

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 15-140 and CRB No. 15-188

**CHERRYL BRADLEY,
Claimant–Respondent,**

v.

**DISTRICT OF COLUMBIA PUBLIC SCHOOLS,
Employer–Petitioner.**

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2016 FEB 1 PM 1 54

Consolidated appeals from a July 21, 2015 Compensation Order and
an October 10, 2015 order titled “E-R-R-A-T-A” by
Administrative Law Judge Fred D. Carney, Jr.
AHD No. PBL 14-013, DCP No. 468-WC-09-0500607

(Decided February 1, 2016)

Lloyd J. Eisenberg for Claimant
Andrea G. Comentale and Frank Mc Dougald for Employer

Before JEFFREY P. RUSSELL, LINDA F. JORY and HEATHER C. LESLIE, *Administrative Appeals
Judges.*

JEFFREY P. RUSSELL for the Compensation Review Board.

DECISION AND REMAND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

A Compensation Order (the CO) was issued by an administrative law judge (ALJ) in the Administrative Hearings Division (AHD) of the Department of Employment Services (DOES) on July 21, 2015. The CO was issued following a formal hearing at which Cheryl Bradley (Claimant) sought an award reinstating disability compensation benefits and medical care for a work-related psychological injury sustained on April 8, 2009, when she was assaulted by a student. Her job was that of a Special Education Specialist.

Because of the nature of our resolution of these consolidated appeals, no detailed exposition of the facts underlying the claim is required.

A formal hearing was held on September 30, 2014 at which Claimant sought reinstatement of disability compensation benefits, including temporary total disability pay and medical care, that had previously been accepted as paid but had subsequently been terminated by the Public Sector Workers' Compensation Program (PSWCP) pursuant to a Notice of Intent to Terminate Benefits issued on February 25, 2014.

On April 24, 2014, approximately 5 months prior to the formal hearing, the parties executed and filed with AHD a Prehearing Order for the Disability Compensation Program (DCP) (the Prehearing Order). Under the heading "STATE WHAT CLAIMANT REQUESTS AS A RESULT OF THE HEARING", the Prehearing Order, in typed letters, stated:

Claimant is seeking restoration of temporary total disability benefits.

Then, in a handwritten addition immediately following the typed language, the Prehearing Order stated:

and medical treatment.

This amendment/addition to the Prehearing Order was initialed by counsel for both parties and the ALJ. These additions were made at the time of the formal hearing, on the record, prior to commencement of the hearing itself. See, HT 7 – 8.

The CO was issued approximately 10 months later, on July 21, 2015. In the CO, the "Claim for Relief" stated:

Claimant seeks an award of treatment for her emotional injury and payment of all related medical expenses.

It made no mention of a claim for disability compensation in the form of temporary total disability. In the CO, the "Issue" was described as follows:

Whether Employer properly terminated Claimant's benefits under the Act? [sic]

In the CO, the "Conclusions of Law" stated:

Based on the evidence presented, I find Employer has not met its burden of proving by [sic] preponderance of the evidence that Claimant's benefits should be terminated.

Finally, the "Order" section of the CO reads as follows:

It is ORDERED that Claimant's claim for relief be, and hereby is, GRANTED.

On August 31, 2015, Employer filed an Application for Review of the CO with the CRB.

On September 2, 2015, counsel for Claimant communicated with Employer's counsel via email, stating that since no appeal had been filed, the CO was final, and counsel requested that temporary total disability benefits be resumed, and medical bills be paid.

On that same date, counsel for Employer responded via email, advising that an appeal had indeed been filed on the preceding Monday, and indicating that the CO did not award temporary total disability benefits.

That same date, counsel for Claimant wrote a letter to the ALJ, arguing that the CO contained a specific factual finding that "Claimant continues to suffer emotional injuries as a result of the April 8, 2009 work injury that continue to render her disabled from work", and asking that an amended compensation order be issued including an award of the temporary total disability benefits.

On September 18, 2015, Employer filed Employer's Opposition to Claimant's September 2, 2015 Letter Requesting the Administrative Law Judge To Amend The July 31, 2015 Compensation Order. Employer argued therein that since an appeal had been taken, the ALJ no longer had jurisdiction over the matter.

Claimant did not file a Cross-Appeal of the CO with the CRB.

On October 29, 2015, the ALJ issued an order titled "E-R-R-A-T-A" (the Order), stating that the CO "contains some omissions and typographical errors that may distort its meaning" and that in order "to bring clarity to the Compensation Order", the ALJ purported to make multiple changes to the CO, the effect of which would, if permitted by law, result in adding temporary total disability benefits to the stated claim for relief and the award.

On November 25, 2015, Employer filed Petitioner's Application for Review of the Order with the CRB, arguing that in light of Employer's having appealed the CO to the CRB, AHD no longer had jurisdiction over the matter and the Order was therefore invalid.

On December 9, 2015, Claimant filed an Opposition to Application for Review, arguing that rules that govern legal proceedings and jurisdiction in the courts of the District of Columbia do not prevent an administrative law judge from correcting a "clear and material error in the wording" of an order after it has been appealed within the agency.

Because the Order was issued after Employer had appealed the CO to the CRB, AHD no longer had jurisdiction over the case, and we therefore vacate the Order.

