

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. 04-009B

ALICE ANAMALECHI-OLADUKON,¹

Claimant–Petitioner,

v.

DISTRICT OF COLUMBIA PUBLIC SCHOOLS,

Employer.

Appeal from a Compensation Order of
Administrative Law Judge Robert R. Middleton
OHA/AHD No. PBL 02-008B, DCP Nos. LT7-BEdu004702

Jude C. Iweanoge, Esquire, for Claimant-Petitioner

Pamela L. Smith, Esq., for Employer-Respondent

Before JEFFREY P. RUSSELL, LINDA F. JORY and FLOYD LEWIS, *Administrative Appeals Judges*.

JEFFREY P. RUSSELL, *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 § 1-623.28, § 32-1521.01, 7 DCMR § 118, and DOES Director's Directive Administrative Policy Issuance No. 05-01 (Feb. 5, 2005).²

¹ The spelling of Petitioner's last name is different in places in this record. We have adopted the spelling that is used by Petitioner's counsel in the Application for Review and supporting memorandum.

² 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 Anti-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 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. Official Code § 32-1501 *et seq.*, and the D.C. Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Official Code § 1-623.1 *et seq.*, including responsibility for administrative appeals filed prior to October

BACKGROUND

This appeal follows the issuance of a Final Compensation Order, which was filed on August 16, 2004, by the Assistant Director for Labor Standards, 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), the Administrative Law Judge (ALJ) denied Petitioner's claim for temporary total disability benefits and medical benefits, finding that the claim was not compensable due to the terms of a settlement agreement purportedly previously entered into by the parties.

Petitioner's Petition for Review requests that the Compensation Order be vacated, and in the supporting memorandum Petitioner requests that the claim be granted as prayed before the ALJ. Respondent has failed to respond to this appeal.

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. 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. 2003). Consistent with this standard 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 decision of the ALJ denying the claims for wage loss benefits and medical care was not based upon substantial evidence and is not in accordance with the law for the following reasons.³

1. The Settlement Agreement (SA) was not intended to and did not cover the claim pending before the ALJ (referred to hereafter as "this claim", which was for a claimed injury allegedly incurred on February 25, 2003) in that the SA referred to and was intended to cover only claims related to an earlier injury which was incurred on or about January of 2000.

1, 2004, the effective date of the D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004.

³ Petitioner's counsel did not specifically identify the issues precisely as phrased below. However, from review of the Petition for Review and the supporting memorandum it appears to this panel that these are the issues raised.

2. Regardless of whether the SA was intended to or did cover this claim, the SA provided for provision of reasonable and necessary medical care and therefore the request for medical care should have been granted.
3. Regardless of whether the SA was intended to and did cover this claim, the SA requires that Respondent provide “reasonable accommodations” at the work place, and the ALJ should therefore have order Respondent to provide such reasonable accommodations.
4. Regardless of whether the SA was intended to and did cover this claim, settlement agreements can not, as a matter of law under the Act, preclude claims for temporary total disability benefits arising after the settlement agreement becomes effective, because, Petitioner asserts, a settlement agreement is a “schedule award” and that, asserts Petitioner, schedule awards do not preclude future claims for temporary total disability.
5. Regardless of whether the SA was intended to and did cover this claim, the SA is invalid because it was not approved by the Director of the Department of Employment Services, as required in *Leonard v. District of Columbia*, 801 A.2d 82 (D.C. 2002).
6. Regardless of whether the SA was intended to and did cover this claim, the SA does not bar future temporary total disability claims because the SA did not include any “lump sum” payments, and is therefore not a full and final settlement such that it precludes future claims for such benefits.

The issues that we can consider will be addressed, and those that for reasons of an inadequate record and incomplete Compensation Order can not be addressed, will be addressed as necessary by the ALJ on remand.

Petitioner’s argument #1: The Settlement Agreement (SA), entered into evidence as Claimant’s Exhibit (CE) 18, was not intended to and did not cover the claim pending before the ALJ (which was for a claimed injury allegedly incurred on February 25, 2003) in that the SA referred to and was intended to cover only claims related to an earlier injury which was incurred on or about January of 2000.

Discussion and analysis: Petitioner argued at the time of the formal hearing and argues again in these proceedings that CE 18 was intended to and indeed did cover only such claims for benefits as may have been related to a prior injury sustained by Petitioner in January 2000, and that since this claim is based upon the assertion by Petitioner that she sustained a new injury, albeit to the same body parts (bilateral carpal tunnel syndrome) on February 25, 2003, the SA does not bar this claim.

