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. 07-68

HORACE HENSLEY,

Claimant – Petitioner

v.

CHEECHI & COMPANY AND ATLANTIC MUTUAL INSURANCE,

Employer/Carrier – Respondent.

Appeal from an Order of
Administrative Law Judge Melissa Lin Klemens
AHD No. 92-359I, OWC No. 115568

Horace Hensley, *pro se* Petitioner

Alan M. Carlo. Esquire, for the Respondent

Before: E. COOPER BROWN, *Chief Administrative Appeals Judge*, FLOYD LEWIS and SHARMAN J. MONROE, *Administrative Appeals Judges.*

SHARMAN J. MONROE, *Administrative Appeals Judge*, on behalf of the Review Panel:

ORDER OF DISMISSAL

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).[1]

[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 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

BACKGROUND

In an Order dated December 6, 2006, ALJ Klemens dismissed the Claimant-Petitioner's (Petitioner) Application for a Formal Hearing filed on September 21, 2006. Inasmuch as the Petitioner had numerous cases pending further adjudication or appeal which also addressed the identical claim for relief requested by the Petitioner, the ALJ determined that she lacked jurisdiction to adjudicate the Petitioner's current hearing request and accordingly dismissed the Application.

In an Order dated February 1, 2007, ALJ Klemens ordered that the Petitioner's request of January 19, 2007 to adjudicate to the same issues presented in his September 21, 2006 Application for a Formal Hearing be "held in abeyance until all other outstanding Orders become final." The Petitioner appeals both Orders.

The appeal of the December 6, 2006 Order was assigned the file number CRB No. 07-23. The appeal of the February 1, 2007 Order was assigned the file number CRB No. 07-68. These appeals were consolidated by the CRB's Order of Consolidation dated April 11, 2007 and ordered to proceed under the file number CRB No. 07-68.

ANALYSIS

As an initial matter, the standard of review by the Compensation Review Board (CRB) and this Review Panel, 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 are based upon substantial evidence in the record, and whether the legal conclusions drawn from those facts are in accordance with applicable law. D.C. Official Code § 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 Int'l. v. District of Columbia Department of Employment Services*, 834 A.2d 882 (D.C. App. 2003). Consistent with this standard of review, the CRB and this Review Panel are 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.

7 DCMR § 251.2 states:

> The authority of the Board is quasi-judicial in nature, involving the review and determination of appeals from compensation orders (including *final decisions or orders granting or denying benefits*) by the Administrative Hearings Division and/or the Office of Workers' Compensation under the Public Sector and Private Sector Acts, consistent with statutory authority.

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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. 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.

[emphasis added].

See also 7 DCMR § 258.1 (an appeal to CRB is from a compensation order or final decision of the AHD).

A final decision or judgment is a court's last action that settles the rights of the parties and disposes of all issues in controversy that are presented to the court for resolution at a given time. *See* Black's Law Dictionary (7th Ed.) at 847. On the other hand, a decision or order that is an interim or temporary action, not constituting a final resolution of the whole controversy presented to the court for resolution at a given time is considered an interlocutory order. An interlocutory order is, unless otherwise stated, not appealable. *See* BLACK'S LAW DICTIONARY at 819, 1123 (7th Ed.). These definitions embody the final judgment rule of D.C. Official Code § 11-721(a) which describes the jurisdiction of the D.C. Court of Appeals.[2] Under this provision, to be final and therefore reviewable, an order must dispose of the whole case on its merits so that the court has nothing remaining to do but to execute the judgment or decree already rendered. *Dyer v. William S. Bergman & Associates*, 635 A.2d 1285 (1993). As the CRB is not a court in the judicial system of the District of Columbia, it is not bound by the rules of procedure governing the D.C. Superior Court and the D.C. Court of Appeals, but may rely on them for procedural issues where appropriate. *See* 7 DCMR § 261.4. Given the quasi-judicial nature of the CRB, the Panel determines that the terms "final decisions or orders granting or denying benefits" in 7 DCMR § 251.2 as it relates to AHD refer to a decision or order from AHD which dispose of the whole case as presented to an ALJ on its merits.

Therefore, the question before the Panel is whether the Orders appealed are final orders from AHD. If they are not, they are interlocutory orders which are not appealable.

In the Order of December 6, 2006, the ALJ dismissed the Petitioner's September 21, 2006 Application for Formal Hearing given the number of outstanding cases pending appeal or further adjudication between the parties on the same or similar issues as presented in the Application. The ALJ noted in the Order that the Petitioner voluntarily withdrew his Application. The Petitioner did not dispute this statement in his appeal. Inasmuch as the ALJ did not specify that the dismissal was with prejudice together with fact of the Petitioner's voluntary withdrawal of his Application, the December 6, 2006 Order was a dismissal without prejudice. This type of dismissal gives the Petitioner the right to re-file at a later date. Accordingly, the ALJ did not decide the merits of the Petitioner's Application for Formal Hearing, did not settle the rights of the parties or dispose of the issues in controversy. The December 6, 2006 was not a final order, but an interlocutory order not appealable to the CRB.

Likewise the February 1, 2007 Order was an interlocutory order not appealable to the CRB. In the Order, the ALJ stated that the Petitioner's letter of January 19, 2007 raised the same issues that he raised in his September 21, 2006 Application for Formal Hearing, which was dismissed via the December 6, 2006 Order. The ALJ determined that, given the Petitioner had appealed the December 6, 2006 Order to the CRB, for jurisdictional reasons, the issuance of any further orders

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[2] D.C. Official Code § 11-721(a), in pertinent part, states:

> (a) The District of Columbia Court of Appeals has jurisdiction of appeals from --
>
> (1) all final orders and judgments of the Superior Court of the District of Columbia; . . .

in matters of the Petitioner versus the Respondent were to be "held in abeyance until all other outstanding Orders become final." In other words, the ALJ put the requests for resolution in the Petitioner's January 2007 "on hold"; the ALJ did not settle the rights of the parties or dispose of the issues in controversy. In addition, the Panel discerns no abuse of discretion, arbitrariness or capriciousness on the part of the ALJ in issuing such an order, either in December or in February, until the other outstanding matters are resolved.

ORDER

Accordingly, Petitioner's December 15, 2006 and February 7, 2007 Applications for Review are hereby DISMISSED.

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FOR THE COMPENSATION REVIEW BOARD:

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SHARMAN J. MONROE
Administrative Appeals Judge

April 23, 2007
DATE