

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**Department of Employment Services**

VINCENT C. GRAY  
MAYOR



LISA MARÍA MALLORY  
DIRECTOR

**COMPENSATION REVIEW BOARD**

**CRB No. 13-037**

**KENDRICK COBB,  
Claimant–Petitioner,**

**v.**

**CLEAN-CUT HAULING & DEMOLITION, LLC and  
NATIONWIDE MUTUAL INSURANCE CO.,  
Employer/Carrier–Respondents.**

Appeal of a February 26, 2013 Dismissal Order and Assessment of Court Costs  
Issued by Administrative Law Judge Sandra M. McNair  
AHD No.12-509, OWC No. 695660

Frank R. Kearney, Esquire, for the Petitioner  
Jamie L. DeSisto, Esquire, for the Respondent

Before HEATHER C. LESLIE, HENRY W. MCCOY, and MELISSA LIN JONES *Administrative Appeals Judges.*

HEATHER C. LESLIE, for the Compensation Review Board.

**DECISION AND ORDER**

**OVERVIEW**

This case is before the Compensation Review Board (CRB) on the request for review filed by the Claimant - Petitioner (Claimant) of the February 26, 2013, Dismissal Order and Assessment of Court Costs (Order) issued by an Administrative Law Judge (ALJ) in the Hearings and Adjudication Section of the District of Columbia Department of Employment Services (DOES). In that Order, the ALJ assessed court costs in the amount of \$721.50 against the parties. We VACATE, in part.

## **BACKGROUND AND FACTS OF RECORD**

On December 20, 2012, a full evidentiary hearing took place before the ALJ. The record closed on or about January 8, 2013 after receipt of the hearing transcript. On February 25, 2013, the ALJ received from the parties a joint request for dismissal of the application for formal hearing without prejudice as the parties had resolved the issues that were the subject of the formal hearing.

On February 26, 2013, the ALJ issued the Order currently under appeal. In that Order, the ALJ dismissed the Application for Formal Hearing without prejudice and assessed court costs in the amount of \$721.50 against the parties. Counsel were informed in the Order that they could determine how the costs were to be split.

The Claimant timely appealed the order. The Claimant argues there was no basis to assess costs associated with the formal hearing.

The dismissal without prejudice was not appealed by either party.

## **STANDARD OF REVIEW**

Because the Order on review is not one based on an evidentiary record produced at a formal hearing, the applicable standard of review by which we assess the determination reached by AHD is whether the decision is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. *See*, 6 Stein, Mitchell & Mezines, *Administrative Law*, § 51.03 (2001).

## **DISCUSSION AND ANALYSIS**

A review of the Order reveals that after the ALJ received the request for a joint dismissal without prejudice, she found the issue of costs required resolution. The Order went on to state,

The District of Columbia Administrative Procedures Act, as amended, D.C. Official Code §2-501 et seq.; the District of Columbia Municipal Regulations, as promulgated §7-200 et seq.; and the District of Columbia Superior Court Rules, assessment of court costs are within the discretion of the Administrative Law Judge (ALJ). District of Columbia Municipal Regulation §7-221.4 states in pertinent part: "A hearing or Attorney Examiner [or Administrative Law Judge] may use the Rules of Civil Procedure of the Superior Court of the District of Columbia as guidelines in matters of procedure not specifically addressed in the District of Columbia Administrative Procedure Act and the Act, (referring to the specific Act that governs the necessity for the hearing, such as the Worker's Compensation Act). Pursuant to 541(b)<sup>1</sup> of the Rules of Civil Procedure of the

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<sup>1</sup> D.C. Superior Court Rule 541(b) states "Costs of depositions, reporters' transcripts on appeal, and premiums on bonds may be taxed at the discretion of the trial court."

Superior Court of the District of Columbia, the assessment of court costs or fees is at the discretion of the judge.

Order at 2.

We agree with the Claimant that the assessment of costs against the parties for the hearing transcript and the appearance fee for the court reporter is in error.

As we have stated in a case similar to the one at bar, were the ALJ assessed costs against a Claimant,

Because the Hearings and Adjudication Section of the District of Columbia Department of Employment Services is not a court in the judicial system of the District of Columbia, it is not bound by, but may rely on those rules for procedural issues where appropriate. *See 7 DCMR § 261.4*. The circumstances in this case do not qualify as "procedural issues where appropriate." First, the assessment of costs is not procedural.<sup>2</sup>

We reiterate our finding here, the assessment of costs is not procedural and it was in error for the ALJ to apply the rules of procedure governing the D.C. Superior Court..

Moreover, we agree with the Claimant that the agency cannot recoup costs associated with obligations the Office of Hearing and Adjudications is required to perform, such as maintaining a formal hearing record as outlined in DCMR § 223.9 which includes the hearing transcript. Whether or not the parties resolve a case after a full evidentiary hearing does not bear on the agency's obligation to maintain a record.

To shift the cost of this obligation after resolution is not contemplated by the act. There is nothing in the D.C. Workers' Compensation Act, as amended, D.C. Code §§ 32-1501 *et seq.* or applicable regulations that authorize an ALJ to assess costs after a hearing but prior to issuance of a Compensation Order. In the absence of such authority, this assessment of a penalty for settling a case is beyond the scope of an ALJ's power.

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<sup>2</sup> *Keitt v. D.C. Water and Sewer Authority*, CRB No. 10-151, AHD No. 05-064C (November 24, 2010).

### CONCLUSION AND ORDER

The assessment of costs against the parties is not in accordance with the law. That part of the February 26, 2013 Dismissal Order and Assessment of Court Costs which assesses costs against the parties is VACATED.

FOR THE COMPENSATION REVIEW BOARD:

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HEATHER C. LESLIE  
*Administrative Appeals Judge*

October 31, 2013  
DATE