Review of the SA indicates that it is a poorly drafted document which does not identify the specific nature of the injury that it purports to cover: it identifies the anatomical injury only as “carpal tunnel syndrome”, without specifying whether it is right sided, left sided, or bilateral, and it gives no date of injury. Further, it does not describe in any particular what the nature of the dispute between the parties was at the time of the resolution by way of the SA, thereby providing no clue as to what contentious issues were being compromised or resolved thereby; it refers to an extraneous document, referred to therein as “Section B”, yet no such document is appended; it contains an un-numbered final page entitled “Release” which is signed only by Petitioner (and a notary attesting to said signature) and is dated either March 27, 2003 (the date recited in the body of the first paragraph of the third page as the date of the document) or March 31, 2003 (the date attested to by the Notary Public), four days after the signing by Petitioner, Petitioner’s prior counsel, Respondent’s Supervisor of the Office of Risk Management’s Claims Bureau, and Respondent’s counsel, of the two page “Settlement Agreement” portion thereof; the terms of the March 27, 2003 document

conflict with, or are at least potentially in conflict with, the terms of the March 31, 2003 portion, in that, among other potential inconsistencies, the former purports to provide for “reasonable and necessary follow-up care” and for “reasonable and necessary medical evaluations to ascertain [Petitioner’s] physical capacity”, as well as for “implementation of certain unspecified “reasonable accommodation such as, but not limited to, the recommendations contained in reports issued by” two entities identified as “Sharpe Health Technology Lab” and “Washington Occupational Health Associates”, not otherwise identified by date, and described as being “Attachment 1”, which attachment is absent (not only from the SA but also from the record itself), while the latter purports that it “releases and discharges [Respondent] ... from any and all claims, demands, actions, judgments, and executions that [Petitioner] ever had or now has or may have, known or unknown, against [Respondent] created by or arising out of said claim”, which is described therein only as “*Alice Anamelechi-Oladukon v. D.C. Public Schools*, OHA No. PBL No. 00-800A, OBA No. 013757, before the Office of Hearings and Adjudication in the Department of Employment Services, Labor Standards Division”, again without further reference to a date of injury or anatomical description.

At the formal hearing on June 3, 2004, which ultimately resulted in the Compensation Order under review, Petitioner testified about the circumstances surrounding the execution of the SA. That testimony is also fairly limited and ambiguous. HT contains the following colloquy concerning Petitioner’s intentions relating to the terms of the SA, which is the only testimony relating to the SA that occurred in the formal hearing:

[Petitioner’s counsel] Q: What was this [settlement] agreement about?

[Petitioner] A: It was related I think from Judge Middleton to dismiss with prejudice, I think January 2003. And counsel was supposed to be working out the agreement.

Q: And this is in relation to your injury from what time?

A: From ’01.

Q: At the time that your former Counsel talked to you about the injury, did he know that you had an injury from February 25th of 2003?

A: No.

HT 49. Then, on cross-examination by counsel for Respondent, Petitioner testified as follows:

Q: Okay. Now, at the time that you signed the agreement, did you not understand that you would be receiving treatment per that agreement regarding your carpal tunnel syndrome? Is that correct?

A: That’s correct.

Q: And now it’s your understanding that you’re trying to say that this agreement only pertains to carpal tunnel syndrome prior to February 26, 2003?

A: That’s correct.

Q: And at any point, then, did you present medical bills or payment of medical bills that were subsequently rejected, that you submitted after February 26th of 2003?

A: No. I didn’t submit any medical document.

HT 60. Then, on re-direct, she testified:

Q: Okay, Ms. Anamelechi-Oladukon, did you have any accidents in 2003?

A: Not to my knowledge.

Q: The agreement that was dated March 27th, 2003, is it your understanding that that agreement relates to the carpal tunnel that you are talking about today?

A: No.

HT 61. Respondent offered no evidence or testimony from anyone concerning Respondent's or its representatives' intentions or understanding concerning the meaning of the SA's terms.

