

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA M. MALLORY
DIRECTOR

CRB No. 11-093

MARTHA CARSON,

Claimant–Respondent,

v.

HOWARD UNIVERSITY HOSPITAL,

Self-Insured Employer–Petitioner.

Appeal from a Penalty Order of
Claims Examiner Edith Tyler and Supervisor Lisa Baxter
OWC No. 603532

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2012 JUN 11 AM 9 17

William H. Schladt, Esquire, for the Petitioner

Michael J Kitzman, Esquire, for the Respondent

Before JEFFREY P. RUSSELL,¹ HENRY W. MCCOY AND LAWRENCE D. TARR, *Administrative Appeals Judges*.

JEFFREY P. RUSSELL, for the Compensation Review Board.

DECISION AND ORDER VACATING AN ORDER

BACKGROUND

Martha Carson injured her right knee while employed by Howard University Hospital (Howard) on July 5, 2004. Following a course of medical care, she and Howard agreed to a settlement of the indemnity portion of her workers' compensation claim, which settlement was reduced to writing and approved by the Office of Workers' Compensation (OWC) on June 13, 2011. The approval order was mailed to Howard's counsel and received by him on June 15, 2011. Payment of the proceeds owed to Ms. Carson pursuant to the approved settlement was received by her on June 27, 2011. On that date, Ms. Carson filed a "Motion Requesting a Declaration of Default and Penalties" against Howard, seeking both a default declaration and an award of a late payment penalty of 20%

¹ Judge Russell is appointed by the Director of DOES as an interim Board Member pursuant to DOES Administrative Policy Issuance No. 11-03 (June 23, 2011).

of the amount due to Ms. Carson under the settlement agreement, pursuant to D.C. Code § 32-1515 (f). Howard opposed the Motion, asserting that the June 27, 2011 payment was timely.

On August 18, 2011, the Claims Examiner and Claims Supervisor issued a “Penalty Order” denying the default request, and awarding the 20% penalty. Howard timely appealed that award, to which appeal Ms. Carson has filed an opposition.

STANDARD OF REVIEW

This appeal concerns an Order based not upon factual findings made on an evidentiary record, but rather upon the contents of the agency administrative record, and the filings of the parties. Accordingly, the CRB must affirm the order under review unless the order 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

In this case the facts are not in dispute. A settlement petition was approved by OWC on June 10, 2011, mailed to the parties, and received by Petitioner on Wednesday, June 15, 2011, making that the date upon which payment of the settlement amount was due. *See*, *Orius Telecommunications, Inc. v. DOES*, 857 A.2d 1061 (D.C. 2004), at 1071. That is, paraphrasing the usage of the District of Columbia Court of Appeals (DCCA) in *Orius*,² the ten-day limit for making timely payment for avoidance of liability for a 20% late payment penalty under D.C. Code § 32-1515 (f) commenced on June 15, 2011 and terminated on June 25, 2011. Given that it is also undisputed that Ms. Carson (through her attorney) received the check for her portion of the settlement from Howard on June 27, 2011, it might appear to be evident that payment was late and a penalty is due. However, June 25 was a Saturday, June 26 a Sunday, and June 27, the date of receipt, was a Monday.

Howard urges us to look to the District of Columbia Rules of Civil Procedure for guidance in determining how to compute the applicable time period,³ while Ms. Carson, although acknowledging that in some instances those rules should be consulted, urges against resort to them in this instance, because she argues that the statute and the governing regulations are clear, and that resort to the Superior Court Rules is unnecessary.

The specific Rule over which they disagree is Rule 6, which reads in pertinent part as follows:

² The Court’s words, using the operative dates applicable to that case, were “counsel for petitioners explicitly conceded during oral argument that the limitations period commenced on August 2, 2002 when he received the compensation order. We credit this concession and accordingly conclude that the ten-day time limit for payment of benefits commenced on August 2 and terminated on August 12 [2002]”.

³ Howard cites and directs us to the Code of District of Columbia Municipal Regulations (CDCR) 1-2801 as support for this proposition. As Ms. Carson points out, this citation is inapposite, in that it applies to proceedings before the Office of Administrative Hearings (OAH), the central administrative adjudicatory panel created to consolidate administrative hearings from various agencies across the District of Columbia executive branch, but from which workers’ compensation adjudication is excluded.

