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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services
Office of the Director

Gregory P. Irish
Director



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MARIE CLARK,)
)
 Claimant,)
)
 v.)
)
 VERIZON COMMUNICATIONS,)
)
 Self-Insured Employer.)
 _____)

Dir. Dkt. No. 03-92
OHA No. 92-793B
OWC No. 279179
(Private Sector)

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DEPARTMENT OF
EMPLOYMENT SERVICES
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**Appeal of the Order Denying Claimant's Motion for Default of
Jeffrey P. Russell, Administrative Law Judge, Department of Employment
Services**

Benjamin T. Boscolo, Esquire, for the Claimant

Catherine McQueen, Esquire, for the Employer

DECISION OF THE DIRECTOR

Jurisdiction

Claimant files this appeal from the Order Denying Claimant's Motion for Default of Administrative Law Judge Jeffrey P. Russell denying Claimant's claim for relief under the provisions of the District of Columbia Workers' Compensation Act of 1979, as amended, D.C. Law 3-77, D.C. Official Code §§ 32-1501-1545 (2001) (Act).

Background

On January 14, 2003, a hearing was held in this matter before Administrative Law Judge (ALJ) Jeffrey P. Russell. In a Compensation Order dated February 6, 2003, Claimant was awarded temporary total disability benefits from January 1, 1998 to September 30, 1998 and temporary partial disability benefits at the rate of \$413.46 per week beginning October 1,

1998 and continuing, plus interest thereon. Thereafter, Claimant filed a Motion for Order Declaring Default contending that Employer failed to comply with the February 6, 2003 Compensation Order. Employer filed an Opposition to Claimant's Motion for Order Declaring Default. Claimant filed a reply to Employer's Opposition.

On June 24, 2003, a hearing was held before ALJ Russell regarding Claimant's Motion for Order Declaring Default. The issue under consideration at the hearing was whether Employer was obligated to make interest payments on compound rather than simple interest. At the hearing, ALJ Russell stated that his ruling would be that the interest rate is compound as opposed to simple. However, ALJ Russell thereafter issued a written Order on June 24, 2003 Denying Claimant's Motion for Default, holding that Employer was not required to pay Claimant based upon compound interest.

On July 23, 2003, Claimant filed an Application for Review of ALJ Russell's June 24, 2003 denial of her Motion for Order Declaring Default.^{1/} On August 6, 2003, Claimant filed a Memorandum of Points and Authorities in support of the Application for Review. On August 19, 2003, Employer filed an Opposition to Claimant's Application for Review along with a Memorandum of Points and Authorities.

Analysis

The sole issue on appeal, based upon the Application for Review, is whether ALJ Russell's decision that Employer is not obligated to make interest payments to Claimant based upon compound interest is in accordance with the law.

The Director of the Department of Employment Services (Director) must affirm the Compensation Order under review if the findings of fact contained therein are supported by substantial evidence in the record considered as a whole and if the law has been properly applied. See D.C. Official Code § 32-1522 (2001); 7 DCMR § 230 (1986). Substantial evidence is such relevant evidence as a reasonable mind might find as adequate to support a conclusion. *George Hyman Construction Company v. D.C. Department of Employment*

¹ On July 23, 2003, along with her Application for Review, Claimant filed a Motion to Extend Time Within Which to File the Memorandum of Points and Authorities. On July 30, 2003, Employer filed an Opposition to Claimant's Motion. The Director has previously held that a Memorandum of Points and Authorities is susceptible to extensions when submitted to support a timely Application for Review. See *Lopez v. Allied Maintenance Corporation*, H&AS NO. 86-254 (Order issued by the Director, July 7, 1987). In the immediate case, Claimant filed a timely Application for Review. Therefore, despite Employer's objections, Claimant's Motion is granted and her Memorandum of Points of Authorities filed on August 6, 2003 is accepted.

Services, 498 A.2d 563, 566 (D.C. 1985).

In support of its Application for Review, Claimant argues that interest on accrued benefits should be compounded for several reasons. First, Claimant contends that by affirming the prior April 28, 2003 Compensation Order in all regards, including the findings on interest, the Director implicitly held that interest on accrued benefits should be compounded. Claimant further asserts that a finding that the interest payments should be compounded is consistent with a prior order of the Office of Hearings and Adjudications, ALJ Russell's bench ruling in the present case, and federal case law.² Claimant argues that D.C. Official Code § 28-3302(b) states that interest should be paid "per annum" and that this plain language establishes that interest should compound annually. Finally, Claimant asserts that a finding that interest should be compounded is consistent with the humanitarian goals of the Act and the principal that laws are to be construed for the benefit of the employee.