The ALJ made no findings in the Compensation Order concerning whether Petitioner had sustained an injury or accident on February 25, 2003, about which Respondent testified at length, describing generally her contention that while on Respondent's premises under circumstances she alleges were work-related, and while using the restroom, she became trapped in a lavatory stall, leading her to bang upon the door with both hands to obtain release. The ALJ made no findings as to whether, if such an incident occurred, Petitioner aggravated her prior injury, sustained a new injury completely, sustained no aggravation or new injury at all, aggravated part of her prior condition only, whether her current alleged symptoms are legitimate, and if so whether they are related to any such new injury or aggravation, or are solely the ongoing sequelae of the prior injury in 2000. Rather, he merely asserted that the SA precluded all future claims of any variety for any carpal tunnel injury or injuries.

This blanket denial is contrary to the law. If a claimant sustains a new injury which is in the nature of an aggravation or worsening of an injury to the same body part for which that claimant had received compensation under a prior award, which we assume would include a properly executed, approved and satisfied settlement agreement, the employer is nonetheless obligated to pay compensation for such new injury, subject to being entitled to a credit under appropriate circumstances for the payments made pursuant to that prior award if the new injury results in additional permanent impairment. In other words, an injured employee is entitled under the Act for compensation for a new injury, even where the new injury in the nature of an aggravation of a prior or pre-existing injury or condition, subject only to the employer taking a credit for any prior permanency award having been made for that pre-existing injury or condition. See, *Barron v. District of Columbia Department of Employment Services*, CRB No. 06-054 (September 6, 2006). However, in that a work-related aggravation of a pre-existing condition or injury constitutes a new injury under the Act (see, *Lerner v. District of Columbia Department of Human Services*, CRB No. 05-216 (May 24, 2005)), the employer may not escape liability for compensation benefits merely because it had previously settled a prior injury claim. At most, such a settlement, if premised upon a properly drafted and approved agreement, would preclude claims for future benefits based upon non-work-related recurrences or aggravations caused by non-work-related activities, or expected "waxing or waning".⁴ In this case, although the ALJ makes reference to such "waxing and waning", the Compensation Order fails to address the central issues, being whether Respondent did in fact sustain a new injury arising out of and occurring in the course of her employment on February 25, 2003 which injury is or was causally related to the complaints for which she seeks

⁴ We are not presented with and do not rule upon the question of whether a properly drafted and explicitly specific settlement agreement which purports to bar all future claims for a specific body part's injury whether claimed to be the result of a new injury or not would be enforceable.

compensation benefits, and did not reach the question of whether the SA was intended to resolve both potential alleged claims.

This failure mandates a remand for findings of fact and conclusions of law thereon. On remand, the ALJ shall consider this issue, and if it is found that Petitioner did sustain a new injury, the ALJ must proceed to consider those additional issues raised by Respondent at the time of the formal hearing which the ALJ did not consider, including whether, despite Petitioner having sustained an accidental injury arising out of and occurring in the course of her employment on February 25, 2003, the claim for benefits is nonetheless barred for failure to provide timely notice of the injury pursuant to D.C. Code § 623.19 (1), and any other issue required to be resolved in light of such findings.

Petitioner's argument #2: Regardless of whether the SA covers this claim, the SA is invalid because it was not approved by the Director of the Department of Employment Services, as required in *Leonard v. District of Columbia*, 801 A.2d 82 (D.C. 2002).

Discussion and analysis: Petitioner objects to the ALJ's reliance upon the SA because it does not appear to have been reviewed and approved by the Director of the Department of Employment Services (the Director), which approval Petitioner asserts is required in order for the SA to be given effect pursuant to the Court of Appeals decision in *Leonard, supra*.

Review of that decision reveals that Petitioner is correct that a settlement agreement under the Act requires some degree of review and approval, and that at the time that the settlement agreement in *Leonard* was executed, that approval was to be from the Director. However, the statutory approval process has changed numerous times since then, first having been transferred to the Office of Personnel, and ultimately to the Office of Risk Management, where it resided at the time that the SA herein was executed.⁵

