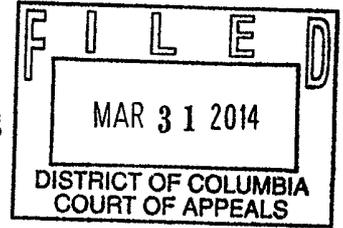


DISTRICT OF COLUMBIA COURT OF APPEALS

No. 12-AA-1824



DISTRICT OF COLUMBIA HOUSING AUTHORITY, PETITIONER,

v.

DISTRICT OF COLUMBIA
DEPARTMENT OF EMPLOYMENT SERVICES, RESPONDENT,

and

DEBORAH T. JACKSON, INTERVENOR.

Petition for Review of a Final Order
of the Compensation Review Board
(CRB-104-12)

(Argued January 9, 2014)

Decided March 31, 2014)

Before FISHER and BLACKBURNE-RIGSBY, *Associate Judges*, and KING,
Senior Judge.

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: Petitioner District of Columbia Housing Authority (DCHA) asks us to reverse a decision of the Compensation Review Board (CRB) affirming an award to DCHA employee Deborah T. Jackson for a back injury stemming from a workplace accident. DCHA contends that neither the CRB nor the administrative law judge (ALJ) whose decision the CRB affirmed had jurisdiction to enter this award because Jackson never filed a claim for her back injury. We affirm the CRB's findings with respect to the neck and left wrist injuries but conclude that it lacked jurisdiction to affirm the ALJ's award because Jackson's back claim was never properly presented to the employer. Accordingly, we reverse the CRB's decision and remand to allow Jackson to file her back injury claim to DCHA.

I.

Jackson, a DCHA police officer, was chasing a burglary suspect on January 31, 2011, when she slipped and fell on ice. She immediately told her supervisor about the resulting pain in her left wrist, neck, and buttocks, and later that day she and her supervisor filed an injury claim form with the Office of Risk Management.¹ On the first page of that form, Jackson claimed an injury to her left wrist only, and on the second page, she claimed injuries to her left wrist and neck. The claim form did not mention any injury to her back. A few weeks later, after several visits to the doctor to treat her neck and left wrist injuries, Jackson realized that the slip and fall had also injured her lower back. She told her immediate supervisor, and they both separately tried to amend her original claim form to include her lower back injury. But they were rebuffed by a human resources staff member and Jackson's claims adjuster, both of whom said that Jackson would have to "go through an appeal" to add her lower back to her original claim.

This turns out to have been misleading advice. Regulations in place at the time did not allow Jackson to amend her existing claim, but they did allow her to file a new claim for a separate injury that was related to the initial work accident through the same process she used to file her original claim. *See* 7 DCMR § 105 (2011), 57 D.C. Reg. 12227 (Dec 24, 2010).² Apparently unaware of this option,

¹ The Office of Risk Management (ORM) handles all initial determinations on workers' compensation claims for all municipal employees. 7 DCMR § 100.2 (2014).

² The regulatory scheme has changed since Jackson filed her original claim in January 2011. Under the new regulations,

The [Workers' Compensation] Program shall issue an amended [Notice of Determination (NOD)] . . . if [it] determines that a claimant is entitled to benefits for an additional body part or injury that is related to the original injury claim. A body part or injury shall be added to an accepted claim if the Program determines after considering all relevant factual evidence, including all relevant medical evidence received under §§ 123 and 124 of this chapter, that the injury or injury to the body

(continued...)

Jackson did not file a new claim, instead, she followed the advice she received and waited until DCHA issued a decision on her original claim to take action.

On March 1, 2011, DCHA notified Jackson that it had accepted her injury claim for her left wrist, but the award notification was silent on the neck injury that she had included on the original claim form. Seeking an award for the neck injury she had claimed and for the related back injury that she had not yet claimed, Jackson sought a formal hearing before the Office of Hearings and Adjudication (OHA) to appeal DCHA's award.³

(...continued)

part is directly related to the original injury for which the claim was initially accepted.

7 DCMR § 111.7 (2014). Claimants must give notice to the Program of the related injury within thirty days. *Id.* § 111.8 (2014). Claimants seeking to amend an NOD pursuant to §§ 111.7 and 111.8

shall make a claim for the additional body part or injury by completing a supplemental Form CA-7, Claim for Compensation, . . . a Form 3, Physicians Report of Employee's Injury, . . . and any other medical or supplemental reports required pursuant to §§ 108.7 and 108.10.

7 DCMR § 111.9 (2014). Section 111.7 could be read in isolation to require the Program to issue an amended NOD even if the claimant does not file a new claim, so long as it determined that the new injury is "directly related" to the original injury for which the claim was initially accepted." But read in conjunction with § 111.9, the current regulations require the claimant to give timely notice and file a supplemental claim for the related injury to an additional body part.

³ Although Jackson's request for a hearing to appeal the decision was dated March 23, 2011, the Administrative Hearings Division of DOES indicated that it did not receive it until April 20, 2011, which would have made it untimely. At the August 3, 2011 hearing, the ALJ dismissed her appeal for that reason. After a second hearing on Jackson's case, the ALJ found that her request had been timely in light of new evidence about when it had been received. DCHA does not challenge this finding.

At the hearing, ALJ Carney informed Jackson that DCHA would have to explicitly deny her neck and back claims before he could review their decision, and he advised her to “start over” and file those claims. Rather than follow this advice, however, Jackson filed another request for a hearing on the March 1 eligibility determination. At the second hearing, on December 5, DCHA told the ALJ that it had decided to accept Jackson’s neck injury claim, so the only remaining issue was her back claim. DCHA argued that the ALJ lacked jurisdiction to review this claim since Jackson still had not filed it. The ALJ allowed the hearing to proceed without ruling on DCHA’s jurisdictional argument, and Jackson presented her medical records of her treatment for her back injury as well as evidence that it was connected to her original slip and fall on January 31. On June 8, 2012, the ALJ ruled that Jackson was entitled to lost wages and medical benefits for her back injury.

