

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA MARÍA MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 13-014

**MARVIA M. APPLEWHITE,
Claimant-Petitioner,**

v.

**HAWK ONE SECURITY,
Employer**

Appeal from a January 16, 2013 Order issued by
Administrative Law Judge Anand K. Verma
AHD No. 07-218, OWC No. 608539

Matthew J. Peffer, Esquire, for the Claimant
Leonard L. McCants,¹ for the Employer

Before: LAWRENCE D. TARR, *Chief Administrative Appeals Judge*, HENRY W. MCCOY, and
MELISSA LIN JONES, *Administrative Appeals Judges*.

LAWRENCE D. TARR, *Chief Administrative Appeals Judge*, for the Compensation Review Board.

DECISION AND REMAND ORDER

This case is before the Compensation Review Board (CRB) on the claimant's request for review of the January 13, 2013 Order issued by Administrative Law Judge (ALJ) Anand K. K. Verma, of the District of Columbia's Department of Employment Services (DOES). At issue are the claimant's requests for two supplementary compensation orders for default.

As will be discussed, we find the claimant's request for review with respect to the first supplementary compensation order is untimely. As to the other motion for a supplementary compensation order for default, we find the ALJ erred by dismissing the motion. Therefore, we must remand that motion for further consideration by the ALJ.

¹ The CRB has learned that Leonard L. McCants is deceased. Since no substitute counsel for the employer has entered an appearance, a copy of this Decision and Remand Order will be sent to the address of the law firm at which Mr. McCants worked.

BACKGROUND FACTS OF RECORD AND PROCEDURAL HISTORY

On August 30, 2007, Judge Anand K. Verma issued a Compensation Order in which he awarded the claimant temporary total disability benefits from January 18, 2005 to May 27, 2005 and beginning October 27, 2005 to the present and continuing. That award has not been modified.

Since then the claimant has filed several motions seeking to declare the employer in default for not paying benefits pursuant to that award. Judge Verma issued orders declaring the employer in default on February 1, 2008, and entered supplementary orders declaring default on May 19, 2008, and December 3, 2009.

In May 2010, the claimant obtained from the Superior Court a Judgment Order ordering the employer to pay \$60,707.76. On November 24, 2010, the Special Fund accepted responsibility for this order and also paid other benefits to the claimant through April 20, 2010.

After that date, the claimant filed two additional supplementary motions to declare the employer in default. On June 16, 2011, the claimant filed a third Motion for Supplementary Compensation Order for Default, asserting she was not paid benefits from April 20 to June 16, 2011. The ALJ denied this motion on December 4, 2012. No appeal was taken from the ALJ's December 4, 2012 Order.

On January 14, 2013, the claimant filed another Motion for Supplementary Compensation Order Declaring Default.² This motion, the fourth supplementary motion for default, sought payment of benefits from June 17, 2011 to January 10, 2013. The ALJ denied this motion on January 16, 2013, and the claimant timely appealed.

STANDARD OF REVIEW

Because the Orders on review are not based on an evidentiary record produced at a formal hearing, the applicable standard of review is whether the decision is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. 7 DCMR § 266.3; see also 6 Stein, Mitchell & Mezines, *Administrative Law*, § 51.03 (2001).

DISCUSSION

Orders on two motions for orders declaring default are before the CRB.

The first motion is the claimant's June 16, 2011, motion that sought a declaration of default for the period April 22, 2010, to the (then) present and continuing. The second motion, filed on January 16, 2013, sought a default order for the period June 17, 2011 (the day after the previous motion was filed) to the (then) present and continuing.

We shall discuss each motion separately.

² The ALJ's Order incorrectly stated the claimant's motion was received on January 10, 2013. The cover letter sent with the motion is dated January 10, 2013 and bears the AHD date stamp of January 14, 2013.

THE JUNE 16, 2011 MOTION

The first motion for which the claimant sought an order declaring default was filed on June 16, 2011. That motion claimed the employer was in default for temporary total disability benefits for the period April 22, 2010 to the present and continuing.

The administrative file in this appeal contains the claimant's June 16, 2011, motion and letters from the claimant dated November 16, 2011, April 10, 2012, and August 10, 2012, requesting a ruling on this motion.

The ALJ issued an Order on December 4, 2012. Although the ALJ's Order stated he was deciding a motion filed on June 17, 2012, the administrative file does not contain any motion dated June 17, 2012, and the claimant has not stated she filed any motion on that date in her later requests to the ALJ or in her AFR or Memorandum.

The administrative file further shows that after the claimant filed the June 16, 2011, motion, the next judicial action that was taken by the ALJ was his December 4, 2012, order, entered 16 months later.³

No appeal was taken from the ALJ's December 4, 2012 Order until the request for review was incorporated in the present appeal of the ALJ's January 16, 2013, Order, filed on February 15, 2013.

Therefore, the claimant's request for review of the ALJ's December 4, 2012, Order is untimely because it was not filed within 30 days. D.C. Code §32-1522 (a), 7 DCMR 258.2. It is hereby DISMISSED.

