

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**Department of Employment Services**

MURIEL BOWSER  
MAYOR



DEBORAH A. CARROLL  
DIRECTOR

**COMPENSATION REVIEW BOARD**

**CRB No. 14-133 (1)**

**MARYANNE TAGOE,  
Claimant–Respondent,**

**v.**

**HOWARD UNIVERSITY HOSPITAL  
and SEDGWICK CMS  
Employer/Third-Party Administrator–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 MAY 1 PM 1 50

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.

**ORDER DENYING RECONSIDERATION**

This case is before the Compensation Review Board (CRB) on the request of Employer to reconsider the Board's Decision and Order (DO) issued on March 17, 2015 which affirmed an Order finding Employer in Default of a Compensation Order. Employer asserts that:

The reason for filing a Motion to Reconsider in this matter is because the Employer does not wish that the *pro se* claimant in this case, Dr. Maryanne Tagoe have the opportunity to use the Default Order to attempt to enforce an Order already paid.

Motion to Reconsider at 2.

Employer's motion was timely filed and upon receipt, an Order to Show Cause issued to the *pro se* Claimant requesting a response by April 10, 2015. Claimant filed a timely objection to Employer's Motion for Reconsideration and a Motion to Dismiss for Lack of Subject Matter Jurisdiction (Claimant's Motion). Claimant's Motion states:

The CRB lacks Jurisdiction to review the Supplementary Default Order issued by ALJ Govan on October 23, 2014 pursuant to D.C. Code §32-1519(a); because it was issued pursuant to §32-1519(a), and thus became final when issued, with relief available only from D.C. Superior Court. *See Snowden v. Dir. OWCP*, 253 F.3d 725 ID.C. Cir. 2001, cert denied, 535 U.S. 1090 (2002).

Claimant's Motion at 1.

On April 20 2015, Employer filed with the CRB an Opposition to Motion to Dismiss (Employer's Opposition) asserting the CRB does have subject matter jurisdiction. In support Employer asserts:

The Longshore and Harbor Workers Compensation Act differs significantly from the DC Workers Compensation Act with respect to the collection of a default payment of an award. . . . Significantly, the statute notes that "review of the judgment so entered may be had as in civil suits for damages at common law". In the *Snowden* case, interpreting that portion of the Longshore and Harbor Workers Compensation Act, the Court found that the Benefits Review Board did not have jurisdiction to hear an appeal from a supplemental order declaring default. The District of Columbia Compensation Review Board has on numerous occasions addressed supplementary orders declaring default and asserted jurisdiction to determine whether the Order of Default was appropriate.

Employer's Opposition at 1, 2.

Employer listed three CRB decisions which did review default orders issued by the Administrative Hearings Division (AHD) which it also attached to its opposition.

We agree with Claimant that the jurisdiction issue should be addressed first, although Claimant did not raise the issue in response to Employer's Application for Review.

While we disagree with Employer that the language of the current District of Columbia Workers Compensation Act (DCWCA) differs "significantly" from the Longshore Harbor Workers Compensation Act (LHWCA), we agree that § 32-1519 of DCWCA differs somewhat from the language of 33 USC § 918. It bears repeating both sections herein.

D.C. Code § 32-1519 (a) states:

In case of default by the employer in the payment of compensation due under any award of compensation for a period of 30 days after the compensation is due and payable, the person to whom such compensation is payable may, within 2 years after such default, make application to the Mayor for a supplementary order declaring the amount of the default. After investigation, notice and hearing, as provided in §32-1520, the Mayor shall make a supplementary order, declaring the amount of the default, which shall be filed in the same manner as the

compensation order. In case the payment in default is an installment of the award the Mayor may, in his discretion, declare the whole of the award as the amount in default. The applicant may file a certified copy of such supplementary order with the Clerk of the Superior Court of the District of Columbia. Such supplementary order of the Mayor shall be final, and the Court shall, upon the filing of the copy, enter judgment for the amount declared in default by the supplementary order. No fee shall be required for filing the supplementary order nor for entry of judgment thereon, and the applicant shall not be liable for costs in a proceeding for review of the judgment unless the Court shall otherwise direct. The Court shall modify such judgment to conform to any later compensation order upon presentation of a certified copy thereof to the Court.

