

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
ACTING DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 14-133

MARYANNE TAGOE,
Claimant-Respondent,

v.

HOWARD UNIVERSITY HOSPITAL
and SEDGWICK CMS
Employer/Carrier-Petitioner.

Appeal from an October 23, 2014 Order by
Administrative Law Judge Amelia G. Govan
AHD No. 03-287, OWC No. 568310

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2015 MAR 17 PM 1 49

Maryanne Tagoe *pro se* Claimant
William H. Schladt for Employer

Before LINDA F. JORY, MELISSA LIN JONES, and JEFFREY P. RUSSELL, *Administrative Appeals Judges*.

LINDA F. JORY for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

This case is before the Compensation Review Board (CRB) on the request of Employer for review of an Order issued on October 23, 2014 by the Administrative Hearings Division (AHD) which found that Employer was in default of a Compensation Order (CO) issued on July 10, 2012. The July 10, 2012 CO ordered Employer to pay Claimant \$505.29 to reimburse her for travel expenses and interest at a rate of two percent. The October 23, 2014 Order found Employer was in default of the CO and again ordered Employer to pay Claimant \$505.29 with two percent interest on that amount.

Employer's Application for Review (AFR) was filed with the CRB on November 21, 2014. Employer attached to the AFR copies of nine checks made payable to Claimant and copies of Claimant's signature indicating Claimant had cashed the checks. On November 24, 2014, the CRB issued a Notice of Application for Review to Employer and Claimant indicating:

Any opposition to the Application shall be filed with the Clerk of the Board within fifteen (15) calendar days from the filing date of the Application for Review, after which this appeal will be assigned to a three-judge panel of the Board for review and disposition.

On January 6, 2015, the CRB received what is entitled "Motion to Dismiss with Prejudice AFH filed by Mr. Schladt dated Dec. 31, 2014." Claimant has not filed an opposition to Employer's AFR.

ISSUES ON APPEAL

1. Has employer shown reasonable grounds for its failure to present additional evidence while the matter was before the Administrative Hearings Division?
2. Is the October 23, 2014 Order arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law?

ANALYSIS

Depending upon the type of order on appeal, the standard of review applied by the CRB differs. When a party appeals a Compensation Order, the CRB is limited to making a determination as to whether the factual findings of the appealed Compensation Order are based upon substantial evidence in the record and whether the legal conclusions drawn from those facts are in accordance with applicable law; if the Compensation Order is supported by substantial evidence, even if there also is contained within the record under review substantial evidence to support a contrary conclusion and even if the CRB might have reached a contrary conclusion, the CRB must affirm that Compensation Order. *Marriott International v. DOES*, 834 A.2d 882, 885 (D.C.2003) In this case, Employer appeals an Order issued in response to a motion; therefore, the CRB must affirm that order unless it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. *See* 6 Stein, Mitchell & Mezines, ADMINISTRATIVE LAW § 51.03 (2001).

Nonetheless, whether the CRB is reviewing a Compensation Order or an Order issued in response to a motion, the CRB does not have the power to conduct additional fact finding, and "[n]o additional information shall be submitted by the claimant or other interested parties after the date of hearing, except under unusual circumstances as determined by the Mayor." D. C. Code § 32-1520(c)..

The purpose underlying the requirement of "unusual circumstances" is "to prevent a hearing from being reopened simply for the purpose of introducing new or additional evidence when that evidence could have reasonably been presented at the hearing." *Charles P. Young Co. v. DOES*, 681 A.2d 451, 454 (D.C. 1996) In other words, reasonable grounds must exist for not introducing the evidence before the ALJ because the CRB does not have the power to accept additional evidence or to

compel an ALJ to consider additional evidence unless:

- (a) that the additional evidence is material, and
- (b) that there existed reasonable grounds for the failure to present the evidence while the case was before the Administrative Hearings Division or the Office of Workers' Compensation (depending on which authority issued the compensation order from which appeal was taken).

Bennett v. DOES, 629 A.2d 28, 30 (D.C. 1993) citing *King v. DOES*, 560 A.2d 1067, 1073 (D.C. 1989).

The CRB has reviewed the record created by the ALJ and has taken official notice of the AHD's administrative files; however, absent a showing by Employer that the documents attached to its Application for Review are material and could not reasonably have been presented to the ALJ except for unusual circumstances, the CRB has not reviewed these documents because it is not permitted to do so.

