

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA MARÍA MALLORY
DIRECTOR

CRB 13-074

**POLLY HEYWARD,
Claimant-Respondent,**

v.

**METRO HOMES INC. AND GUARD INSURANCE GROUP,
Employer and Carrier-Petitioner.**

Appeal from a May 23, 2013 Compensation Order on Remand By
Administrative Law Judge Anand K. Verma
AHD No. 12-145, OWC No. 682864

James P. McElwaine, Esquire, for the Claimant
Todd S. Sapiro, Esquire, for the Employer and Carrier

Before LAWRENCE D. TARR, *Chief Administrative Appeals Judge*, MELISSA LIN JONES, and
HENRY W. MCCOY *Administrative Appeals Judges*.

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

ORDER VACATING COMPENSATION ORDER ON REMAND

The claimant, Polly Heyward, filed an Application for Formal Hearing on February 1, 2012, seeking continuing workers' compensation benefits beginning on January 1, 2011, for an alleged injury that she sustained on December 31, 2010, while working as a licensed practical nurse for this employer.

The case was assigned to Administrative Law Judge Belva D. Newsome. The transcript from the May 15, 2012, formal hearing at pages 6-7, shows that claimant's counsel told the ALJ that the parties agreed to reserve disposition of the issues of causal relationship, medical causal relationship, and the nature and extent of the claimant's disability. Counsel told the ALJ that there only was one issue for decision - whether the claimant sustained an injury that arose out of and in the course of employment.

Despite the fact that the claim for benefits was withdrawn, the ALJ entered an award for temporary total disability benefits. The employer appealed the ALJ's decision to the Compensation Review Board (CRB).

The employer also filed a motion with the ALJ asking that she reconsider her decision and a motion with the CRB, asking for a stay of the CO. The ALJ decided on July 31, 2012, that she

did not have jurisdiction to issue a ruling on the Motion for Reconsideration because the employer had already appealed her decision.

After the parties' filed their memoranda, the CRB, concerned that the parties had withdrawn the only issues for which benefits could be awarded, issued a supplemental briefing order that asked the parties to address this issue:

If the CRB finds that the parties agreed to reserve disposition of all issues except whether the accident arose out of and in the course of employment, does the Administrative Law Judge lack jurisdiction to hear this matter because there is no claim for benefits under consideration and the ALJ may not issue an advisory opinion?

After receipt of memoranda, the CRB issued its decision on September 25, 2012.

The CRB held that because the parties withdrew the only claims that would allow for an award, the parties, in effect, were asking the ALJ for an advisory opinion.

The CRB noted that D.C. Code §§ 32-1507, 32-1508, and 32-1509 grants an ALJ authority to issue awards for medical services and supplies (D.C. Code §32-1507), for disability, defined as physical or mental incapacity which results in loss of wages (D.C. Code §1508 and §1501), and when injury causes death (D.C. Code 1509). When those issues were voluntarily withdrawn, there were no issues remaining for which benefits could be awarded. The CRB held

A review of the administrative file and hearing transcript reveals that there was no claim for relief before the ALJ that would allow for an award to be issued. Stated another way, the Claimant was not seeking an award of disability benefits or payment of causally related medical bills under D.C. Code §§ 32-1508, 32-1509, and 32-1507 which would grant the ALJ authority to adjudicate this case...

An ALJ is not granted the authority to issue advisory opinions. Under the Act, the ALJ's authority is limited to adjudicating claims for compensation, that is, claims for which a payment for disability, death, or for medical services and supplies. D.C. Code §§ 32-1508, 32-1509, and 32-1507.

When the parties withdrew from the ALJ's determination the contested issues of causal relationship, medical causal relationship and nature and extent of disability, they withdrew the only contested issues in this case for which an award of compensation can be made. Therefore, the ALJ did not have authority to decide the issue of whether the claimant sustained an accidental injury arising out of and in the course of her employment.

Heyward v. Metro Homes Inc., CRB 12-123, AHD No. 12-145, OWC No. 682864 (September 25, 2012).¹

¹ Claimant's counsel erroneously stated in his memorandum that the CRB did not cite any statutory authority to support its decision.

The CRB reversed the ALJ's CO and vacated the award of benefits.

Neither party filed a motion for reconsideration with the CRB nor did claimant's counsel file an appeal of the CRB's decision with the District of Columbia Court of Appeals. The CRB's September 25, 2012, Decision and Order became final after 30 days.

Despite the fact that the CRB had reversed and vacated the award and did not remand the case to AHD, ALJ Anand K. Verma, without any claim before him, issued a Compensation Order on Remand finding that the claimant's injury arose out of and in the course of employment.

The ALJ exceeded his authority when he *sua sponte* issued a decision eight months after a final decision in a case for which there was no pending claim. The CRB must vacate the COR issued as a result of the ALJ's *ultra vires* action in issuing the May 23, 2013, Compensation Order on Remand.

ORDER

The ALJ's May 23, 2013 Compensation Order on Remand was issued without legal authority and is hereby VACATED.²

FOR THE COMPENSATION REVIEW BOARD:

LAWRENCE D. TARR
Chief, Administrative Appeals Judge

August 8, 2013
DATE

² In light of our decision, the claimant's motion for an expedited decision is denied.