Moreover, because the CO did not make all necessary findings of fact, conclusions of law, or an order concerning disputed material claims that had been raised, it is not supported by substantial evidence, does not comport with the District of Columbia Administrative Procedure Act, D.C. Code § 2-501 (DCAPA), and because the ALJ impermissibly applied the now-repealed treating physician preference, it is not in accordance with the law. Therefore, we vacate the CO, and remand for further consideration and a new compensation order.

DISCUSSION

As an initial matter:

It is further well documented that in a contested case, to conform to the requirements of the District of Columbia Administrative Procedure Act, D.C. Code § 2-501 (APA), an agency's decision must (1) state findings of fact on each material issue in contest, (2) those factual findings must be supported by substantial evidence, and (3) the conclusions of law must flow rationally from those factual findings. The failure to satisfy these requirements renders an agency decision unsupported by substantial evidence. *Perkins v. DOES*, 482 A.2d 401 (D.C. 1984).

Johnson v. D. C. Office of Unified Communications, CRB No. 15-122, (December 18, 2015), at 2, n.1.

By failing to address the temporary total disability claim in the claim for relief, the conclusions, and the order portions of the CO, the ALJ failed to comply with the DCAPA. Accordingly, the CO is unsupported by substantial evidence.

Further, we note that the final sentence in the Discussion section of the CO reads:

In workers' compensation cases, the medical opinion of a treating physician is generally entitled to greater weight than the opinions of doctors who have been retained to examine a claimant solely for the purpose of litigation.

CO at 9.¹

While for a time the public sector workers' compensation did contain a provision such as the ALJ describes, it has been repealed and is no longer the law in this jurisdiction in public sector cases. See *D.C. Public Schools v. DOES*, 95 A.3d 1284 (D.C. 2014). The ALJ's reliance on that long-repealed provision is, in and of itself, sufficient to require that we vacate the CO and remand the matter for further consideration, without reference to any preference for the opinion of a treating physician.

Regarding the Order and the effect of an appeal upon the jurisdiction of a trial court to exercise jurisdiction in a case, the District of Columbia Court of Appeals has written:

The husband's jurisdictional argument — which is that the trial court was "divested . . . of jurisdiction" once he filed his notice of appeal on September 20, 2011— is easily disposed of at the outset. While "appellate jurisdiction . . . divests a trial court of jurisdiction to hear matters relating to those issues [which have been raised] on appeal," the trial court "is free to decide 'other matters [such as a request for attorney's fees] which do not result in revocation or alteration of the judgment on appeal.'" *In re Estate of Green*, 896 A.2d 250, 254, 254 n.6 (D.C. 2006) (quoting *Stebbins v. Stebbins*, 673 A.2d 184, 190 (D.C. 1996)) ("[A] trial

¹ Oddly, the ALJ included a superscript "5" at the conclusion of this sentence, but the CO contains no footnote 5.

court may award attorney fees to a prevailing party even though the underlying order is on appeal.")).

Araya v. Keleta, 65 A.3d 40 (D.C. 2013), at 47 – 48 (bracketed material in original).

Adjudication of disputed workers' compensation claims via a formal hearing process is quasi-judicial in nature. *See D.C. Public Schools v. DOES*, 95 A.3d 1284 (D.C. 2014), at 1288. The workers' compensation adjudication process devised by the legislature includes within it an established scheme for appellate review of an AHD administrative law judge's decision by a panel of administrative appellate judges. The orderly and efficient operation of this process is greatly facilitated by adhering to the widely accepted and generally applied principal that once an aggrieved party has sought review of an adverse decision by filing a cognizable and viable appeal of that decision to the duly constituted body vested with the authority to review the decision, the matters on appeal are solely within the jurisdiction of that appellate body until it resolves the appeal or otherwise returns the matter to the original decision-making authority.

Lastly, this issue was addressed by both the Director of DOES when appellate review of compensation orders was vested in that office, and the DCCA. In an "Order to Vacate", then Director Joseph Yeldell wrote:

On June 8, 1995, the District of Columbia Court of Appeals ruled that the Hearings and Adjudication Section [now AHD] was without jurisdiction to modify the Compensation Order, because claimant's claim was on appeal to the Director.

Francis v. Georgetown University Hospital, Dir. Dkt. 93-5, H&AS No. 91-696 (September 11, 1995), citing *Georgetown University Hospital v. DOES and Lloyd Francis, Intervenor*, 659 A.2d 832 (D.C. 1995). While the circumstances of that case do not exactly mirror this case (*i.e.*, the claimant sought a modification of a compensation order which was on appeal based upon a claim of changed conditions) the principle concerning the lack of jurisdiction to modify a compensation order that is pending appellate review in the Agency remains the same.

Claimant has given us no reason why we should depart from this rule, and we discern none in this case.

Accordingly, the Order is vacated.

CONCLUSION AND ORDER

Because the Order was issued after Employer had appealed the CO to the CRB, AHD no longer had jurisdiction over the case, and the Order is therefore vacated.

Because the CO did not make findings of fact, conclusions of law, or an order concerning disputed material claims that had been raised, does not comport with the DCAPA, and improperly applied a repealed provision of the law, is not in accordance with the law and is vacated.

The matter is remanded to AHD for further consideration of the claims raised and the issuance of a new compensation order.

So ordered.