

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. 09-002

PATRICIA Y. CAMP,

Claimant – Petitioner,

v.

D.C. DEPARTMENT OF HEALTH,

Employer – Respondent.

Appeal from a Compensation Order of  
Administrative Law Judge Fred D. Carney, Jr.,  
AHD No. PBL 08-096, DCP No. 761010-0001-1999-0030

Harold Levi, Esq., for Petitioner

Andrea G. Comentale, Esq., for Respondent

Before E. COOPER BROWN, *Chief Administrative Appeals Judge*, LESLIE A. MEEK<sup>1</sup> and JEFFERY P. RUSSELL, *Administrative Appeals Judges*.

E. COOPER BROWN, *Chief Administrative Appeals Judge*, on behalf of the Review Panel;  
Leslie A. Meek, *Administrative Appeals Judge*, dissenting.

**DECISION AND REMAND ORDER**

JURISDICTION

Jurisdiction is conferred upon the Compensation Review Board pursuant to D.C. Official Code §§ 1-623.28 and 32-1521.01, 7 DCMR § 118, and DOES Director's Directive Administrative Policy Issuance No. 05-01 (Feb. 5, 2005), by which the CRB replaces the Office of the Director in providing administrative appellate review and disposition of disability compensation claims arising under the District of Columbia Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Official Code § 1-623.1 *et seq.*

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<sup>1</sup> Administrative Law Judge Meek is appointed by the Director of DOES as an Interim Board Member pursuant to DOES Administrative Issuance No. 09-01, as amended (January 29, 2009) in accordance with 7 DCMR § 252.2 and DOES Administrative Policy Issuance No. 05-01 (February 5, 2005).

## OVERVIEW

Claimant-Petitioner (Petitioner) appeals from the September 23, 2008 issuance of a Final Order by the Administrative Hearings Division (AHD), Office of Hearings and Adjudication, D.C. Department of Employment Services (DOES), that dismissed Petitioner's application for formal hearing as "premature" for having been filed in the absence of a final determination by the Office of Risk Management/Disability Compensation Program (DCP).

Petitioner suffered a work injury in November of 1980. Thereafter she filed for, and received disability compensation until 1995 when said benefits were terminated by Employer-Respondent (Respondent). Petitioner sought reconsideration of the termination of her benefits and said benefits were as a consequence restored. *Patricia Camp v. D.C. General Hospital*, ECAB No. 97-14 (March 20, 1998). Petitioner's benefits were again terminated in December of 2002. Petitioner requested a formal hearing before AHD, which resulted in issuance of a Compensation Order in January of 2008 awarding Petitioner reinstatement of temporary total disability benefits from December 24, 2002 to the present and continuing. *Patricia Camp v. D.C. Dept. of Health*, AHD No. PBL 02-022A, DCP No. LT4 000778 (Jan. 29, 2008). As a result, the payment of temporary total disability benefits was resumed, including a lump sum payment of \$149,348.77 to Petitioner in March 2008 for past compensation due and owing.

Petitioner subsequently challenged the amount of the lump sum payment in correspondence dated March 5, 2008 addressed to the Disability Compensation Program (DCP), asserting that the amount paid did not fully take into account applicable COLA adjustments. In addition, Petitioner charged that there existed an underpayment of prior reinstated compensation (pre-December 24, 2002 benefits) to which she was entitled pursuant to the March 20, 1998 ECAB award (a matter which Petitioner asserts she had raised with DCP numerous times in past to no avail), and that the average weekly wage of the prior ECAB award had been improperly based upon the District's DS pay scale rather than the federal pay scale to which Petitioner claimed she was entitled (an issue which had also been previously raised with DCP to no avail).

