ limited her credibility finding to the "actions of management" which we find to be vague and confusing as there were numerous actions presented by the Employer, many of which did not even occur on September 10, 2009. The ALJ seems to allude to personnel actions before the date in question as being the causative factor of the Claimant's psychological issues. The evidence presented by Employer reveals numerous meetings, emails, communications, and personnel

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<sup>2</sup> *Letren v. D.C. Child and Family Services*, AHD No. PBL09-089A, DCP No. 30090951004-0001 (February 9, 2011), p.2.

actions with the Claimant before the events of September 10, 2009. Specifically, the ALJ states,

After all the meetings, emails, the use of LWOP for annual leave for unscheduled absences due to her work-related injury of January 13, 2009, and the use of AWOL while Claimant was not on leave restriction or AWOL had not approved by the Director, Claimant reached her breaking point, and had to be released to a relative to be excused from duty. *Letren, supra* at 8.

Moreover, it is unclear if the ALJ found that only the September 10, 2009 event caused the psychological problems or if it was the cumulative workplace issues and the Employer's "actions." [Footnote omitted.] Such ambiguity constrains us to remand the case for the ALJ to clarify her credibility findings surrounding the events of September 10, 2009 and for a specific determination as to what event or events caused the Claimant's psychological problems.<sup>[3]</sup>

A Compensation Order on Remand issued on October 18, 2011. The ALJ characterized the issue on remand as "What credibility determinations are necessary to find substantial evidence to support the award of disability benefits in the Compensation Order dated February 9, 2011?"<sup>4</sup> Then, after reciting a portion of the CRB's August 16, 2011 Decision and Remand Order, the ALJ quoted *King v. D.C. Department of Employment Services*<sup>5</sup> and, without analysis stated Ms. Letren's version of the September 10, 2009 events is credible and the testimony of Employer's witnesses is not credible regarding the events of that date but is credible regarding "the actions of the Employer preceding September 10, 2009."<sup>6</sup> Finally, the ALJ referenced some caselaw regarding cumulative injuries, the prior Compensation Order, and the claim for relief.

In this appeal, D.C. Child and Family Services ("Employer") asserts the Compensation Order on Remand fails to comply with the August 16, 2011 Decision and Remand Order. Employer argues the Compensation Order on Remand fails to apply any reasoning or analysis to the specific instructions in that Decision and Remand Order.<sup>7</sup>

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<sup>3</sup> *Letren v. D.C. Child and Family Services*, CRB No. 11-021, AHD No. PBL09-089A, DCP No. 30090951004-0001 (August 16, 2011), pp. 3-4.

<sup>4</sup> *Letren v. D.C. Child and Family Services*, AHD No. PBL09-089A, DCP No. 30090951004-0001 (October 18, 2011), p. 2.

<sup>5</sup> *King v. DOES*, 560 A.2d 1067 (D.C. 1989).

<sup>6</sup> *Letren v. D.C. Child and Family Services*, AHD No. PBL09-089A, DCP No. 30090951004-0001 (October 18, 2011), p. 3.

<sup>7</sup> Employer's disagreement with the ALJ's refusal to recuse herself was resolved in the prior Decision and Remand Order and will not be addressed further in this Decision and Remand Order. See *Letren v. D.C. Child and Family Services*, CRB No. 11-021, AHD No. PBL09-089A, DCP No. 30090951004-0001 (August 16, 2011), p. 2, nt. 3.

In response, Ms. Letren contends the ALJ adequately addressed the errors outlined in the prior Decision and Remand Order. She requests we affirm the Compensation Order on Remand.

#### ISSUE ON APPEAL

Does substantial evidence in the record support that the ALJ properly considered the directives in the October 18, 2011 Decision and Remand Order?

#### ANALYSIS

The scope of review by the CRB is limited to making a determination as to whether the factual findings of the appealed Compensation Order on Remand are based upon substantial evidence<sup>8</sup> in the record and whether the legal conclusions drawn from those facts are in accordance with applicable law.<sup>9</sup> Consistent with this standard of review, the CRB is constrained to uphold a Compensation Order on Remand that is supported by substantial evidence, even if there also is contained within the record under review substantial evidence to support a contrary conclusion and even if the CRB might have reached a contrary conclusion.<sup>10</sup>

A determination of credibility, like all other findings of fact, must be supported by substantial evidence in the record when reviewed as a whole.<sup>11</sup> Such a determination should involve more than a mere consideration of the witness' demeanor and appearance; it should include an overall evaluation of the testimony in light of its rationality, internal coherence, and consistency with other evidence of record.<sup>12</sup> The credibility findings of an ALJ are entitled to great weight-- when properly supported.<sup>13</sup>

The Compensation Order on Remand lacks any explanation or support as to the credibility finding other than in regards to the events of September 10, 2009, Ms. Letren is credible and the other witnesses are not. Thus, in the context of this mental-mental case where credibility is crucial, the Compensation Order on Remand must be remanded for an appropriate credibility analysis as the *Ramey* test requires.<sup>14</sup>

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<sup>8</sup> "Substantial evidence" is relevant evidence a reasonable person might accept to support a conclusion. *Marriott International v. DOES*, 834 A.2d 882, 885 (D.C. 2003)

<sup>9</sup> Section 32-1521.01(d)(2)(A) of Act.

<sup>10</sup> *Marriott International*, *supra*.

<sup>11</sup> See *Davis v. Western Union Telegraph*, Dir. Dkt. 88-84, H&AS No. 87-751, OWC No. 098216 (March 4, 1992).

<sup>12</sup> *Davis*, *supra*, (citing *Sartor v. Arkansas Natural Gas Corporation*, 321 U.S. 620 (1955)).

<sup>13</sup> *Dell v. DOES*, 499 A.2d 102, 106 (D.C. 1985).

<sup>14</sup> On remand, the ALJ would be wise to omit any reference to a presumption of compensability in this public sector case.

In addition, the ALJ only confounds issues when after reciting the CRB's directive to explain "her findings surrounding the events of September 10, 2009 and [provide] a specific determination as to what event or events caused the Claimant's psychological problems,"<sup>15</sup> she 1. recites caselaw to support the proposition that cumulative trauma may result in a compensable injury, 2. references findings of fact from the February 9, 2011 Compensation Order, and 3. states the claim for relief. The CRB does not dispute that in the appropriate case, a cumulative trauma may result in a compensable injury, but the ALJ has not made findings as to whether this is such an appropriate case, particularly when the ALJ repeatedly references just one specific event that occurred on September 10, 2009.

#### CONCLUSION AND ORDER

The instructions in the August 16, 2011 Decision and Remand Order are clear. Equally as clear is the ALJ's failure to comply with those instructions through findings of fact, an analysis of an application of the law to those facts, and a rational conclusion reached through that analysis.<sup>16</sup> Consequently, the law requires we vacate the October 24, 2011 Compensation Order on Remand and remand this matter for further proceedings consistent with this Decision and Remand Order as well as the August 16, 2011 Decision and Remand Order.

FOR THE COMPENSATION REVIEW BOARD:

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MELISSA LIN JONES  
Administrative Appeals Judge

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March 28, 2012  
DATE

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<sup>15</sup> *Letren v. D.C. Child and Family Services*, CRB No. 11-021, AHD No. PBL09-089A, DCP No. 30090951004-0001 (August 16, 2011), p. 4.

<sup>16</sup> See D.C. Code §2-501 *et seq.* (2006).