

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

Department of Employment Services

VINCENT C. GRAY  
MAYOR



F. THOMAS LUPARELLO  
ACTING DIRECTOR

**COMPENSATION REVIEW BOARD**

**CRB No. 14-040**

**MARIE EASON,  
Claimant-Petitioner,**

v.

**CENTER RADIOLOGY and THE HARTFORD,  
Employer and Insurer-Respondent.**

DEPT. OF EMPLOYMENT  
SERVICES  
COMPENSATION REVIEW  
BOARD  
2014 JUL 9 AM 9 00

Appeal from a Supplemental Compensation Order Compensation Order  
by Administrative Law Judge Linda F. Jory  
AHD No. 04-156, OWC No. 590269

Matthew Peffer for Petitioner  
Mary G. Weidner for the Respondent

Before: JEFFREY P. RUSSELL, HENRY W. MCCOY and MELISSA LIN JONES, *Administrative Appeals Judges.*

JEFFREY P. RUSSELL, *Administrative Appeals Judge*, for the Compensation Review Board.

**DECISION AND ORDER**

**BACKGROUND AND FACTS OF RECORD**

In a Compensation Order issued on June 23, 2004, Claimant Marie Eason was awarded temporary total disability benefits from May 14, 2003 until February 18, 2005, and from October 1, 2005 through October 25, 2005.

As of October 25, 2005, Ms. Eason started returning her checks to the insurer because she had returned to work part time. However, the insurer continued to send her compensation checks but described the payments as "temporary partial disability" payments, although they were in the same amount as the previous temporary total disability benefits.

On May 31, 2013, Employer issued a Notice of Final Payment of Compensation Payments, noting therein that it had paid 110 weeks of temporary total disability payments, and 390 6/7 weeks of temporary partial disability payments.<sup>1</sup>

On July 1, 2013, Ms. Eason filed a Motion for Order Declaring Default, seeking a determination that Employer was in default for non-payment of a Compensation Order for which it had not sought modification, and seeking assessment of a 20% penalty on the unpaid amount. A Formal Hearing on the Motion was held on October 30, 2013.

At the time of the formal hearing, the ALJ had pending before her a Remand Order from the Compensation Review Board in the case of *Clement v. Sterne, Kessler, Goldstein & Fox*, CRB No. 10-201, 03-575B (March 26, 2013), a case dealing with the same fundamental question at issue in this case, i.e., whether the 500 week limit on “temporary or permanent partial disability” payments includes within it a limit on temporary total disability payment. The CRB had remanded the *Clement* case to the ALJ with instructions to apply the 500 week limit to temporary total disability payments.

On the day after the formal hearing, October 31, 2013, the ALJ issued a Supplemental Compensation Order on Remand in *Clement*, in which she followed the direction of the CRB and denied Mr. Clement’s request for default and penalties. That Supplemental Compensation Order on Remand was appealed to the CRB, which affirmed the order on March 18, 2014. Decision and Order, *Clement v. Sterne Kessler*, CRB No. 13-134, AHD No. 03575B, OWC No. 555839 (March 18, 2014). That Decision and Order has been appealed to the District of Columbia Court of Appeals (DCCA), and has not yet been acted upon by the court.

On March 10, 2014, the ALJ issued a Supplemental Compensation Order in this case. Following the CRB’s decision in *Clement*, she denied Ms. Eason’s requests for assessment of a penalty and order of default. Ms. Eason filed a timely appeal with the CRB, to which Employer filed a timely opposition. We affirm the Supplemental Compensation Order.

#### DISCUSSION AND ANALYSIS<sup>2</sup>

On review, Ms. Eason makes the same arguments that were raised in the *Clement* cases, specifically, that the CRB misinterprets the plain meaning of D.C. Code § 32-1505 (b), that resort to legislative intent is not necessary in this case because in her view the language of the statute is clear and subject to only one reading, that the “humanitarian purposes of the Act” compel that the language be given the meaning that she prefers, that the *Clement* decision is

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<sup>1</sup> Despite the insurer’s characterization of the payments, the Compensation Order of June 23, 2004 was never modified; hence, all payments were temporary total disability payments.

<sup>2</sup> The CRB reviews a Compensation Order to determine whether the factual findings are based upon substantial evidence in the record, and whether the legal conclusions drawn from those facts are in accordance with applicable law. The CRB will affirm 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.

wrong and the CRB ought to abandon it, and that a publication on the DOES website is consistent with her reading of the statute, and inconsistent with the CRB's *Clement* decision.

Each of these arguments has been fully addressed in the prior CRB decisions in *Clement*, to which we would only add that, with respect to resort to the "humanitarian purposes of the Act", the DCCA has written:

When our cases speak of the "humanitarian purpose" of the statute, they refer specifically to the presumption of compensability, D.C. Code § 36-321 (1) (1988), which enables a claimant more easily to establish his or her entitlement to benefits and is intended to favor awards in arguable cases. See *Ferreira v. District of Columbia Department of Employment Services*, 531 A.2d 651, 655 (D.C. 1987). The reason for this presumption is simply that a worker's sole remedy for a work-related injury is the remedy provided by the statute; consequently, if the statutory benefits are unavailable for any reason, the worker will not be compensated at all for the injury. However, when it is undisputed that a claimant's injury arose out of his or her employment and is therefore compensable, "the presumption is no longer part of the case" because it is no longer necessary to effectuate the humanitarian purpose of the law. *Dunston v. District of Columbia Department of Employment Services*, 509 A.2d 109, 111 (D.C. (1986).

*4934, Inc. v. DOES*, 605 A.2d 50 (D.C. 1992), at 57. See also, *WMATA v. Reid*, 666 A.2d 41 (D.C. 1995) at 48, footnote 12.

Moreover, as the DCCA has also written:

While the principle of liberal construction of workers' compensation laws "allows doubts to be resolved favorably to the employee, it does not relieve the courts of the obligation to apply the law as it is written and in accordance with its plain meaning." *National Geographic Soc'y v. District of Columbia Dep't of Employment Servs.*, 721 A.2d 618, 622 (D.C. 1998).

*Adjei v. DOES*, 817 A.2d 179 (February 20, 2003) at 184.

Ms. Eason's appeal is in essence a request that we reconsider *Clement*, a course for which we do not feel a convincing case has been made.

CONCLUSION AND ORDER

The Supplemental Compensation Order of March 10, 2014 is supported by substantial evidence and is accordance with the law. The Supplemental Compensation Order is affirmed.

FOR THE COMPENSATION REVIEW BOARD:



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JEFFREY P. RUSSELL  
*Administrative Appeals Judge*

July 9, 2014  
DATE