

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



F. THOMAS LUPARELLO
INTERIM DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 13-142

**WILLIAM CORADO,
Claimant–Petitioner,**

v.

**THE ARMY NAVY CLUB and THE HARTFORD INSURANCE CO.,
Employer/Insurer–Respondent.**

Appeal from an October 23, 2013 Order¹
of Claims Examiner Myrna Parada and
Claims Supervisor Lisa Baxter
OWC No. 690472

Michael J. Kitzman for Petitioner
Chad A. Michael for Respondent

Before MELISSA LIN JONES, HENRY W. MCCOY, and JEFFREY P. RUSSELL, *Administrative Appeals Judges*.

MELISSA LIN JONES, *Administrative Appeals Judge*, for the Compensation Review Board

DECISION AND REMAND ORDER

ISSUES ON APPEAL

1. Did the Army Navy Club timely make payment pursuant to the Order approving the settlement?
2. Is the October 23, 2013 Order arbitrary and capricious, an abuse of discretion, or not in accordance with the law?

¹ The order is titled “Compensation Order Awarding 20% penalty for late payment of Settlement Approval;” however, the claims examiner waived the penalty. Because of the discrepancy, throughout this Decision and Remand Order, the claims examiner’s Order will be referred to as “Order.”

FACTS OF RECORD, PROCEDURAL HISTORY, AND ANALYSIS²

On June 18, 2013, the Office of Workers' Compensation approved a \$75,000 settlement agreement between Mr. William Corado and The Army Navy Club. The Army Navy Club received the Order approving the settlement agreement on June 20, 2013.³ Mr. Corado did not receive payment pursuant to that Order until July 5, 2013, and on July 29, 2013, he filed a Motion for Default requesting a penalty for late payment. A claims examiner denied Mr. Corado's motion in the Order dated October 23, 2013.

As stated at §32-1515(f) of the D.C. Workers' Compensation Act of 1979, as amended, D.C. Code § 32-1501, *et seq.*, (the Act), payment pursuant to an order is due 10 days after the order "becomes due":

If any compensation, payable under the terms of an award, is not paid within 10 days after it becomes due, there shall be added to such unpaid compensation an amount equal to 20% thereof, which shall be paid at the same time as, but in addition to, such compensation, unless review of the compensation order making such award is had as provided in §32-1522 and an order staying payments has been issued by the Mayor or court. The Mayor may waive payment of the additional compensation after a showing by the employer that owing to conditions over which he had no control such installment could not be paid within the period prescribed for the payment.

An order "becomes due" when it is properly served on the employer.⁴ Then, when calculating the 10 day period, 7 DCMR §299 defines the word "day" as a "calendar day, unless otherwise specified in the Act or this chapter." It is only when the deadline falls on a Saturday, Sunday, or legal holiday that the deadline is extended to the next business day;⁵ therefore, in this case, payment was due July 1, 2013, not July 5, 2013 as calculated by the claims examiner. Moreover, although a check issued on July 1, 2013, contrary to The Army Navy Club's argument that it paid timely, neither issuance nor mailing is determinative;⁶ the dispositive date is the date the

² Upon review of an appeal from the Office of Workers' Compensation, the Compensation Review 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, §51.93 (2001).

³ Order at unnumbered p. 2; Respondent's Response and Supporting Memorandum in Opposition of Claimant's Application for Review, unnumbered p. 2.

⁴ *Brinkley v. RTL Electric*, CRB No. 05-23, OWC No. 580138 (July 20, 2005). See also *Fernandes v. Ft. Meyer Construction*, CRB No. 06-77, AHD No. 03-396, OWC No. 586505 (January 31, 2007); *Brinkley v. RTL Electric*, CRB No. 05-23, OWC No. 580138 (July 20, 2005).

⁵ *Carson v. Howard University Hospital*, CRB No. 11-093, OWC No. 603532 (January 11, 2012).

⁶ *Dorsey v. ITT/Continental Baking*, Dir. Dkt. No. 86-19, H&AS No. 85-353-A, OWC No. 009588 (May 9, 1989). See also *Porter v. Greater Southeast Community Hospital*, Dir. Dkt. No. 99-54, H&AS No. unknown, OWC No. 297956 (August 11, 2000); *Imes v. Georgia Brown's Restaurant* Dir. Dkt. No. 99-44, H&AS No. 98-123, OWC No. unknown (June 27, 2000) (There is no room for discretion; that the envelope was post-marked timely is irrelevant.)

claimant actually receives the check.⁷ Thus, because Mr. Corado did not receive the check until July 5, 2013, payment pursuant to the Order was late.

The claims examiner erroneously denied Mr. Corado's request for a penalty solely on the grounds of timing; however, in response to the claims examiner's Show Cause Order inquiring why a penalty should not be imposed for late payment and in its Response and Supporting Memorandum in Opposition of Claimant's Application for Review, the Army Navy Club asserts the delay was beyond its control. Specifically, the claims adjuster assigned by the insurance company to Mr. Corado's claim was on bereavement leave after receipt of the Order, and that adjuster is "the only person who can pay out a settlement agreement."⁸ As a matter of law, the Army Navy Club's argument fails, and on remand, the claims examiner is directed to issue an order imposing the penalty.

The purpose of §32-1515(f) of the Act is to require prompt payment,⁹ and a claims examiner has no discretion when analyzing this issue; "either the compensation is timely paid and there is no penalty, or the compensation is late and the penalty must be imposed if claimant seeks it," subject to the exceptions for circumstances beyond the carrier's control.¹⁰ Contrary to the Army Navy's argument, the control issue is not whether the carrier had control over the claims adjuster's tragic circumstances or her bereavement leave. The control issue is whether The Hartford had control over its own staffing and internal, payment-processing procedures such that because "[t]he claims adjuster on every file is the sole person who can issue settlement checks"¹¹ Mr. Corado received his payment late.

In *Orius Telecommunications, Inc. v. Department of Employment Services*, the D.C. Court of Appeals found that "neither the operation of [the insurance company's] check processing system, nor the celerity – or lack thereof – with which it deposits mail into the postal system is beyond the [carrier's] control such that the director, acting as the Mayor's designee, could properly consider them as bases for waiving the penalty."¹² Like the carrier in *Orius*, The Hartford had control over its "check processing system" in this case, and as a matter of law, a penalty is due.

⁷ *Rodriguez v. Sibley Memorial Hospital*, CRB No. 05-233, OWC No. 594763 (December 2, 2005).

⁸ Order at unnumbered p. 2.

⁹ *Hard Rock Café v. DOES*, 911 A.2d 1217 (D.C. 2006).

¹⁰ *Dorsey*.

¹¹ Order at unnumbered p. 2.

¹² *Orius Telecommunications, Inc. v. DOES*, 857 A.2d 1061, 1070 (D.C. 2004).

CONCLUSION AND ORDER

The Army Navy Club failed to timely pay pursuant to the Order approving the settlement, and the claims examiner's October 23, 2013 Order is arbitrary, capricious, an abuse of discretion, and not in accordance with the law; therefore, it is VACATED. As a matter of law, Mr. Corado is entitled to a 20% penalty pursuant to §32-1515(f) of the Act, and this matter is REMANDED for the claims examiner to enter such an order.

FOR THE COMPENSATION REVIEW BOARD:

MELISSA LIN JONES
Administrative Appeals Judge

March 12, 2014
DATE