

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. 07-164

JOSEPH MURRAY,

Claimant–Petitioner,

v.

PAUL BROTHERS, INC., AND SAFECO INSURANCE CO. OF AMERICA,

Employer/Carrier–Respondent.

Appeal from a Compensation Order of  
Administrative Law Judge Amelia G. Govan  
AHD No. 06-296, OWC No. 592695

Joseph Murray, Petitioner *pro se*

Mary G. Weidner, Esquire, for the Respondent

Before E. COOPER BROWN, *Chief Administrative Appeals Judge*, JEFFREY P. RUSSELL and SHARMAN J. MONROE, *Administrative Appeals Judges*.

JEFFREY P. RUSSELL, *Administrative Appeals Judge*, for the Review Panel; JEFFREY P. RUSSELL, *Administrative Appeals Judges*, dissenting in part:

**DECISION AND ORDER**

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>

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<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 District of Columbia Workers’ Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, *codified at* D.C. Official Code § 32-1521.01. In accordance with the Director’s Directive, the CRB replaces the Office of the Director in providing administrative appellate review and disposition of workers’ and disability compensation claims arising under the District of Columbia Workers’ Compensation Act of 1979, as amended, D.C. Code Ann. §§ 32-1501 to 32-1545 (2005), and the District of Columbia 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 District of Columbia Workers’ Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004.

## BACKGROUND

This appeal follows the issuance of a Compensation Order from the Administrative Hearings Division (AHD), Office of Hearings and Adjudication (OHA), the District of Columbia Department of Employment Services (DOES). In that Compensation Order, which was filed on August 13, 2007, the Administrative Law Judge (ALJ) denied Claimant-Petitioner's (Petitioner) claim seeking an award under the Act for temporary partial disability benefits from September 1997 to 2001, and for permanent partial disability benefits from 2001 to April 26, 2006. Petitioner filed an Application for Review (AFR) with the Compensation Review Board on September 20, 2007 seeking review of that Compensation Order.

As grounds for this appeal, Petitioner alleges many errors, too numerous and non-specific to recount. Suffice it to say that he disagrees with the denial of his claims, and that he believes that the ALJ's decision is not supported by substantial evidence, and is not in accordance with the law.

Because the Compensation Order is supported by substantial evidence and is in accordance with the law, we affirm.

## ANALYSIS

As an initial matter, the scope 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. *See* D.C. Workers' Compensation Act of 1979, as amended, D.C. Code Ann. § 32-1501 to 32-1545 (2005), at § 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 International v. District of Columbia Dep't. of Employment Serv's.*, 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.

We have reviewed the Compensation Order and the record herein, and detect no errors on the part of the ALJ. Each finding of fact is amply supported by record evidence, and the conclusions of law flow rationally therefrom and are in accordance with the Act. The record fully supports the ALJ's thorough, well reasoned decision, and the Panel, therefore, adopts the reasoning and legal analysis expressed by the ALJ in that decision in affirming the Compensation Order in all respects.

## CONCLUSION

The Compensation Order of August 13, 2007 is supported by substantial evidence in the record and is in accordance with the law.

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**ORDER**

The Compensation Order of August 13, 2007 is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

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JEFFREY P. RUSSELL  
Administrative Appeals Judge

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November 1, 2007  
DATE

JEFFREY P. RUSSELL, *Administrative Appeals Judge*, dissenting in part:

We ought not even be considering this appeal. This matter was initially dismissed due to the clearly untimely filing by Petitioner of his Application for Review. However, following that dismissal (which was entered following a motion to dismiss by Respondent and Petitioner's initial response in opposition) Petitioner filed a second objection in the form of a "Motion for Reconsideration", raising for the first time allegations that some unidentified person in a different office within the Agency gave him bad legal advice concerning how days are to be counted for appeal purposes. In response to that motion, and over my objection, the majority of this panel reversed the denial. What follows is the entire substantive part of the majority's order:

On October 18, 2007, the Petitioner filed a Motion to Reconsider the Order Dismissing Appeal entered in this matter on October 9, 2007. On October 25, 2007, the Respondent filed an Opposition. Upon review of the parties' pleadings and a review of the record, it is hereby

**ORDERED**, that the Petitioner's Motion is herewith granted. The Order Dismissing Appeal is VACATED, and Petitioner's Application for Review is rescheduled for consideration before this Review Panel. *See Galligan v. D.C. Department of Employment Services*, 918 A.2d 386 (D.C. 2007). *See also, Covington v. Metro Pet Pals LLC*, CRB (Dir.Dkt.) No. 03-96, OHA No. 02-448A (March 18, 2005) (the filing of a timely appeal is not a jurisdictional prerequisite to appellate review, but a requirement that, like a statute of limitations, is subject to waiver, estoppel, and equitable tolling when equity so requires). *Accord, Neguisse v. Florida Market Chevron*, CRB No. 5-18, OHA No. 03-500, OWC No. 578967 (February 28, 2007), and *Daniels v. D.C. Water & Sewer Authority*, CRB No. 05-236 OHA No. 04-086, OWC No. 590151 (July 27, 2005).

