

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. 05-239

THOMASINE BROWN, DEPENDENT MOTHER OF THURMAN BROWN, DECEASED,

Claimant–Respondent

v.

BORG WARNER PROTECTIVE SERVICE AND LUMBERMAN'S MUTUAL CASUALTY COMPANY,

Employer/Carrier–Petitioner

Appeal from a Compensation Order of
Claims Examiner Antoinette Green and Supervisor Mohammad Sheikh
Of the Office of Workers' Compensation
OWC No. 517746

Kevin J. O'Connell, Esquire, for the Petitioner

Richard Galiher, Esquire, for the Respondent¹

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

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

DECISION AND ORDER

JURISDICTION

Jurisdiction is conferred upon the Compensation Review Board pursuant to D.C. Official Code §§ 32-1521.01 and 32-1522 (2004), 7 DCMR § 230, and the Department of Employment Services Director's Directive, Administrative Policy Issuance 05-01 (February 5, 2005).²

¹ Respondent has filed no response, either in support or opposition, to the Application for Review filed by Petitioner.

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 District of Columbia Fiscal Year 2005 Budget Support Act of 2004, Title J, the District of Columbia Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, *codified at* D.C. Official Code § 32-1521.01. In accordance with the Director's Directive, the CRB replaces the Office of the Director in providing administrative appellate review and disposition of workers' and

BACKGROUND

This appeal follows the issuance of a Compensation Order Denying Approval of Structured Lump-Sum Settlement (Compensation Order) from the Office of Workers' Compensation (OWC) in the District of Columbia Department of Employment Services (DOES). In that Compensation Order, which was filed on May 4, 2005, the Claims Examiner recommended, and the Claims Supervisor approved, the denial of approval of a jointly submitted lump sum settlement agreement. Petitioner now seeks review of that Compensation Order.

As grounds for this appeal, Petitioner alleges as error that the denial of approval of the settlement agreement is not in accordance with the law, in that the settlement agreement is in the best interest of Respondent since it provides Respondent with lifetime benefits in excess of those which she is currently receiving from Petitioner voluntarily on a monthly basis, as well as an additional lump sum payment, and further because denial of approval is contrary to the express mandatory language of D.C. Official Code §§ 32-1508 (8), which governs approval of lump sum settlement agreements.

ANALYSIS

As an initial matter, regarding the scope of review by the Compensation Review Board (CRB) and this Review Panel, in its review of an appeal from OWC, the Board must affirm said decision unless it is determined to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. *See*, 6 Stein, Mitchell & Mezines, ADMINISTRATIVE LAW § 51.03 (2001).

Turning to the case under review, D.C. Code § 32-1508 (8) reads in pertinent part:

The Mayor may approve lump-sum settlements agreed to in writing by interested parties, discharging the liability of the employer for compensation ... in any case where the Mayor determines that it is in the best interest of an injured employee entitled to compensation or individuals entitled to benefits pursuant to § 32-1509 [dependents of deceased workers whose deaths are work related]. The Mayor shall approve the settlement, where both parties are represented by legal counsel who are eligible to receive attorney fees pursuant to § 32-1530.³ These settlements shall be the complete and final dispositions of a case and shall be a final binding compensation order.

disability compensation claims arising under the District of Columbia Workers' Compensation Act of 1979, as amended, D.C. Code Ann. §§ 32-1501 to 32-1545 (2005), and the District of Columbia Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Code Ann. §§ 1-623.1 to 1-643.7 (2005), including responsibility for administrative appeals filed prior to October 1, 2004, the effective date of the District of Columbia Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004.

³ We note that the statutory requirement that "both parties" be represented by "legal counsel who are eligible to receive attorney fees pursuant to § 32-1530" can not be given its literal interpretation, because such an interpretation is an impossibility, given that § 32-1530 governs only the consideration and award of attorney fees to legal counsel representing claimants. The Act is completely silent on the subject of attorney fees paid to legal counsel for employers. We read § 32-1508(8) as covering cases where the claimant is represented by counsel eligible to receive a fee pursuant to §32-1530, and where the employer is represented by counsel qualified to practice law before the Agency.

Review of the record reveals that both parties in this action were represented by counsel before OWC, and that both counsel requested approval of the settlement agreement on behalf of their respective clients. From the body of the Compensation Order, it appears that Petitioner's assertions concerning the fact that the settlement terms represent an increase in the amount of benefits that Respondent receives absent the agreement is correct, both on a monthly basis, and considering that the Petitioner, under the agreement, will pay Respondent an additional lump sum of \$1,700.00, and an attorney fee of an additional \$1,700.00.

The Compensation Order contains the following language, which is the only discussion of the reasons for the denial of approval:

Therefore, after careful review of the records of the Office of Workers' Compensation determined [sic] that the Structured Settlement of \$324.00 per month payable for 120 months (10 years) certain and guaranteed for the lifetime thereafter of Thomasine Brown is not in the best interest of the claimant. Since Ms. Brown is currently receiving \$320.28 per month [sic]. Ms. Brown needs money now to meet her medical and other financial need.

It is hereby determined that the Structured Settlement is being returned unapproved to the employer/carrier. It is also determined that it is not in the best interest of the Beneficiary in accordance with D.C. 3-77 Section 32-1508 (8) and 32-1509 (5).

Compensation Order, page 2.

From this language, it appears that the denial of approval of the settlement agreement is a function of the concerns of OWC that the weekly benefit amount is inadequate to meet Respondent's needs. While such considerations are laudatory, the clear legislative intent as evidenced by the mandatory language of § 32-1508 (8), quoted above, is to presume conclusively that a negotiated settlement between represented parties is, taking all things into account, including things about the relative merits of each sides legal position that are or may be unknown to OWC, in the best interest of the claimant. It is noteworthy that the mandatory language is the result of an amendment to the prior statute, which theretofore permitted great discretion to OWC in consideration of such settlement agreements. As pointed out by the Director in an earlier case touching on this issue:

[W]hen the Act was amended in 1999, in evaluating a settlement agreement under D.C. Code § 32-1508 (8), specific language was added to this section stating that the "mayor shall approve the settlement where both parties are represented by legal counsel". D.C. Law 12-229 §2(e) (April 26, 1999). Thus, this change in the Act requires that the settlement be approved as written because it was signed by both attorneys.

Finch v. Washington Metropolitan Area Transit Authority, Dir. Dkt. No. 3-81, OHA No. 03-164, OWC No. 556679 (May 6, 2004).

It appears that the denial of the approval of the settlement agreement is contrary to the express provisions of the Act, and is therefore not in accordance with the law.

CONCLUSION

The Compensation Order of May 4, 2005 is not in accordance with the law, and must be reversed.

ORDER

The Compensation Order of May 4, 2005 is hereby REVERSED and REMANDED with instructions to approve the Structured Lump-Sum Settlement Agreement submitted jointly by the represented parties.

FOR THE COMPENSATION REVIEW BOARD

JEFFREY. P. RUSSELL
Administrative Appeals Judge

_____June 28, 2005_____
DATE