

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

Department of Employment Services

MURIEL BOWSER  
MAYOR



DEBORAH A. CARROLL  
DIRECTOR

**COMPENSATION REVIEW BOARD**

**CRB No. 15-194**

**HORACE HENSLEY,  
Claimant–Petitioner,**

v.

**CHEECHI & COMPANY and  
ATLANTIC MUTUAL INSURANCE COMPANY,  
Employer/Insurers-Respondents.**

Appeal from a November 20, 2015 Order  
by of Administrative Law Judge Nata K. Brown  
AHD No. 92-359K, OWC No. 115568

DEPT. OF EMPLOYMENT  
SERVICES  
COMPENSATION REVIEW  
BOARD  
2016 MAY 5 PM 12 36

(Decided May 5, 2016)

Horace E. Hensley, Pro Se  
Alan M. Carlo for Employer

Before HEATHER C. LESLIE, LINDA F. JORY, and JEFFREY P. RUSSELL, *Administrative Appeals Judges.*

HEATHER C. LESLIE, for the Compensation Review Board.

**DECISION AND ORDER**

**FACTS OF RECORD AND PROCEDURAL HISTORY**

The underlying facts of the injury and treatment are described by the Compensation Review Board (CRB) in a prior Decision and Order: [REDACTED]

Claimant was a comptroller for Employer for 7 months, from May 1986 until December 11, 1986. Claimant had a pre-existing arthritic condition, ankylosing spondylosis. While working for this Employer in October and November 1986, Claimant began experiencing neck and back pain. He stopped working on December 11, 1986, and has not worked since.

This case has been the subject of many prior orders. Pertinent to the present review, on October 20, 1987, Claimant was awarded continuing temporary total disability benefits beginning on January 1, 1987. The hearing officer found that Claimant's work-related activities exacerbated his pre-existing ankylosing spondylitis condition, rendering him temporary totally disabled. *Hensley v. Cheechi & Co.*, H&AS No. 87-437, OWC No. 115568 (October 20, 1987).

In 1993, Claimant was found to be permanently and totally disabled. See *Hensley v. Cheechi & Co.*, OHA No. 92-359D, OWC No. 115568 (April 15, 1999).

On March 18, 2003, the Director of the Department of Employment Services (DOES), who at that time decided appeals of workers compensation orders, reversed and remanded an Administrative Law Judge's (ALJ) 2002 decision that denied Claimant's request for home attendant care services administered by a relative, to assist with daily functions, such as getting in and out of bed, getting dressed and undressed, preparing daily meals and medication. The Director held

Claimant has a severe disabling inflammatory disease, ankylosing spondylitis (AS), involving at least the cervical spine, lumbar spine, hips, knees, ankles and wrist. This condition prevents Claimant from doing most daily routine tasks and his condition continues to degenerate.

*Hensley v. Cheechi & Co.*, Dir. Dkt, No. 02-71, H&AS NO. 92-359E, OWC No. 115568 (March 18, 2003).

Claimant appealed the Director's decision to the District of Columbia Court of Appeals (DCCA). The DCCA dismissed the appeal without addressing the merits of the decision. In his opinion after the remand, the ALJ denied the claim, without prejudice, because neither party had submitted the issue of the reasonableness and necessity of the home attendant care services to Utilization Review. *Hensley v. Cheechi & Co.*, OHA 92-359E, OWC No. 115568 (March 28, 2007).

On February 3, 2010, another Compensation Order (CO) was issued, denying Claimant's request for expense reimbursement and awarded Claimant 20% penalties as a result of Employer's alleged failure to timely pay cost of living adjustments from February 22, 1990 through July 13, 1997. In that CO, the ALJ determined Claimant's bilateral hip and knee problems, recommended neck surgery, fibromyalgia, enthesopathy, restrictive lung disease, heart ailment, an eye condition, gastroenterology services, as well as problems with his ankles and wrists were not medically causally related to the work injury. *Hensley v. Cheechi & Co.*, OHA 92-359J, OWC No. 115568 (February 3, 2010). In a June 29, 2011 Decision and Order, the CRB affirmed the order's denial of expense reimbursement but reversed the award of penalties. *Hensley v. Cheechi & Co.*,

CRB 10-075, OHA 92-359J (June 29, 2011). Claimant appealed the decision to the DCCA.

