

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 15-029

KAREN R. CALMEISE,
Claimant-Petitioner,

v.

DISTRICT OF COLUMBIA DEPARTMENT OF EMPLOYMENT SERVICES,
Employer-Respondent.

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2015 JUL 13 PM 1 42

Appeal from a January 22, 2015 Amended Dismissal Order by
Administrative Appeals Judge Melissa Lin Jones
AHD PBL No. 14-030A, DCP No. 0468-WC-09-0501070

(Decided July 13, 2015)

Karen R. Calmeise *pro se*
Lindsay Neinast for the Employer

Before LAWRENCE D. TARR, *Chief Administrative Appeals Judge* with HEATHER C. LESLIE and
JEFFREY P. RUSSELL *Administrative Appeals Judges*.

LAWRENCE D. TARR, *Chief Administrative Appeals Judge*, for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY¹

Karen R. Calmeise (“Claimant”) was employed as an administrative law judge for the Department of Employment Services’ (“DOES”) Administrative Hearings Division (“AHD”). In December 2012 she filed a claim with Employer’s Office of Risk Management (“ORM”) Public Sector Workers’ Compensation Program (PSWCP) for right wrist and hand pain caused by her work. This claim was later combined with Claimant’s claim relating to her left wrist and hand complaints.

On January 21, 2013, Claimant received a letter from Ms. Tiffany Bruce, who identified herself in the letter as “Claims Examiner 1”. This letter, on Sedgwick Claims Management Services stationary, notified Claimant that her claim was under review.

¹ Because this matter was decided without a formal hearing, except where noted the facts of record are derived from the uncontested facts presented in the hearing officer’s Order and the written briefs filed with AHD and the CRB.

Ms. Bruce sent Claimant another letter on January 23, 2013. This letter sent on ORM letterhead and signed by Ms. Bruce as "Claims Examiner" was titled "Notice of Determination Regarding Original Claim For Compensation Form NOC". This document, advised Claimant that her claim was controverted because Employer did not have sufficient information to accept or deny the claim. This letter further told claimant that her claim would be held in abeyance

until we have completed our investigation. Once all documentation is received, a determination will be made in your case and you will receive notice of this determination.

While a determination was pending, Claimant was referred to Dr. Shameer Shamas and he treated her on January 24, 2013, February 8, 2013 and April 11, 2013. In her brief in response to Employer's motion to dismiss her claim, Claimant asserted she received the official mileage reimbursement form from Ms. Bruce, completed it by requesting reimbursement for two of the three examinations², and returned the form within 24 hours of receipt.

On June 2, 2014, Employer's Office of Risk Management Public Sector Workers' Compensation Program ("PSWCP"), issued a Notice of Determination Regarding Original Claim For Compensation ("NOD") signed by Brittany Miller, claims representative, and Andre Cross, claims supervisor.

The NOD referenced a November 29, 2012 incident, advised Claimant that she was eligible for the benefits specified later in the letter and that

This award is limited to the facts and injuries outlined. Any injuries you claim that are not expressly accepted in this notice are denied.

The NOD stated that Claimant had not received a "definitive medical diagnosis", and that her claim for medical treatment for "bilateral hand and wrist pain" injuries was accepted and that "Medical expenses directly related to injuries sustained in the above reference incident and performed and/or prescribed by a treating PPO Physician are compensable."

The NOD further advised Claimant that her claim for temporary total disability benefits was denied because she had not missed any time from work. The NOD also told Claimant that if she disagreed she could receive a hearing at AHD if she filed the attached Uniform Request for Review of Eligibility Determination within 30 days of the NOD.

The NOD said nothing about Claimant's mileage reimbursement request.

² Claimant did not submit a mileage reimbursement claim for her appointment with Dr. Shammas on February 8, 2013. In her review brief Claimant attached a number of documents that related to her mileage reimbursement request. These documents were not submitted to the hearing officer and will not be considered. 7 DCMR § 264.1.

On June 26, 2014 Claimant completed the request for hearing. Because Claimant was a colleague of all the administrative law judges at AHD, Administrative Appeals Judge Melissa Lin Jones was assigned to serve as the hearing officer and a formal hearing was scheduled.

