

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA MARÍA MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 13-094

MARVIN HILL,
Claimant–Petitioner,

v.

HARKLESS CONSTRUCTION AND ERIE INSURANCE COMPANY,
Employer & Carrier - Respondents

An Appeal from a June 24, 2013 Compensation Order by
Administrative Law Judge Gerald Roberson
AHD No. 13-214, OWC No. 697121

Eugene I. Kane, Esquire, for the Claimant
Andrew T. Nichols, Esquire, for the Employer

Before: HEATHER C. LESLIE, HENRY W. MCCOY, *Administrative Appeals Judges* and LAWRENCE D.
TARR, *Chief Administrative Appeals Judge*

HEATHER C. LESLIE, *Administrative Appeals Judge*, for the Compensation Review Board.

DECISION AND ORDER

OVERVIEW

This case is before the Compensation Review Board (CRB) on the request for review filed by the Claimant - Petitioner (Claimant) of the June 24, 2013, Compensation Order (CO) issued by an Administrative Law Judge (ALJ) in the Office of Hearings and Adjudication of the District of Columbia Department of Employment Services (DOES). In that CO, the Claimant's request for disability benefits was denied.

FACTS OF RECORD AND PROCEDURAL HISTORY

On June 27, 2012, the Claimant was injured while working. The Claimant was working in a manhole when an explosion occurred, causing an electrical shock to the Claimant. The Claimant suffered burns to his face and left arm. The Claimant sought medical treatment and was diagnosed with a concussion, left arm abrasions, and 1st and 2nd degree burns to his face and left arm. The Claimant was out of work until August 2, 2012.

A full evidentiary hearing was held on May 9, 2013. The Claimant sought an award of temporary total disability benefits from June 27, 2012 to the present and continuing and payment of related medical expenses. The issues raised by the Employer were whether the receipt of compensation pursuant to the laws of Maryland bars a claim for compensation under D.C. Code § 32-1503(a-1), the nature and extent of Claimant's disability, and whether the Claimant was entitled to penalties. A CO was issued on June 24, 2013 denying the Claimant's claim for relief. The ALJ concluded that while D.C. Code § 32-1503(a-1) does not bar the Claimant from filing a claim in the District of Columbia, the Claimant failed to prove by a preponderance of the evidence the nature and extent of his disability.

At 11:49pm on July 24, 2013, the Claimant, through counsel, faxed a 7 page document titled "Employee Marvin Hill Application for Review" as well as a "Memorandum in Support of Employer E.G. Farmer Transport Application for Review Before the CRB" to the Office of Workers Compensation.¹ The Claimant sought a reversal of the Compensation Order.

The Compensation Review Board received the fax on July 25, 2013.

On August 9, 2013, the Employer filed an opposition to the Claimant's application for review.

STANDARD OF REVIEW

The scope of review by the CRB, 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 on Remand 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. Comprehensive Merit Personnel Act of 1978, as amended, D.C. Code § 1-623.01, *et seq.*, at § 1-623.28(a), and *Marriott International v. DOES*, 834 A.2d 882 (D.C. 2003).

Consistent with this standard of review, the CRB is 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.

ANALYSIS

We note that as a matter of law, if an application for review is not properly filed, the CRB does not have the authority to consider an application for review.

¹We are uncertain who E.G. Farmer Transport is this Employer is not a party to this case. We will treat this as a typographical error as the Claimant, Marvin Hill is the Petitioner and the body of the memorandum refers to the circumstances surrounding this case.

D.C. Code § 32-1522(a) states in pertinent part:

A party aggrieved by a compensation order may file an application for review with the Board within 30 days of the issuance of the compensation order.

Thus, in order to be timely, the Application for Review should have been filed with the CRB by July 24, 2013, 30 days after the June 24, 2013 Compensation Order. The CRB did not receive the fax until June 25, 2013.

In addition, 7 DCMR § 7-257.3 states:

Submission of documents, including the Application for Review, by facsimile (fax) transmission or email does not constitute filing and shall not be accepted for filing.

A review of the administrative file reveals that Claimant's Counsel only submitted a fax copy of the Application for Review. The Claimant failed to file an Application for Review with the Compensation Review Board either by U.S. mail, commercial overnight delivery, inter-government mail, or personal delivery in a timely fashion.²

Pursuant to 7 DCMR § 7-257.3, the faxed documents filed by Claimant do not constitute a proper filing and shall not be accepted by the CRB. As such, the CRB is without jurisdiction to consider the appeal.

ORDER

The Application for Review is dismissed.

FOR THE COMPENSATION REVIEW BOARD:

HEATHER C. LESLIE
Administrative Appeals Judge

September 16, 2013

DATE

² 7 DCMR § 7-257.2.