

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
ACTING DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 14-124

ANGELA WORTHY,
Claimant-Petitioner,

v.

DISTRICT OF COLUMBIA DEPARTMENT OF EMPLOYMENT SERVICES,
Self-Insured Employer-Respondent.

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2015 MAR 10 AM 10 51

Appeal from a September 30, 2014 Compensation Order
by Administrative Law Judge Fred D. Carney, Jr.
AHD No. 12-045B, DCP No. A984801119-0001

Angela Worthy, *Pro Se* Claimant¹
Eric Adam Huang for the Employer

Before MELISSA LIN JONES and LINDA F. JORY, *Administrative Appeals Judges* and LAWRENCE
D. TARR, *Chief Administrative Appeals Judge*.

MELISSA LIN JONES for the Compensation Review Board.

DECISION AND DISMISSAL ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

On April 19, 1990, Ms. Angela Worthy fell out of a chair while working as an unemployment claims examiner for the District of Columbia Department of Employment Services (“Employer”). Her claim for lumbar spine injury was accepted as compensable, but on December 13, 2012, the Public Sector Workers’ Compensation Program issued a Notice of Determination terminating Ms. Worthy’s benefits.

At a formal hearing, Ms. Worthy sought “an award under the Act for benefits in the form of leave restoration or wage loss and medical benefits for the period between November 8, 2012 to November 9, 2012; November 30, 2012 to December 11, 2012; December 27, 2012 to January 7, 2013.” *Worthy v. D.C. Department of Employment Services*, AHD No. 12-045B, DCP No.

¹ Ms. Worthy was represented by Nat Nelson before the Administrative Hearings Division and at the formal hearing.

A984801119-0001 (September 30, 2014). An administrative law judge denied Ms. Worthy's claim for relief.

On October 31, 2014, Ms. Worthy filed an Application for Review "based on some of the evidence that was not submitted in court on the day of my hearing from Workman [*sic*] Compensation." Unnumbered p. 1. Ms. Worthy asserts that her breast reduction surgery was approved and that she lost leave time as a result of her back injury.

In opposition to Ms. Worthy's appeal, Employer asserts the request for review was not filed timely. In the alternative, Employer argues the role of the Compensation Review Board ("CRB") is restricted to a review of the record on appeal, and as such, the CRB cannot base its ruling on new evidence not submitted at the formal hearing. In addition, Employer argues there is no basis for reviewing Ms. Worthy's claims regarding approval for breast reduction surgery because that request was dismissed on Ms. Worthy's motion at the formal hearing. Finally, Employer argues that Ms. Worthy is not entitled to wage loss benefits because she did not lose any wages and that she is not entitled to leave restoration because she used federal leave, not District of Columbia leave. For these reasons, Employer requests the CRB affirm the Compensation Order.

ANALYSIS

The CRB's authority is limited to administrative appellate review through an analysis of whether the factual findings of the appealed Compensation Order are based upon substantial evidence in the record and whether the legal conclusions drawn from those facts are in accordance with applicable law. *See* D.C. Comprehensive Merit Personnel Act of 1978, as amended. D.C. Code §1-623.01 *et seq.*, at §1-623.28(a) ("Act"). Consistent with this standard of review, the CRB is constrained to uphold a Compensation Order that is supported by substantial evidence even if there also is contained within the record under review substantial evidence to support a contrary conclusion and even if the CRB might have reached a contrary conclusion. *Marriott International v. DOES*, 834 A.2d 882 (D.C. 2003). Equally as important, as a matter of law, if an Application for Review is not filed timely, the CRB does not have not have authority to consider the merits of the appeal.

Section 1-623.28(a) of the Act, in pertinent part, provides

[a]n application for review pursuant to this subsection must be filed within 30 days after the date of the issuance of the decision of the Mayor or his or her designee pursuant to §1-623.24(b)(1).

Similarly, 7 DCMR § 135.2 states

Any party adversely affected or aggrieved by a compensation order or final decision issued by the OHA with respect to a claim for workers' compensation benefits pursuant to Title XXIII of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (D.C. Official Code §§1-623.1, *et seq.* (2006 Repl. & 2012 Supp.)) may appeal said compensation order or final decision to the Board by filing an Application for Review with the Board within thirty (30) calendar days from the date shown on the certificate of service of the

compensation order or final decision in accordance with and pursuant to the provisions of 7 DCMR §258.2 [which states an “Application for Review must be filed within thirty (30) calendar days from the date shown on the certificate of service of the compensation order or final decision from which appeal is taken.”]

The Compensation Order is dated September 30, 2014, but the Certificate of Service attached to the Compensation Order is dated September 29, 2014. In order to resolve the conflict, the CRB has taken official notice of the Docket Entries in the Office of Hearings and Adjudication, Administrative Hearings Division’s administrative file. According to those entries, the Compensation Order issued on September 30, 2014, and the thirty calendar day period beginning from that date ended on October 30, 2014. Although Ms. Worthy’s Application for Review is dated October 29, 2014, it was not filed until October 31, 2014 and is not timely.

CONCLUSION AND ORDER

Ms. Worthy’s appeal is DISMISSED as untimely filed. Any remaining issues are beyond the CRB’s jurisdiction.

FOR THE COMPENSATION REVIEW BOARD:

/s/ *Melissa Lin Jones*

MELISSA LIN JONES

Administrative Appeals Judge

March 10, 2015

DATE