

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. 07-113,

EDWARD HILL,

Claimant – Petitioner,

v.

GREYHOUND LINES, INC. AND ACE USA ,

Employer – Respondent.

Appeal from a Compensation Order of
Administrative Law Judge Amelia G. Govan
AHD No. 01-329B, OWC No. 590459

Edward Hill, *Pro Se*

Mary G. Weidner, Esq., for the Respondent

Before LINDA F. JORY, SHARMAN MONROE *Administrative Appeals Judges* and E. COOPER BROWN, *Chief Administrative Appeals Judge*.

LINDA F. JORY, *Administrative Appeals Judge* on behalf of the Review Panel:

DECISION AND 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

¹ Pursuant 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 D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, sec. 1102 (Oct. 1, 1994), *codified at* D.C. Code Ann. § 32-1521.01 (2005). In accordance with the Director's Policy Issuance, the CRB replaces the Office of the Director in providing administrative appellate review and disposition of workers' and disability compensation claims arising under the D.C. Workers' Compensation Act of 1979, as amended, D.C. Code Ann. §§ 32-1501 to 32-1545 (2005) and the D.C. Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Code Ann. §§ 1-623.1 to 1.643.7 (2005), including responsibility for administrative appeals filed prior to October 1, 2004, the effective date of the D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004.

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 May 4, 2007, the Administrative Law Judge (ALJ) denied Petitioner temporary total disability benefits as the ALJ concluded Petitioner did not show that his actual working conditions could have caused similar emotional injury in a person who not significantly predisposed to such injury. Claimant-Petitioner (Petitioner) now seeks review of that Compensation Order in an Application for Review (AFR) filed with the CRB on June 7, 2007.

Specifically Petitioner asserts the following²:

1. The ALJ did not properly afford him a presumption of compensability.
2. The ALJ has not properly applied the [Dailey] test.
3. The ALJ erred in not giving any weight to Petitioner's underlying injury.
4. The ALJ did not address the legal and factual issues presented by Petitioner.
5. The ALJ failed to consider Petitioner's physical injuries, diabetes and hypertension were elevated to a point, wherein he had to be hospitalized.
6. The ALJ ignored substantial evidence, citing just 10 or more that 150 pieces of evidence.
7. The ALJ gave no weight to Petitioner's alternative for the injury.

On June 12, 2007 Respondent filed a Motion to Dismiss the Application for Review and an amended Motion to Dismiss on June 13, 2007 asserting that Petitioner's AFR should be dismissed as it was untimely filed.

Petitioner filed his response to Respondent's motion on June 22, 2007 to which Respondent responded on June 29, 2007.

Respondent also filed an Opposition to Petitioner's Application for Review on June 22, 2007 and asserted:

1. Contrary to Petitioner's assertion, Respondent asserts Petitioner submitted 10 exhibits which consisted of approximately 299 pages which were admitted into evidence by the ALJ.
2. The ALJ had substantial evidence to support her decision, as Petitioner did not satisfy the objective standard for an emotional injury.

² The remainder of Petitioner's Application for Review although continually utilizing a numerical assignment are, in the panel's view, assertions Petitioner relies on in support of his Application for Review and do not represent additional allegations of alleged error by the ALJ which the CRB can address as either unsupported by substantial evidence or not in accordance with the law. *Marriott*, 834 A.2d at 885.

ANALYSIS

As an initial matter, the standard 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. D.C. Official Code § 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 Int’l. v. District of Columbia Department of Employment Services*, 834 A.2d 882 (D.C. App. 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 question before the Panel at this juncture is whether the Petitioner’s Application for Review received on June 7, 2007 constitutes a timely filed Application for Review.

7 D.C.M.R. § 258.2 states:

An Application for Review must be filed within thirty (30) calendar days from the date shown on the certificate of service of the compensation order or final decision from which appeal is taken.

Petitioner has asserted that his Application was filed timely. In support of this argument Petitioner asserts that pursuant to Superior Court Civil Rules of Procedure, Rule 6 regarding time, “In computing any period of time prescribed or allowed by these rule by order of Court of by any applicable statue, the day of the act, event or default from which the designated period of time begins to run shall not be included and the last day of the period so computed shall be included, unless it is a Saturday, Sunday or a legal holiday”. The CRB has adopted Super Ct. Civ. R. 6 and agrees the time for filing the appeal when due on a Sunday is extended to Monday. See *McManus v. Department of Corrections*, CRB No. 09-03, OHA No. PBL 02-017B, DCP Nos. 002805, 022683 (May 23, 2006).

