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

Office of Hearings and Adjudication
COMPENSATION REVIEW BOARD

(202) 671-1394-Voice
(202) 673-6402-Fax

CRB No. 07-038

BONITA DAVIS,

Claimant–Petitioner,

v.

DISTRICT OF COLUMBIA PUBLIC SCHOOLS,

Employer-Respondent.

Appeal from an Order of
Administrative Law Judge Melissa Lin Klemens
OHA/AHD No. PBL 07-016, DCP No. 760005-0001-2005-0017

Jessica G. Bhagan Esquire and Ari N. Laric, Esquire, for Claimant-Petitioner

Andrea G. Comantale, Esq., for Employer-Respondent[1]

Before JEFFREY P. RUSSELL, LINDA F. JORY and FLOYD LEWIS, *Administrative Appeals Judges.*

JEFFREY P. RUSSELL, *Administrative Appeals Judge*, on behalf of the Review Panel:

SHOW CAUSE ORDER

JURISDICTION

Jurisdiction is conferred upon the Compensation Review Board pursuant to D.C. Official Code § 1-623.28, § 32-1521.01, 7 DCMR § 118, and DOES Director's Directive Administrative Policy Issuance No. 05-01 (Feb. 5, 2005).[2]

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[1] Ms. Bhagan and Ms. Comantale appear as counsel for Claimant-Petitioner and Employer-Respondent, respectively, under the "parties served" notation on the "Amended Order" dated January 27, 2007, the only order from AHD that has been provided to the CRB. Neither Ms. Comantale nor anyone else on behalf of Employer-Respondent has filed any response to the Application for Review, the Motion for Stay filed by Claimant-Petitioner along with her Application for Review, or the Motion for Extension of Time To File Memorandum of Points and Authorities filed by Mr. Aric on Claimant-Petitioner's behalf on February 27, 2007.

[2] Pursuant to Administrative Policy Issuance No. 05-01, dated February 5, 2005, the Director of the Department of Employment Services realigned the Office of Hearings and Adjudication to include, *inter alia*, establishment of the Compensation Review Board (CRB) in implementation of the D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, D.C. Official Code § 32-1521.01. In accordance with the Director's

BACKGROUND

On February 7, 2007, "Claimant's Application for Review" (AFR) was filed with the CRB. In that AFR, Claimant-Petitioner asserted that "the Administrative Law Judge's January 12, 2007 dismissal of the application for formal hearing (AFH) is arbitrary, capricious, unsupported by substantial evidence and not in accordance with the law and should therefore be reversed".

Attached to the AFR was a "Motion to Stay Review Proceedings..." (Motion to Stay), in which it was asserted that Claimant-Petitioner had filed a Motion for Reconsideration of the order being appealed, that is, the order of January 12, 2007 referenced in the AFR. It was further asserted in the Motion to Stay that the basis of the stay request was that review of the January 12, 2007 order would ultimately become unnecessary because it had, in Claimant-Petitioner's view, been the result of clear error, an error which would be rectified upon the ALJ in AHD being provided with proof that the AFH had in fact been filed in a timely fashion. The Motion for Stay sought a stay of review proceedings of "fifteen days after the response of the Administrative Law Judge" to the Motion for Reconsideration.

No copy of the January 12, 2007 order from AHD was attached to the AFR, in contravention of the requirements of 7 DCMR 258.4 (c).

No response to the AFR, Motion to Stay, or any of the subsequent orders or notices from CRB has been filed by Employer-Respondent.

On February 9, 2007, the Clerk of CRB issued a "Notice of Application for Review", directing that any opposition to the AFR be filed within 15 days thereof; however, on that same date, the Clerk of CRB also issued an administrative "Order re Extension of time to File Memorandum of Points and Authorities...", extending by 15 days from that date the time within which Claimant-Petitioner was to file a Memorandum of Points and Authorities in support of the AFR, and providing that Employer Respondent should have 10 days from the filing of the Memorandum of Points and Authorities within which to file a response or Memorandum in Opposition to the AFR. Lastly, on February 9, 2007, the Clerk of CRB issued a "Request for Evidence Record" to AHD.

On February 27, 2007, Claimant-Petitioner filed "Claimant's Motion for Extension of Time to File Memorandum of Points and Authorities...", citing as grounds therefor the fact that Mr. Laric had only been assigned to handle this matter on February 22, 2007, Ms. Bhagan being "out on Maternity leave" as of some date not contained in the motion.

On March 5, 2007, in response to the February 9, 2007 record request, AHD transmitted to CRB a set of exhibits filed by Claimant prior to the scheduled date of the formal hearing, "Employer's

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Directive, the CRB replaces the Office of the Director in providing administrative appellate review and disposition of workers' and disability compensation claims arising under the D.C. Workers' Compensation Act of 1979, as amended, D.C. Official Code § 32-1501 *et seq.*, and the D.C. Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Official Code § 1-623.1 *et seq.*, including responsibility for administrative appeals filed prior to October 1, 2004, the effective date of the D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004.

