

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services

VINCENT C. GRAY
MAYOR



F. THOMAS LUPARELLO
ACTING DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 14-071

KARLA JONES,
Claimant–Petitioner,

v.

DISTRICT OF COLUMBIA METROPOLITAN POLICE DEPARTMENT,
Self-Insured Employer—Respondent

Appeal of an April 30, 2014 Order by
Administrative Law Judge Fred D. Carney, Jr.
AHD No. PBL 10-089B, DCP No. 30081072058-0001

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2014 SEP 23 AM 11 33

Matthew Peffer for the Petitioner
Kevin J. Turner for the Respondent

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

HEATHER C. LESLIE for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

Claimant sustained a work-related injury on October 2, 2008. The then Office of Risk Management, now Public Sector Workers' Compensation Program, accepted the claim and awarded wage loss and medical benefits. Pursuant to a prior Compensation Order (CO), Claimant was receiving wage loss and medical benefits.¹

On October 18, 2012, Employer sent Claimant a letter requesting certain forms to be filled out, "Employee Report of Earnings" and an "Authorization to Release District of Columbia and Federal

¹ *Jones v. D.C. Metropolitan Police Dept.*, AHD No. PBL 10-089A, DCP No. 30081072058-0001 (April 13, 2012). On May 21, 2012, an *Errata* was issued to amend the Conclusion of Law section to delete the entitlement to accrued interest.¹

Tax Information.” In this letter, Claimant was advised that failure to fill out the forms within 30 days may cause disability benefits to stop. Claimant failed to timely fill out the forms.

On February 13, 2013, a Notice of Determination Regarding Temporary Total Disability Benefits was sent to Claimant, advising her that benefits were suspended due to not filing out the forms sent with the October 18, 2012 letter. Disability benefits were reinstated on March 19, 2013 after receipt of the requested forms.

Claimant requested a Formal Hearing, seeking restoration of benefits from February 13, 2013 to March 18, 2013. Claimant contended that after complying with Employer’s request and submitting the forms, she was entitled to her disability benefits for the period claimed. Employer argued Claimant forfeited her right to benefits by failing to comply with DC Code § 1-623.06. The parties submitted their argument on brief. On April 30, 2014, a CO was issued denying Claimant’s claim for relief.

Claimant timely appealed. On appeal, Claimant argues the CO is in error as “the Government has no authority to deprive Ms. Jones of her temporary total disability benefits after she has complied with the Government mandates.” Claimant’s argument at 5. Employer argues the CO is correct that DC Code § 1-623.06(b) supports a finding that Claimant forfeited her entitlement to disability benefits when she did not timely respond to the Employer’s request for income verification.

ANALYSIS

The scope of review by the CRB is limited to making a determination as to whether the factual findings of the Order are based upon substantial evidence in the record and whether the legal conclusions drawn from those facts are in accordance with the applicable law.² Section 1-623.28(a) of the District of Columbia Government Merit Personnel Act of 1978, as amended, D.C. Code § 1-623.1 *et seq.* (“Act”).

The statute in question § 1-623.06, states, in relevant part,

(b)(1) The Mayor shall require each employee receiving benefits under this subchapter to report his or her earnings from employment or self-employment by affidavit, including by providing copies of tax documents and authorizing the Mayor to obtain copies of tax documents, within 30 days of a written request for a report of earnings.

(2) An employee shall forfeit his or her right to workers' compensation with respect to any period for which the report of earnings was required if the employee:

(A) Fails to file a complete report of earnings within 30 days of a written request for a report of earnings; or

² “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. DOES*, 834 A.2d 882 (D.C. 2003).

(B) Knowingly omits or understates any part of his or her earnings.

(3) Workers' compensation forfeited under this section, if already paid, may be recovered by a deduction from future workers' compensation payments owed to the employee or otherwise recovered under § 1-623.29.

(4) The Mayor shall notify any employee receiving workers' compensation benefits, on forms prescribed by the Mayor, of that employee's affirmative duty to report earnings and shall specifically notify the employee that a failure to report earnings may subject him or her to termination from the program and civil or criminal liability. The notice by the Mayor may be satisfied by printing the notice on the employee payee statement portion of indemnity check sent to the employee.

(5) For the purposes of this subsection, the term "earnings" includes any cash, wages, or salary received from self-employment or from any other employment aside from the employment in which the worker was injured. The term "earnings" also includes commissions, bonuses, and the cash value of all payments and benefits received in any form other than cash. Commissions and bonuses earned before disability but received during the time the employee is receiving workers' compensation benefits do not constitute earnings that must be reported.