33 USC § 918 states:

In case of default by the employer in the payment of compensation due under any award of compensation for a period of 30 days after the compensation is due and payable, the person to whom such compensation is payable may, within *one year* after such default, make application to the *deputy commissioner* for a supplementary order declaring the amount of the default. After investigation, notice and hearing, as provided in *19 [33 USC §919], the deputy commissioner* shall make a supplementary order, declaring the amount of the default, which shall be filed in the same manner as the compensation order. In case the payment in default is an installment of the award the *deputy commissioner* may, in his discretion, declare the whole of the award as the amount in default. The applicant may file a certified copy of such supplementary order with the clerk of the *Federal district court for the judicial district in which the employer has his principal place of business or maintains an office, or for the judicial district in which the injury occurred. In case such principal place of business or office or place where the injury occurred is in the District of Columbia, a copy of such supplementary order may be filed with the clerk of the Superior Court of the District of Columbia [United States District Court for the District of Columbia].* Such supplementary order of the *deputy commissioner* shall be final, and the Court shall, upon the filing of the copy, enter judgment for the amount declared in default by the supplementary order *if such supplementary order is in accordance with law. Review of the judgment so entered may be had as in civil suits for damages at common law. Final proceedings to execute the judgment may be had by writ of execution in the form used by the court in suits at common law in actions of assumpsit.* No fee shall be required for filing the supplementary order nor for entry of judgment thereon, and the applicant shall not be liable for costs in a proceeding for review of the judgment unless the Court shall otherwise direct. The Court shall modify such judgment to conform to any later compensation order upon presentation of a certified copy thereof to the Court.

(emphasis added) The emphasis added to the section identifies the language that differs from the DCWCA default language. Notable is the emphasized language at the end of the section that

provides the appeals rights for a judgment entered against an Employer and enforcement remedies available to execute a judgment. DCWCA provides its enforcement language in § 32-1522. However, while we agree with Claimant that § 32-1519 may serve as an “instruction” to D. C. Superior Court that the ALJ’s order *shall be* final and the Court shall upon filing enter judgment for the amount declared in default, DCWCA’s language lacks any remedy in the event the ALJ has erred in her/his calculation or abused her/his discretion.

We look therefore to the regulations promulgated to interpret the DCWCA after the genesis of the CRB, specifically 7 DCMR § 261.5, which states:

The Board shall have power to preserve and enforce order during any proceedings for determination or adjudication of entitlement to compensation or benefits or for liability for payment thereof, and to do all things in accordance with law which may be necessary to enable the Board to effectively discharge its duties.

Based upon this review of the statute and the regulations, we determine the CRB does have jurisdiction to review the supplemental order for default in order to render it final. In so concluding, we are mindful that the District of Columbia Court of Appeals (DCCA) questioned whether the CRB has jurisdiction to review supplementary orders declaring a default, citing 7 DCMR § 271.1 which states:

In the event of default by an employer in the payment of compensation awarded pursuant to a Decision and Order issued by the Board, request by the party to whom such compensation is payable for a declaration of such default, for the purpose of filing such declaration with the Superior Court of the District of Columbia pursuant to D.C Official Code §32-1519 (2001) shall be filed with and brought solely before the Administrative Hearing Divisions, and not before the Board.

*Hensley v. DOES*, 49 A.3d 1195 (August 16, 2012).

We must respectfully point out that the CRB lacks authority to award any benefits which essentially renders this regulation moot. *See WMATA v. DOES (Juni Browne Intervenor)*, 926 A.2d 140 (June 14, 2007).

Turning to Employer’s argument that:

The reason for filing a Motion to Reconsider in this matter is because the Employer does not wish that the *pro se* claimant in this case, Dr. Maryanne Tagoe have the opportunity to use the Default Order to attempt to enforce an Order already paid.

Motion to Reconsider at 2.

Employer does not elaborate on this assertion. The Decision and Order issued by this Panel affirmed an Order by an Administrative Law Judge (ALJ) dated October 23, 2014, which found

Employer to be in default of a Compensation Order dated July 10, 2012 because the ALJ found there was no “evidentiary proof that the award was timely paid by Employer”. To reach the conclusion that the record before the ALJ lacked evidentiary proof that the award was timely paid by Employer, this Panel explained:

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. The 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.

DO at 5.

This Panel also rejects Employer’s assertion that the Compensation Order which the ALJ found in default (July 10, 2012) was not a final order as it was appealed to the District of Columbia Court of Appeals, and § 32-1519 requires the Order must be a “Final Order” in order to obtain a default order. Employer’s statement is not supported by the language of § 32-1519 as quoted above.

Finally, we address Employer’s assertion that the Board has improperly placed the legal burden on the Employer to prove (or disprove) a default. We agree Claimant bears the initial burden of establishing entitlement to an order declaring a default, and have not determined that an Employer bears the burden, notwithstanding that Employer is in the best position to obtain copies of cancelled checks it issued. We found no error in the ALJ’s determination there was no evidentiary proof that the award was timely paid or her ruling in Claimant’s favor on the default but denying Claimant’s request for penalties.

We are not persuaded by Employer’s request for reconsideration and accordingly it is **DENIED**.

FOR THE COMPENSATION REVIEW BOARD:

  
LINDA F. JORY  
*Administrative Appeals Judge*

May 1, 2015  
DATE