

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**Department of Employment Services  
Labor Standards Bureau**

**Office of Hearings and Adjudication  
COMPENSATION REVIEW BOARD**



**(202) 671-1394-Voice  
(202) 673-6402-Fax**

**CRB (Dir.Dkt.) No. 09-03,**

**EDNA MCMANUS,**

**Claimant – Respondent,**

**v.**

**D.C. DEPARTMENT OF CORRECTIONS,**

**Employer – Petitioner.**

Appeal from a Compensation Order of  
Administrative Law Judge Robert R. Middleton  
OHA No. PBL 02-017B, DCP Nos. 002805 and 022683

Amy Vruno, Esq., for the Petitioner

Gail L. Davis, Esq., for the Respondent

Before E. COOPER BROWN, *Chief Administrative Appeals Judge*, and FLOYD LEWIS and SHARMAN J. MONROE, *Administrative Appeals Judges*.

SHARMAN J. MONROE, *Administrative Appeals Judge*, on behalf of the Review Panel:

**DECISION AND ORDER**

**JURISDICTION**

Jurisdiction is conferred upon the Compensation Review Board pursuant to D.C. Official Code § 1-623.28, § 32-1521.01, 7 DCMR § 118, and DOES Director's Directive Administrative Policy Issuance No. 05-01 (Feb. 5, 2005).<sup>1</sup>

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<sup>1</sup> Pursuant to Administrative Policy Issuance No. 05-01, dated February 5, 2005, the Director of the Department of Employment Services realigned the Office of Hearings and Adjudication to include, *inter alia*, establishment of the Compensation Review Board (CRB) in implementation of the D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, D.C. Official Code §32-1521.01. In accordance with the Director's Directive, the CRB replaces the Office of the Director in providing administrative appellate review and disposition of workers' and disability compensation claims arising under the D.C. Workers' Compensation Act of 1979, as amended, D.C. Official Code §32-1501 *et seq.*, and the D.C. Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Official Code §1-623.1 *et seq.*, including responsibility for administrative appeals filed prior to October 1, 2004, the effective date of the D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004.

## BACKGROUND

This appeal follows the issuance of a Final Compensation Order by the Assistant Director for Labor Standards of the District of Columbia Department of Employment Services, approving and adopting a Recommended Compensation Order from the Office of Hearings and Adjudication (OHA).<sup>2</sup> In that Recommended Compensation Order, which was filed on April 4, 2003, the Administrative Law Judge (ALJ) awarded the Claimant-Respondent (Respondent) temporary total disability benefits from February 27, 2002 to the present and continuing and reasonably related medical expenses based upon a finding that her February 26, 2002 left wrist injury arose out of and in the course of her employment. The Employer-Petitioner (Petitioner) now seeks review of the Final Compensation Order.

As grounds for this appeal, the Petitioner alleges that the ALJ's decision is not based upon substantial evidence. In her opposition, the Respondent alleges that since the Petitioner did not perfect its appeal within the statutory 30-day timeframe and did not properly serve a copy of its Petition for Review upon the Petitioner, the Board should refuse to consider the Petition for Review or, in the alternative, should not consider any evidence or arguments submitted by the Petitioner after May 5, 2003.

## ANALYSIS

As an initial matter, the standard of review by the Compensation Review Board (CRB) and this Review Panel, as established by the Act and as contained in the governing regulations, is limited to making a determination as to whether the factual findings of the 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. *See* D.C. Workers' Compensation Act of 1979, as amended, D.C. Official Code § 32-1501 *et seq.*, at § 32-1522(d)(2)(A). "Substantial evidence," as defined by the District of Columbia Court of Appeals, is such evidence as a reasonable person might accept to support a particular conclusion. *Marriott Int'l. v. District of Columbia Department of Employment Services*, 834 A.2d 882 (D.C. 2003). Consistent with this standard of review, the CRB and this Review Panel are constrained to uphold 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, and even where the reviewing authority might have reached a contrary conclusion. *Marriott*, 834 A.2d at 885.

Before the merits of this appeal can be examined, the Panel must necessarily address the jurisdictional assertions raised by the Respondent in her opposition. The Respondent basically asserts that since both the Act and the Appeals Rights attached to the Final Compensation Order set forth the procedures, without any allowances or exceptions, for filing an appeal and the Petitioner failed to adhere to the procedures, its appeal should not be considered. The merits of the Respondent's assertions will be examined one by one.

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<sup>2</sup> Pursuant to the Director's Directive, Administrative Policy Issuance 05-01, the functions of the Office of Hearings and Adjudication have been assigned to the Administrative Hearings Division (AHD). Throughout this decision, the new office names, CRB and AHD, will be used.

