

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. 05-30

HODGES JONES,

Claimant - Respondent

v.

HADLEY MEMORIAL HOSPITAL,

Self-Insured Employer – Petitioner

Appeal from an Order of  
Claims Examiner Letitia P. Settle  
OWC No. 195191

Bonnie J. Brownell, Esquire for the Petitioner

W. Scott Fungler, Esquire for the Respondent

Before: LINDA F. JORY, FLOYD LEWIS and SHARMAN J. MONROE, *Administrative Appeals Judges*.

FLOYD LEWIS, *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).<sup>1</sup>

<sup>1</sup> 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, 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,

## BACKGROUND

This appeal follows the issuance of a Supplemental Award of Attorney's Fee Order from the Office of Workers' Compensation (OWC) in the District of Columbia Department of Employment Services (DOES). In that Order, which was filed on December 7, 2004, OWC granted the request of Claimant-Respondent (Respondent) that attorney's fees in the amount of \$5,685.00 be assessed against Employer-Petitioner (Petitioner). Petitioner now seeks review of that Order.

As grounds for this appeal, Petitioner alleges as error that the Order is not supported by substantial evidence and is not in accordance with the law.

## ANALYSIS

In the review of an appeal from the Office of Worker's Compensation (OWC), the Compensation Review Board must affirm the Compensation Order or Final Decision 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, § 51.03 (2001).

A November 30, 2001 Compensation Order awarded Respondent permanent partial disability benefits for the left and right lower extremities and the right upper extremity. On May 21, 2002, the Director issued a Decision and Remand Order directing further review of this case to determine whether Respondent was entitled to temporary or permanent total disability benefits. On December 17, 2003, a Compensation Order on Remand was issued awarding Respondent permanent total disability benefits. The Compensation Order of December 17, 2003 was not appealed.

On February 4, 2004, Respondent petitioned OWC for an award of attorney's fees in the amount of \$5,685.00 for work done before OWC. On December 7, 2004, OWC granted Respondent's request in a Supplemental Award of Attorney's Fees, which Petitioner contends should be reversed.

As grounds for this appeal, Petitioner alleges as error that the Supplemental Award of Attorney's Fees is not in accordance with the law. In its appeal, Petitioner states that D. C. Official Code § 32-1530(a) "is not applicable here as there is no allegation that benefits were not paid within thirty days of receipt of written notice of a claim." Thus, Petitioner argues that under D.C. Official Code § 32-1530(b) and *Providence Hosp. v. Dist. of Columbia Dep't. of Employment Servs.*, 855 A.2d 1108, 1113 (D.C. 2004) and *National Geographic Soc'y v. Dist. of Columbia Dep't. of Employment Servs.*, 721 A.2d 618, 621

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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.

(D.C. 1998), since Petitioner did not reject a Memorandum of Informal Conference, Respondent is not entitled to an award of attorney's fees in this matter.

However, despite Petitioner's contention that there is no allegation that Petitioner declined to pay compensation within thirty days after receiving notice that a claim had been filed, the record reveals that in Respondent's Petition for Attorney's Fees that was submitted to OWC, Respondent clearly states that Petitioner failed to pay within 30 days and cites D.C. Official Code § 32-1530(a) as the basis and authority for seeking approval of his request for fees from OWC.. Paragraph 27 of the petition reads, "If an Employer or Carrier refuses to pay benefits within 30 days of a claim, and the claimant thereafter uses an attorney to successfully prosecute this claim, a reasonable attorney fee may be awarded against the employer or carrier in an amount approved by the director."

Moreover, again, in his response to Petitioner's appeal in this matter, Respondent reiterates that "Section 32-1530(b) is inapplicable to the claimant's attorney's fee petition because the employer never paid or tendered payment of compensation without an award pursuant to this chapter, therefore Section 32-1530(a) and not Section 32-1530(b) is the basis for an award of claimant's attorney fees in the instant case."

After reviewing, the record as a whole and considering the arguments and counterarguments raised by the parties in this appeal, this Panel concludes that the Supplemental Award of Attorney's Fee is in accordance with the law and should not be disturbed.

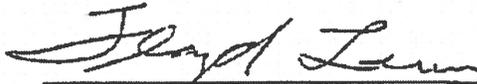
#### CONCLUSION

The Supplemental Award of Attorney's Fee of December 7, 2004, which granted Respondent's request for attorney's fees in the amount of \$5,685.00 for work done before OWC is not arbitrary, capricious or an abuse of discretion and is in accordance with the law.

**ORDER**

The Supplemental Award of Attorney's Fee of December 7, 2004 is hereby **AFFIRMED**.

**FOR THE COMPENSATION REVIEW BOARD:**

A handwritten signature in cursive script, appearing to read "Floyd Lewis", written over a horizontal line.

**FLOYD LEWIS**  
Administrative Appeals Judge

**SEP 27 2005**  
DATE