THE JANUARY 14, 2013 MOTION

The other matter that is before the CRB relates to the claimant's Fourth Motion for Supplementary Compensation Order for Default, filed on January 14, 2013. With this motion, the claimant sought an order declaring the employer in default, asserting that between June 17, 2011 and January 10, 2013, she became entitled to wage loss benefits for 82 weeks in the amount of \$37,774.94.⁴

In denying the Motion, the ALJ wrote (with underlining original):

On January 10, 2013, the Office of Hearings and Adjudication (OHA) received from Claimant a Motion for Order Declaring Default of the August 30, 2007 Compensation Order in the above captioned matter. Specifically, Claimant requests issuance of a piecemeal Order Declaring Default of said

³ Further support that the ALJ miswrote the date of the motion is found in the claimant's memorandum to the CRB in which she stated that the ALJ denied her June 16, 2011 motion on December 4, 2012.

⁴ The amount the claimant claimed was corrected in her AFR from \$56,662.00 to \$37,774.94.

Compensation Order. Review of the case file, however, reveals that subsequent to the filing of Claimant's Motion for Order Declaring Default with the OHA on July 14, 2009, an Order Declaring Default of the August 30, 2007 Compensation Order awarding continued disability benefits from October 27, 2005 was issued on December 3, 2009 with a copy thereof concurrently mailed to both parties.

In a footnote to the last sentence the ALJ stated:

Claimant shall cease burdening the administrative economy with frivolous requests and motions in this matter.

On review, the claimant argues that the ALJ committed reversible error by denying her January 10, 2013 Fourth Motion for Supplementary Order Declaring Default. We agree.

In cases where an employer fails to make payments of compensation due under an award, D.C. Code §32-1519 (a) states the procedure by which a claimant may obtain a supplementary order declaring the amount in default:

In case of default by the employer in the payment of compensation due under any award of compensation for a period of 30 days after the compensation is due and payable, the person to whom such compensation is payable may, within 2 years after such default, make application to the Mayor for a supplementary order declaring the amount of the default. After investigation, notice and hearing, as provided in § 32-1520, the Mayor shall make a supplementary order, declaring the amount of the default, which shall be filed in the same manner as the compensation order. In case the payment in default is an installment of the award the Mayor may, in his discretion, declare the whole of the award as the amount in default.

This Code section then states the procedure for obtaining a judgment in the Superior Court for the amount declared in default:

The applicant may file a certified copy of such supplementary order with the Clerk of the Superior Court of the District of Columbia. Such supplementary order of the Mayor shall be final, and the Court shall, upon the filing of the copy, enter judgment for the amount declared in default by the supplementary order. No fee shall be required for filing the supplementary order nor for entry of judgment thereon, and the applicant shall not be liable for costs in a proceeding for review of the judgment unless the Court shall otherwise direct. The Court shall modify such judgment to conform to any later compensation order upon presentation of a certified copy thereof to the Court.

The ALJ denied the claimant's January 10, 2013 motion because the ALJ's previous December 3, 2009, Order Declaring Default purported to find the employer in default of an award that awarded the claimant continuing benefits. We disagree with the ALJ.

D.C. Code §32-1519 (a), by specifically stating “The Mayor shall make a supplementary order declaring the amount of default” and by further stating that upon filing the Superior Court “shall enter judgment for the amount declared in default by the supplemental order” requires the exact procedure utilized by this claimant in cases where an employer continues to default on a continuing award; Notwithstanding any previous default order for continuing benefits, a claimant may continually petition for a default order declaring a specific amount that is in default for a discrete period of benefits.

Here the claimant’s Motion averred that between June 17, 2011 and January 10, 2013, she became entitled to wage loss benefits for 82 weeks of compensation, in the amount (as corrected) of \$37,774.94. By filing another motion for a supplementary order declaring this amount of default, a period of default for which she had not previously sought a default order, the claimant was seeking to enforce her rights by following a procedure that was in harmony with the Code. She was not burdening the “administrative economy” nor filing a frivolous request.

Therefore, we find the ALJ incorrectly dismissed the claimant’s January 10, 2013 Fourth Motion for Supplementary Order Declaring Default. We remand this matter to the ALJ for a determination as to whether the employer is in default, and if so, for a determination as to the amount that the employer is in default and for entry of the appropriate order.

CONCLUSION AND ORDER

The appeal of the claimant’s June 16, 2011 motion for a default order is dismissed because no timely appeal of the Order was filed with the CRB.

That part of the ALJ’s January 16, 2013 Order that denied the claimant’s Fourth Motion for Supplementary Compensation Order for Default is vacated. This matter is remanded to the ALJ for a determination as to whether the employer is in default for the period alleged, and if so, for a determination as to the amount that the employer is in default and for entry of the appropriate order.

FOR THE COMPENSATION REVIEW BOARD:

LAWRENCE D. TARR
Chief Administrative Appeals Judge

May 17, 2013

Date