The Compensation Order in this case was issued on May 4, 2007. The certificate of service attached to the Compensation Order shows that it was sent, via certified mail, to Petitioner at the same address Petitioner has listed as his return address. Pursuant to the regulations promulgated to administer the Act, Petitioner should have filed an Application for Review with the Director within 30 days of May 4, 2007 or by June 3, 2007. In that June 3, 2007 is a Sunday and not a legal business day for filings, Petitioner would be afforded an additional day and therefore should have filed his Application for Review by June 4, 2007. Petitioner did not file any correspondence with the Compensation Review Board until June 7, 2007.

Petitioner maintains, however, that he is afforded an additional three days in which to file his AFR and relies on D.C.M.R. §228.5 which states “Three (3) working days from mailing shall be presumed to be the normal time for registered or certified mail to actually be received”.

The Panel notes that the regulations contained in §228 pertain to filings and service either by the Office of Workers’ Compensation (OWC) or by the Hearings and Adjudication Section (now entitled Administrative Hearings Division or AHD) or filings by parties with OWC or AHD and do not govern an Application for Review of a Compensation Order with the CRB. Assuming *arguendo*, that a *pro se* litigant or any reviewing body would construe §228 to apply to all filings with the agency including the CRB, the Panel concludes that §228.5 can not be interpreted to give any party an additional three days in which to file an AFR. To the contrary, if this regulation were to apply to filings of AFR, the Panel finds that this regulation could aid only the party who wished to file an AFR, by mailing with return receipt requested, and the party mails it three days or more days prior to the due date but for unknown reasons the document does not arrive on time. That party could then be given the benefit that the document should have been received in three days under §228.5. However, as evidenced by Petitioner’s Certificate of Service in the instant matter, Petitioner did not mail his AFR until June 5, 2007 a day after the date the AFR should have been filed with the CRB pursuant to 7 D.C.M.R. §258.2, thus it is clear he did not intend for the AFR to have been received by June, 4, 2007.

As Respondent points out, the Court of Appeals recently opined in a footnote that to eliminate disputes concerning the time period in which to file an appeal, especially for *pro se* litigants, “the DOES could have stated whether the thirty day time period for the administrative application for review refers to calendar days or to business days”. See *Galligan v. District of Columbia Department of Employment Services*, 918 A.2d 386, 388, fn3(D.C. 2007)³. However, in the instant matter the Appeals Rights attached to the Compensation Order states specifically “the Application for Review must be filed within 30 calendar days of the date of the Certificate of Service”. See also *Washington Hospital Center v. District of Columbia Department of Employment Services*, 743 A.2d 1208 (D.C. December 30, 1999)(The thirty day period for filing an application for review of a compensation order is not controlled by the date on which a party receives the order but rather by the date of the certificate of service on the compensation order).

Inasmuch as Petitioner’s initial correspondence, the Application for Review was not received by the CRB until June 7, 2007, the Panel concludes he has not filed a timely Application for Review under the Act. In that Petitioner’s Application for Review is untimely, the Panel is without authority to address the merits of Petitioner’s appeal or Respondent’s reply or review the record before the ALJ. See *Gooden v. The Washington Post*, CRB (Dir. Dkt.) No. 04-44, OHA No. 97-25A; OWC No. 279073 (March 14, 2005).

³ Unlike *Galligan*, the instant Petitioner did not allege that he was misled as to when to file his AFR by the agency. The Petitioner has not presented any reason, nor has the Panel discerned any reason, for its late filing that would persuade the Panel to invoke equitable principles of waiver, estoppel, or equitable tolling. See *Daniels v. D.C. Water & Sewer Authority*, CRB No. 05-236, OHA No. 04-086, OWC No. 590151 (July 27, 2005); *Neguisse v. Florida Market Chevron*, CRB No. 05-18, OHA No. 03-500, OWC No. 578967 (July 25, 2005).

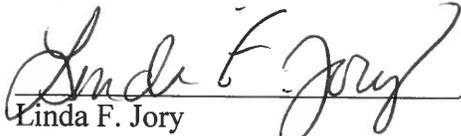
CONCLUSION

Petitioner's Application for Review was not timely filed pursuant to the Act. The Board is, therefore, without authority to address the Petitioner's appeal or review the record created by the ALJ. *See Gooden, supra.*

ORDER

The June 7, 2007 Application for Review is hereby dismissed, as untimely filed.

FOR THE COMPENSATION REVIEW BOARD:



Linda F. Jory
Administrative Appeals Judge

July 17, 2007

DATE