



CLIFFORD W. TEAL,	)	
	)	
Claimant	)	
	)	
v.	)	H&AS No. 86-403
	)	OWC No. 0090338
WASHINGTON GAS LIGHT	)	
COMPANY,	)	
	)	
Self-Insured	)	
Employer	)	

ORDER

This matter is before the Director for consideration of the employer's Motion for Stay. On or about March 5, 1987, employer filed a Motion for Stay of the Hearing Examiner's Compensation Order which was issued February 12, 1987. The claimant has filed an opposition to employer's motion.

The employer makes two arguments in support of its Motion for Stay: First, employer essentially argues that there is a substantial likelihood that the Compensation Order which awards substantial benefits to claimant will be reversed upon the Director's review. Second, employer argues that it will be irreparably harmed if the stay is not granted, since in the event of a reversal by the Director, it is unlikely that the employer would ever be able to recover the monetary benefits which the present challenged Compensation Order requires it to pay.

The Director's decision in this matter is governed by D.C. Code, Section 36-322 of the District of Columbia Workers' Compensation Act (hereinafter "WCA") which provides in relevant part:

The payment of amounts required by a Compensation Order shall not be stayed pending final review unless so ordered on the grounds that irreparable injury would otherwise ensue to the employer.

See also 7 D.C.M.R. Employment Benefits, Section 230.12.

While neither the Workers' Compensation Act nor the regulations implementing same define the term "irreparable injury," in Karis v. Edwin E. Ellet Tile & Marble, Dir. Dkt. 86-11 (order denying stay, June 29, 1986), the Acting Director held in essence that the prospect of being unable to recover benefits paid pursuant to a Compensation Order which is later reversed did not constitute irreparable injury.

D.C. Code, Section 36-322 was based upon the similarly worded provision of Section 21(c) of the Longshore and Harbor Worker's Compensation Act (hereinafter "LHWCA"), 33 USC Section 901 et seq., apparently without any intention to change the prior construction of the term irreparable harm as it was used in the LHWCA. See Council of the District of Columbia, Report of the Committee on Housing and Economic Development, Bill 3-106 (January 29, 1980) (Leg. Hist.), and Report of the Committee on Public Services and Consumer Affairs, Bill 3-106 (January 16, 1980) (Leg. Hist.). Since the District of Columbia Court of Appeals has approved the agency's prior reliance on decisions arising under the LHWCA when attempting to construe similarly worded provisions under the WCA which are not otherwise contrary to the words or intent of the WCA or legislative history, I shall now rely on the definition of "irreparable injury" as that term has previously been construed under the similarly worded provision of the LHWCA. See Joyner v. DOES, 502 A.2d 1027 (1986), and WMATA v. DOES, 506 A. 1127 (1986).

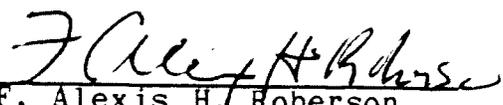
Cases from other jurisdictions interpreting the irreparable injury provision of the LHWCA have concluded that the prospect of an employer or insurance carrier being unable to collect payments made to a claimant pursuant to a compensation order that is later reversed does not constitute an irreparable injury warranting a stay of a compensation order under review. Or stated in other words, the insolvency or financial irresponsibility of claimant to repay compensation paid to him or her pursuant to an order which is later reversed is not such an irreparable injury as would entitle the appealing employer or insurance carrier to a stay. See

Jones v. Shepard, 20 F. Supp. 345 (DC Miss. 1937); Travelers Insurance Co. v. Norton 32 F. Supp. 501 (DC Pa 1940); Walliser v. Bassett, 33 F. Supp. 636 (DC Wis. 1939); Lehigh Valley R. Co. v. Lowe, 68 F. Supp. 753 (DC NJ 1946); Seas Shipping Co. v. Cardillo, 86 F. Supp 531 (DC NY 1949); Higgins, Inc. v. Donovan, 249 F. Supp. 941 (ED La 1966), aff'd 373 F. 2d 18; Associated Indem. Corp. v. Shea, 325 F. Supp. 1100 (SD Ala. 1971), aff'd 455 F. 2d 913. The authorities cited immediately above have interpreted the term "irreparable injury" in the same manner as the term has been generally used in the law governing injunctive relief.

In this jurisdiction, cases interpreting the term irreparable injury in the area of injunctive relief are no different than the cases cited above interpreting the term irreparable injury under the LHWCA. See Perpetual Building Ltd. Partnership v. District of Columbia, 618 F. Supp. 603 (D.C.D.C. 1985); Virginia Petroleum Jobbers Association v. Federal Power Commission, 259 F.2d 921, 925 (D.C. Cir. 1985); Wisconsin Gas Company v. Federal Energy Regulatory Commission, 758 F.2d 669 (D.C. Cir. 1985); Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir 1977). The only instance in which it appears possible that payments to a claimant who is financially insolvent may constitute irreparable injury so as to warrant the stay of a compensation order is when payment of the compensation order imminently threatens the continued solvency of the moving party. Perpetual Building Ltd. Partnership v. District of Columbia, Supra p. 616.

Turning to the specific facts of this case, while the employer alleges a potential economic harm which it equates with irreparable injury, the employer clearly does not suggest that payment of the proposed compensation order imminently threatens its continued financial solvency. I therefore find that the employer has failed to state as a matter of law an irreparable injury which would warrant the issuance of a stay. Having concluded that the employer has not alleged or demonstrated an irreparable injury, I need not consider the further issue of whether there is a substantial likelihood that the employer will prevail on its appeal.

Accordingly, it is hereby ordered that Employer's motion for stay be, and the same is, hereby denied.

  
F. Alexis H. Roberson  
Director

Date: MAY 20 1987