In response, by correspondence dated September 4, 2008, DCP stated that it would only address issues related to the Compensation Order of January 29, 2008, which had ordered reinstatement of disability benefits commencing December 24, 2002. Notwithstanding this assertion, DCP completely ignored the issues and concerns that Petitioner raised. Instead, DCP noted that in calculating an employee's average weekly wage it relies upon the individual's Grade/Step at time of injury unless the employee upon his/her subsequent return to work is granted a Grade/Step increase. Although this issue had not been raised by Petitioner (since Petitioner has been temporarily totally disabled since the date of her work injury, and as a result has not returned to work in any capacity), DCP requested information evidencing Petitioner's wages as of December 24, 2002, at the time of DCP's second termination of her benefits.

In light of the non-response by DCP, Petitioner thereafter filed an Application for Formal Hearing (AFH) with AHD on September 12, 2008.<sup>2</sup> The AFH was subsequently dismissed,

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<sup>2</sup> In the Compensation Order herein appealed it is stated that Petitioner's AFH was received by AHD on February 22, 2008. Review of the AHD record on appeal reveals the AFH was filed on September 12, 2008.

without hearing, on September 23, 2008. In dismissing Petitioner's application, the ALJ ruled that to the extent Petitioner's March 2008 petition to DCP was based upon the prior claim awards by ECAB and AHD, the 30-day "deemed accepted" provision of D.C. Official Code § 1-623.24(a-3)(1) did not apply, and further, that in the absence of a formal written rejection by DCP of her petition, Petitioner's Application for a Formal Hearing was premature.

Pursuant to an Application for Review filed with the CRB on October 3, 2008, Petitioner challenges the ALJ's summary dismissal of her claim. Petitioner argues that DCP's March 5, 2008 response constitutes a constructive denial of her claim, thus meeting the procedural requirements of the Act precedent to filing an application with AHD, particularly inasmuch as the compensation sought pursuant to Petitioner's request to DCP is for the underpayment of compensation claimed owed as a result of prior awards. Respondent, on the other hand, argues that because DCP in its response requested additional information, it has not rejected Petitioner's request, constructively or otherwise, and thus Petitioner's application filed with AHD was properly dismissed as prematurely filed.

For the reasons hereafter set forth, this Review Panel is of the opinion that Petitioner's submission to DCP constitutes an effort to secure full payment of compensation benefits previously awarded. As such, the provisions of D.C. Official Code § 1-623.24(g) apply, requiring the Administrative Hearings Division to determine whether, and to what extent, Respondent is in default with respect to the compensation previously awarded, and to order the award of any underpayment for which Respondent is found liable.

#### DISCUSSION AND ANALYSIS

As an initial matter, the standard of review by the Compensation Review Board (CRB) and this Review Panel, as established by the Act and as contained in the governing regulations, is limited to making a determination as to whether the factual findings of the 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. D.C. Comprehensive Merit Personnel Act of 1978, as amended, D.C. Official Code § 1-623.01, *et seq.* at § 1-623.28(a). D.C. Official Code § 32-1521.01(d)(2)(A). "Substantial evidence," as defined by the District of Columbia Court of Appeals, is such evidence as a reasonable person might accept to support a particular conclusion. *Marriott Int'l. v. D. C. Department of Employment Services*, 834 A.2d 882 (D.C. 2003). Consistent with this standard of review, the CRB and this Review Panel are constrained to uphold a Compensation Order that is supported by substantial evidence, even if there is also contained within the record under review substantial evidence to support a contrary conclusion. *Marriott*, at 885. Where, as in this case, we are presented with an appeal for which there is no evidentiary record to review, but strictly presented with an issue of law, the Board will affirm the order under review unless it is determined to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with applicable law. *See* 6 Stein, Mitchell & Mezines, ADMINISTRATIVE LAW, § 51.93 (2001).