Prior to the formal hearing, Judge Jones held a pre-hearing conference. Although no record of the pre-hearing conference was made, it appears that Claimant identified that her claim was for \$41.76 in reimbursement for her mileage expenses for attending the two examinations with Dr. Shammass. As the Amended Dismissal Order (“ADO”) stated:

At the pre-hearing conference, a question arose regarding jurisdiction. The parties were ordered to submit written briefs on the following issue: Whether AHD has jurisdiction over this claim, specifically whether Claimant’s claim for relief has been reviewed and made subject of a written Final Determination by PSWCP.

ADO at 1-2.

The parties filed written briefs and the ADO that is the subject of this appeal issued on January 22, 2015.³ The ADO granted Employer’s Motion to Dismiss and cancelled the formal hearing. The ADO held:

The plan language of §1-623.24 (b) (1) of the Act requires “the issuance of a decision” by the PSWCP before an injured worker may request a formal hearing. In other words, the Act is clear that the actual issuance of a Final Determination is a prerequisite to AHD’s adjudication of the request for benefits. Thus AHD lacks jurisdiction to hear a case unless the PSWCP has issued a Final Determination.

Moreover, even assuming that “a claim for mileage reimbursement for initial medical treatment following a work-related injury is not a separate benefit under the Act,” in order for there to be a justiciable issue, the Final Determination issued by PSWCP must be a denial.

Id. at 3. (Footnotes omitted).

The ADO pointed out that PSWCP’s NOD concluded that Claimant was eligible for workers’ compensation benefits for bilateral hand and wrist injuries and that her claim for medical treatment and the resulting expenses was accepted. The NOD held that while travel expenses might be necessary to effectuate the provision of medical benefits,

Claimant may have received some indication that her request for mileage reimbursement has been denied, and certainly, the failure to pay the \$41.76 after more than eight months would seem to substantiate such a denial; however, in the absence of a Final Determination denying Claimant mileage reimbursement, AHD lacked jurisdiction to adjudicate her claim for relief.

³ A Dismissal Order issued on January 21, 2015 but did not contain the Appeals Rights statement. The ADO issued the following day with the omitted Appeals Rights statement.

Id. at 4.

Claimant timely appealed and Employer timely filed an Opposition.

STANDARD OF REVIEW

In this case, Claimant appeals an Order issued in response to a motion. Therefore, the CRB must affirm that order unless it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. *See* 6 Stein, Mitchell & Mezines, ADMINISTRATIVE LAW § 51.03 (2001).

ANALYSIS

On Review, Claimant raises several arguments. Claimant first argues that her claim for medical treatment encompasses entitlement to reimbursement for medical expenses. Therefore, according to Claimant:

The fact that the NOD did not specifically deny nor make any reference to the pending claim for mileage reimbursement is of no consequence. In the absence of evidence to the contrary that the transportation expenses were not incurred as a result of the approved medical treatment, the July 2014 NOD granting medical treatment is sufficient to authorize Petitioner's reimbursement for mileage expenses.

Claimant's memorandum at 5.

We disagree with Claimant that when Employer authorized medical services it also was authorizing transportation and other medical expenses. The Code differentiates between medical services and transportation expenses:

The employee may initially select a physician to provide medical services, appliances, and supplies ... and may be furnished necessary and reasonable transportation and expenses incident to the securing of such services, appliances, and supplies. D.C Code § 1-623.03 (a) (3).

The regulations also identify medical services and transportation expenses as distinct items: 7 DCMR § 123 ("Medical Services and Supplies: Treating Physicians"), 7 DCMR § 125 ("Transportation and Mileage").

Moreover, the concurring opinion in *Tagoe v. Howard University Hospital*, CRB No. 08-187, AHD No. 03-287, OWC No. 568310 (February 13, 2009), a concurring opinion joined by two CRB judges stated:

As previously noted, the *Lazarus* court [*Lazarus v. Chevron*, 958 F. 2d 1297 (5th Cir. 1992)] in construing the virtually identical language found at 33 USC § 918 (a) of the Longshore Act, distinguished between the authorization or provision by an employer of medical services " and paying employees for expenses incurred in obtaining such services" where the employer refuses or neglects to provide or

authorize the ordered medical care—in which event a subsequent award of medical expenses obtained by the employee “in a suit against the employer is ‘compensation’ within the meaning of [section 918 (a)]958 F 2d at 1301. What is required, in order to convert the incurred medical expenses into compensation owed by the employer to the employee, is that the employee “file a claim with the Secretary to recover his expenses” *Id.*

This concurring opinion was adopted by a unanimous CRB panel in *Tagoe v. Howard University Hospital*, CRB No. 10-007 and 10-009, AHD No. 03-287 & 03-286, OWC No 568310 (July 30, 2010).