First, the Respondent argues that the Petition for Review was filed late. D.C. Official Code § 1-623.28(a) provides that an application for review must be filed within 30 days after the date of the issuance of the decision. The implementing regulations for the Act at 7 DCMR § 118.2 provide:

Within thirty (30) days from the date of the award, a party may seek the Director's review by filing with the Director the original and one (1) copy of a petition for review and any briefs, motions or other supporting documents. The appealing party shall also serve copies of the petition and any other documents filed with the Director on the adverse party and on the Office of Benefits Administration and shall include a certification that the petition and any supporting documents have been served, by mail or delivery, upon the opposing party and the Office of Benefits Administration.

Here, the Final Compensation Order was dated April 4, 2003. Any appeal of this decision would have had to be filed by May 4, 2003 to fall within the 30-day period required by the statute. The Petitioner's appeal was filed, via fax, on May 5, 2003.<sup>3</sup> Official notice of the calendar for year 2003 shows that May 4<sup>th</sup> fell on a Sunday. Under Super. Ct. Civ. R. 6 (a), the time for filing the appeal was automatically extended to Monday, May 5, 2003. See *Jackson v. District of Columbia Employees' Compensation Appeals Board*, 537 A.2d 576, 577 (D.C.1988). Thus, the Petitioner's appeal was filed within the 30-day period prescribed by the Act and was timely.

Second, the Respondent asserts that as the Petitioner failed to either file its Memorandum of Points and Authorities with its Petition for Review or file its Memorandum within 30 days of the issuance of the Final Compensation Order, its Petition for Review should not be considered. The Respondent's assertion is rejected. The failure to file a Memorandum with a Petition for Review does not automatically require a dismissal of a case. *Rashad v. D.C. Office of the Corporation Counsel*, CRB (Dir.Dkt.) No. 12-99, OHA No. PBL 97-070B, DCP No. LT4-DMH000400 (May 18, 2006). See also *Short v. D.C. Department of Employment Services*, 723 A.2d 845, 849 (D.C. 1998).

The Panel notes that at the time it filed its Petition for Review, the Petitioner requested permission to file its Memorandum of Points and Authorities within 30 days. Although neither the Act nor the implementing regulations provide for an extension, the Director, through practice, routinely granted requests for extensions to file Memorandum of Points and Authorities, without a showing of good cause.<sup>4</sup> The Petitioner was, accordingly, granted an extension. A review of the appellate record, however, indicates that as of the date of this decision, the Petitioner had not filed a memorandum. This failure is not fatal to the Petitioner's appeal for the reason stated earlier, *i.e.*, the filing of a memorandum of points and authorities is necessarily optional. This matter will be reviewed based upon the Petitioner's allegation in its application that the decision is not predicated on substantial evidence.

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<sup>3</sup> In 2003, the policies and procedures of the Office of the Director provided for the acceptance of appeals via fax. This policy has since been repealed. See 7 DCMR § 257.3.

<sup>4</sup> Effective February 5, 2005, the routine granting of a request to extend time to file a Memorandum of Points and Authorities has been curtailed given the mandates of the D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, D.C. Official Code §32-1521.01, and Administrative Policy Issuance No. 05-01.

Third, the Respondent asserts that since the Petitioner failed to serve her with a copy of the Petition for Review, the Panel should not consider the merits of the appeal. The purpose of the service requirement is to give the opposing party notice of an appeal and an opportunity to respond thereto. Although the Respondent was not served a copy of the Petition for Review at the time the Petition was filed on May 5, 2003, the Respondent was aware by May 16, 2003 that an appeal had been filed and was not precluded from submitting a response addressing the merits of the appeal.

As to the merits of the decision below, the ALJ found, and the finding is supported by substantial evidence, that the Respondent's left wrist injury arose out of and in the course of her employment. The evidence showed the Respondent was on the Petitioner's premises at the time and place that she was expected to be and, that she was performing her work duties when the injury occurred. In addition, the medical evidence showed that the Respondent sustained a left wrist injury on February 26, 2002. The Panel notes that the Petitioner did not put on any evidence to rebut or contradict that the Respondent left wrist injury was work-related.

The ALJ also found, and the finding is supported by substantial evidence, that the Respondent is temporarily totally disabled as a result of her left wrist injury. In doing so, the ALJ relied upon the medical reports of Dr. Rafik Muawwad, the treating physician. As the ALJ indicated, pursuant to the holding of *Butler v. Boatman & Magnani*, H&AS No. 84-348, OWC No. 044699 (Director's Decision, December 31, 1986), in this jurisdiction, great weight is given to the opinion of the treating physician. After reviewing the medical evidence, the Director can discern no basis for disturbing the ALJ's reliance on Dr. Muawwad's opinion.

#### CONCLUSION

The Compensation Order of April 4, 2003 is supported by substantial evidence in the record and is in accordance with the law

#### ORDER

The Compensation Order of April 4, 2003 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

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SHARMAN J. MONROE  
Administrative Appeals Judge

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May 23, 2006  
DATE