

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. 08-023

DEBORAH A. COLEMAN,

Claimant–Petitioner,

v.

COMMUNITY ALLIANCE, INC., AND LIBERTY MUTUAL INSURANCE COMPANY,

Employer/Carrier–Respondent.

Appeal from a Compensation Order of
Administrative Law Judge Anand K. Verma
AHD No. 03-046A, OWC No. 574318

Heather C. Leslie, Esquire, for the Petitioner

Douglas A. Seymour, Esquire, for the Respondent

Before JEFFREY P. RUSSELL, FLOYD LEWIS, *Administrative Appeals Judges*, and E. COOPER BROWN,
Chief Administrative Appeals Judge.

JEFFREY P. RUSSELL, *Administrative Appeals Judge*, for the Compensation Review Panel:

DECISION AND REMAND ORDER

JURISDICTION

Jurisdiction is conferred upon the Compensation Review Board pursuant to D.C. Official Code §§ 32-1521.01 and 32-1522 (2004), 7 DCMR § 230, and the Department of Employment Services Director's Directive, Administrative Policy Issuance 05-01 (February 5, 2005).¹

¹Pursuant to Administrative Policy Issuance No. 05-01, dated February 5, 2005, the Director of the Department of Employment Services realigned the Office of Hearings and Adjudication to include, *inter alia*, establishment of the Compensation Review Board (CRB) in implementation of the District of Columbia Fiscal Year 2005 Budget Support Act of 2004, Title J, the District of Columbia Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, *codified at* D.C. Official Code § 32-1521.01. In accordance with the Director's Directive, the CRB replaces the Office of the Director in providing administrative appellate review and disposition of workers' and disability compensation claims arising under the District of Columbia Workers' Compensation Act of 1979, as amended, D.C. Code Ann. §§ 32-1501 to 32-1545 (2005), and the District of Columbia Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Code Ann. §§ 1-623.1 to 1-643.7 (2005), including responsibility for

BACKGROUND

This appeal follows the issuance of a Compensation Order from the Administrative Hearings Division (AHD) of the Office of Hearings and Adjudication (OHA) in the District of Columbia Department of Employment Services (DOES). In that Compensation Order, which was filed on September 28, 2007, the Administrative Law Judge (ALJ) determined that “a default of the OWC Informal Order of July 15, 2002 is not warranted”, denying Claimant-Petitioner’s request for an order of default in connection with an order previously issued by the Office of Workers’ Compensation (OWC). Petitioner filed an Application for Review (AFR) on October 24, 2007, seeking review of that Compensation Order.

As grounds for this appeal, Petitioner alleges as error that the ALJ disregarded the instructions of the CRB in a prior Decision and Remand Order to consider the merits of a Motion for Default. In opposition to the appeal, Respondent argues that the ALJ was correct to fail to consider the motion.

Because the decision of the ALJ to deny the motion for Default was based upon the ALJ’s determination that the CRB was in error in instructing the ALJ to consider said motion, the Compensation Order on Remand is not in accordance with agency policy or the law, and is vacated. We remand with instructions to follow the prior directive of the CRB.

ANALYSIS

As an initial matter, the scope 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. *See* D.C. Workers’ Compensation Act of 1979, as amended, D.C. Code Ann. §32-1501 to 32-1545 (2005), at §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 International v. District of Columbia Dep’t. of Employment Serv’s.*, 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, and even where the reviewing authority might have reached a contrary conclusion. *Marriott*, 834 A.2d at 885.

The prior CRB Decision and Remand Order contained the following discussion and order:

After reviewing the record in this matter, this Panel notes that after the CRB’s reversal of the March 31, 2004 Compensation Order, the previous Compensation Order granting continuing temporary total disability benefits remains controlling

administrative appeals filed prior to October 1, 2004, the effective date of the District of Columbia Workers’ Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004.

until a modification hearing is held, as ordered by the CRB and another Compensation Order is issued. Thus, the ALJ's determination to deny Petitioner's motion as premature, "during the pendency of a new hearing on the merit of modification" is erroneous and this matter must be remanded for findings of fact and conclusions of law on Petitioner's motion.