In the instant case, the claim before AHD was summarily dismissed without hearing or receipt of evidence or argument, based solely upon Petitioner's AFH submission which included a copy of Petitioner's March 5, 2008 correspondence and DCP's September 4, 2008 response in

which additional information (as previously noted) was requested. The ALJ did not treat Petitioner's petition to DCP as a new claim to which the 30-day time period by which DCP is required to make a determination attaches lest the claim be "deemed accepted" pursuant to D.C. Official Code § 1-623.24(a-3)(1). Instead, the ALJ noted that Petitioner's petition to DCP was based on previously existing claims, and thus concluded that the provisions of section 1-623.24(a-3)(1) did not apply, citing *Nixon v. D.C. Dept of Employment Services*, 954 A.2d 1016 (D.C. 2008). Because the 30-day "deemed accepted" provision did not apply, and because the DCP's September 4, 2008 response did not constitute a final determination with respect to Petitioner's March 5, 2008 petition, the ALJ held that Petitioner's Application for Formal Hearing was premature, and thus dismissed the application for lack of AHD jurisdiction.

We agree with the ALJ that Petitioner's March 5, 2008 petition to DCP did not constitute a new claim within the meaning of the Act. Clearly Petitioner sought through her petition to DCP to correct the amount of her previously awarded compensation because applicable COLA adjustments were apparently not taken into account by DCP in arriving at the appropriate amount of temporary total disability compensation to be paid (including the lump-sum payout that Petitioner received) pursuant to the Compensation Order issued January 29, 2008.<sup>3</sup> Similarly, with respect to the issue concerning the compensation Petitioner had previously received pursuant to the ECAB Order of March 20, 1998, Petitioner's additional request to DCP was but a continuation of her apparent long term and ongoing effort to get DCP to take into account the fact that at the time of her original award her wage loss should have been based on the federal GS pay scale rather than the District's DS pay scale which had been used as the basis for computing her average weekly wage.

However, because we agree with the ALJ's characterization of the nature of Petitioner's entreaty to DCP does not mean that we agree with the conclusion that the ALJ reached as a result of that characterization.

It is clear from the foregoing that Petitioner is seeking to recover for what she contends are underpayments in the compensation benefits previously awarded. As such, the provisions of D.C. Official Code § 1-623.24(g) control:

If the Mayor or his or her designee fails to make payments of the award for compensation as required by subsection (a-3)(1), (a-4)(2), or (b)(3) of this section, the award shall be increased by an amount equal to one month of the compensation for each 30-day period that payment is not made; provided, that the increase shall not exceed 12 months' compensation. In addition, the claimant may file with the Superior Court of the District of Columbia a lien against the Disability Compensation Fund, the General Fund of the District of Columbia, or any other

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<sup>3</sup> D.C. Official Code § 1-623.41 provides for COLA adjustments. To assert that Petitioner's assertion of entitlement to the COLA increases she argues were not forthcoming constitutes a new claim would mean that each and every time DCP failed to provide a required COLA increase, a new claim would have to be filed. As it is, section 1-623.41 is expressly "wedded" to sections 1-611.05 and 1-611.06, thus the COLA increases to which any claimant receiving wage loss benefits is entitled are to be automatically afforded the claimant pursuant to the Mayor's determination of COLA benefits for government employees pursuant to the cited provisions.

District fund or property to pay the compensation award. The Court shall fix the terms and manner of enforcement of the lien against the compensation award.

In the instant case Petitioner seeks payment pursuant to the purported failure and/or refusal of DCP to pay the full amount of the disability compensation to which Petitioner feels she is entitled pursuant to the two prior compensation orders issued in her case. In both instances, pursuant to the ECAB decision issued in 1998 and pursuant to the AHD decision in January of 2008, Petitioner's entitlement to temporary total disability wage loss benefits was ordered reinstated. The issues now raised were not known, could not have been known, and thus were not and could not have been raised at the time of the proceedings giving rise to the prior awards. Consequently, Petitioner's recourse for securing relief under the Act for the shortfall in compensation alleged by Petitioner to have resulted is pursuant to section 1-623.24(g), which governs a claimant's rights where DCP fails to make payments pursuant to an award of compensation.

