

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. 06-48

DEWAYNE GRAHAM,

Claimant – Petitioner,

v.

GIANT FOOD LLC AND ACE INSURANCE CO./MAC RISK MGT.,

Employer/Carrier - Respondent.

Appeal from an Order of
Claims Examiner Selwyn Johnson
OWC No. 608573

DeWayne Graham, *pro se* Petitioner

Christine L. Raub, Esquire, for the Respondent

Before LINDA F. JORY, JEFFREY P. RUSSELL AND FLOYD LEWIS, *Administrative Appeals Judges*

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 (1994), and the Department of Employment Services Director's Directive, Administrative Policy Issuance 05-01 (February 5, 2005).¹ Pursuant

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 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, 32-1522 (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. Official Code §§ 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.

to § 230.04, the authority of the Compensation Review Board extends over appeals from compensation orders including final decisions or orders granting or denying benefits by the Administrative Hearings Division (AHD) or the Office of Workers' Compensation (OWC) under the public and private sector Acts.

BACKGROUND

This appeal follows the December 9, 2005 issuance by the Office of Workers' Compensation (OWC) in the District of Columbia Department of Employment Services (DOES) of a Final Order, appealable by operation of law which adopted in full a Memorandum of Informal conference originally issued on June 13, 2005. In that Memorandum, which was filed on June 13, 2005, the Claims Examiner concluded that Petitioner's claim for wage loss and medical benefits should be denied due to the lack of evidence to show a causal relationship between Petitioner's alleged stress and a work related event.

As grounds for this appeal, Petitioner alleges that he was improperly denied a hearing with regard to the benefits requested. Respondent has filed a response asserting Petitioner's Application for Review should be dismissed for his failure to comply with the D.C. Municipal Regulations at D.C.M. R. §7-258.6.

ANALYSIS

In the review of an appeal from OWC, the 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). For the reasons set forth herein, the Board concludes herein, that the Claims Examiner's December 9, 2005 Final Order is neither arbitrary, capricious nor an abuse of discretion and is in accordance with the law. The Board further concludes Petitioner was not denied the right to a hearing as he was afforded an extended period of time in which to request a formal hearing pursuant to D.C.M. R. §219.22.

As Respondent correctly asserts, Petitioner's "Application for Review" gives a history as to what occurred after the Memorandum of Informal Conference was issued, and his actions thereafter, but Petitioner has presented no facts or legal argument as to why the Final Order converting the decision of the Informal Conference is incorrect. Petitioner has not alleged any errors of law or provided any basis to support the Application filed. Moreover, as Respondent properly points out, Petitioner has not complied with the regulations promulgated to administer the Act and its amendments, specifically D.C.M.R. § 7-258.6 which requires Petitioner to (a) serve a copy, by mail or personal delivery, copies of same upon the opposing parties who shall be designated the respondents for purposes of proceedings before the Board on appeal and (b) serve a copy on either the AHD or the OWC depending upon which office issued the compensation order or final decision from which the appeal is taken; and (c) file with the Board certification that such service required by this section was effected. D.C.M.R. § 7-258.6.

Upon review of the record, the Panel agrees with all of Respondent's assertions, in particular that Petitioner has failed to present any facts or legal argument as to why the Final Order converting the decision of the Informal Conference is incorrect.

In his letter, which has been accepted as an Application for Review, Petitioner concedes that he received OWC's denial "forms" on August 2, 2005. Although this is one day earlier than the Claims Examiner asserts he resent the Memorandum, it is reasonable to assume Petitioner received the Memorandum of Informal Conference on or about August 4, 2005.² The Panel finds no reason to conclude that the standard "appeal rights" notification was not attached to the Memorandum of Informal Conference which advises any aggrieved parties that they must file an application for a formal hearing in accordance with D.C.M.R. § 220 within 34 working days after the issuance of the Memorandum of Informal Conference and "If an application is not filed, said Memorandum shall be come final". Thereafter, the Office shall issue a Final Order that shall be sent by certified mail to the parties and their representatives."

According to the uncontradicted Final Order, the Claims Examiner, contacted Petitioner on December 7, 2005 when it was determined that he had not requested a Formal Hearing. Petitioner informed the claims examiner that he *did* receive the Memorandum of Informal Conference and he *did not* apply for a Formal Hearing. Having found that the *pro se* Petitioner was provided with an adequate extended period of time in which to file an Application for Formal Hearing, the Panel finds Petitioner's alleged hospitalization on or about December 7, 2005 to be of no consequence given Petitioner's concession that he had received the Memorandum of Informal Conference in August 2005.

CONCLUSION

The Final Order of December 9, 2005 which adopted the Memorandum of Informal Conference denying Petitioner's claim for relief was issued in accordance with the law.

ORDER

The Final Order of December 9, 2005 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

LINDA F. JORY
Administrative Appeals Judge

June 28, 2006

DATE

² The administrative file reveals that the Memorandum of Informal Conference was actually issued by OWC on June 13, 2005, and received by Respondent and its Carrier on June 14, 2005 and June 15, 2005, respectively, but the Claims Examiner agreed to resend the memorandum by regular mail after inquiring of Petitioner why he had not signed the certified card (green card). Petitioner informed the Claims Examiner that he was at work during the day but requested the Memorandum be sent to him by regular mail instead. As noted herein, the Claims Examiner agreed to resend the Memorandum and did so on August 3, 2005. For purposes of Petitioner's appeal rights, the Panel finds it reasonable to extend the time for requesting a formal hearing to 34 business days after August 4, 2005, which the Panel notes, would have been by September 22, 2005.