In reviewing the CO, the ALJ reviewed the statute as well as the Public Sector Workers Compensation Return to Work Emergency Declaration Resolution of 2011 which states:

The first amendment would clarify that ORM, on behalf of the Mayor, has the authority to ask employees receiving worker's compensation benefits, or claimants for information on their annual earnings. This specific authority is currently codified in D. C. Code § 1-624.06, the partial disability section of the statute. Collecting this information for all workers' compensation claimants, including those receiving temporary total disability compensation, will allow ORM to investigate whether claimants who are supposed to be totally disabled are actually working and receiving other income and, therefore, fraudulently receiving benefits. The proposed amendment would simply move the existing authorization to its own subsection in the statute, so that it will apply to all Claimants. This specific authority is currently codified at DC Code § 1-624.06.

The ALJ found the statute, along with the amendment, extends the requirement for reporting to all Claimants, regardless of the extent of the disability. As Claimant acknowledges, "the Government has, pursuant to its authority under the D.C. Code § 1.623.06(b), suspended Ms. Jones' benefits for a period of time when she had not complied with its request." Claimant's argument at 7. The ALJ concluded that because Claimant failed to timely return the requested reports to the Employer, Claimant forfeited her rights to disability benefits from February 13, 2013 to March 18, 2013. We agree with the ALJ.

Claimant in argument avers that while D.C. Code § 1.623.06(b) grants Employer the authority to suspend benefits, suspension is not proper after the Claimant has complied with the report request when the Claimant is receiving temporary total disability, rather than temporary partial disability. Claimant states that as Claimant has provided the requested income information, Employer cannot continue to withhold temporary total disability benefits from February 13, 2013 to March 18, 2013. We disagree.

D.C. Code § 1.623.06(b) confers authority to Employer to cease payment of compensation when Claimant has not timely returned requested reports. We conclude that any consequences that Claimant shall bear in not timely responding is governed by the same statutory authority.

On this point, Claimant argues D.C. Code § 1.623.06(b) only authorizes Employer to *suspend* disability payments. However, suspend is not a word used in the statute. D.C. Code § 1.623.06(b)(2)(A) states that a Claimant “shall *forfeit* his or her right to workers' compensation with respect to any period for which the report of earnings was required if the employee....Fails to file a complete report of earnings within 30 days of a written request for a report of earnings.” (Emphasis added). The term forfeit is defined as “the divestiture of property without compensation” or “the loss of a right, privilege, or property because of a crime, breach of obligation, or neglect of duty.”³

As Claimant points out, in interpreting statutory provision, the Court will examine the plain meaning of the statute's words. See *Cook v. Edgewood Mgmt. Corp.*, 825 A.2d 939, 944 (D.C. 2003). The statute clearly states that the Claimant shall forfeit disability payments when Claimant fails to file the requested reports within 30 days. We reject Claimant's argument that after complying with Employer's request, Claimant is then entitled to her back owed disability benefits. Pursuant to the statute, Claimant forfeited disability payments from February 13, 2013 to March 18, 2013.

We also reject Claimant's due process argument. As the ALJ concluded:

Claimant argues that taking her benefits through forfeiture amounts to a taking of her property without due process of law in violation of Claimant's Fifth Amendment rights. This argument is rejected, as due process is defined as a minimum requirement of notice and a hearing in accordance with the Due Process Clause of the United States Constitution, 5th and 14th amendments. This argument is likewise rejected, as Claimant has been notified and has been granted a formal hearing on the matter. Additionally Claimant argues that she admittedly failed to provide WC with the wage earning verification it requested within (30) days.

CO at 5-6.

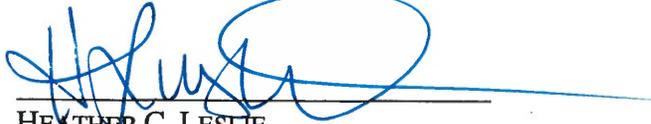
Claimant was advised, in the October 18, 2012 letter from Employer, of the consequences of failing to respond timely. Claimant failed to respond within 30 days. We affirm the ALJ's conclusion that Claimant's due process rights were not violated.

³ Black's Law Dictionary, Ninth Edition.

CONCLUSION AND ORDER

The April 30, 2014 Compensation Order is supported by the substantial evidence in the record and in accordance with the law. It is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:



HEATHER C. LESLIE
Administrative Appeals Judge

September 23, 2014
DATE