There is a long history with respect to this claim, as correctly summarized by the Employer:

There have been three Compensation Orders on Remand which have determined the amount that was owed to the claimant in this case. The first Compensation Order on [R]emand is dated September 21, 2009 and is attached hereto. In that Compensation Order, medical expenses were awarded in the amount of \$2,670.72. Mileage was awarded in the amount of \$573.44. After a Decision and Remand from the Compensation Review Board, a new Compensation Order on Remand was issued on February 18, 2021. The mileage was again incorrectly calculated. However, an additional \$80.00 in medical expenses was awarded, which has never been disputed by the employer. The total amount of medical expense reimbursements that has been awarded in this case from those two Orders is \$2,750.72. This amount has been affirmed by the CRB. The mileage award was eventually corrected such that an Order dated July 10, 2012 was issued awarding mileage in the amount of \$505.29. That dollar amount included all mileage from the date the injury through the end of 2008. That mileage reimbursement amount was affirmed by the Compensation Review Board.

Employer's Memorandum in Support of Application for Review at 2.

As noted in the Order under review, on June 21, 2013, Claimant filed a Motion for Supplementary Order of Default and Penalties asserting Employer had not paid the full amount awarded in the ALJ's July 10, 2012 Compensation Order on Remand (COR). The July 10, 2012 COR ordered Employer to pay out of pocket medical expenses of \$3,326.16 and a travel mileage reimbursement of \$505.29. The CRB affirmed the ALJ's award on September 18, 2012. *Tagoe v. Howard University Hospital*, CRB No. 12-110, AHD No. 03-287 (September 18, 2012). An Order to Show Cause was issued directing Employer to Show Cause why an Order on Default

should not be issued. The ALJ determined employer had not received Claimant's June 21, 2013 Motion and issued an Amended Order to Show Cause on July 2, 2013. Employer filed its response on July 10, 2013. Employer's response included a chart which lists 9 payments made to Claimant from March 9, 2010 through June 20, 2013. Employer asserted that the July 10, 2012 Order required Employer to pay Claimant \$3906.04 but it has paid Claimant \$4,265.08, therefore it was entitled to a credit of \$288.17.

The ALJ issued another Order to Show Cause on September 8, 2014. This order stated:

Employer's Response to the Amended Order to Show Cause lists payments made to Claimant. Those payments total \$4,265.08. However Employer's list does not capture the dates applicable to the itemized payments, nor does it explain which Order each payment was to satisfy. As such, it is unclear to the undersigned which, if any, payments were not paid timely to satisfy the Compensation Orders issued. In addition, Claimant has not submitted documentation to support her allegation that Employer owes her the amounts and penalty and interest due to her. Neither party has submitted documentation other than the narrative, charts and lists.

Accordingly, the parties are hereby **ORDERED** to submit documentation to support their respective positions within fifteen business days of service of this Order, with a copy served upon the opposing party. Claimant is to substantiate, with appropriate documentation, her claim that she received untimely payment, pursuant to the applicable Orders, of amounts due her. Employer is to substantiate its position that all payments were rendered in a timely manner pursuant to the applicable Orders, with *appropriate documentation*.

(Bold in original, italics added)

Employer filed its response on October 1, 2014. Employer asserted that it had voluntarily paid Claimant \$4195.60 as of the date the COR issued on July 10, 2012; therefore, no default or penalty was due for that Order. Employer attached a check register itemizing nine payments that were made to claimant and that eight out of nine had cleared or had been cashed. The 8 checks totaled \$4,198.63.

Claimant filed a Motion to Strike Employer's response asserting it should have been filed on September 30, 2014 and therefore it is untimely. Claimant also asked for a status conference and asserted that Employer has not provided any checks to show proof of payments. Employer filed a response to Claimant's Motion to Strike asserting, *inter alia*, that its response was timely and that it had voluntarily paid Claimant an amount of \$566.69 in anticipation of the increase of the mileage award because the OWC and the CRB had recognized that the wrong rate for mileage had been used. Employer asserted that it had already paid Claimant the benefits ordered in the July 10, 2012 order and no additional payment was owed. Employer used the response to Claimant's Motion to Strike to supplement its prior chart submission with a new chart that added a payment made pursuant to the award made on June 2, 2013 in the amount of \$69.48 and

distinguished the checks as either “Award Payment”, “Voluntary Payment” or “Compensation Order”.

It is unclear why Employer did not include its explanation that it had voluntarily paid Claimant mileage in anticipation of an increased mileage award in its prior response to the Amended Order to Show Cause or the subsequent Order to Show Cause. Employer’s response to the Amended Order to Show Cause filed on July 10, 2013 does not mention the amount of \$566.69. In its response to the September 8, 2014 Order, Employer did state that it had paid an additional \$566.69 on March 22, 2011, but did not state it was for mileage. Nevertheless, the ALJ did acknowledge employer’s explanation but stated:

Employer’s Response and detailed chart is helpful with regard to the timeline and delineation of payments made. However, the check register submitted is insufficient as documentary proof of the payments made by Employer and/or checks cashed by the Claimant. It is not on Employer’s letterhead or that of any financial institution. There are no indicia of the official character of this information. As such, it is no more reliable, as factual evidence, than the charts submitted by Claimant.