It is commendable that Petitioner first attempted to resolve the discrepancies in the amount of compensation owed pursuant to her petition to DCP. However, doing so was neither mandatory nor a precondition to seeking relief from AHD where, as here occurred, the original orders awarding the compensation now claimed to be underpaid were issued by DOES or its predecessor agency. Accordingly, the ALJ committed reversible error in declining to exercise jurisdiction over Petitioner's application for a formal hearing before AHD. This matter is thus remanded to AHD for a determination of whether Petitioner is legally entitled to additional disability compensation over and above that which DCP has paid (and continues to pay) as temporary total disability and, if so, a determination of the amount of such shortfall. If the ALJ determines that DCP has failed to fully comply with the previously issued awards of compensation, the ALJ shall, in addition to ordering the payment of such additional or supplemental compensation as is warranted, determine what if any increase in said amount is owed pursuant to section 1-623.24(g).

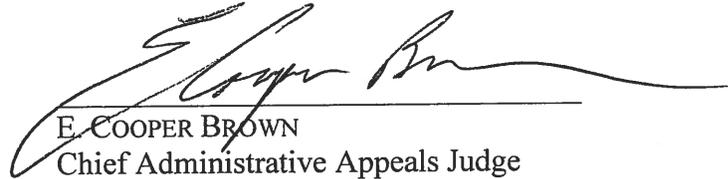
#### CONCLUSION

Having been awarded disability compensation of which Petitioner asserts an underpayment by DCP, she is entitled to a hearing before AHD pursuant to D.C. Official Code § 1-623.24(g) to determine whether she is legally entitled to the payment of compensation over and above that which she has been or is being paid, and if so how much.

**ORDER**

The Final Order of September 23, 2008 herein appealed is VACATED, and this matter REMANDED for further proceedings consistent with this Decision and Remand Order.

FOR THE COMPENSATION REVIEW BOARD:

  
E. COOPER BROWN  
Chief Administrative Appeals Judge

March 31, 2009

DATE

Leslie A. Meek, Administrative Appeals Judge, *dissenting*:

I write separately as I disagree with the majority's assertion that DCP failed to make payments pursuant to an award of compensation, and Petitioner's procedure for relief is to be found in §1-623.24(g). I am of the opinion that as no award concerning a cost of living increase was made by the ALJ in this matter, D.C. Official Code § 1-623.24 (g) offers Petitioner no remedy in this instance. I also write separately as I am of the opinion that Petitioner, upon seeking compensation pursuant to D.C. Official code § 1-623.41, is now seeking a determination on a claim that has not been brought before or decided by AHD. Petitioner is now presenting a new claim for a different type of compensation and is therefore required to obtain a determination from the Disability Compensation Program (DCP)/Office of Risk Management (ORM) before a formal hearing before the Administrative Hearings Division (AHD) may be had. Without a determination by DCP/ORM, AHD has no jurisdiction to hear the matter.

This appeal follows the September 23, 2008 issuance of an Order by the Administrative Hearings Division of the Office of Hearings and Adjudication (OHA) in the District of Columbia Department of Employment Services (DOES).

Petitioner suffered a work injury on November 14, 1980. Thereafter she filed for, and received compensation benefits until 1995 when said benefits were terminated by Respondent. Petitioner sought reconsideration of the termination of her benefits and said benefits were thereafter restored. Petitioner's benefits were terminated a second time in December, 2002, and pursuant to a January 29, 2008 Compensation Order, said benefits were again restored.

Once the Petitioner's benefits were restored and the payment of compensation benefits were resumed, Petitioner determined DCP issued payments that were based upon an incorrect pay

scale. Petitioner further determined DCP failed to pay her pursuant to various cost of living adjustments. Petitioner thereafter filed an application for formal hearing with AHD on September 12, 2008.<sup>4</sup> Said application was assigned to an administrative law judge (ALJ) for disposition and it was dismissed by the ALJ on September 23, 2008. In dismissing the application, the ALJ ruled Petitioner did not exhaust her administrative remedies as she failed to obtain a determination from DCP before seeking redress from AHD.