DCHA appealed that ruling to the CRB, again raising its jurisdictional objection, which the CRB rejected. It observed that DCHA,

is correct that as a general rule, OHA does not have jurisdiction to determine a claim for injury to a specific body part unless the employer has issued a determination denying liability for that body part, [and that] the plain language of D.C. Code § 1.623.24 (b)(1) requires that the employer make a determination with respect to a claim before an injured worker may obtain a formal hearing.

But the CRB was persuaded, on the following grounds, that this general rule did not deprive the ALJ of jurisdiction in this case.

In the present case, claimant asserted three claims: left wrist, neck, and back. The Notice of Determination only accepted the claimant’s left wrist claim. The Notice was silent as to the neck and back claims. However, the employer did not challenge AHD’s jurisdiction over the neck claim. Indeed, at the hearing it advised the ALJ that it was accepting that claim. The employer, in effect, conceded jurisdiction over the claim for neck injury even though it did not specifically deny that claim. Since the employer did not challenge jurisdiction with respect to one of the claims on which the Notice of Determination was silent, we find it may not act inconsistently and

challenge jurisdiction over the other claim on which the Notice of Determination was silent, the back claim.

On appeal, DCHA argues that the CRB's reasoning relies on a factual error. Specifically, the CRB says that "claimant asserted three claims: left wrist, neck, and back," but Jackson's original and only claim presented to DCHA sought compensation for injuries to her left wrist and neck, but not her back. Thus, even if Jackson's neck injury was properly before them all along, her back injury was not, and never had been.

II.

DCHA has challenged both the substance of the CRB's decision and its jurisdiction over an award on an injury claim that was never filed before the employer. The District of Columbia Administrative Procedures Act (DCAPA) entitles any person challenging an agency's assumption of jurisdiction at any point in a proceeding to "immediate judicial review" of the agency's action. D.C. Code § 2-510 (a) (2012 Repl.). The DCAPA also authorizes this court to "hold unlawful and set aside any . . . conclusions . . . found to be in excess of statutory jurisdiction." *Id.* § 2-510 (a)(3)(C) (2012 Repl.). We review an agency's legal conclusions, including its assumption of jurisdiction, *de novo*. *Daniel v. District of Columbia Dep't of Emp't Servs.*, 673 A.2d 205, 207 (D.C. 1996) (reviewing *de novo* the agency's determination that it lacked jurisdiction over claims that arose before the Workers' Compensation Act was enacted).

When reviewing a CRB decision, we determine whether it is supported by "substantial competent evidence in the record." *Kralick v. District of Columbia Dep't of Emp't Servs.*, 842 A.2d 705, 710 (D.C. 2004). "Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion." *Mitchell v. District of Columbia Dep't of Emp't Servs.*, 50 A.3d 453, 455 (D.C. 2012). When we review any agency decision under the substantial evidence standard, we affirm only when the agency (1) made factual findings on each material contested issue, (2) substantial evidence supports each finding, and (3) its legal conclusions flow rationally from its factual findings. *District of Columbia Dep't of Mental Health v. District of Columbia Dep't of Emp't Servs.*, 15 A.3d 692, 696 (D.C. 2011); *see also* D.C. Code § 1-623.28 (b) (2012 Repl.) (providing for review in this court of CRB decisions).

We determine, first, that the CRB's legal conclusion that Jackson had asserted her back claim to DCHA was not supported by substantial evidence in the record.⁴ We conclude that the CRB, like the ALJ, lacked jurisdiction over Jackson's back claim because that claim was never asserted to DCHA.

Although the CRB states that Jackson asserted claims for her left wrist, neck, and back injuries, it is undisputed that Jackson's claim form identified only her left wrist and neck injuries and nowhere mentioned a back injury. DCHA, however, has informed us that it has no objection to a remand allowing Jackson to file a claim for her back. An employee generally has two years from the date he or she first became aware of the causal relationship between an injury and his or her employment to file a claim for compensation. 7 DCMR § 119.1 (2014). That time limit has been exceeded; however, there is an exception to that requirement where the employee's immediate supervisor had actual knowledge of the injury within thirty days of the time the injury first appeared, which was the case here. 7 DCMR §§ 119.2 (a), 199 (2014). The CRB and the ALJ both credited evidence that a few weeks after the accident, Ms. Jackson told her supervisor that her slip and fall had also injured her back, and that he tried to help her amend her original claim.⁵ Since her supervisor actually knew about the injury within the thirty-day period, Jackson can still file her claim for injuries to her back.

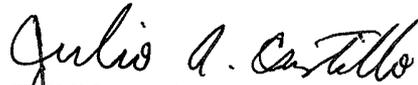
⁴ To file a claim, the employee must supply "the nature and cause of the injury" on the claim form supplied by ORM. 7 DCMR § 108.4 (d) (2014). The Employer and Employee First Report of Injury requires claimants to identify the affected body parts. 7 DCMR § 107.4 (k) (2014).

⁵ The ALJ found that Jackson notified her supervisor of her lower back injury "on or about mid-February 2011" which would have been within thirty days of her January 31 accident.

Accordingly, we reverse the CRB's decision affirming the ALJ's award for Jackson's back injury so that Jackson may file a claim for her back injury with DCHA.

So ordered.

ENTERED BY DIRECTION OF THE COURT:


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Clerk of the Court

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