

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA MARÍA MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 10-090(R)

SHELDA KRALICK,
Claimant,

v.

DISTRICT OF COLUMBIA DEPARTMENT OF HUMAN SERVICES,
Self-Insured Employer.

Upon Remand from the District of Columbia Court of Appeals
DCCA No. 11-AA-1719
CRB No. 10-090, AHD No. PBLXX-885, DCP No. 100921

Kevin J. Turner, Esquire for Employer
Daniel R. Long, Esquire for Claimant

Before MELISSA LIN JONES, HEATHER C. LESLIE,¹ and JEFFREY P. RUSSELL,² *Administrative Appeals Judges*

MELISSA LIN JONES for the Compensation Review Board³

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

Ms. Shelda Kralick, a computer programmer, slipped and fell on snow and ice outside her building as she was reporting for work on February 21, 1979. Her claim for a back injury was accepted by the U.S. Department of Labor (the entity then charged with processing work-related injuries sustained by District of Columbia government employees), and she received disability compensation benefits from February 21, 1979 through July 17, 1990. On July 17, 1990, the Division of Disability and Crime Compensation terminated Ms. Kralick's benefits in a Denial Order. Following the issuance of multiple agency decisions and a decision by the District of Columbia Court of Appeals, Ms. Kralick eventually was awarded disability compensation benefits.

¹ Judge Leslie has been appointed by the Director of the Department of Employment Services ("DOES") as a temporary Compensation Review Board ("CRB") member pursuant to DOES Administrative Policy Issuance No. 12-02 (June 20, 2012).

² Judge Russell has been appointed by the Director of the DOES as a temporary CRB member pursuant to DOES Administrative Policy Issuance No. 12-01 (June 20, 2012).

³ Jurisdiction is conferred upon the CRB pursuant to D.C. Code §1-623.28, 7 DCMR §118, and the DOES Administrative Policy Issuance No. 05-01 (February 5, 2005).

On April 18, 2008, Ms. Kralick filed a petition seeking (among other things) an order directing the Disability Compensation Program⁴ to calculate and pay her for her loss of wage earning capacity pursuant to §1-623.13(a) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, D.C. Code §1-623.1 *et seq.* (“Act”). An administrative law judge issued an Order on February 25, 2010 granting Ms. Kralick’s request that she be paid the appropriate increase in her basic compensation because she did not have a physical or mental disability before her work-related injury.⁵

On November 30, 2011, the CRB issued a Decision and Order affirming the February 25, 2010 Order.⁶ Based upon a plain reading of the unambiguous language of the statute, Ms. Kralick was entitled to an increase in her basic compensation pursuant to §1-623.13(a).

The Department of Human Services filed another appeal with the District of Columbia Court of Appeals, and on November 30, 2012, the Court granted a joint motion to remand the case to the CRB. The basis for the joint motion was to allow the CRB to

[c]onsider the effect on the CRB’s decision in this case of the amendment by the Council of the District of Columbia to §2313(a) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (effective July 2, 2011 [*sic*]), which replaced the word “or” between paragraphs (1) and (2) with the word “and.” See D.C. Code §1-623.13(a) (Supp. 2012).^[7]

In response to the Court’s Order, the CRB directed the parties to file written memoranda.⁸

Ms. Kralick argues the pre-2010 version of the statute was the proper version of the Act to apply to her claim because the January 31, 2007 Compensation Order awarding her temporary total disability

⁴ Effective October 1, 2010, the Disability Compensation Program’s name was changed to the Public Sector Workers’ Compensation Program.

⁵ *Kralick v. D.C. Department of Human Services*, AHD No. XX-885, DCP No. 100921 (February 25, 2010).

⁶ *Kralick v. D.C. Department of Human Services*, CRB No. 10-090, AHD No. XX-885, DCP No. 100921 (November 30, 2011).

⁷ Joint Motion to Remand

⁸ On January 11, 2013, the Chief Administrative Appeals Judge granted the parties a second extension of the deadlines for filing the memoranda requested in response to the D.C. Court of Appeals’ remand order:

Each party is directed to file a written memorandum by the close of business on January 14, 2013, that addresses the issue(s) on remand. Opposition briefs will be permitted but not required. Any opposition must be filed by the close of business on January 31, 2013.

Order Granting Consent Motion to Extend Time to Respond to December 6, 2012 Order, *Kralick v. D.C. Department of Human Services*, CRB No. 10-090(R), AHD No. PBLXX-885 (January 11, 2013).