As grounds for this appeal, Petitioner alleges the ALJ erred in dismissing the application for formal hearing. Petitioner argues its application for formal hearing before AHD was not premature. Respondent asserts it did obtain a determination from DCP before filing its application for formal hearing. On March 5, 2008, Petitioner submitted a written correspondence to Respondent requesting applicable wage adjustments. It is Petitioner's position that the correspondence was a claim and DCP's written response to the March 5, 2008 request was a constructive denial and constitutes a determination. Petitioner argues, these occurrences meet the procedural requirements of the Act. As additional support for this contention, Petitioner posits, the compensation owed to her includes funds due to her as far back as December 24, 2002. Petitioner further argues AHD's ability to grant a request for a formal hearing is not predicated upon DCP's issuance of a "formal" decision, and the September 4, 2008 "constructive" denial is enough to exhaust that portion of the administrative process.

In its review of an appeal of an order, other than a Compensation Order, the Board must affirm the order under review 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).

D.C. Official Code §1-623.41 states;

On or after April 1, 1990, the Mayor shall award cost-of-living increases in compensation for disability or death whenever a cost-of-living increase is awarded pursuant to §§ 1-611.05 and 1-611.06. The percentage amount and effective date of those increases shall be the same as for any increase granted under these sections. This section shall not apply to any collective bargaining agreements that are to the contrary.

D.C. Official Code §1-623.02b states in relevant part;

Functions—Disability compensation.

The functions of the program shall be to:

(5) Make determinations and awards for, or against payment of compensation under this chapter;

(6) Pay compensation to employees for work related disability or death resulting from personal injury sustained in the performance of their duty, as specified in this section.

7 DCMR199 defines "claim" as, "an assertion properly filed and otherwise made in accordance with the provisions of this chapter that an individual is entitled to benefits under the Act."

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<sup>4</sup> In the Order at issue, the ALJ stated Claimant's application for formal hearing was received by AHD on February 22, 2008. This date was incorrect. Review of the record reveals the application at issue in this instance was in fact, filed with AHD on September 12, 2008.

D.C. Official Code §1-623.21 states;

(a) Compensation under this subchapter may be allowed only if an individual or someone on his or her behalf makes claim therefore. The claim shall:

(1) Be made in writing within the time specified by §1-623.22;

(2) Be delivered to the Office of the Mayor or to an individual whom the Mayor may designate by rules and regulations, or deposited in the mail properly stamped and addressed to the Mayor or his or her designee;

(3) Be on a form approved by the Mayor;

(4) Contain all information required by the Mayor;

(5) Be sworn to by the individual entitled to compensation or someone on his or her behalf; and

(6) Except in case of death, be accompanied by a certificate of the physician of the employee stating the nature of the injury and the nature and probable extent of the disability.

(b) The Mayor may waive paragraphs (3) through (6) of subsection (a) of this section for reasonable cause shown.

7 DCMR105 states in relevant part;

7-105.1. Any individual seeking benefits provided for by the Act shall file a claim with the Division within three (3) years as specified by §2322<sup>5</sup> of the Act...

7-105.5 No claim shall be deemed to have been filed until the executed form has been received by the Division.

7 DCMR199.1 defines "Division" as, "the Public Sector Division of the Office of Workers' Compensation, Department of Employment Services, District of Columbia Government.

7 DCMR 3100.1 states in relevant part;

The provisions of Chapter 31 are applicable to the District of Columbia's (District) Disability Compensation Program (Program), administered by the Office of Risk Management (ORM). [emphasis added].

7 DCMR 3100.2: ORM has oversight and administrative responsibility for the Program, including decisions on requests for reconsideration of Initial Determinations (IDs) and Eligibility Determinations (EDs) rendered by the ORM.

7 DCMR 3131.1: The District government is responsible for receiving first reports of injuries, administering claims and making compensability and continued eligibility determinations.

7 DCMR3131.3: The Program shall make IDs concerning new claims for compensation benefits, including decisions to accept or deny new claims.

