

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. 03-67

CAROLYN BLOCKER,

Claimant – Petitioner,

v.

CUSTODIAN OF THE SPECIAL FUND, D.C. DEPARTMENT OF EMPLOYMENT SERVICES,

Respondent.

Appeal from an Order of
The Custodian of the Special Fund, Alonzo Patterson, Denying Special Fund Relief
Special Fund No. 457, OWC No. 502680

Allen J. Lowe, Esquire, for the Petitioner

Ross Buchholz, Esquire, for the Respondent

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

FLOYD LEWIS, *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 §§ 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, 32-1522 (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 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.

BACKGROUND

This appeal follows the issuance of an Order of the Custodian of the Special Fund, created by D.C. Official Code § 32-1540 in the District of Columbia Department of Employment Services (DOES). In that Order, which was filed on April 10, 2003, the Custodian of the Special Fund (Custodian) denied the request by Claimant-Petitioner (Petitioner) for payment from the Special Fund and dismissed the Petition for relief. Petitioner now appeals that Order.

Preliminarily, this Panel notes that the CRB has recently decided, in an extensive decision, that the CRB has the authority to review Special Fund decisions and that these Special Fund decisions are to be reviewed under the same authority and regulations that control the review of any other decision, order or recommendation issued from the Office of Worker's Compensation. *McGee v. Custodian of the Special Fund*, CRB No. 03-052, SF No. 441 (July 17, 2006).

ANALYSIS

In the review of an appeal from the Office of Worker's Compensation (OWC), the Compensation Review Board must affirm the Compensation Order or Final Decision under review unless it is determined to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. *See* 6 Stein, Mitchell & Mezines, ADMINISTRATIVE LAW, § 51.03 (2001).

As grounds for this appeal, Petitioner alleges as error that Custodian's decision is not in accordance with the language of D.C. Official Code § 32-1519 and *Divencenzo v Angelo Brothers Roofing*, Dir. Dkt. No. 02-46, OHA No. 92-903A (April 9, 2003). Petitioner requests that the Special Fund be ordered to make payments pursuant to the dictates of the Act and the Settlement Agreement in this matter and cease and desist from issuing any such further Orders involving similarly situated claims.

In denying Petitioner's request for Special Fund Relief, the Custodian stated:

In November, 2001, the D.C. Office of the Corporation Counsel (OCC) on behalf of the District of Columbia Government (D.C.) settled D.C. claims in the U.S. Bankruptcy Court by entering into a Settlement Agreement (Agreement) with the Greater Southeast Community Hospital Foundation, et. al. (GSECH); and

This Agreement (at p. 5, para. 3) assigned to the District Government the liability to pay to each workers' compensation claimant against GSECH any and all claims, "whether known or unknown, filed or not filed, liquidated or unliquidated, disputed or undisputed, contingent or non-contingent, now existing or discovered in the future. . . and/or (3) any claim for fees and costs associated therewith."

In addition to clarifying the CRB's jurisdiction over Special Fund decisions, the *McGee* case, in great detail, addressed the arguments that Petitioner raises in this matter, in resolving a similar claim for Special Fund relief. The CRB concluded that the decision denying the claim for payment was properly within the discretion of the Custodian, stating:

The determination by the Custodian that there has been a settlement agreement which contemplates that Petitioner's claims will be paid by an entity other than the Special Fund is not arbitrary, capricious or otherwise not in accordance with the exercise of the broad discretion of the Custodian in making Special Fund decisions.

McGee at 8.

Moreover, this Panel refers to language from page 5-6 of the Settlement Agreement, which reads:

Assignment and Payment of Workers' Compensation Claims: The District shall pay directly to each claimant any and all amounts allowed or determined to be payable by workers' compensation adjudicatory authorities through the District's normal adjudicatory process on account of Workers' Compensation Claims against the Debtors for actual or alleged injuries (collectively the "Claimants Workers' Compensation Claims" and individually a "Claimant's Compensation Claim") The District shall be responsible for defending and paying the cost of defense of all Claimant's Workers' Compensation Claims, and the Debtors shall not be responsible for defending or paying the cost of defense of any Claimant's Workers' Compensation Claim.

This Panel agrees with the Custodian that the Settlement Agreement places liability for all past, present or future claims arising from the Greater Southeast Community Hospital Foundation on the District of Columbia Government and not the Special Fund. As such, the Custodian's dismissal of Petitioner's request for Special Fund relief will not be disturbed. Also, it must be noted that the United States Bankruptcy Court for the District of Columbia approved the referenced Settlement Agreement in this matter, on October 21, 2001 (Case No. 99-01159).

Finally, we note that Petitioner argues that the Custodian's denial of payment is in contravention of the Settlement Agreement, contending that in the context of the Settlement Agreement, the term "District of Columbia Government" was meant to identify the Special Fund specifically. However, the Settlement Agreement does not state this and there is nothing therein that leads to such a conclusion. As stressed in *McGee*, the Special Fund is a creature of and exists solely by virtue of the Act, which of course can not be said of the District of Columbia Government. Moreover, the Act gives the Custodian discretion in making Special Fund payments, something that Petitioner argues it does not have by virtue of the Settlement Agreement.

We can not help but believe that the parties to the Settlement Agreement could have identified the Special Fund specifically, rather than the District of Columbia generally, as the source from which payments under the agreement were to originate. While Petitioner argues that is what the parties intended, that intention is not obvious to us from the agreement. If Petitioner believes this is what the parties intended, it seems that Petitioner's recourse is to a forum of proper jurisdiction over the interpretation and enforcement of settlement agreements generally, or settlement agreements in bankruptcy matters specifically

Moreover, we do not rule that Petitioner has no recourse in seeking to collect the amount of the default from the "District of Columbia Government." This Panel simply holds that the Custodian's determination that Petitioner's recourse is not through application or petition to the Special Fund is neither arbitrary nor capricious and is consistent with the Act.

CONCLUSION

The Order of the Custodian, dated April 10, 2003, is not arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law.

ORDER

The Order of April 10, 2003 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

FLOYD LEWIS
Administrative Appeals Judge

September 27, 2006
DATE