Accordingly, after a complete review of the record, the Order denying Petitioner's Motion for Order Declaring Default is not in accordance with the law and must be reversed.

CONCLUSION

The Order of February 14, 2007 is not in accordance with the law and this matter must be remanded to the ALJ for consideration of Petitioner's Motion of Order Declaring Default.

ORDER

The Order of February 14, 2007 is hereby REVERSED and REMANDED to the Administrative Hearings Division for further proceedings consistent with the above discussion.

And, in a footnote therein, addressing the very legal question with which the ALJ herein takes issue, the CRB wrote:

The CRB recently emphasized that interlocutory orders are not ripe for appeal and that the CRB will not hear them. *Hensley v. Cheech [sic] & Company*, CRB No. 07-68 (April 23, 2007). However, this AHD Order is not interlocutory, as it is a final decision on merits of Petitioner's request for default, as it says, in essence, that there is no default here. The CRB's reversal of the granting of the modification request made the earlier Compensation Order awarding benefits controlling and it is that earlier Compensation Order that Petitioner is saying is in default. A pending request for modification, either as a first request or on remand, does not stay the underlying Compensation Order.

In the Compensation Order under review in this proceeding, rather than consider the claim for default, the ALJ determined that, in the ALJ's opinion, the CRB's decision was erroneous, because the order that it reviewed was merely interlocutory. The ALJ then declined to consider the motion because of this conclusion.

This is not within the discretion of the ALJ. As we have noted previously, while the CRB may well be in error, claims relating to such errors having occurred are for the District of Columbia Court of Appeals to decide. See, *Rovinski v. American Combustion Industries*, CRB No. 07-091, AHD 06-341, OWC No. 576295 (June 5, 2007). While an ALJ may be entirely justified in disputing the ultimate correctness of a CRB decision, allowing an ALJ to disregard the instructions of the CRB produces an untenable, unworkable and potentially dysfunctional system of adjudication, which will result in delays in resolution of disputed claims, including the correction of any error that may be

committed by the CRB, and in the payment of appropriate benefits. The CRB having determined the law of the case, the ALJ is not free to disregard that determination, and to do so is reversible error, a point which we have been called upon to reiterate in *Munson v. Hardy & Son Trucking*, CRB No. 07-017, AHD No. 96-176B, OWC No. 029805 (February 5, 2007).

While an ALJ in AHD is free to state disagreement with a CRB decision, the ALJ is not free to ignore, disregard, or refuse to follow the specific instructions of the CRB in connection with remands to AHD. This is so because (1) as a matter of policy as discussed above relating to the need for an orderly and efficient system of adjudicatory functioning, permitting the ALJ to ignore the CRB directive is deleterious to the adjudicatory functioning of the agency, the law of the case is subject to determination by the CRB as discussed in *Munson, supra*, and is not subject to reversal by the ALJ, (2) the powers of the Director, who is the ultimate superior authority within the agency over the ministerial actions of the OHA, including both AHD and CRB, have been delegated to the CRB under the directive issued as Administrative Policy Issuance No. 05-01, dated February 5, 2005, referred to in footnote 1, *ante*, and (3) because the Court of Appeals has held that the CRB may not issue compensation orders itself, but can, may, and in appropriate instances, must remand to the ALJ with *instructions* as to how to proceed, where the CRB detects error in the actions of the ALJ; see, *Washington Metropolitan Area Transit Authority v. District of Columbia Department of Employment Services and Juni Browne, Intervenor*, 926 A.2d 140 (D.C. 2007).

Accordingly, the matter herein is again remanded to the ALJ with instructions that he consider the merits of the Motion for Default.

CONCLUSION

The Compensation Order of September 28, 2007 is not in accordance with the law as discussed above.

ORDER

The Compensation Order of September 28, 2007 is vacated, and the matter is remanded to AHD with instructions to carry out the previous directive of the CRB “for consideration of Petitioner’s Motion of Order Declaring Default”.

FOR THE COMPENSATION REVIEW BOARD:

JEFFREY P. RUSSELL
Administrative Appeals Judge

February 19, 2008
DATE