⁵ To trace the various transfers of authority to review and approve settlement agreements under the Act, See, § 1103 of the Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861); § 3 of the Disability Compensation Program Transfer Emergency Amendment Act of 2002 (D.C. Act 14-400, June 26, 2002, 49 DCR 6526); see also § 3 of the Disability Compensation Program Transfer Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-476, Oct. 3, 2002, 49 DCR 9570), and § 3 of the Disability Compensation Program Transfer and Risk Management Emergency Amendment Act of 2003 (D.C. Act 15-88, May 19, 2003, 50 DCR 4330), § 3 of the Disability Compensation Program Transfer and Risk Management Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-128, July 29, 2003, 50 DCR 6836), and § 3 of the Disability Compensation Program Transfer and Risk Management Second Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-172, October 6, 2003, 50 DCR 9173). The "Disability Compensation Program Transfer Temporary Amendment Act of 2002," was introduced in Council and assigned Bill No. 14-705. The Bill was adopted on first and second readings on June 4, 2002 and July 2, 2002, respectively. Signed by the Mayor on July 17, 2002, it was assigned Act No. 14-436 and transmitted to Congress for its review. D.C. Law 14-202 became effective on October 17, 2002, and expired on May 30, 2003. The "Fiscal Year 2004 Budget Support Act of 2003," was introduced in Council and assigned Bill No. 15-218. The Bill was adopted on first and second readings on May 6, 2003, and June 3, 2003, respectively. Signed by the Mayor on June 20, 2003, it was assigned Act No. 15-106 and transmitted to Congress for its review. D.C. Law 15-39 became effective on November 13, 2003. D.C. Law 15-39, § 2002, provided that all of the powers, duties and functions transferred to the Office of Personnel under D.C. Law 14-28, § 1202 (48 DCR 6891), are transferred to the Office of the City Administrator, and that all property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available to the Office of Personnel under § 1202 of D.C. Law 14-28 are transferred to the Office of the City Administrator.

Review of the SA reveals that it was signed by “Phyllis Dailey”, identified therein as the Supervisor of the Claims Bureau within the Office of Risk Management, as well as by an attorney from the Office of Corporation Counsel on behalf of the District of Columbia Government. These signatures would appear, at least on their face, to satisfy the review and approval requirement for settlement agreements under the Act. In that Petitioner did not raise the sufficiency of the approval process when the matter was presented to the ALJ, and given this apparent facial validity, we affirm the implied finding of the ALJ that the agreement satisfies the statutory requirements as to agency review and approval of settlement agreements as it existed at the time that SA was executed.

This does not resolve, however, the question of whether the SA consists merely of the March 27, 2003 two page portion of CE 18, or also includes the March 31, 2003 third page of that exhibit as well. Resolution of that issue is a factual matter, depending among other things upon the intention of the parties to the agreement, evidence of which is completely lacking in this record. To the extent that on remand, the decision of the ALJ rests upon the terms of the SA, the ALJ must make further findings of fact and conclusions of law as to whether this third page, which does not bear the signature of either the representative of the Office of Risk Management or counsel for the government, and is not referenced within the body of the two page portion of CE 18, is nonetheless intended to be and is for legal purposes a part of the settlement agreement that the parties executed. Further proceedings may be needed to obtain evidence of this nature.

Petitioner’s argument #3: Regardless of whether the SA was intended to or did cover this claim, the SA provided for provision of reasonable and necessary medical care and therefore the request for medical care should have been granted.

Discussion and analysis: Petitioner also asserts that even if the SA is found to be valid and to be applicable to the February 25, 2003 claimed injury, Respondent is nonetheless obligated under that agreement to provide medical care and treatment for the ongoing medical care and treatment required in connection with her bilateral carpal tunnel syndrome, either because such care is provided for therein regardless of which injury is responsible for the need for such care, or because it is the result of the prior injury and the agreement contemplated at least that such care as is required by virtue of the prior injury will continue to be provided. This argument is premised upon the undeniable fact that the fully executed portion of the SA contains, in paragraph 5, an agreement that Respondent will provide Petitioner with “reasonable and necessary follow-up care” and for “reasonable and necessary medical evaluations to ascertain [Petitioner’s] physical capacity”.

We can find no error in Petitioner’s argument or logic, to the effect that, if it is found that Petitioner’s complaints are real, even if it is found that Petitioner did not sustain a new injury on February 25, 2003, they are to be treated in the manner contemplated by the parties in the SA. Whether that means that they are to be provided for by Respondent under that agreement, or have been released pursuant to that agreement may depend in part at least upon whether or not the third page of CE 18 is found to be part of the agreement, an issue that we are not able to determine on this record and which is for the ALJ, *ab initio*. On remand, therefore, in the event that it is found that such care is not compensable as a result of Petitioner having sustained a new injury, the ALJ shall consider whether Petitioner is entitled to have the claimed medical care provided by Respondent under the terms of the SA.

