

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 14-139

**LATOYA CHEEKS,
Claimant-Respondent,**

v.

**WMATA and
AS&G ADMINISTRATION,
Employer/Insurer-Petitioner.**

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2015 APR 15 AM 9 58

Appeal from a October 31, 2014 Compensation Order by
Administrative Law Judge Linda F. Jory
AHD No. 14-413, OWC No. 696551

Krista N. DeSmyter for Claimant
Mark H. Dho for Employer

Before MELISSA LIN JONES and HEATHER C. LESLIE, *Administrative Appeals Judges* and
LAWRENCE D. TARR, *Chief Administrative Appeals Judge*.

MELISSA LIN JONES for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

On August 1, 2012, Ms. Latoya Cheeks injured her right foot; a piece of metal fell onto that foot when she was closing a station gate. Ms. Cheeks initially sought treatment in August 2012 but did not seek any additional medical treatment in 2012 or 2013. In January 2014, Ms. Cheeks' pain worsened, and she sought additional medical treatment with Dr. Matthew Menet.

Ms. Cheeks' employer, Washington Metropolitan Area Transit Authority ("WMATA"), denied Ms. Cheeks' request for wage loss benefits and authorization for consultation with a foot specialist as recommended by Dr. Menet. Consequently, the parties proceeded to a formal hearing.

In a compensation order dated October 31, 2014, an administrative law judge (“ALJ”) determined examination by a foot specialist is reasonable and necessary. The ALJ also awarded Ms. Cheeks temporary total disability benefits from May 16, 2014 to June 10, 2014 and interest on accrued benefits. *Cheeks v. WMATA*, AHD No. 14-413, OWC No. 696551 (October 31, 2014).

On appeal, WMATA only contests the award of interest. WMATA argues that “[a]s a matter of law, there is no statutory provision, language, or basis for an assessment of interest on accrued benefits awarded in a compensation order.” Memorandum of Points and Authorities in Support of Employer’s Application for Review, p. 2. WMATA also argues that 7 DCM. § 209.11 does not clearly or explicitly apply to an award of benefits following the issuance of a compensation order. WMATA relies on *Mitchell v. D.C. Public Schools*, CRB No. 11-007, AHD No. PBL08-100A, DCP No. 30080441654-0001 (October 5, 2011) and the dissent in that case to bolster its position that “there is no reasonable basis to interpret an express authority or implied authority to assess additional compensation, fee, or penalty against the employer on the issuance of a compensation order.” *Id.* at p. 6. WMATA requests the CRB vacate the October 31, 2014 Compensation Order.

In response, Ms. Cheeks asserts long-standing precedent, common sense, and policy considerations support an award of interest on accrued benefits awarded in a compensation order. Ms. Cheeks requests the CRB affirm the October 31, 2014 Compensation Order.

ISSUE ON APPEAL

Is there authority for an award of interest on accrued benefits awarded in a compensation order?

ANALYSIS¹

On appeal, WMATA presents just one issue for review, whether there is authority for an award of interest on accrued benefits awarded in a compensation order. WMATA supports its position that there is no authority for an award of interest on accrued benefits awarded in a compensation order by relying on 7 DCMR § 209.11 which it argues is a regulation applicable to voluntary payment of compensation. 7 DCMR §209.11 states

Interest on accrued benefits shall be calculated at the same rate as that utilized by the Superior Court of the District of Columbia for civil judgments.

¹ The scope of review by the CRB is limited to making a determination as to whether the factual findings of the appealed 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. Section 32-1521.01(d)(2)(A) of the District of Columbia Workers’ Compensation Act of 1979, as amended, D.C. Code § 32-1501 *et seq.* (“Act”). Consistent with this standard of review, the CRB is constrained to uphold a compensation order that is supported by substantial evidence, even if there also is contained within the record under review substantial evidence to support a contrary conclusion and even if the CRB might have reached a contrary conclusion. *Marriott International v. DOES*, 834 A.2d 882, 885 (D.C. 2003).

WMATA argues the plain text of the regulation is silent as to its applicability to benefits awarded in a compensation order, as opposed to those paid voluntarily. WMATA also argues that without specific authority, an ALJ does not have the power to create an additional benefit, fee, penalty, or fine.

Ms. Cheeks responds to WMATA's argument by relying on the plain, logical definition of the term "accrued benefits" and on over thirty years of decisions by administrative law judges, the Director, and the Compensation Review Board.

