

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services
Labor Standards Bureau

Office of Hearings and Adjudication
COMPENSATION REVIEW BOARD



(202) 671-1394-Voice
(202) 673-6402 - Fax

CRB No. 08-073

JIMMY HARRIS,

Claimant – Petitioner,

v.

D.C. DEPARTMENT OF MOTOR VEHICLES,

Self-Insured Employer – Respondent.

Appeal from a Compensation Order of
Administrative Law Judge Fred D. Carney, Jr.
AHD No. PBL 92-016C, ODC No. LTDMV005141

Jimmy Harris, Petitioner *Pro Se*

Andrea G. Comentale, Esq., for Respondent

Before E. Cooper Brown, Chief Administrative Appeals Judge, FLOYD LEWIS and SHARMAN J. MONROE, *Administrative Appeals Judges*.

E. COOPER BROWN, *Chief Administrative Appeals Judge*, on behalf of the Review Panel:

DECISION AND ORDER

JURISDICTION

Jurisdiction is conferred upon the Compensation Review Board (CRB) pursuant to D.C. Official Code § 1-623.28, § 32-1521.01, 7 DCMR § 118, and DOES Director's Directive Administrative Policy Issuance No. 05-01 (Feb. 5, 2005).

OVERVIEW

This appeal follows the issuance of a Compensation Order by the Administrative Hearings Division (AHD), Office of Hearings and Adjudication, District of Columbia Department of Employment Services. In that Compensation Order, which was issued on October 31, 2007, the Administrative Law Judge (ALJ) denied the Claimant-Petitioner's (Petitioner) request for an award of permanent partial disability benefits from April 15, 1990 to the present and continuing, and payment of related medical expenses. In rejecting Petitioner's claim, the presiding ALJ held

that the instant claim was litigated and resolved pursuant to a previously issued Compensation Order and thus barred by the legal doctrine of *res judicata* which prevents the relitigation of a previously decided claim.

Pursuant to a submission filed with the Department of Employment Services on December 4, 2007,¹ Petitioner challenges the October 31, 2007 Compensation Order, asserting on the merits that he is entitled to the claimed award of disability benefits. In opposition, Respondent asserts that Petitioner's Application for Review is untimely filed and that the merits of Petitioner's claim having been previously decided, the Compensation Order properly rejected Petitioner's attempt to renew that claim as a matter of *res judicata*.

As hereafter more fully discussed, this Review Panel holds that Petitioner's Application for Review was not timely filed with the CRB and that in any event *res judicata* bars relitigation of Petitioner's claim.

ANALYSIS

As an initial matter, the scope of review by the Compensation Review Board 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. *See* D.C. Comprehensive Merit Personnel Act of 1978, as amended, D.C. Official Code § 1-623.28 (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. 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.

Turning to the case under review herein, we necessarily first address Respondent's challenge to the CRB's jurisdiction based upon the assertion that Petitioner's Application for Review was not timely filed within the statutorily mandated thirty (30) calendar day period from the date of issuance of the Compensation Order. As a matter of law, if the Application for Review was not timely filed, the CRB does not have not have the authority to consider Petitioner's appeal.

D.C. Official Code § 1-623.28(a) states in pertinent part:

The Director of the Department of Employment Services may review an award for or against payment of compensation on application by either the claimant or the Office of the Attorney General. An application for review pursuant to this subsection must be filed within 30 days after the date of the issuance of the decision of the Mayor or his or her designee pursuant to § 1-623.24(b)(1). . . .

¹ *See* discussion, *infra*.

In addition, 7 DCMR § 118.2 states:

Any party adversely affected or aggrieved by a compensation order or final decision issued by the Administrative Hearings Division with respect to a claim for disability benefits pursuant to Title XXIII of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (D.C. Official Code § 1-623.1 *et seq.* (2001)) may appeal said compensation order or final decision to the Board by filing an Application for Review with the Board within thirty (30) calendar days from the date shown on the certificate of service of the compensation order or final decision in accordance with and pursuant to the provisions of 7 DCMR § 258.

