

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services
Labor Standards Bureau

Office of Hearings and Adjudication
COMPENSATION REVIEW BOARD



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CRB No. 08-032

BARBARA JONES,

Claimant–Petitioner,

v.

DISTRICT OF COLUMBIA DEPARTMENT OF HUMAN SERVICES,

Employer–Respondent.

Appeal from an Order of
Administrative Law Judge Terri Thompson Mallett
AHD No. OHA PBL 06-027, DCP No. 761011-0007-2005-0002

Kirk D. Williams, Esquire, for the Petitioner

Kevin J. Turner, Esquire, for the Respondent

Before JEFFREY P. RUSSELL, FLOYD LEWIS, *Administrative Appeals Judges*, and E. COOPER BROWN,
Chief Administrative Appeals Judge.

JEFFREY P. RUSSELL, *Administrative Appeals Judge*, for the Compensation Review Panel:

ORDER DISMISSING APPEAL

On November 5, 2007, Petitioner filed an Application for Review (AFR), seeking review of an Order issued by an Administrative Law Judge (ALJ) in the Administrative Hearings Division (AHD) of the Office of Hearings and Adjudication (AHD) of the District of Columbia Department of Employment Services (DOES). In that AFR, Petitioner asserts that the Order is “unsupported by substantial evidence and [is] contrary to law”, because the ALJ “rejected Claimant’s uncontradicted calculations” concerning amounts allegedly due and owing to Petitioner, relating to loss of earning capacity and related to a claim for an “augmented” disability compensation rate, in connection with an injury found to be compensable in a prior Compensation Order issued, which awarded benefits for a work related injury under D.C. Code § 1-623.01, *et seq.*, the Public Sector Disability Compensation law governing claims for work related injuries sustained by employees of the government of the District of Columbia. In the AFR, Petitioner requests as relief that the CRB “pass an order reversing the October 29, 2007 Order and remand[...] this matter to AHD for full and appropriate disposition”.

Respondent opposes this appeal, asserting that the Order on appeal is not a “Compensation Order”, and that because of this fact, the CRB has no jurisdiction to review it. In support of this argument, Respondent points to 7 DCMR § 118.2, which provides:

Any party adversely affected by or aggrieved by a compensation order or final decision issued by [AHD] with respect to a claim for disability benefits pursuant to [the public sector disability compensation law] may appeal said compensation order or final decision to [the CRB] by filing [an AFR] with [the CRB] 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 section 258.

Neither of the terms “compensation order” or “final decision” are defined in either the statute or the governing regulations. However, by limiting the CRB’s appellate authority to review of “compensation orders” or “final decisions”, it appears that the regulations and the statute make a distinction between orders that represent a final determination as to whether and/or in what amount a worker is entitled to “compensation”, or is entitled to seek such compensation, on the one hand, and orders that neither award nor deny such compensation, as a final matter. Given that the formal hearing process is quasi judicial in nature, orders of the latter description would be orders governing the process employed to allow the ALJ to garner the appropriate evidence and to clarify the legal and factual nature of the dispute presented for resolution. Such orders are not final decisions relating to entitlement to, or entitlement to seek, compensation. The distinction between these types of orders necessarily implies that the ALJ has broad discretion to control the method and process by which evidence and legal arguments preceding the issuance of the compensation order or final decision will be conducted.

Review of the order on appeal reveals that it neither grants nor denies compensation benefits, nor does it foreclose the opportunity to seek such compensation benefits in the pending proceeding. To the contrary, it expressly empowers Petitioner to continue the quest for the claimed compensation benefits, by directing that Petitioner clarify the legal and factual bases for the amounts of compensation benefits sought, by submitting material identifying the pay periods for which Petitioner is seeking an award, the amount of disability benefits already paid for that period and beyond which payments Petitioner is seeking additional compensation, either as penalty or “augmentation”, and the legal basis for the claimed augmentation.

Rather than being “make work”¹ as characterized by Petitioner in this appeal, the order to submit this additional information is clearly and obviously intended to facilitate the ALJ’s further consideration of the claims presented to her, and the specific instructions are rationally related to that task. It is equally clear and obvious that there was nothing final in the order relating to the claim, and that the order itself was intended to assist Petitioner in further presenting a claim that, theretofore, Petitioner had failed to present with sufficient clarity for the ALJ to fully consider.

¹ We are troubled by the perhaps unintended implication in counsel’s characterization that the ALJ intends anything other than to further clarify the legal and factual bases for the claimed benefits, and urge counsel to refrain from using such loaded phraseology when arguing before AHD and the CRB.

In any event, as we have previously ruled, in *Hensley v. Cheechi & Co.*, CRB No. 07-68, AHD No. 92-359 (April 23, 2007), and other cases, the CRB does not have jurisdictional authority over interlocutory orders issued by AHD such as that from which Petitioner now seeks appeal. Accordingly, the Application for Review filed herein, is DISMISSED *without prejudice* for lack of jurisdiction.

FOR THE COMPENSATION REVIEW BOARD:

JEFFREY P. RUSSELL
Administrative Appeals Judge

February 7, 2008

DATE