

**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. 06-81**

**CHERYL MANLEY,**

**Claimant – Petitioner.**

**v.**

**ABC IMAGING AND THE HARTFORD INSURANCE CO.,**

**Employer/Carrier – Respondent.**

Appeal from an Award of Attorney's Fee of  
Claims Examiner Karen Bivins  
OWC No. 602935

Benjamin T. Boscolo, Esq., for the Petitioner

David R. Jones, Esq., for the Respondent

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

SHARMAN J. MONROE, *Administrative Appeals Judge*, on behalf of the Review Panel:

**DECISION AND REMAND 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).<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

## BACKGROUND

This appeal follows the issuance of an Award of Attorney's Fee from the Office of Workers' Compensation (OWC) in the District of Columbia Department of Employment Services (DOES). In that Award, which was filed on August 11, 2006, the Claims Examiner (CE) denied the request of the Claimant-Petitioner (Petitioner) for attorney's fees pursuant to D.C. Official Code § 32-1530(a). The Petitioner now seeks review of that Compensation Order.

As grounds for this appeal, the Petitioner alleges as error that the denial is not in accordance with the law and should be reversed.

## ANALYSIS

In the review of an appeal from OWC, the Board must affirm the order 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, § 51.93 (2001).

Turning to the case under review herein, the Petitioner alleges that on June 16, 2004, she filed a Claim Application with the OWC and the Employer-Respondent (Respondent) and that the Respondent failed to voluntarily pay the benefits sought within thirty (30) days of receipt of the Claim Application as required by the Act and that she is thus entitled to attorney's fees pursuant to D.C. Official Code § 32-1530(a). The Petitioner argues that the Act does not indicate that benefits can be withheld if medical records are not provided within a certain timeframe. Citing *Tucker v. Baltimore American Ice Company*, Dir.Dkt. No. 03-42A, OWC No. 580402 (July 23, 2003), she maintains that an employer's obligation to pay compensation begins to run with the filing of a claim.

In denying attorney's fees in this case, the CE stated:

After considering the evidence submitted by both parties, I find that there is not enough evidence to access [sic] fees against the employer/carrier.

While the CE concluded that there was not enough evidence to assess fees, the CE failed to state the bases or rationales for the conclusion. In other words, the CE failed to indicate which subsection of D.C. Official Code § 32-1530 is applicable to this case, what evidence is necessary to award the requested fee under the applicable subsection, what evidence is lacking and who has

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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 (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.

the burden of providing the lacking evidence. Without the bases or rationales for the conclusion not to access fees against the Respondent set forth, the denial is incomplete and the Panel is unable to properly review the denial. This matter must be remanded for further review and proceedings, including but not limited to, an informal conference.

#### CONCLUSION

The Award of Attorney's Fee of August 11, 2006 is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. On remand, the CE is to specify the bases or rationales for the conclusion reached after review and further proceedings.

#### ORDER

The Award of Attorney's Fee of August 11, 2006 is VACATED and REMANDED for further review and proceedings consistent with the above discussion.

FOR THE COMPENSATION REVIEW BOARD:

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SHARMAN J. MONROE  
Administrative Appeals Judge

October 19, 2006 \_\_\_\_\_  
DATE