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<sup>5</sup> The District of Columbia Municipal Regulations currently cite to Sections of the Act utilizing outdated Section numerals. This section has since been renumbered as §1-623.24.

7 DCMR 3133.1: The Program shall issue a notice regarding each ID and ED pursuant to this section. A notice of an ID or ED shall be issued using a standard form developed by the Program that informs the employee of the right to request reconsideration.

7 DCMR 3133.2 : A notice shall contain a narrative description of the rationale for the decision, shall cite relevant portions of the supporting documentation or claim file, and shall be accompanied by supportive documentation.

7 DCMR 3133.3: A notice shall be sent to the claimant's last known address by first class U.S. mail, postage prepaid. A certificate of service shall be executed by the Program at the time of mailing.

7 DCMR106 states in relevant part;

7-106.1 In accordance with the §2324 of the Act, the Division shall notify the individual claiming benefits, in writing, of its determination upon the claim submitted and its findings of fact upon which the determination is based as soon as practicable.

7-106.2 A form for requesting a hearing pursuant to § 2324(b)<sup>6</sup> of the Act shall accompany the notice of determination.

7-106.3 If the individual claiming benefits under the Act wishes to request a hearing pursuant to § 2324 (b) of the Act, that individual shall sign the request for hearing which was forwarded to him or her pursuant to §106.1 of this Chapter and return it to the office designated on that form within thirty (30) days of the issuance of the determination. The individual shall also simultaneously mail a copy of the request for hearing to the Office of the Corporation Counsel at the address designated on that form.

D.C. Official Code §1-623.24 states in relevant part;

(a) The Mayor or his or her designee shall determine and make a finding of facts and an award for or against payment of compensation under this subchapter within 30 days after the claim was filed based on the following guidelines:

(1) The claim presented by the beneficiary and the report furnished by the employee's immediate superior; and

(2) Any investigation as the Mayor or his or her designee considers necessary, provided that the investigation shall not extend beyond 30 days from the date that the Mayor received the report of the injury.

(b) (1) Before review under §1-623.28(a), a claimant for compensation not satisfied with a decision of the Mayor or his or her designee under subsection (a) of this section is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on the claim before a Department of Employment Services Disability Compensation Administrative Law Judge. At the hearing, the claimant and the Attorney General are entitled to present evidence. Within 30 days after the hearing, the Mayor or his or her designee shall notify the claimant, the Attorney General, and the Office of Personnel in writing of his or her decision and any modifications of the award he or she may make and the basis of the decision.

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<sup>6</sup> This section has since been renumbered as §1-623.22

As a result of a previous Compensation Order, Petitioner was awarded compensation benefits. Petitioner now seeks additional compensation benefits asserting she is entitled to cost of living adjustments (COLA). The Final Compensation Order issued in this matter by the ALJ was silent regarding COLA's as COLA's were not set forth as a claim by Petitioner at that time.

COLA's have specific requirements that must be met in order for a claimant to qualify for the increase in compensation. A determination must be made regarding whether COLA requirements have been met. As Petitioner is now requesting benefits based on facts not previously litigated, and as no findings of fact regarding COLA's were made in the previous Compensation Order, a new claim is required and a determination from the Disability Compensation Program/Office of Risk Management is required.

If Petitioner wishes to have her assertions addressed, she must file a claim concerning those assertions. D.C. Official Code §1-623.21 of the Act mandates *inter alia*, claims be filed within a specified time period, claims be filed on a particular form, and claims be sworn to by individuals entitled to compensation.

Once a claim is properly filed, it is considered by the ORM as the ORM is charged with administering the disability compensation program. See 7-DCMR, §7-3100.1, 3100.2 and 3131.3. Upon consideration of a claim, the ORM will make an initial determination and is required to issue a notice of its determination on a designated, standardized form. See 7-DCMR §3133.1. The notice of determination must be mailed to the employee and must inform employee of his/her right to request reconsideration. The notice of determination, when mailed to the employee, must be accompanied by a copy of the form required for formal hearing requests. See Section 7 DCMR 106.2. If the employee claiming benefits wishes to request a formal hearing, that employee must sign the form provided, and return it to the designated office. See 7-DCMR 106.3 and DC Official Code §1-623.24 (b).

