

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA M. MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 12-093

ALLEN LOVE,

Claimant-Petitioner,

v.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

Self-Insured Employer-Respondent.

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2012 OCT 11 PM 12 32

Appeal from a Compensation Order of
Administrative Law Judge Anand K. Verma
AHD No. 05-288A, OWC No. 550539

Matthew Pepper, Esquire, for the Petitioner

Donna J. Henderson, Esquire, for the Respondent

Before JEFFREY P. RUSSELL,¹ LAWRENCE D. TARR, and MELISSA LIN JONES, *Administrative Appeals Judges*.

JEFFREY P. RUSSELL, for the Compensation Review Board.

ORDER DISMISSING APPEAL

A formal hearing was conducted in the hearings division of the Department of Employment Services (DOES) on February 13, 2001, at which hearing the Claimant-Petitioner, Allen Love, sought a schedule award to his left leg. The Administrative Law Judge (ALJ) before whom the hearing was held, ALJ David Boddie, denied the claim in a Compensation Order issued April 29, 2002.

On October 21, 2011, Mr. Love filed another Application for Formal Hearing (AFH), and on December 20, 2011, the hearings division of DOES issued a scheduling order assigning the matter to ALJ Anand Verma.

¹ Judge Russell was appointed by the Director of DOES as a Board member pursuant to DOES Administrative Policy Issuance No. 12-01 (June 20, 2012).

On February 23, 2012, the Employer-Respondent, Washington Metropolitan Area Transit Authority (WMATA) filed a “Motion to Dismiss or, In the Alternative, For Summary Judgment” (the Motion), raising a statute of limitations argument.

The next day, ALJ Verma (the ALJ) granted the Motion, dismissing the AFH in an “Order” dated February 24, 2012 (the Order). The ALJ did not seek to obtain any input from Mr. Love concerning his position on the Motion, and Mr. Love did not file anything in opposition in the hours that passed between the filing of the Motion and the Order of dismissal. In the Order of dismissal, the ALJ did not address any of the potential objections that a claimant in Mr. Love’s position might have raised to the Motion, including possible issues of error on the part of WMATA in asserting the dates of events relevant to the issue of limitations, the potential for circumstances that might extend a limitations period such as matters in estoppel, or any other potential legal or equitable circumstances that might have tolled the running of any applicable limitations period, either under existing law or based upon a good faith argument for the modification of existing law, or any other potential matter in opposition.

Mr. Love appealed the Order to the Compensation Review Board (CRB). In that appeal, Mr. Love argued that the granting of the Motion without affording him an opportunity to respond violated his due process rights. WMATA opposed the appeal, and relying upon a case from the Sixth Circuit United States Court of Appeals, argued that Mr. Love’s failure to assert any merits-based reason why the Motion should be denied creates an exception to the requirement that a Judge provide a party with a prescribed period of time within which to oppose such a motion. WMATA did not raise any issue regarding the jurisdiction of the CRB to consider the appeal.

The CRB agreed with Mr. Love, and on May 16, 2012 issued an “Amended Decision and Remand Order”² in which the CRB remanded the matter to the hearings section and the ALJ with instructions to permit Mr. Love to file a response. The CRB further instructed the ALJ to “provide detailed factual statements and a thorough analysis of the issues and responses raised” after providing Mr. Love that opportunity to respond.

On May 21, 2012, the ALJ issued a document entitled “Order on Remand”³. In that document, the ALJ recited various reasons why, in his view, the CRB lacked jurisdiction to review his original order of dismissal. Nothing in the Order on Remand addressed the matters raised by the CRB concerning due process, nor did it purport to grant or deny the original Motion, or to dismiss the AFH.

We will not here repeat what was contained in the Amended Decision and Remand Order. Nor will we address the erroneous and in many respects perplexing arguments and complaints raised by the ALJ.

² The Amended Decision and Remand Order was dated the same day as the original Decision and Remand Order that it amended, but was mailed (and hence “filed”) the following day, May 16, 2012. The amendment corrected the record to the effect that the original Decision and Order erroneously stated that WMATA had not filed an opposition to the appeal.

³ May 16, 2012 was a Wednesday, and May 21, 2012 the following Monday. Thus only two business days passed between the Amended Decision and Order and the issuance of the Order on Remand.

Unlike the Order of February 24, 2012, the "Order on Remand" is not an order granting or denying a claim for compensation.⁴ It does nothing with respect to the pending claim for compensation that exists by virtue of (1) Mr. Love having filed the AFH, and (2) the CRB having vacated the Order of February 24, 2012. It neither grants nor denies a claim for benefits under the Act, nor does it, by its own terms, address the claim in any fashion. It is a legal nullity.

It is AHD's obligation to respect the due process rights of the parties that appear before it and AHD's responsibility to determine when and how it carries out the CRB's remand instructions.

The failure of an ALJ to respect the due process rights of a party, and to comply with a CRB decision, whether willful or inadvertent, are not matters that we have the power to remedy, beyond vacating and reversing such orders as are issued which transgress those rights, and returning the matter to the hearings division with instructions to act in accordance with the law. We must depend upon the Agency for personnel and performance matters.

It is AHD's responsibility to determine when and how it carries out the CRB's directive and AHD's obligation to proceed in a manner that respects the due process rights of the parties.

Moreover, as stated in *Reyes v. Bogart Properties*, Dir. Dkt. No. 03-28, OHA No. 02-234, OWC No. 573479 (July 31, 2003):

The conduct of the ALJ in this matter raises serious concerns... From the date of this decision forward, the [CRB] will remand, directly back to the Chief OHA Administrative Law Judge (Chief) any matter wherein an OHA Administrative Law Judge has failed to follow a mandate set forth in a Remand Order of the [CRB]. Ultimately, it is the Chief's responsibility to make certain that all orders directed to the OHA by the [CRB] are carried out as mandated.

(bracketed material added to reflect the fact that the CRB has replaced the Director as the authority charged with reviewing compensation orders.)

There being no final Compensation Order before us, there is nothing for us to review. Therefore, this appeal is dismissed. See generally, D.C. Code §§32-1520, 1521.01; 7 DCMR 258.1

⁴ A "Compensation Order" is defined as "an order of a Hearing or Attorney Examiner [now, Administrative Law Judge] ... which rejects a claim or which makes an award of compensation in respect of a claim under the Act." 7 DCMR 299, "DEFINITIONS", 299.1. An order involuntarily dismissing an Application for Formal Hearing is by definition an order "rejecting" a claim. The Order in this case was premised upon the ALJ's acceptance of certain facts which he deemed compelled the dismissal of the AFH on timeliness grounds. Had that gone un-appealed, they would have become the law of the case and would forever precluded a future request for a schedule award. It is in every sense "final".

FOR THE COMPENSATION REVIEW BOARD:



JEFFREY P. RUSSELL
Administrative Appeals Judge

October 11, 2012

DATE