On February 1, 2013, Employer’s Response to Claimant’s Brief on Remand was filed. Because this reply was not filed timely, it has not been considered in the resolution of this appeal.

compensation benefits from July 17, 1990 through March 14, 2006 and permanent total disability compensation benefits continuing thereafter became final on April 26, 2007 or because pursuant to 7 DCMR §262.3 the CRB had 30 days to rule on the appeal of the February 25, 2010 Order. In the alternative, Ms. Kralick argues application of the 2010 version of the Act unjustly impairs her rights retroactively. Finally, Ms. Kralick argues the CRB's prior interpretation of §1-623.13(a) properly applies to her request.

The Department of Human Services contends the 2010 amendment of §1-623.13(a) applies to Ms. Kralick's claim because the CRB should have applied the law as it existed when it rendered its November 30, 2011 Decision and Order. The Department of Human Services also asserts there is no statutory direction or legislative history to suggest the amendment should not be applied to pending matters.

ISSUE ON REMAND

Does Ms. Kralick qualify for an increase in her basic compensation pursuant to the pre-2010 amendment to §1-623.13(a) of the Act?

ANALYSIS

Prior to June 15, 2010, §1-623.13(a) of the Act stated:

If an individual: (1) Was a minor or employed in a learner's capacity at the time of injury; or (2) did not have a physical or mental disability before the injury, the Mayor, on review under §1-623.28 after the time the wage-earning capacity of the individual would probably have increased but for the injury, shall recompute prospectively the monetary compensation payable for disability on the basis of an assumed monthly pay corresponding to the probable increased wage-earning capacity.

Effective September 24, 2010, after a previous amendment did not make this change, the word "or" was replaced by "and."

The Department of Mental Health contends the amended version of the Act replacing "or" with "and" applies to Ms. Kralick's claim. We disagree.

Paramount to resolving this matter is whether the amendment should be construed as correcting an earlier error in transcription or publication such that the original intent of the legislature is made manifest by the change or whether the amendment is a substantive change in the law. To this end, we carefully reviewed the legislative history of the "Fiscal Year 2011 Budget Support Act" which contains within it the "Disability Compensation Amendment Act of 2010" including review of the Committee Report and its section-by-section analysis, the 9 page preliminary summary to the Enrolled Original of the statute in which the purposes of the various provisions are discussed, and the comments regarding the purposes of those provisions contained in the Fiscal Impact Statement. Nothing in these materials addresses this particular amendment; nothing in these materials suggests any of the provisions relating to the Act were to be applied retroactively; nothing in these materials

suggests this particular amendment was intended to correct a drafting or publication error in the original enactment. Accordingly, we deem prospective application to be the appropriate manner to treat the amendment.

The question of the effect of amendments to active legislation also was examined by the Director of DOES in *Lloyd v. Giant Food*,⁹ a case brought under the District of Columbia Workers' Compensation Act of 1979. After examining case law and the rules on statutory construction, the Director adopted the statutory construction analysis enunciated in *Mayo v. D.C. Department of Employment Services*,¹⁰ and held that legislation is prospective in nature unless there is statutory direction or legislative history for retroactive application. Consistent with *Nixon v. D.C. Housing Authority*,¹¹ the analysis and reasoning in *Lloyd* is sound and is adopted for application herein.

The effective date of the amendment is September 24, 2010. A review of the legislative history does not reveal any language from the District of Columbia City Council either directing that the provision be applied retroactively or reflecting a legislative intent to apply the new provision to cases already in process, as was the scenario in *Mayo, supra*. Given the rules of statutory construction, the amended version of D.C. Code §1-623.13(a) is not applicable to this case.

Specifically, Ms. Kralick's injury took place in 1979, and in 1990, a Denial Order terminated her temporary total disability compensation benefits. All this activity took place prior to the enactment of the amendment. Thus, we find the 2010 amendment to §1-623.13(a) does not apply to Ms. Kralick's claim.

The parties' remaining arguments duplicate those raised previously on appeal of the February 25, 2010 Order. Because those arguments were addressed in the November 30, 2011 Decision and Remand Order, we incorporate the content of that Decision and Order by reference.

⁹ *Lloyd v. Giant Food*, Dir. Dkt. No. 03-70, OHA No. 97-110E, OWC Nos. 501519, 230297, 265731 (September 30, 2004).

¹⁰ *Mayo v. DOES*, 738 A.2d 807 (D.C. 1999).

¹¹ *Nixon v. D.C. Housing Authority*, CRB No. 06-80, AHD No. PBL 06-013, DCP No. LTUNK0090 (November 29, 2006) *aff'd on other grounds and rev'd in part*, *Nixon v. DOES*, 954 A.2d 1016 (D.C. 2008).

CONCLUSION AND ORDER

Because Ms. Kralick did not have a physical or mental disability before the injury, she is entitled to an increase in her basic compensation pursuant to the plain language of §1-623.13(a) of the Act before the 2010 amendment.

FOR THE COMPENSATION REVIEW BOARD:

MELISSA LIN JONES
Administrative Appeals Judge

February 8, 2013
DATE