GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

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DIRECTOR

COMPENSATION REVIEW BOARD

DEPT. OF EMPLOYMENT SERVICES
COMPENSATION REVIEW BOARD
2011 DEC 12 PM 1 16

CRB No. 11-026

FRANCES JOHNSON,
Claimant–Petitioner

v.

DISTRICT OF COLUMBIA DEPARTMENT OF PUBLIC WORKS,
Self-Insured Employer-Respondent

Appeal from a Compensation Order of
Administrative Law Judge Fred D. Carney, Jr.
AHD PBL No. 10-059, DCP No. 30081118088-0001

Robert K. Magovern, Esquire, for the Claimant[1]
Justin Zimmerman, Esquire, For the Self-Insured Employer

Before LAWRENCE D. TARR, HENRY W. MCCOY, and HEATHER C. LESLIE,[2] *Administrative Appeals Judges*

LAWRENCE D. TARR, *Administrative Appeals Judge,* for the Compensation Review Board.

DECISION AND ORDER

OVERVIEW

This case is before the Compensation Review Board (CRB) on the request filed by Frances Johnson, for review of the March 15, 2011, Compensation Order (CO) issued by an Administrative Law Judge (ALJ) in the Administrative Hearings Division (AHD) of the District of Columbia's Department of Employment Services (DOES). In that CO, the ALJ dismissed the claimant's Application for Formal Hearing, finding that it was not timely filed. We AFFIRM.

BACKGROUND FACTS OF RECORD

The claimant, Frances Johnson, worked for the District of Columbia Public Works Department as an operator of heavy motor vehicles. The claimant alleges she sustained a work-related injury on November 17, 2008, when she was struck by a street sweeper. She has not returned to work since the accident.

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[1] The claimant was represented by William J. Howard, Esquire, at the formal hearing.
[2] Judge Leslie has been appointed by the Director of DOES as a CRB member pursuant to DOES Policy Issuance No. 11-03 (June 13, 2011).

On or about November 24, 2008, the claimant filed a claim for workers' compensation with the employer's Disability Compensation Program (DCP) (now called the Public Sector Workers' Compensation Program). DCP denied the claim on December 18, 2008, asserting the claimant abandoned her claim because she did not return certain required reports despite DCP twice requesting the reports. The notice of denial advised the claimant that she could request reconsideration within 30 days of the date of the notice.

Eleven months later, on November 13, 2009, the claimant filed a request for reconsideration. On December 16, 2009, DCP issued a Final Decision on Reconsideration that denied the claimant's request for reconsideration because it was not filed within 30 days of the December 18, 2008, notice of denial. The Final Decision on Reconsideration stated that it was DCP's final order and that the claimant had "30 days from the date of this decision to file for a hearing with the Office of Hearings and Adjudication."

The claimant's Application For Hearing, (AFH), dated January 5, 2010, was date stamped on the back as received on January 20, 2010. On January 25, 2010,[3] a staff assistant at AHD sent the claimant a letter that stated:

> We received an incomplete Application for Formal Hearing from you on January 20, 2010. In order to properly process your Application for Formal Hearing, you must forward a copy of your Final Decision on Reconsideration Form from the Office of Risk Management or a Notice of Determination by a claims examiner. If you need to obtain a copy of your Final Decision on Reconsideration Form or Notice of Determination please contact the D.C. Office of Risk Management on: 202-727-8600.

The AFH, dated January 5, 2010, with the proper documents attached, was received by facsimile transmission at AHD on January 27, 2010.

In the March 15, 2011, CO, the ALJ found the claimant filed her request of formal hearing on January 20, 2011, which was more than the 30 days after DCP issued the Final Decision on Reconsideration.

> The Final Decision of [sic] Reconsideration informed Claimant that if she wanted to seek a formal hearing on the decision to deny her reconsideration she would have to request a formal hearing 30 days from the date of the order. On January 20, 2010, Claimant filed a request for formal hearing. The time between December 16, 2009 and January 20, 2010, exceeds 30 days.

CO at 3.

The ALJ dismissed the claim because the request for formal hearing was not filed within the time required by law. The claimant now appeals the ALJ's March 15, 2011, CO.

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[3] The ALJ mistakenly wrote that this letter was sent on January 20, 2010.

THE STANDARD OF REVIEW

Review by the CRB is limited to making a determination as to whether the factual findings of the CO 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. DOES*, 834 A.2d 882 (D.C. 2003). Consistent with this standard of review, this Review Panel will 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.

ANALYSIS

D.C. Code §1-623.24 (b) (1) required that the clamant file her request for formal hearing within 30 days after the date of December 16, 2009. 7 DCMR §106 provides the hearing request "must be returned to the office designated on the form within thirty (30) days of the issuance of the determination."At issue is whether the claimant filed her formal hearing request within 30 days.

In her written statement, the claimant first argues that the ALJ's decision that her AFH was untimely is incorrect because she tried to contact the employer several times within 30 days of December 16, 2009. The claimant also appears to argue that the AFH was timely because it was received by OWC on January 5, 2010.

The Code and Municipal Regulations required that the claimant file her AFH with AHD within 30 days after the date of the decision appealed. There is no provision in the Code that permits tolling or suspending the 30-day filing requirement if a claimant contacts her employer during the 30-day period.

It is settled that a document misfiled at the CRB instead of at AHD will be deemed field at AHD and vice versa *Gooden v. Corner Stone Beulah Christian Academy*, CRB No. 10-172, OWC No. 672678 (March 11, 2011), *Rockefeller v WMATA*, CRB No. 10-108, AHD No. 08-369, OWC No. 597481 (March 10, 2011). In light of the specific statutory and regulatory requirements, a document filed at OWC can not be deemed filed at AHD.

The claimant's other argument challenges the ALJ's factual finding that the AFH was not filed until January 20, 2010. The claimant points to the date that she wrote on the AFH, January 5, 2010, as proof that the AFH was timely filed. The ALJ found that the AFH, although dated January 5, 2010, was not filed at AHD until January 20, 2010.

This finding is supported by the evidence of record. The AFH is date stamped on the back and shows it was not received at AHD until January 20, 2010. Further corroboration that the AFH was received on January 20, 2010, is shown by the January 25, 2010, letter from AHD's staff

assistant that advised the claimant the AFH, without the notice of determination, was received by AHD on January 20, 2010.

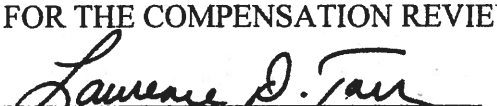
The claimant was required to file her AFH with AHD on or before January 15, 2010, which is 30 days after the December 16, 2010, Final Decision on Reconsideration. The ALJ, working from the date most favorable to the claimant, deemed the AFH as filed on January 20, 2010, notwithstanding the application with complete documentation was not received until the January 27, 2010.

Even using the date most favorable to the Claimant, the AFH was not filed within 30 days. Therefore, the ALJ properly dismissed the claim.

CONCLUSION AND ORDER

The March 11, 2011, Compensation Order is supported by substantial evidence and is in accordance with the law. It is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:



Lawrence D. Tarr
Administrative Appeals Judge

December 12, 2011
DATE