Claimant’s second argument on review is similar to her first- she asserts that a claim for mileage reimbursement is not a separate claim but is part of a claim for medical benefits. Therefore, Claimant asserts, since Dr. Shamass’ treatment was authorized, her expenses in traveling to and from his office are included in that authorization:

To hold that travel expense is a separate claim apart from the claim for medical benefits is akin to accepting a workers [sic] request for surgical treatment but reserving the authority to approve the use of anesthesia or approve recommended physical therapy treatment.

Claimant’s memorandum at 6.

As stated in our discussion of Claimant’s first argument, medical services and transportation expenses are separately treated under the Code and regulations and a claim for one does not, *per se*, include a claim for the other.

Additionally, Claimant’s analogy does not hold true. Contrary to claimant’s assertion, Employer could authorize surgery but still separately challenge a recommendation for anesthesia or physical therapy through the Utilization Review process. 7 DCMR § 126.1 provides that any medical care or service shall be subject to utilization review and that utilization review may be performed before, during, or after the medical care or service is provided.

Lastly, Claimant argues a separated NOD for travel expenses is not required under 7 DCMR § 105.2 and that requiring a NOD

contradicts and frustrates the purpose of the Public Sector Workers [sic] Program. The DO further results in a denial of due process in that the Act is intended to provide a conflict free and efficient procedure for injured workers to be rehabilitated and be compensated for loss due to workplace injury disability.

Id. at 7.

Therefore, Claimant argues, it was error to dismiss her claim because there was no evidence that the travel expenses were not reasonably related to the work injury, nor was there evidence that the claim was not filed within 90 days of her receiving her claim form.

The Act and regulations require that before an injured public sector employee may have a formal hearing, (1) the employee must allege she has made a claim to the PSWP and (2) Employee must prove PSWP denied the claim. If (1) and (2) are proven, then AHD's jurisdiction, that is, the issue or issues that AHD may consider at the formal hearing, is defined by that which PSWP denied in the NOD. As the CRB has held:

While the courts have broad grants of authority to adjudicate matters, the adjudicatory authority of an administrative agency is limited by an enabling act. Under the Act governing this matter, a claim for benefits for a work-related injury must first be made to the Public Sector Division of the Office of Workers' Compensation, that is, the OBA. See D.C. Official Code § 1-623.24 (a); 7 DCMR §§ 104, 105, 106, 199. The OBA, now the TPA, is responsible for conducting necessary investigations into an injured worker's claim and then making an initial determination either to award or deny disability compensation benefits for that claim. It is only if the injured worker is dissatisfied with the determination the worker can request a hearing before the ALJ. See D.C. Official Code § 1-623.24 (b) (1). Thus, an ALJ is without ancillary authority to adjudicate claims for compensation that have not been first presented to the OBA, or the TPA, for investigation and resolution.")

Burney v. D.C. Public Service Commission, CRB No. 05-220, OHA No. PBL97-016A, DCP No. 345126 (June 1, 2005) (Emphasis added).

In reaching our decision, we have not overlooked the fact that the NOD also contained the statement that "Any injuries you claim that are not expressly accepted in this notice are denied." This general denial of any other injuries would not encompass Claimant's claim for mileage reimbursement. Mileage reimbursement is not considered an injury under the Act. See, D.C. Code § 1-623.01(5) (A).

Here, while Claimant may have made a claim for travel expense reimbursement with the PSWP 'the NOD did not deny that claim. The NOD only accepted her claim for the injuries of "bilateral hand and wrist pain," it did not deny her previous mileage expense reimbursement claim. Therefore, AHD did not have jurisdiction to adjudicate Claimant's mileage reimbursement claim.

CONCLUSION AND ORDER

The Amended Dismissal Order's conclusion that the Administrative Hearings Division lacks jurisdiction to adjudicate Claimant's medical expense reimbursement claim is neither arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law and is **AFFIRMED**.

So ordered.