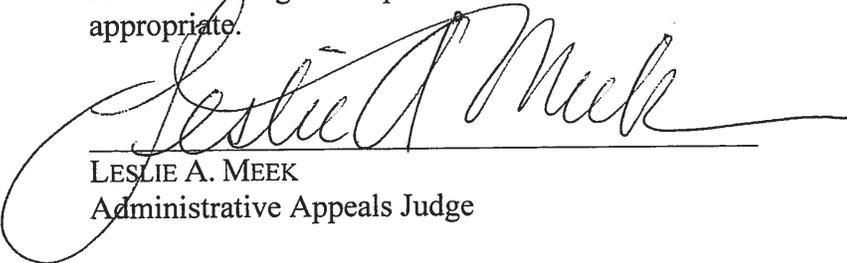
Petitioner alleges the ALJ erred in his decision to dismiss Petitioner's application for formal hearing. Petitioner argues its request for a formal hearing was not premature as Petitioner's March 5, 2008 correspondence to DCP made specific demands, claims and requests for an immediate award of compensation. Petitioner asserts its March 5, 2008 letter should be deemed a claim for compensation as defined by the Act. Petitioner also asserts that DCP's September 4, 2008 response to her March 5, 2008 letter constitutes an action on behalf of the Mayor and should be treated as a Notice of Determination.

The Act sets forth the definition of claim and sets forth specific procedures to be followed by an individual who wishes to file a claim for benefits. The Act requires that the claim be submitted on a form approved by the Mayor, contain particular information and be sworn to by the Petitioner. Review of the record reveals Petitioner neither submitted the required claim form to DCP, nor did Petitioner take an oath regarding the information that was submitted to DCP via the March 5, 2008 letter. In light of the statutory requirements, Petitioner's assertion that the March 5, 2008 letter should be treated as a claim must be rejected. Petitioner's failure to follow the Act's delineated procedures has left her without a claim.

The responsibilities of the Mayor under the Act have been delegated to the DCP. Thus, under the Act, a claim for benefits for a work-related injury must first be made to the DCP of the ORM. The DCP is responsible for conducting necessary investigations into an injured worker's claim and thereafter make an initial determination either to award or deny disability compensation benefits for that claim. See D.C. Official Code §1-623.24(a); and 7 DCMR 106. Because Petitioner has not submitted a claim to DCP regarding her wage adjustment issues, DCP could not issue a determination.

While Petitioner argues AHD's ability to grant a request for formal hearing is not predicated on DCP's issuance of a "formal" decision, and the September 4, 2008 correspondence from DCP constitutes a "determination" as defined by the Act, these arguments are not supported by the Act. D.C. Official Code §1-623.21 requires a claim asserting an individual's entitlement to benefits under the Act must be filed before compensation can be allowed. The D.C. Municipal Regulations mandate the DCP must make an initial determination regarding a claim and thereafter issue a notice of its determination. See 7-DCMR 3131.3 and 3133.1. DCP's letter cannot be deemed a determination as a determination can only be issued in response to an appropriately filed claim. Section 1-623-24 (a) of the Act requires DCP to issue a determination within 30 days of the claim being filed. Without a determination from DCP, Petitioner's claim cannot be heard by the ALJ.

Petitioner filed an application for formal hearing seeking a decision on the issue of rate of pay and cost of living expenses without filing a claim with the Mayor pursuant to the Act and D.C. Municipal Regulations. Petitioner's failure to properly file a claim regarding her entitlement to rate of pay and cost of living adjustments constitutes a failure to exhaust the administrative remedies set forth in the Act and the D.C. Municipal Regulations. Petitioner's application for formal hearing was premature and the ALJ's dismissal of Petitioner's application was appropriate.



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LESLIE A. MEEK  
Administrative Appeals Judge