I reprint in its entirety my dissent to that order here:

The majority of this panel appears to embrace a rule whereby any *pro se* litigant who makes any unsubstantiated and non-specific allegation that he or she was given erroneous information by a purported employee of this agency concerning time frames within which required actions must be carried out, is unencumbered by those time limitations, which rule is not only unfair to employers and to represented claimants (who, I assume, are still bound by those rules) by comparison, it also creates a morass of administrative problems in pending and future cases. And it does so for no apparent reasons beyond that it is permitted to do so by *Covington, et al.*, and its misplaced belief that it is compelled to do so under *Galligan, supra*.

However, *Galligan* created no such rule; in fact, given the somewhat odd posture of that case, I venture to say that *Galligan* established no rule of general applicability at all.

In that case, a *pro se* litigant raised the argument that she was misled regarding deadlines relating to filing appellate documents with the Director of the agency, having allegedly been erroneously advised on the subject by someone she identified as a “senior counsel”, i.e., a senior attorney, in the Office of the Director. The court instructed the CRB, which decided the appeal upon assuming responsibility for agency review upon its creation, to consider the merits of her motion to extend the time for such filing, and remanded the matter to CRB for that purpose. The CRB issued an order to show cause to the parties, to which the employer failed to respond, thereupon permitting the CRB to treat the appeal as proceeding without objection by the employer. In its order to show cause, however, the CRB panel made abundantly clear that it was tasked by the court to perform a function that was beyond its legislatively granted power, to wit, to make factual findings relating to the allegations of the *pro se* claimant.

The court did not follow its usual practice of deferring to the agency with respect to establishing policy-based interpretations of its own rules, regulations and statutory mandates. However, the court did not interpose a rule relating to how the matter should have been resolved upon agency consideration of the motion following its consideration of its merits, which presumably would include an inquiry into the truth of the allegations. Thus, *Galligan* is an aberrant procedural anomaly, which established no rule of general application concerning the heart of the matter before us, and it never reached a procedural point at which the lack of fact finding power on the part of the CRB was considered.

Further, unlike *Galligan*, which at least presented fairly specific allegations concerning a conversation, the identity of its participants, and its contents, this case presents the following set of claims: Petitioner alleges the happening of a conversation with a “staff member” from the Administrative Hearings Division (not the CRB), an office within the agency that is comprised of between six or eight persons if one counts only administrative staff, or in excess of 20 persons if one

counts legal assistants, paralegals and Administrative Law Judges<sup>2</sup>; not only is the “staff person” unidentified by name or title, but we are not even given the age, gender, racial background, physical description, work location or other identifying characteristics; whether the person alleged to have given the advice was a person who Petitioner could reasonably be expected to believe was in a position [to] give accurate information is impossible to judge, given the lack of identifying characteristics such as job title; the date, place and time of the alleged conversation is not given, to the point that we are not even apprised as to whether Petitioner alleges that this conversation took place prior to or after the expiration of the time for filing an appeal; we are not advised whether this conversation occurred in the presence of witnesses; we are not told whether the conversation included multiple subjects, or whether the issue raised (i.e., whether weekends and holidays are counted) was disposed of authoritatively or with caveats; we can not tell whether the information alleged to be given accurately reflects what was actually stated, or rather represents a misunderstanding of what was said; the list of relevant things unknown about this alleged conversation goes on and on.

Yet, remarkably, the majority treats the allegations not only as true, but also fills in whatever spots are left blank with assumptions and presumptions that the missing information, if true, would support Petitioner’s motion to reconsider the matter. And, as a final matter, we are given no explanation for the failure of Petitioner to raise the alleged conversation in his first response to the original Motion to Dismiss the appeal as untimely, filed by Respondent.

Even more remarkably, the majority fails to give any reason whatsoever why it departs from the established statutory and regulatory deadlines; a mere assertion of the authority to do so is insufficient, in my estimation, to do so in the absence of any explanation for doing so. Our rules and regulations presumably exist for good and significant reasons, and departing from them requires explanation, which the majority eschews. The majority’s silence has one positive effect, though, and that is that there is no reason for the undersigned or any other Administrative Appeals Judge to follow its lead in the future, since we have no idea why it acted as it did. Lamentably, however, the majority ignores the cogent arguments of the Respondent, including its legitimate questioning of whether we even retain authority to reconsider this motion, particularly given the movant’s initial failure to raise the substantitive (and unsubstantiated, and arguably irrelevant) claims related to statements or legal advice given to him by some staff member not even alleged to be employed by the CRB. We can only guess at what response the majority has to those arguments, since the majority is silent as to its reasons.

The CRB is well within its power and authority to establish a simple rule that the parties before it must adhere to the regulatory and statutory requirements for filing appeals and other documents, and that deviation from those requirements will not be

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<sup>2</sup> If this new rule includes scenarios wherein the allegedly erroneous advice is alleged to have been given by a claims examiner or other staff person in the Office of Workers’ Compensation (OWC), the number of such persons will far exceed a hundred.

countenanced merely because an allegation of inaccurate advice is made by a litigant. This rule would be based upon the concern that the CRB has no mechanism by which it may examine and evaluate the allegations of a litigant concerning the circumstances surrounding the allegedly bad advice, and is not empowered by statute or regulation to conduct fact finding inquiries of any variety, as well as the concern that establishing a rule such as the one apparently embraced by the majority in this case will invite an unknown but potentially substantial number of similar claims in the future, all equally incapable of being fairly and adequately assessed, evaluated and acted upon.

I respectfully dissent.

I do not believe that this appeal ought to be considered.