

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA MARÍA MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 13-061

**EUGENE BONDS,
Claimant–Respondent,**

v.

**DISTRICT OF COLUMBIA DEPARTMENT OF CORRECTIONS,
Employer–Petitioner.**

Appeal from a Compensation Order of
Administrative Law Judge Fred D. Carney, Jr.
AHD No. PBL08-061F, DCP No. 20080224100-0001¹

Frank McDougald, Esquire for Petitioner²

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

MELISSA LIN JONES for the Compensation Review Board.

DECISION AND REMAND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

On February 15, 2008, Mr. Eugene Bonds, a corporal in the District of Columbia Department of Corrections (“Employer”), was escorting an inmate to the mental health unit. The inmate punched Mr. Bonds multiple times and spit blood on Mr. Bonds. The blood covered Mr. Bonds’ face and went into his mouth and eyes.

During the altercation, Mr. Bonds injured his right hand and left knee. Employer accepted these injuries as compensable.

¹ Although the Compensation Order’s caption states the claimant’s name is “Eugene Bond,” the claimant’s actual name is “Eugene Bonds.”

² Kirk D. Williams, Esquire represented Mr. Bonds at the formal hearing, but Mr. Bonds did not file any response to the Application for Review.

In addition to seeking treatment for his physical injuries, Mr. Bonds sought mental health treatment through the Employee Assistance Program and through Counseling Services of Mitchellville. Employer did not accept Mr. Bonds' psychological injury as compensable.

As a result, Mr. Bonds requested a formal hearing for "[t]reatment for post-traumatic stress and payment of related medical expenses."³ An administrative law judge ("ALJ") awarded him his claim for relief because his psychological condition is medically causally related to the work accident,⁴ and the Compensation Review Board ("CRB") affirmed the Compensation Order.⁵

On March 25, 2011, a different ALJ dismissed Mr. Bonds' Application for Formal Hearing requesting temporary total disability compensation benefits from July 27, 2010 to the date of the formal hearing and continuing. At that time, Mr. Bonds' request for adjudication was premature because he had failed to exhaust his administrative remedies and Office of Hearings and Adjudication ("OHA")⁶ lacked jurisdiction over his claim.⁷

On November 30, 2011, another formal hearing was held before another ALJ. Following this proceeding, the ALJ denied Mr. Bonds' request for temporary total disability compensation benefits from July 27, 2010 to the date of the formal hearing and continuing. In a Compensation Order dated February 21, 2012, the ALJ ruled that the OHA lacked jurisdiction over his claim.⁸

Mr. Bonds' appealed the February 21, 2012 Compensation Order. That Compensation Order was remanded to OHA "to adjudicate the merits of Mr. Bonds' request for ongoing temporary total disability compensation benefits from July 27, 2010."⁹

While the appeal of the February 21, 2012 Compensation Order was pending, Mr. Bonds requested another formal hearing purportedly to restore his medical benefits. When that formal hearing convened, the claim for relief was changed to determine his entitlement to temporary total disability compensation benefits from July 27, 2010 to the date of this formal hearing and continuing; therefore, on September 14, 2012, an ALJ issued an Order. This ALJ dismissed Mr. Bonds' Application for Formal Hearing for lack of jurisdiction; the ALJ determined that Mr.

³ *Bonds v. D.C. Department of Corrections*, AHD No. PBL08-061B, DCP No. 20080224100-00011 (September 22, 2010).

⁴ *Id.* at p. 5.

⁵ *Bonds v. D.C. Department of Corrections*, CRB No. 10-180, AHD No. PBL08-061B, DCP No. 200802241-00011 (April 12, 2011).

⁶ As of February 2011, OHA's name changed to Hearings and Adjudication.

⁷ *Bonds v. D.C. Department of Corrections*, AHD No. PBL08-061C, OWC No. 20080224100-0001 (March 25, 2011).

⁸ *Bonds v. D.C. Department of Correction*, AHD No. PBL08-061D, OWC No. 300903255759-001 (February 21, 2012).

⁹ *Bonds v. D.C. Department of Correction*, CRB No. 12-038, AHD No. PBL08-061D, OWC No. 300903255759-001 (December 6, 2012).

Bonds had failed to present a claim for which relief could be granted,¹⁰ and the CRB affirmed the dismissal of Mr. Bonds' Application for Formal Hearing.¹¹

On February 20, 2013, a full evidentiary hearing was held to adjudicate whether Mr. Bonds' failure "to attend an [additional medical evaluation ("AME")] warrant[ed] a suspension of his benefits pursuant to the [the District of Columbia Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Official Code §1-623.1 *et seq.* ("Act")]."¹² In a Compensation Order dated April 30, 2013, an ALJ reinstated Mr. Bonds' medical benefits for his psychological injury, and this appeal ensued.

Employer disputes the ALJ's ruling that medical benefits cannot be suspended for a claimant's failure to attend an AME. Mr. Bonds did not file any opposition.