In response to Claimant's Application for Review, Employer argues that since the D.C. Code is silent on the issue of compound interest, only simple interest should be awarded. Employer asserts that, contrary to Claimant's allegation that she is merely seeking interest on a "per annum" basis, Claimant is actually seeking compound interest, which is defined as interest upon interest. Employer explains that interest "per annum" does not incorporate the concept of adding the interest to the principal each year and then taking interest on that sum the next year, which is the case with compound interest. Employer notes that because the Director's prior April 28, 2003 Decision did not specifically address the computation of interest, there has been no implicit or explicit holding that interest should be compounded. Furthermore, Employer contends that neither ALJ Russell's prior Order nor his statements at the hearing regarding the computation of interest are binding precedent. Employer further contends that the federal cases cited by Claimant are inapplicable since there is no such statutory authority providing for compound interest in the District of Columbia.

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. It is further noted that D.C. Official Code § 28-3302 (2001) is applicable to the interest rate on civil judgments in the District of Columbia. The rate of interest under the Act is governed by D.C. Official Code § 28-3302 (c). That Code Section provides, in pertinent part, that:

The rate of interest on judgments and decrees, where the judgment or decree is not against the District of Columbia, or its officers, or

² In *Dawson v. Congressional Productions*, OHA No. 99-99A, OWC No. 277776 (March 8, 2001), ALJ Russell concluded that the employer's obligation was to pay compound rather than simple interest.

its employees acting within the scope of their employment or where the rate of interest is not fixed by contract, shall be 70% of the rate of interest set by the Secretary of the Treasury pursuant to section 6621 of the International Revenue Code of 1986, approved October 22, 1986 (100 Stat. 2744; 26 U.S.C.S. § 6621), for underpayments of tax to the Internal Revenue Service, rounded to the nearest full percent, or if exactly ½ of 1%, increased to the next highest full percent; provided, that a court of competent jurisdiction may lower the rate of interest under this subsection for good cause shown or upon a showing that the judgment debtor in good faith is unable to pay the judgment. . .

D.C. Official Code § 28-3302(c)(2003).

The D.C. Court of Appeals, in *Rastall v. CSX Transportation*, 697 A.2d 46 (D.C. 1997), held that in the absence of statutory authority or a contractual agreement, interest should be simple rather than compound. Therein, the railroad company argued that the trial court erred in allowing the jury to consider an award of compound interest. In that case, the Court of Appeals noted that § 28-3302 did not specify that compound interest may be awarded. The Court determined that absent a contractual provision, prejudgment and judgment interest is not usually compounded. *Id* at 53 (citing *Giant Food, Inc. v. Bender*, 399 A.2d 1293, 1304 (D.C. 1979)). Since there was no contractual provision for compound interest, the Court of Appeals reversed the jury's award of compound interest and remanded the case to the trial court to enter simple interest.

The Director concludes that interest payments should be made on simple rather than compound interest. D.C. Official Code § 28-3302, relied upon by Claimant, does not provide for the payment of compound interest.^{3/} Based upon the previous holding of the D.C. Court of Appeals, the Director concludes that in the absence of any statutory authority for compound interest, interest should be calculated on a simple basis in compensation cases. *See Rastall, supra*.

Despite Claimant's arguments to the contrary regarding the prior April 28, 2003 Decision, there was no implicit determination by the Director that compound interest is appropriate under the Act. Although the Director affirmed ALJ Russell's award of interest

³ The Director rejects Claimant's argument that the language in § 28-3302(b) containing the phrase "per annum" establishes that interest should be compounded. Employer is correct in that the applicable § is 28-3302(c), which does not contain the phrase "per annum." Furthermore, in *Rastall*, the Court of Appeals stated that § 28-3302 does not specify that compound interest may be awarded. *Rastall* at 53. It is clear that the Court of Appeals has interpreted § 28-3302 to mean that interest cannot be compounded.

in conjunction with compensation benefits, the Director did not specifically address how the interest should be computed. Therefore, Claimant's argument that the Director's prior Decision in this case implicitly decided this issue is rejected.^{4/} Finally, the federal case law cited by Claimant as persuasive authority is inapplicable to this case and provides no mandate for reversal of the ALJ.

Accordingly, the June 24, 2003 Order Denying Claimant's Motion for Default is in accordance with the law.

Conclusion

ALJ Russell's ruling that Employer is not obligated to make interest payments based upon compound interest is in accordance with the law.

Decision

The June 23, 2003 Order Denying Claimant's Motion for Default is **AFFIRMED**.



Gregory P. Irish
Director

February 10, 2004

Date

⁴ It is also noted that the Director is not bound by conclusions of law from an administrative law judge, to include ALJ Russell's initial bench ruling in this case and his prior Order in *Dawson v. Congressional Productions, Inc.*, OHA No. 99-99A, OWC No. 277776 (March 8, 2001). See *Koh Systems v. D.C. Department of Employment Services*, 683 A.2d 446, 449 (D.C. 1996); See Also *Jones v. Washington Hospital Center*, Dir. Dkt. No. 3-55; OHA No. 2-291, OWC No. 564887 (July 2, 2003).