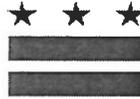


GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 13- 129 (R)

JOSE ROMERO,
Claimant,

v.

V & V CONSTRUCTION INC., and
OHIO CASUALTY INSURANCE COMPANY,
Employer and Insurer.

On Remand from the District of Columbia Court of Appeals
Memorandum Opinion and Judgment
No. 14-AA-342 (March 11, 2015)
AHD No. 10-267A, OWC No. 657345

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2015 APR 22 AM 10 50

Michael J. Kitzman for Claimant
Robin Cole for the Employer and Carrier

Before LAWRENCE D. TARR, *Chief Administrative Appeals Judge* and JEFFREY P. RUSSELL and
HEATHER C. LESLIE *Administrative Appeals Judges*.

DECISION AND REMAND ORDER

By Compensation Order (“CO”) dated April 19, 2013, Claimant was awarded 38% permanent partial disability to his left hand. Employer did not receive a copy of the April 19, 2013 CO from the Administrative Hearings Division and was notified of the CO by Claimant’s counsel on May 10, 2013. Employer issued a check to claimant on May 14, 2013. Claimant did not receive this check because Employer sent it to the wrong address.

On May 20, 2013, Claimant filed a Motion for Default. The ALJ denied Claimant’s motion on June 7, 2013 because Employer had not properly been served with the CO by the Administrative Hearings Division.

On June 14, 2013, Claimant filed a second Motion for Default. Employer issued another check to Claimant that was received by Claimant on June 17, 2013. In response to a Show Cause Order issued by the ALJ, Employer asserted it never received the CO and had mailed the check to an incorrect address.

On October 8, 2013, the ALJ issued a Supplemental Compensation Order that denied Claimant's second Motion for Default. The ALJ found that Employer did not receive a copy of the CO due to an error made by the Administrative Hearings Division staff, that after receipt of a copy of the CO from Claimant's counsel Employer did not ask that the ALJ reissue the CO with a new date of service, that Employer processed a check but that payment was sent to the wrong address and that this error was subsequently corrected. The ALJ further found that the delay in issuing a replacement check because "in order to re-issue the check a stop payment had to be issued on the first check." This took until June 12, 2013 when Employer issued a replacement check.

The ALJ held:

Employer asserts, that given the extraordinary circumstances in which the compensation order was never served on counsel pursuant to D.C.M.R. §228.4 and the check was issued timely although to an incorrect address, which led to a stop payment, thus the circumstances surrounding the late payment were due to factors which employer had not [sic] control. Inasmuch as neither party has explained why employer was provided with an incorrect address and there appears to the undersigned no intent to delay claimant's check by sending it to a wrong address, claimant's request is denied.

CO at 2. (Underlined added).

On February 27, 2014 the Compensation Review Board issued a Decision and Order that affirmed the ALJ's Compensation Order denying Claimant's request for a penalty due to the alleged late payment of the benefits.

The CRB held "It is well settled that compensation payable pursuant to an award becomes due when the award is properly served upon the Employer by AHD. Thus, the dispositive question in the case at bar is whether or not the Employer was properly served the CO by AHD." Decision and Order at 2.

The CRB held that no penalty was owed because Employer was never properly served. As to other arguments raised by Claimant, the CRB held:

Whether the first Supplemental Compensation Order was appealed or not, unless and until a Compensation Order is properly served on the employer, the clock for assessing a penalty does not start running. As a result, all of the other issues about a wrong address and a stop payment and intent and Employer's Counsel receiving a copy of the Compensation Order by fax (from AHD) or by email (from Claimant's Counsel) are red herrings, and although there is no requirement of intent when requesting a penalty, in this case, the ALJ's error in that regard is harmless precisely because Employer was never served with the Compensation Order.

Id.

Claimant appealed the CRB's decision to the District of Columbia Court of Appeals ("DCCA"). The DCCA vacated the CRB's decision.

The DCCA, after noting that the CRB had held compensation payments are due when an award is properly served on the Employer by AHD, held:

The CRB order does not identify the source of this "well settled" proposition, however, nor does it explain as an original matter why "actual receipt" a concept well known in the law, should be read in these circumstances to require receipt *in conformance with* § 228.1.

Apparently thinking it unnecessary to do so, the agency did not determine why the employer had an incorrect mailing address for Mr. Romero. The order does not address whether the resolution of this factual issue might establish grounds for the Mayor to waive the penalty pursuant to § 32-1515 (f).

The DCCA vacated the CRB's decision "to allow the agency to make further factual findings and a reasoned articulation of its judgment."

The remand from the DCCA asks for resolution of both factual and legal issues. The Court has asked for a legal determination whether the term "actual receipt" in 7 DCMR § 228.4 only means receipt in conformance with 7 DCMR §228.1, *i.e.* receipt from the Administrative Hearings Division or whether that term includes receipt from non-agency sources, such as from a claimant's attorney.

The DCCA also remanded this case for further factual findings regarding why Employer did not have Claimant's correct address. Such findings would be necessary if "actual receipt" includes receipt of the CO by non-agency means because, depending on the reason for the incorrect address, such reason may permit waiver of the late payment penalty under D.C. Code § 32-1515(f). That section states

The Mayor may waive payment of the additional compensation after a showing by the employer that owing to conditions over which he had no control such installment could not be paid within the period prescribed by the payment.

Therefore, the CRB must remand this case to AHD so that an ALJ can make the required findings as to why Employer had an incorrect mailing address for Claimant, determine whether the term "actual receipt" only means receipt from AHD, and, if receipt of the CO from Claimant's counsel satisfies 7 DCMR § 228.4, whether payment of additional compensation is waived pursuant to D.C. Code § 32-1515(f).

CONCLUSION AND ORDER

This case is remanded to the Administrative Hearings Division for a new decision consistent with this decision and the remand instructions from the DCCA.

FOR THE COMPENSATION REVIEW BOARD:

/s/ Lawrence D. Tarr _____
LAWRENCE D. TARR
Chief Administrative Appeals Judge

April 22, 2015
DATE