Claimant was awarded a travel reimbursement of \$505.29, at two percent interest, in the July 10, 2012 Compensation Order. There is no evidentiary proof that the award was timely paid by Employer.

Order at 7.

Based on the above, this Panel concludes there are not reasonable grounds for Employer’s failure to present the cancelled checks to the ALJ. Claimant’s Motion for Default was filed in June 2013. Over the course of 14 months, Employer was served with two Orders to Show Cause and had two opportunities to provide the ALJ copies of the cancelled checks, particularly the check it asserts was a voluntary payment of mileage and, as noted above, Employer took advantage of Claimant’s Motion to Strike to put additional explanation into the record. Employer could have easily submitted a copy of the check with its Response to Claimant’s Motion to Strike and it did not do so.

Merely stating that it has overpaid Claimant is not a sufficient explanation for not making payment pursuant to a Compensation Order. The ALJ provided the parties with two opportunities to explain why an order declaring a default should not be issued. This Review Panel concludes the ALJ did not abuse her discretion in concluding that employer did not submit sufficient documentary proof of the payments made by Employer. The Panel further finds the ALJ’s decision that Employer was in default of the July 10, 2012 was not arbitrary and accordingly is affirmed.

With regard to Claimant’s request for penalties the Order does not specifically deny Claimant’s request for penalties however, after ordering Employer to pay Claimant \$505.29 with two

percent interest on that amount the ALJ ordered:

ALL OTHER CLAIMS FOR RELIEF ARE HEREBY DENIED.

Order at 8.

Claimant had the legal burden to prove entitlement to penalties -- in this case that the employer did not make full payment pursuant to the July 10, 2012 COR. *See McDonald v. George Washington University*, CRB No. 12-132, OWC No. 669153 (November 5, 2012). Arguably, the ALJ erred by placing the burden on Employer:

Employer's Response to the Amended Order to Show Cause lists payments made to Claimant. Those payments total \$4,265.08. However, Employer's list does not capture the dates applicable to the itemized payments, nor did it explain which Order each payment was to satisfy. As such it was unclear which, if any, payments were not paid timely to satisfy the Compensation Orders issued.

The document submitted [Employer's check register] does not reflect a discrete payment of the \$505.29 for travel costs awarded on July 10, 2012.

Employer's Response and detailed chart is helpful with regard to the timeline and delineation of payments made. However, the check register submitted is insufficient as documentary proof of the payments made by Employer and/or checks cashed by the Claimant. It is not on Employer's letterhead or that of any financial institution. There are no indicia of the official character of this information. As such, it is no more reliable, as factual evidence, than the charts submitted by Claimant.

Claimant was awarded a travel reimbursement of \$505.29, at two percent interest, in the July 10, 2012 Compensation Order. There is no evidentiary proof that the award was timely paid by Employer.

Order at 6,7.

However, the ALJ went on to write:

In addition, Claimant did not submit documentation to support her allegation that Employer owes her the amounts and penalty claimed. She submitted charts which purported to represent amounts, penalties and interest due to her. Neither party submitted documentation other than the narrative, charts and lists. There were no copies of checks mailed or of cancelled checks or other documentary substantiation for the amounts claimed to be outstanding and/or paid.

Order at 6. With regard to Claimant's response to the September 8, 2014 Order to Show Cause, the ALJ wrote:

Claimant resubmitted her chart and her assertion that the \$505.29 awarded on July 10, 2012 and all accrued interest on all awards has never been paid. Claimant further contended that Employer's Response was untimely, and re-submitted her request for a status conference. Claimant submitted no new documentation regarding payments sought or received.

Order at 7. The ALJ summarized:

At this juncture, no benefit would ensue from reconvening the parties to adduce evidence. Neither party has substantiated its position with documentary proof, with regard to the disputed payment/receipt of the amounts awarded. There is no reason to believe that convening of yet another conference or hearing would adduce additional documentary proof in support of either party's contentions. Claimant has had more than ample opportunity to document her claims for reimbursement and mileage from 2009 to the present. This matter has been in contention since 2003. If any further action is required when the Court of Appeals addresses Claimant's filings, that action will be taken. Until the DCCA rules, any further filings will be held in abeyance.

Order at 7. The Panel concludes that although the ALJ failed to specifically reach a conclusion on Claimant's request for a penalty, given the ALJ's rulings as set forth above, the ALJ essentially determined Claimant has not met her burden of proving entitlement to a penalty pursuant to § 32-1515(f) and that ruling is accordingly affirmed.

CONCLUSION AND ORDER

The October 23, 2014 Order finding Employer in Default of the July 10, 2012 Compensation Order and denying penalties is **AFFIRMED**.

FOR THE COMPENSATION REVIEW BOARD:



Linda F. Jory
Administrative Appeals Judge

March 17, 2015

DATE