The Compensation Order herein appealed was issued by AHD on October 31, 2007. Pursuant to the foregoing provisions, a timely Application for Review would thus have had to have been filed with the CRB on or before November 30, 2007. In arguing that Petitioner's Application for Review is untimely, Respondent cites to Petitioner's submission filed with the CRB on January 9, 2008 entitled "Amendment" which was accompanied by Petitioner's "Answer to Compensation Order" (dated November 30, 2007). The January 9, 2008 filing is not, however, determinative of the timeliness of Petitioner's Application for Review. Rather, this Review Panel takes administrative notice of the filing by Petitioner on December 4, 2007 of the November 30, 2007 "Answer to Compensation Order" with AHD. Although not expressly articulated as an Application for Review, and not otherwise conforming with the requirements set forth in the CRB Regulations for such filings (*see* 7 DCMR § 258), in light of the fact that Petitioner appears *pro se*, without legal representation, pursuant to established precedent this Review Panel will treat Petitioner's submission as his Application for Review and December 4, 2007 as the AFR filing date notwithstanding that the submission was filed with AHD. *See e.g., Covington v. Metro Pets Pals, L.L.C.*, CRB (Dir.Dkt.) No. 03-97, OHA No. 02-448A (March 18, 2005).

Treating December 4, 2007 as the AFR filing date, Petitioner's Application for Review is nevertheless untimely filed because the 30-day period for filing an appeal with the CRB, as mandated by D.C. Official Code § 1-623.28(a) and & 7 DCMR § 118.2, expired on November 30, 2007, several days before Petitioner's filing. In that Petitioner's Application for Review is untimely, notwithstanding the filing with AHD, the CRB is without jurisdictional authority to review and address the merits of Petitioner's appeal. *See Gooden v. The Washington Post*, CRB (Dir. Dkt.) No. 04-44, OHA No. 97-25A; OWC No. 279073 (March 14, 2005). *See generally Jackson v. D.C. Department of Corrections*, Dir. Dkt. No. 25-03, PBL No. 96-92A (July 13, 2004).

Because we hold that Petitioner's Application for Review was not timely filed with the CRB, we need not address the merits of Petitioner's appeal. Even so, we note that had this Review Panel ruled otherwise with respect to the timeliness of Petitioner's AFR and reached the merits of Petitioner's appeal, we nevertheless would have affirmed the Compensation Order's rejection of Petitioner's claim as barred by *res judicata*. As the ALJ concluded, Petitioner's claim for temporary total disability benefits pursuant to the instant action, based upon the injuries he

sustained due to his work-related accident in February of 1990, is effectively the same claim or claims previously disposed of on the merits pursuant to prior Compensation Orders issued by the Office of Hearings and Adjudication. “When a claim of any kind has been finally adjudicated on the merits, *res judicata* precludes the relitigation of the same claim between the same parties in subsequent litigation.” *Walden v. D.C. Dept. of Employment Services*, 759 A.2d 186, 189 (D.C. 2000) (citations omitted). The Court of Appeals has held that *res judicata* and the related doctrine of collateral estoppel² are applicable in administrative proceedings when the agency is acting, as in the instant proceedings, in a judicial capacity “resolving disputed issues of fact properly before it which the parties have an adequate opportunity to litigate.” *Walden*, 759 A.2d at 189; *Oubre v. D.C. Dept. of Employment Services*, 630 A.2d 699, 703 (D.C. 1993).

CONCLUSION

Petitioner’s Application for Review is untimely filed, having not been filed within thirty calendar days of the date of issuance of the Compensation Order herein appealed.

ORDER

Petitioner’s Application for Formal Hearing is DISMISSED as untimely filed, and the Compensation Order herein appealed AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

E. COOPER BROWN
Chief Administrative Appeals Judge

April 29, 2008

DATE

² Parties are also precluded under the related doctrine of collateral estoppel from relitigating issues of law or fact which have actually been decided in an earlier proceeding between the parties. *Goldkind v. Snider Brothers, Inc.*, 467 A.2d 468, 473 (D.C. 1983).