

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. 08-061

MARIA CRUZ

Claimant – Respondent

v.

HILTON GARDEN INN AND ZURICH AMERICAN INSURANCE,

Employer/Carrier – Petitioner.

Appeal from a Final Order of
Claims Examiner Toni Green
OWC No. 62944

Barbara Thompson, Esquire for the Petitioner

Heather C. Leslie, for the Respondent

Before: FLOYD LEWIS, SHARMAN J. MONROE, JEFFREY P. RUSSELL, *Administrative Appeals Judges.*

FLOYD LEWIS, *Administrative Appeals Judge*, on behalf of the Review Panel:

DECISION AND REMAND ORDER

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

BACKGROUND

This appeal follows the issuance of an Order of the Office of Workers' Compensation (OWC) in the District of Columbia Department of Employment Services (DOES). In that Order, which was filed on November 20, 2007, OWC found that the instant claim was timely filed and granted the request for authorization for a change in treating physicians by Claimant-Respondent (Respondent). Employer-Petitioner (Petitioner) filed an Application for Review on December 20, 2007.

As grounds for this appeal, Petitioner alleges as error that the Order is arbitrary, capricious, unsupported by substantial evidence and is in clear error of the law.

ANALYSIS

In the review of an appeal from the Office of Worker's Compensation (OWC), the Compensation Review Board must affirm the Compensation Order or Final Decision under review unless it is determined to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. *See* 6 Stein, Mitchell & Mezines, ADMINISTRATIVE LAW, § 51.03 (2001).

On April 20, 2007, after an Order was issued by OWC concluding that Respondent's claim was untimely filed, OWC denied the request to change treating physicians. On appeal, the CRB remanded this matter to OWC, concluding that OWC's order was arbitrary, capricious, an abuse of discretion and not in accordance with the law. The CRB found that the submissions in the OWC official file did not amount to acceptable evidence that Respondent's claim was not timely filed and remanded the case to OWC to determine the date of Respondent's injury and whether the claim was timely filed. If the claim was timely, the CRB ordered OWC to decide whether to grant or deny the request to change physicians.

On remand, OWC found that Respondent's claim for an injury on April 16, 2006 was timely filed on June 7, 2006. Then, OWC concluded that that it was in Respondent's best interest to authorize a change in treating physicians for the April 16, 2006 injury.

Turning to the case under review herein, Petitioner does not contest OWC's finding that the claim was timely filed. However, Petitioner contends that OWC erred by failing to address the issue of whether Respondent suffered a compensable injury before addressing the issue of whether Respondent should be authorized to change physicians. It is Petitioner's argument that Respondent has no entitlement to medical treatment until there has been a finding that she sustained a compensable injury. As such, Petitioner asks that OWC's Order be reversed and the matter remanded for the Claims Examiner to issue a Memorandum of Informal Conference setting forth the recommendations concerning the issue of accidental injury and causal relationship. Respondent counters that the Order should be affirmed, as OWC followed the CRB's directive and correctly found that the claim was timely filed and that the authorization to change physicians should be granted

This Panel must agree with Petitioner's arguments on this issue. In the earlier appeal before the CRB, while Respondent herein filed the appeal with the CRB contending that the Claims Examiner failed to apply the correct standard in determining the issue of change of physicians, in its opposition, Petitioner argued that there never was a finding by the Claims Examiner on whether Respondent had sustained a compensable accidental injury. The CRB remanded this matter to the Claims Examiner to determine the date of Respondent's injury and whether the claim had been timely filed.

However, in remanding this matter for further action necessary by the Claims Examiner, we must make it clear the CRB was not, in any way, making a finding that there was, in fact, a work-related injury. Any finding on the issue of work-relatedness in this matter must be made by the Claims Examiner. Before addressing the issue of the request for change of physicians, first there must be a determination on whether this matter is compensable. Thus, this matter must be

remanded to the Claims Examiner for a determination on the issue of accidental injury and causal relationship.

Accordingly, OWC's Order is arbitrary, capricious, an abuse of discretion, or not otherwise in accordance with the law and must be remanded for a determination of whether Respondent suffered a compensable injury

CONCLUSION

The Order of November 20, 2007 is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law and must be remanded.

ORDER

The Order of November 20, 2007 is VACATED and REMANDED for further action consistent with the above discussion.

FOR THE COMPENSATION REVIEW BOARD:

FLOYD LEWIS
Administrative Appeals Judge

March 14, 2008
DATE