On August 16, 2012, the DCCA affirmed all but one of the CRB's holdings. The DCCA affirmed the CRB's determinations on the ALJ's findings regarding the Claimant's failure to prove that the claimed medical conditions and services were causally related to the work accident, the CRB's determination that the employer did not act in bad faith, and the CRB's finding that the employer was not liable for the claimed reimbursements. *Hensley v. Cheechi & Co*, 49 A.3d 1195 (D.C. 2012).

Claimant subsequently filed for a Formal Hearing requesting a modification of the prior February 3, 2010 in the fall of 2013. A scheduling order was issued and a pre-hearing conference conducted on December 3, 2013. On December 26, 2013, an Order Denying Motion for Modification, stating that the issue presented, modification of the February 3, 2010 CO, was *res judicata* pursuant to *Walden v. DOES*, 759 A.2d 186, 189 (D.C. 2000).

Claimant timely requested review of the ALJ's decision.

*Hensley v. Cheechi & Company*, CRB No. 14-011 (April 22, 2014) (DO) (Footnotes omitted.).

The CRB affirmed the ALJ's determination that the issues presented by Claimant were barred by the principles of *res judicata*.

Claimant appealed the DO to the DCCA which affirmed the CRB's decision. The DCCA stated:

In this case, we readily affirm the CRB's Decision and Order, because the CRB (and the ALJ) correctly recognized that the principle of *res judicata* bars petitioner from relitigating the issues that were resolved in *Hensley I*.

*Hensley v. Cheechi & Company*, No. 14-AA-507, Mem. Op. & J. (D.C. April 22, 2015).

On September 30, 2015, Claimant filed a Motion to Lift Stay Dated January 17, 2014, a Motion to Rescind AHD No. 92-359K, December 26, 2013 Order Denying Motion to Compel Discovery. Those motions were denied on November 20, 2015. This appeal followed.

#### ANALYSIS<sup>1</sup>

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<sup>1</sup> In review of an appeal which is based not upon factual findings made on an evidentiary record, but rather is based upon review of the administrative record, the filings of the parties, and the orders, 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 & Mezones, ADMINISTRATIVE LAW, § 51.03 (2001).

Claimant makes several arguments, many which again address issues raised in the October 14, 2013 Application for Formal Hearing and the December 26, 2013 Order Denying Modification. See Claimant's argument at 2-3. Claimant ultimately requests:

...that the AHD No. 92-359(K), November 20, 2015 Order be vacated and remanded to AHD, with instructions, to compel Employer to provide requested Discovery; to allow Status Conference based on his pro se status (As allowed in Claimant's Exhibit 2.8.1 Jun 4, 2004 (p.1); to conduct a Formal Hearing on Claimant's AHD No. 92-359K submission addressing all stated issues; and rescind the AHD No. 92-359K, December 26, 2013.

Claimant's argument at 3, 4.

Claimant finally asks this panel to "reaffirm case law" referencing several past orders and evidence.

As the ALJ stated in her November 20, 2015 Order:

Claimant's request has already been granted. The parties appeared at AHD on December 2, 2013 for a Pre-Hearing Conference, the issues were heard, and two orders, Order Denying Motion for Modification of Award and Order Denying Motion to Compel Discover were issued by the undersigned on December 26, 2013. There is no record of a Motion to Lift Stay in the file to be addressed. The CRB affirmed the Order Denying Motion to Compel Discovery, and the DCCA declined to hear Claimant's petition.

We agree with the ALJ. As stated in our prior DO, affirmed by the DCCA, Claimant cannot now relitigate the same issues presented to the ALJ in December of 2013. Specifically,

A review of Claimant's arguments surround the legal ramifications of prior orders from the Administrative Hearings Division (AHD) and that the ALJ erred in not modifying the February 10, 2010 order, and argues many, if not all, of the same arguments that have been presented before not only to AHD, but also to the DCCA.

DO at 3.

Re-litigation of any issues presented to the ALJ, and decided of in the December 26, 2013 Order under AHD No. 92-359(K) is barred by the principles of *res judicata*. The CRB and DCCA affirmed the order which is now final and not rescindable, as Claimant urges in this appeal.

As for Claimant's other arguments, including any request for a clarification or definitive statement on prior orders or evidence, we again refer Claimant to our prior DO and the DCCA decision.

#### CONCLUSION AND ORDER

The November 20, 2015 Order Denying to Lift Stay, Denying Motion to Rescind AHD No. 92-359K and Order Denying to Compel Discovery is neither arbitrary, capricious, nor an abuse of discretion, and is in accordance with the law. It is AFFIRMED.

*So ordered.*