

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



F. THOMAS LUPARELLO
ACTING DIRECTOR

CRB No. 14-016

MARIA LUISA TAFALLA,
Claimant - Petitioner,

v.

SPECIALTY HOSPITAL OF WASHINGTON
and AIG INC.,
Employer/Insurer-Respondents.

Appeal from a January 15, 2014 Order By
Administrative Law Judge Linda F. Jory
AHD No. 14-014, OWC No. 701615

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2014 MAY 21 AM 11 30

John Christopher Belcher, for the Petitioner
Joel E. Ogden, for the Respondent

Before HEATHER C. LESLIE, JEFFREY P. RUSSELL, and HENRY W. MCCOY, *Administrative Appeals Judges.*

HEATHER C. LESLIE for the Compensation Review Board.

DECISION AND ORDER

OVERVIEW

This case is before the Compensation Review Board (CRB) on the request for review filed by Claimant - Petitioner (Claimant) of the January 15, 2014, Order issued by an Administrative Law Judge (ALJ) in the Hearings and Adjudication Section of the District of Columbia Department of Employment Services (DOES). In that Order, the ALJ dismissed Claimant's Application for Formal Hearing, without prejudice, and remanded the case to the Office of Worker's Compensation (OWC). We AFFIRM.

BACKGROUND AND FACTS OF RECORD

Claimant was injured at work on November 1, 2012 and sought medical treatment for her injuries. According to Claimant's counsel, Claimant continues to receive treatment and incur expenses, some of which Employer has refused to pay.

The parties proceeded to an Informal Conference on May 22, 2013. The issues presented were payment of medical bills and authorization for medical treatment, specifically pain management.

On May 31, 2013, a Memorandum of Informal Conference was issued wherein the Claims Examiner recommended,

That the Claimant not be authorized to continue medical treatment (for pain management) until she undergoes the IME schedule by the employer/carrier. It is recommended that the employer/carrier pay all medicals as it relates to the work injury of 11/01/12. Said medicals shall be paid in accordance with §32-1507(2).

Claimant did not appeal the Recommendation.

Claimant filed for a Formal Hearing on or about September 23, 2013 which was received by AHD on October 4, 2013. Claimant avers that the Application for Formal Hearing's purpose was to enforce the recommendations of the May 31, 2013 Memorandum. On October 7, 2013, the Memorandum was converted to an Order by the Claims Examiner.

The ALJ scheduled a status conference on January 15, 2014. After that status conference, an Order was issued on January 15, 2014 which dismissed Claimant's Application for Formal Hearing without prejudice for failure to timely appeal the Recommendation pursuant to 7 DCMR § 219.22 and remanded the matter to OWC.

Claimant timely appealed.¹ Claimant argues that the CRB should reinstate Claimant's claim and remand the matter to AHD for a hearing on the merits. Specifically, Claimant is seeking enforcement of the OWC Order and asserts her due process rights have been violated. Employer opposes, arguing the Order should be affirmed.

THE STANDARD OF REVIEW

In review of an appeal which is based not upon factual findings made on an evidentiary record, but rather is based upon review of the administrative record, the filings of the parties, and the orders, the Board must affirm the order 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, § 51.93 (2001).

DISCUSSION AND ANALYSIS

Claimant argues the following:

1. Contrary to the assumption of the ALJ, Tafalla does not challenge the Compensation Order of October 7, 2013. Rather Tafalla seeks to enforce that order by requiring Respondents to pay unpaid medical bills and, since the undersigned counsel has now been forced to devote over 40 hours to this matter, requiring Respondents to pay the undersigned counsel's attorney fees.
2. The ALJ's action violates Tafalla's Constitutional right to due process of law at two levels. First, nothing in the May 31 memorandum or any other document received by Tafalla informed Tafalla or her counsel that she had only 30 days to seek a formal hearing after the issuance of the May 31 Memorandum. Second, the ALJ dismissed

¹ Claimant concurrently filed a Motion to Complete Record for Review. Based upon our determination that the Order is in accordance with the law, the Motion is rendered moot.

this matter *sua sponte*, at a status hearing, without giving the undersigned counsel any opportunity to review the law or make a reasoned response.

Claimant's argument at 5.

Employer, in opposition, asserts that they are in compliance with the Order and that the ALJ was correct in dismissing the Application for Formal Hearing as Claimant's remedy is with OWC pursuant to DC Code § 32-1519. Moreover, Employer asserts that if attorney fees are to be sought, § 32-1530 governs such request. Finally, Employer argues that Claimant's counsel should be aware of the law, including appeal rights, and that ignorance of the law is not a defense to an untimely filing. We agree with Employer.

The ALJ, as is the CRB, is limited over what may be presented for resolution. A Claims Examiner's recommendation becomes binding if the recommendation is not timely rejected within fourteen days and an application for a formal hearing is not timely filed within thirty-four days after the issuance of the recommendation. *Travelers Indem. Co. of Ill. v. DOES*, 975 A.2d 823 (D.C. 2009). The regulations governing timely filing of a claim with AHD following an Informal Conference before OWC are set forth at 7 DCMR § 219.20² and § 219.22.³ Pursuant to these provisions, an aggrieved party has thirty-four working days following issuance of the Memorandum of Informal Conference to reject the Claims Examiner's recommendation and request, by filing an Application for Formal Hearing with AHD, a hearing *de novo* on the party's claim. In the absence of a timely filing with AHD, the Memorandum "becomes final by operation of law and the parties become bound by it." *Sandoval v. Washington Metropolitan Area Transit Authority*, Dir. Dkt. No. 99-57, OHA No. 99-177 (Nov. 1, 1999). *Accord, Aviles v. G. Hyman Construction Co., et al.*, Dir. Dkt. No. 97-40, H&AS No. 97-54 (July 31, 1997).

Thus, once the recommendation becomes a binding final order, any modification request, attorney fees request, any motions for default or penalties, must be filed with OWC. In the case before us, the recommendation was issued on May 31, 2013 and became final 34 working days later. Claimant filed her Application for Formal Hearing on October 4, 2013, well after the recommendation became final as a matter of law. We conclude the ALJ's dismissal was proper and in accordance with the law.

Moreover, while it may be true that OWC may have sent the recommendation without appeal rights attached, such an omission is deemed harmless as Claimant was in agreement with the Order. No prejudice resulted by OWC's alleged failure to attach appeal rights as by Claimant's own admission, an appeal would not have been necessary. As stated above, Claimant's remedies for any alleged failure of Employer to fail to comply with the Order lie with OWC, not AHD nor the CRB.

² 7 DCMR § 219.20 states: "The parties shall have fourteen (14) working days after receipt of the Memorandum of Informal Conference within which to signify in writing whether they agree or disagree with the terms of the memorandum."

³ 7 DCMR § 219-22 states: "If an application for formal hearing is not filed in accordance with § 220 of the chapter within thirty-four (34) working days after the issuance of the Memorandum of Informal Conference, said Memorandum shall become final. Thereafter, the Office shall issue a Final Order which shall be sent by certified mail to the parties and their representatives, and the Hearings and Adjudication Section. An aggrieved part may request a review by the Director, DOES."

CONCLUSION AND ORDER

The January 15, 2014 Order is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:



HEATHER C. LESLIE

Administrative Appeals Judge

May 21, 2014

DATE