Petitioner’s argument #4: Regardless of whether the SA was intended to and did cover this claim, the SA requires that Respondent provide “reasonable accommodations” at the work

place, and the ALJ should therefore have ordered Respondent to provide such reasonable accommodations.

Discussion and analysis: Petitioner cites no basis or authority under the Act that would permit the ALJ to order Respondent to provide any “accommodation” to Petitioner, *vis a vis* her claimed physical disability or limitations, and we are aware of none. To the extent that the SA creates a claim for such relief, it is not a claim that is cognizable by this agency under the Act. Accordingly, it was not error for the ALJ to have failed to issue a Compensation Order including such an award.⁶ Of course, the failure to so provide such accommodation as part of offering suitable employment to Petitioner may have an impact upon the claim for temporary total disability benefits, depending upon whether such accommodations are necessary as a result of Petitioner’s condition, whether such condition is the result of the prior injury, the alleged subsequent injury, or neither, and whether such accommodations were or were not offered (all subjects upon which the Compensation Order is silent). On remand, the ALJ must address these issues, if it is found that the nature and extent of disability remains an issue upon consideration of the issues of compensability in light of the contentions of the parties relating to the happening of a new injury, the effects of the SA, and the sequelae of the prior injury.

Petitioner’s argument #5: Regardless of whether the SA covers this claim, settlement agreements can not, as a matter of law under the Act, preclude claims for temporary total disability benefits arising after the settlement agreement becomes effective because, Petitioner asserts, a settlement agreement is a “schedule award” and that, according to Petitioner, schedule awards do not preclude future claims for temporary total disability, citing *Smith v. District of Columbia Department of Employment Services*, 548 A.2d 95 (D.C. 1988) and others.

Discussion and analysis: We frankly do not understand Petitioner’s contention that a settlement agreement is a “schedule award”, and we note that the cases cited by Petitioner as suggesting that schedule awards do not extinguish future claims for temporary total disability benefits under the Act (1) do not stand for that proposition (and, indeed, generally stand for the opposite proposition), and (2) are not cases decided under the Act, but rather are cases decided under the District of Columbia Workers’ Compensation Act, D. C. Code § 32-1501, *et seq.*, the workers’ compensation statute covering private sector employment. If, on remand, it is determined that the SA does indeed apply to this claim and that its terms include an agreement that future wage loss benefits were released thereby, nothing in the law would preclude the ALJ from applying that term in the case of a claim for temporary total disability.

Petitioner’s argument #6: Regardless of whether the SA covers this claim, the SA does not bar future temporary total disability claims because the SA did not include any “lump sum” payments, and is therefore not a full and final settlement such that it precludes future claims for such benefits.

Discussion and analysis: We decline to rule upon this argument at this time, because the argument was not raised below and therefore was not subject to any factual inquiry or analysis as to whether its predicate assumption, to wit, that the SA did not include a “lump sum” payment or an equivalent, has any basis in fact. We note that paragraphs 3 (A), 3 (B), and 4 provide for credits and payments to and from Petitioner and Respondent in the form of disability benefits, continuation of pay, reimbursement for contested medical bills, payment of outstanding contested medical bills, and sick

⁶ We note that such a request was never made to the ALJ in the formal hearing process.

leave, and that the record does not contain "Section B", a compilation of at least part of the benefits equation necessary to determine what monetary benefit, if any, Petitioner obtained or was entitled to obtain under SA, nor does it contain a listing of or statement concerning the medical bills paid, reimbursed, or agreed to be paid or reimbursed. We also note, however, that our authority to review the specific terms of a properly approved settlement agreement is defined by statute and would presumably not permit us to substitute our judgment for that of the statutorily prescribed governmental agent, in this case, the properly delegated person within the Office of Risk Management, as to the propriety of such an agreement's approval.

CONCLUSION

The Compensation Order of August 16, 2004 is not supported by substantial evidence and is not in accordance with the law, as set forth in the foregoing Decision and Order.

ORDER

The Compensation Order of August 16, 2004 is REVERSED and REMANDED to the Administrative Hearings Division for further proceedings, findings of fact and conclusions of law consistent with the foregoing Decision and Order.

FOR THE COMPENSATION REVIEW BOARD:

JEFFREY P. RUSSELL
Administrative Appeals Judge

September 20, 2006
DATE