Brief" which had been filed by Employer-Respondent on January 11, 2007, in response to a show cause order (not in our record) issued by the ALJ concerning the apparent lack of timeliness of the filing of the AFH, "Employer's Motion to Correct the Record", filed January 18, 2007, asserting that a statement in the January 12, 2007 order dismissing the AFH that Employer-Respondent had filed no response to a Show Cause Order was erroneous, and an "Amended Order" issued by the ALJ on January 27, 2007. In that Amended Order, the ALJ stated that the dismissal of the AFH on grounds of untimeliness contained in the January 12, 2007 order was erroneous, but that "Nonetheless, the parties have raised other jurisdictional issues, and Claimant failed to filed [sic] a response to the directive to file a brief on the issue of jurisdiction [footnote omitted]. Therefore, the Application hereby is DISMISSED, and the formal hearing scheduled for January 18, 2007 is CANCELLED."

On March 13, 2007, the Clerk of CRB assigned this matter to this Review Panel.

ANALYSIS

The only order from AHD that has been appealed to the CRB is the January 12, 2007 order dismissing the AFH. Although we have been provided a copy of a subsequent "Amended Order" dated January 27, 2007, by AHD in response to CRB's request for the record, we are unaware of the nature of any of the disputes in this matter beyond their being "jurisdictional".

At this juncture, CRB has nothing before it to review. That is because the January 12, 2007 order of dismissal was effectively rescinded by the ALJ in the January 27, 2007 Amended Order, the ALJ having reconsidered the matter as requested by Claimant-Petitioner, and decided that the AFH was timely. Indeed, the January 12, 2007 order had been rescinded by the ALJ even before the AFR had been filed; apparently Claimant-Petitioner's counsel was unaware that the Amended Order had been issued at the time that the AFR was filed on February 7, 2007, twelve days following the issuance of the Amended Order.

However, Claimant-Petitioner's current counsel, Mr. Laric, has filed a motion on February 22, 2007, in which he appears to be laboring under the impression that something is pending before this Board. Whether he remains unaware of the procedural status of this case at this time we do not know. Although the Clerk waited the requested 10 days before issuing the Notice of Assignment to CRB Review Panel, and yet no Memorandum of Points and Authorities has been filed, the Motion for Extension of Time Remains unopposed and has not been acted upon specifically by the CRB.

ORDER

The parties are directed to file, **on or before March 29, 2007**, a Brief and/or Memorandum of Points and Authorities, advising the CRB as to their respective positions with respect to what matters are properly pending before the CRB, fully explaining how said matters are properly before us, and fully describing their arguments on all issues that each contends are in dispute, and to show cause why this appeal, as well as any appeal of the Amended Order of January 27, 2007, ought not be dismissed with prejudice. This includes a description of what order or orders are contended to be under review, what errors of law or otherwise are contended to have been committed by the ALJ

issuing said orders, and all statutory or decisional authority there exists in support thereof. If it is the contention of either party that the Amended Order is before the CRB, that party shall address specifically all reasons why such appeal ought not be precluded due to the failure to appeal same within 30 days of the issuance thereof by the ALJ.

Failure to so respond to this order by said date shall result in the dismissal of this appeal with prejudice, which shall include the dismissal of any appeal of the Amended Order of January 27, 2007.

FOR THE COMPENSATION REVIEW BOARD:

JEFFREY P. RUSSELL
Administrative Appeals Judge

March 21, 2007
DATE

BONITA DAVIS V. DISTRICT OF COLUMBIA PUBIC SCHOOLS
CRB NO. 07- 038

CERTIFICATE OF SERVICE

I hereby certify that the attached document was mailed, U.S. postage pre-paid, or hand-delivered, as noted, this 21st day of March,2007 to the persons or organizations listed below:

Jessica G. Bhagan, Esq. 7852 Walker Dr., Suite 300 Greenbelt, MD 20770 Certified No. 7006 2760 0004 3044 8320	CERTIFIED MAIL
Andrea G. Comentale, Esq. 441 4th Street, N.W., Suite 1060 North Washington, DC 20001 Certified No. 7006 2760 0004 3044 8337	CERTIFIED MAIL
Terri Thompson Mallett Acting Chief Administrative Law Judge Administrative Hearings Division D.C. Department of Employment Services Washington, D.C.	HAND DELIVERY
Charles Green, Director Office of Workers' Compensation D.C. Department of Employment Services Washington, D.C.	HAND DELIVERY

Clerk of the Board