

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. 06-77

MANUEL FERNANDES,

Claimant - Respondent

v.

FT. MYER CONSTRUCTION AND ST. PAUL INSURANCE CO.,

Employer/Carrier - Petitioner

Appeal from a Compensation Order of
Administrative Law Judge David L. Boddie
AHD/OHA No. 03-396, OWC No. 586505

Gerard J. Emig, Esquire for the Petitioner

Charles Krikawa, IV Esquire, for the Respondent

Before E. COOPER BROWN, *Chief Administrative Appeals Judge*, LINDA F. JORY, and FLOYD LEWIS, *Administrative Appeals Judges*.

LINDA F. JORY, *Administrative Appeals Judge*, on behalf of the Review Panel

DECISION AND REMAND ORDER

JURISDICTION

Jurisdiction is conferred upon the Compensation Review Board pursuant to D.C. Official Code § 32-1521.01 and § 32-1522 (2004), 7 DCMR § 230 (1994), and the Department of Employment Services Director's Directive, Administrative Policy Issuance 05-01 (February 5, 2005)¹.

¹Pursuant 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 20024, Title J, the Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, sec. 1102 (Oct. 1, 1994) *codified at* D. C. Code Ann. §§ 32-1521.01, 32-1522 (2005). In accordance with the Director's Policy Issuance, the CRB replaces the Office of the Director in providing administrative appellate review and disposition of workers' and disability compensation claims arising under the D.C. Workers' Compensation Act of 1979, as amended, D.C. Code Ann. §§ 32-1501 to 32-1545 (2005) and the D.C. Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Official Code §§ 1-623.1 to 1.643.7 (2005), including responsibility for administrative appeals filed prior to October 1, 2004, the effective date of the D.C.

Pursuant to 7 D.C.M.R. § 230.04, the authority of the Compensation Review Board extends over appeals from compensation orders including final decisions or orders granting or denying benefits by the Administrative Hearings Division (AHD) or the Office of Workers' Compensation (OWC) under the public and private sector Acts.

BACKGROUND

This appeal follows the issuance of a Supplementary Compensation Order Awarding Penalties from the Administrative Hearings Division (AHD) of the Office of Hearings and Adjudication (OHA) in the District of Columbia Department of Employment Services (DOES). In that Supplemental Compensation Order, which was filed on August 24, 2006, the Administrative Law Judge (ALJ), concluded the Claimant - Respondent (Respondent) was entitled to an award of penalties in accordance with D.C. Code §32-1515.

As grounds for this appeal, Petitioner alleges that the Administrative Hearings Division (AHD)² (AHD) was without jurisdiction to issue the Supplemental Compensation Order and that AHD failed to address the arguments made by the employer/insurer in the response to show cause filed by Petitioner. Respondent asserts that the filing of an Application of Review does not stay the effect of a Compensation Order nor the obligation of the Employer/Insurer to pay an award in a timely fashion in accordance with the Act.

ANALYSIS

As an initial matter, the scope of review by the Compensation Review Board (CRB) and this Review Panel (hereafter, the 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. D.C. Official Code §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 Int'l. v. District of Columbia Department of Employment Services* 834 A.2d 882 (D.C. 2003). Consistent with this scope of review, the CRB and this panel are bound 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.

Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004.

² Petitioner identifies AHD as the Office of Hearings and Adjudication (OHA) However, the OHA became the Administrative Hearings Division (AHD) on February 5, 2005 with the creation of the CRB and OHA became the name of the division within the Labor Standards Bureau which encompasses both AHD and the CRB. Review of the record ensures that Petitioner meant to refer to OHA as AHD and it is not alleging that OHA lacks jurisdiction to address a request for penalties on an unpaid order.

Pursuant to D.C. Code 32-1515(f):

If any compensation payable under the terms of an award is not paid within 10 days after it becomes due, there shall be added to such unpaid compensation an amount equal to 20% thereof, which shall be paid at the same time as, but in addition to, such compensation, unless review of the compensation order making such award is had as provided in §32-1522(b)(2) and an order staying payments has been issued by the Mayor or court. The Mayor may waive payment of the additional compensation after a showing by the employer that owing to conditions over which he had no control such installment could not be paid within the period prescribed for the payment.

§32-1522 (b)(2) states in pertinent part:

The payment of any amounts required by a Compensation Order shall not be stayed pending final decision on review unless so ordered on the grounds that irreparable injury would otherwise ensue to the employer³.

The Panel must initially agree that Petitioner has not requested nor been granted a stay in payment of compensation benefits pursuant to the Compensation Order. Nevertheless, the starting point in determining if compensation has been timely paid is to ascertain when the compensation became due. As is well settled under the Act, compensation payable pursuant to an award becomes due when the award is actually received by employer/carrier. *See* D.C.M.R. §228.4; *Orius Telecommunications v. Dist. Of Columbia Dept. of Employment Servs.*, 857 A.2d 1061 (D.C. App. 2004); *Brinkley v. RTL Electric*, CRB No. 05-23, OWC No. 580138 (July 20, 2005). While Petitioner asserts that its payment of compensation was made only 5 days late, the Panel is unable to ascertain if in fact compensation was late as the ALJ failed to include any findings as to when the Compensation Order was received or the date compensation was paid. While it is quite possible that Petitioner stipulated that its payment was untimely under the act before the ALJ, he failed to include said stipulation in his findings of fact.

As written, this Panel is unable to determine from the Supplementary Compensation Order if the award of penalties is in accordance with the law. Accordingly, the award is vacated and the

³ The regulations promulgated for administration by the CRB include the following regulations with regard to a stay of payment:

§260.1: The filing of an Application for Review shall not stay the effectiveness of a compensation order or the payment of any amount ordered by it pending review by the board.

§260.2: Upon application by the employer the Board may stay a compensation order

§260.3 The Board shall only stay a compensation order on the grounds that the employer would suffer irreparable injury by complying with it.

See also Fernandes v. Ft. Meyer Construction Co., CRB No. 06-59, OHA NO. 03-396, OWC NO. 586505 (January 30, 2007), fn 3.

matter remanded to the ALJ to make appropriate findings of fact as to when Petitioner received the Compensation Order and when Petitioner actually rendered payment.

CONCLUSION

The Panel is unable to determine if the August 24, 2006 Supplemental Compensation Order Awarding Penalties is in accordance with the law or supported by substantial evidence as the order lacks material information. The Supplementary Compensation Order must be vacated and remand for additional findings of fact relative to the receipt of the Compensation Order and the issuance of payment of benefit made by Petitioner.

ORDER

The Supplemental Compensation Order Awarding Penalties of August 24, 2006 is hereby **VACATED** and the matter is **REMANDED** to AHD for further proceedings consistent with the foregoing Decision and Order.

FOR THE COMPENSATION REVIEW BOARD:

LINDA F. JORY
Administrative Appeals Judge

January 31, 2007

Date