Rule 6. Time.

- (a) Computation. – In computing any time prescribed or allowed by these rules, by order of Court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday [...]. When the period allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation.[...].

Although the Code of District of Columbia Municipal Regulations (CDCR) 7-221.5 permits DOES Administrative Law Judges (ALJs) to “use the Rules of Civil Procedure of the Superior Court of the District of Columbia as guidelines in matters of procedure not specifically addressed in the District of Columbia Administrative Procedure Act and the Act”, that regulation does not refer to matters pending before Claims Examiners in the Office of Workers’ Compensation (OWC).

Because we value and seek to maximize consistency of practice, procedure and substance in the administration and application of the provisions of the Act, where issues that are presented in both OWC and the hearings division of the Agency are concerned, to the extent possible, the same approaches to resolving ambiguities and establishing interpretive rules ought to be utilized. Thus, in proper circumstances, we deem it appropriate to utilize the Superior Court Rules as guidelines not only for ALJs, but Claims Examiners as well.⁴

We are cognizant, however, that the aspects of the issue that was before the Claims Examiner and which is now before us have been considered by the DCCA, and that the Court has resolved issues relating to the ten-day time period and its computation (1) in ways that made no reference to Rule 6 or any other Superior Court rule, and (2) in a manner that contradicted at least one prime feature of Rule 6, that being the rule’s directive that in computing time periods of 11 or fewer days, intermediate Saturdays and Sundays are not to be counted. We refer, of course, to *Orius, supra*, in which the Court (implicitly but one assumes knowingly) included two Saturdays and two Sundays in the 10 days that it determined were the relevant time frame within which payment had to be made in order to avoid liability for the penalty. For this reason, we take it as established by the DCCA that the 10-day period in question here should include weekends in the computation, and must therefore reject Howard’s argument that the 10-day period expired on June 29.

Nonetheless, we are faced with the fact that the 10th day fell on a Saturday. It is a near universal commonality throughout judicial and administrative adjudicatory practice and procedure that where a deadline date falls on a Saturday, a Sunday or a legal holiday, the date is extended to the next day that is none of those. It is that practice which manifests itself in the first part of Rule 6 (a), and is the rule applied by this Agency in both public and private sector cases when the issue of computation of time arises. See, *Jones v. District of Columbia Department of Corrections*, CRB No. 08-223 (October 14, 2011) and *Unigwe v. Dominion Enterprises*, CRB No. 11-055 (September 8, 2011),

⁴ In her filings in connection with this appeal, Ms. Carson concedes that “it is customary to look to the Superior Court rules for guidance in certain issues.” Memorandum of Points and Authorities in Opposition to Application for Review, unnumbered page 3.

both citing *Jackson v. ECAB*, 537 A.2d 576 (D.C. 1988). It is also the rule adopted by the DCCA in its Rule 26 (a)(3).⁵ We view it as sensible, and applying it in this instance fosters consistency in the administration of the Act; we view having a single framework for computation of time to be superior to having multiple such frameworks.

CONCLUSION

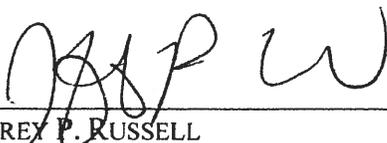
The award of a penalty pursuant to D.C. Code § 32-1515 (f) where the 10th day fell on a Saturday, and payment was made the following Monday, was not in accordance with the law.

⁵ We are aware that the DCCA has also included the exclusion of intermediate weekends and holidays in its time computation rules. See, District of Columbia Court of Appeals Rule 26 (a)(2).

ORDER

The Award of a 20% penalty contained in the Penalty Order of August 18, 2011 is reversed and vacated. The denial of the default request remains unchanged.

FOR THE COMPENSATION REVIEW BOARD:

A handwritten signature in black ink, appearing to read "J.P. Russell", written over a horizontal line.

JEFFREY P. RUSSELL
Administrative Appeals Judge

January 11, 2012
DATE