At the formal hearing, Ms. Cheeks' claim for relief was "authorization for a foot specialist consultation as recommended by Dr. Matthew Menet. Also, we're requesting temporary total disability benefits from May 16th, 2014 to June 10, 2014 and interest should you award those benefits." Hearing Transcript, p. 8. There is no prior compensation order in this case so arguably the interest awarded in the October 31, 2014 Compensation Order is interest on accrued benefits that should have been paid voluntarily and were not. Of course, following that logic, interest would terminate as of the date benefits are awarded in a compensation order and would not accrue if an employer failed to make payments thereafter, a result which may or not be reasonable given other remedies available to address such non-payment. Be that as it may, that particular issue is not on appeal here.

What is on appeal here is the assessment of interest on benefits awarded in a compensation order. To that end, WMATA is correct that 7 DCMR § 209.11 falls under the heading "Voluntary Payment of Compensation;" however, while a heading can assist in resolving an ambiguity, it is not definitive.² More appropriately, "accrued interest" is defined as "[i]nterest that is earned but not yet paid," BLACK'S LAW DICTIONARY 830 (8th ed. 2004), and this definition supports assessment of interest regardless of whether the benefits are payable voluntarily or under an order so a claimant receives the full value of the benefits.

Decisions addressing this issue are inconsistent. In *Clark v. Verizon Communications*, Dir. Dkt. No. 03-92 OHA No. 92-793B OWC No. 279179 (February 10, 2004), the Director specified that interest applies to voluntary payment of benefits:

District of Columbia Municipal Regulation (DCMR) § 7-209.11, which pertains to the voluntary payment of compensation benefits, provides that "Interest on accrued benefits shall be calculated at the same rate as that utilized by the Superior Court of the District of Columbia for civil judgments." DCMR § 7-209.11. ...

(Emphasis added.) On the other hand, in *Hill v. Greyhound Line, Inc.*, Dir. Dkt. No. 96-039, H&AS NO. 87-759(B), OWC No. 0115712 (January 31, 1997), the Director awarded interest on benefits awarded in a compensation order:

² The reduction in permanent partial disability benefits for schedule members also falls under this heading (7 DCMR § 209.17), but there is no doubt these reductions apply to permanent partial disability benefits paid voluntarily or pursuant to an award in a compensation order. The same is true for the 500 week cap on temporary or partial disability benefits (7 DCMR § 209.13) and the cost of an independent medical examination (7 DCMR § 209.16).

As to claimant's third argument on interest, the Hearing Examiner ruled in an Amended Supplementary Compensation Order dated March 22, 1996, that the claimant is entitled to interest on his disability benefits awarded in the June 30, 1992 Compensation Order on Remand. The Director concurs with this ruling. In the case of *Bolden v. Embassy Dairy*, H&AS No. 83-192, OWC No. 001777 (February 15, 1984), it was held that interest is assessable on accrued benefits. The Director therefore acknowledges that an oversight has occurred with respect to the awarding of interest in this case. Accordingly, the Director orders that the employer pay to claimant interest on temporary total disability benefits from February 19, 1987 to June 1, 1988, from June 8, 1988 to June 13, 1988 and from October 25, 1988 to December 23, 1988. Said interest, as ordered by the Hearing Examiner in the Amended Supplementary Compensation Order (March 22, 1996), shall be paid at the rate payable at the D.C. Superior Court on judgments. 7 DCMR § 209.11 and § 221.5 Employment Benefits. Inasmuch as the oversight on interest has been corrected herein, the Director takes this opportunity to state that the portion of the Order of the Director issued on June 16, 1994 which denies claimant interest is hereby vacated and set aside.

WMATA's reliance on *Mitchell v. D.C. Public Schools*, CRB No. 11-007, AHD No. PBL08-100A, DCP No. 30080441654-0001 (October 5, 2011) is misplaced. *Mitchell* is a public sector case, and the dissent that WMATA relies on specifically distinguishes public sector cases from private sector cases because

[g]iven the text of 7 DCMR 209.11, the Director's determination that "there was authority for the hearing officer, now ALJ, to assess interest on accrued benefits [in private sector workers' compensation cases]" does not, in the absence of a similar provision in the public sector workers' compensation disability act, make such awards proper in public sector workers' compensation disability cases. The public sector workers' compensation disability act is duly enacted legislation and had the City Council intended to allow the assessment of interest it would have so provided in the Act.

Id. (M. Jones dissenting.)

Thus, there is precedent for the long-standing practice of awarding interest on accrued benefits awarded in a compensation order, and relying on that precedent in conjunction with a regulatory analysis requires the CRB affirm the October 31, 2014 Compensation Order.

CONCLUSION AND ORDER

Because there is a legal basis for the long-standing practice of awarding interest on accrued

benefits awarded in a private-sector compensation order, the October 31, 2014 Compensation Order is supported by substantial evidence, is in accordance with the law, and is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:



MELISSA LIN JONES
Administrative Appeals Judge

April 15, 2015
DATE