ISSUE ON APPEAL

1. Can medical benefits be suspended for a claimant's failure to attend an AME?

ANALYSIS¹³ AND CONCLUSION

Mr. Bonds was scheduled to attend an AME with Dr. Bruce Smoller on September 4, 2012. Mr. Bonds failed to attend that appointment, and in response the Public Sector Workers' Compensation Program issued a Notice of Determination suspending Mr. Bonds' medical benefits for his psychological injury.

Pursuant to §1-624.23(d) of the Act

[i]f an employee refuses to submit to or obstructs an examination, his or her right to compensation under this subchapter is suspended until the refusal or obstruction stops. Compensation is not payable while a refusal or obstruction

¹⁰ *Bonds v. D.C. Department of Corrections*, AHD No. PBL08-061E, OWC No. 20080224100-001 (September 14, 2012). The September 14, 2012 Order contains a typographical error; review of the administrative file clearly indicates Mr. Bonds' claim for relief was for temporary total disability compensation benefits from July 27, 2010, not July 7, 2010.

¹¹ *Bonds v. D.C. Department of Corrections*, CRB No. 12-163, AHD No. PBL08-061E, OWC No. 20080224100-001 (December 5, 2012).

¹² *Bonds v. D.C. Department of Corrections*, AHD No. PBL08-061F, OWC No. 20080224100-001 (April 30, 2013).

¹³ The scope of review by the CRB is limited to making a determination as to 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. Section 32-1521.01(d)(2)(A) of the 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, 885 (D.C. 2003).

continues, and the period of the refusal or obstruction is deducted from the period for which compensation is payable to the employee.

Although the ALJ quoted this provision, he reinstated Mr. Bonds' medical benefits for his psychological injury on the grounds that

[t]he Act defines "compensation" as money allowance payable to an employee or his or her dependents . . . DC Code §1-623.01(12). Therefore medical benefits cannot be suspended under the Act on the grounds that Claimant failed to attend an AME. That provision allows DCP^[14] to suspend Claimant's "compensation" or "money" only.^[15]

"Compensation" is defined in the Act:

The term "compensation" includes the money allowance payable to an employee or his or her dependents and any other benefits paid for from the Employees' Compensation Fund, but this does not in any way reduce the amount of the monthly compensation payable for disability or death.^[16]

Furthermore, §1-623.03 of the Act, "Medical Services and Initial Medical and Other Benefits," obligates the government to

furnish to an employee who is injured while in the performance of duty the services, appliances, and supplies prescribed or recommended by a qualified physician, who is approved by the Mayor or his or her designee pursuant to subsection (d) of this section, which the Mayor considers likely to cure, give relief, reduce the degree or period of disability, or aid in lessening the amount of the monthly compensation. These services, appliances, and supplies shall be furnished:

- (1) Whether or not disability has arisen;
- (2) Notwithstanding that the employee has accepted or is entitled to receive benefits under subchapter III of Chapter 83 of Title 5 of the United States Code, or another retirement system for employees of the District or federal government; and
- (3) By or on the order of the District of Columbia government medical officers and hospitals, or by or on the order of a physician or managed care organization designated or approved by the Mayor.

¹⁴ Effective October 1, 2010, the DCP's name was changed to the Public Sector Workers' Compensation Program.

¹⁵ *Bonds v. D.C. Department of Corrections*, AHD No. PBL08-061F, OWC No. 20080224100-001 (April 30, 2013).

¹⁶ Section 1-623.01(12) of the Act. (Emphasis added.)

The employee may initially select a physician to provide medical services, appliances, and supplies in accordance with such rules and regulations and instructions as the Mayor considers necessary, and may be furnished necessary and reasonable transportation and expenses incident to the securing of such services, appliances, and supplies. These expenses, when authorized or approved by the Mayor, shall be paid from the Employees' Compensation Fund.

* * *

(d) (1) An employee to whom services, appliances, or supplies are furnished pursuant to subsection (a) of this section shall be provided with such services, appliances, and supplies (including reasonable transportation incident thereto) by a managed care organization or other health care provider designated by the Mayor or his or her designee, in accordance with such rules, regulations, and instructions as the Mayor considers appropriate. Any health care provider who is a member of such managed care organization shall apply in writing to the Mayor or his or her designee, and be approved by the Mayor or his or her designee prior to providing any services, appliances, or supplies pursuant to this section.

(2) Any expenses incurred as a result of furnishing services, appliances, or supplies which are authorized by the Mayor under paragraph (1) of this section shall be paid from the Employees' Compensation Fund.^[17]

Thus, medical benefits are paid from the Employees' Compensation Fund and qualify as compensation under §1-624.23(d) of the Act. It then follows that when a claimant fails to attend an AME, the claimant's right to disability compensation benefits including the right to medical benefits is suspended so long as the claimant's refusal or obstruction continues.

ORDER

The April 30, 2013 Compensation Order is not in accordance with the law and is REVERSED. This matter is REMANDED for the ALJ to adjudicate the period of Mr. Bonds' refusal.

FOR THE COMPENSATION REVIEW BOARD:

MELISSA LIN JONES
Administrative Appeals Judge

July 15, 2013
DATE

¹⁷ Section 1-623.03(a) – (d)(2) of the Act. (Emphasis added.)