

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Department of Employment Services**  
**Labor Standards Bureau**

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



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**CRB No. 08-051**

**MERICHA BLAIR,**

**Claimant – Petitioner**

**v.**

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

**Self-Insured Employer – Respondent.**

Appeal from a Compensation Order on Remand Order of  
Administrative Law Judge Fred D. Carney  
AHD No. PBL 05-12A, DCP No. LTDMPSJ0006365

Kirk D. Williams, Esq., for the Petitioner

Andrea G. Comentale, Esq., for the Respondent

Before E. COOPER BROWN, *Chief Administrative Appeals Judge*, SHARMAN J. MONROE and  
JEFFREY P. RUSSELL, *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 and 32-1522 (2004), 7 DCMR § 118, and the Department of Employment Services Director's Directive, Administrative Policy Issuance No. 05-01 (February 5, 2005).

**OVERVIEW**

This appeal follows the issuance of a Compensation Order on Remand from the Administrative Hearings Division (AHD) of the Office of Hearings and Adjudication (OHA) in the District of Columbia Department of Employment Services (DOES). In the Order, which was filed on November 20, 2007, the Administrative Law Judge (ALJ) denied the Claimant-Petitioner's (Petitioner) request for payment of causally related medical expenses. On December 3, 2007, the Petitioner filed an Application with the CRB seeking a review of that Compensation

Order on Remand. On December 19, 2007, the Self-Insured Employer-Respondent (Respondent) filed an Opposition.

As grounds for this appeal, the Petitioner alleges that the decision below is not supported by substantial evidence in the record and is not in accordance with the law. For the reasons stated below, the Compensation Order on Remand is affirmed.

#### 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. D.C. Official Code §§ 1-623.28(a) and 32-1521.01(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.

Turning to the case under review herein, the Petitioner alleges that the ALJ failed to correctly identify the issue in dispute. The Petitioner concedes that the Respondent’s April 14, 2005 Notice of Determination controverting her claim was appropriately issued and that she consequently withdrew her initial application for formal hearing on September 14, 2005 after providing the Respondent with requested documents. The Petitioner asserts that her current application, filed on December 5, 2005, refers to the Respondent’s failure to issue a notice either awarding or denying benefits within thirty (30) days after September 14, 2005. The Petitioner maintains that the issue on remand was whether the Respondent complied with the thirty day timeframe of D.C. Official Code § 1-623.24(a-3) after receiving the requested documents and that the ALJ committed reversible error in not making the appropriate findings.

In its Opposition, the Respondent asserts that the Petitioner incorrectly frames the issue on remand. The Respondent maintains that the initial issue in this matter was whether the Respondent failed to issue an initial determination within thirty (30) days of receipt of the Petitioner’s claim. In support of its assertion, the Respondent cites to the Petitioner’s May 8, 2006 Memorandum of Points and Authorities which the ALJ relied upon in issuing the January 3, 2007 Order which was the subject of the CRB’s May 30, 2007 remand. Further, the Respondent argues that the Petitioner is raising a new issue of whether the thirty (30) day period of D.C. Official Code § 1-623.24(a-3) applies, not only to the initial, but also to subsequent determinations on a claim. The Respondent maintains that the answer is no and the procedures and timeframes relating to subsequent determinations are found at 7 DCMR § 3132.1 *et seq.*

In order to fully adjudicate this appeal, this Panel takes administrative notice of the contents of files AHD No. PBL 05-012 and PBL 05-012A, and CRB No. 07-33. For the sake of clarity in reading this opinion, the procedural history of this case will be briefly set forth.

On March 21, 2005, the Petitioner filed a claim for disability benefits. On April 14, 2005, the Respondent, through its Disability Compensation Program (DCP), issued a Notice of Determination indicating that it was controverting the Petitioner's claim because of lack medical reports. On or about June 3, 2005, the Petitioner filed an Application for Formal Hearing with AHD. On September 14, 2005, the Petitioner withdrew her application after providing the Respondent with medical reports. On January 27, 2006, the Petitioner filed a second Application with AHD. Following a hearing on April 26, 2006 and a review of the parties' arguments on briefs, the ALJ, in an Order dated January 3, 2007, dismissed the second application on the basis that AHD lack the requisite jurisdiction to proceed.<sup>1</sup> In dismissing the application, the ALJ stated:

Claimant argues that, 7 DCMR § 1313.55 [sic] confers jurisdiction upon AHD to review claimant's request for benefits when DCP fails to issue a final decision in thirty days. Title 7 DCMR § 1313.5 [sic]<sup>2</sup> provides, in relevant part:

Within 30 days after the [DCP] receives a new claim for compensation benefit under the Act, the Program shall issue an [Initial Determination] . . . furnishing or authorizing payment . . . [or] denying such a claim.

Claimant argues that the above provision is a legislative effort to confer jurisdiction on AHD prior to an *initial determination*. However the regulation on which claimant relies does not mention AHD or the ALJ's authority. Further, such an argument is contrary to the plain interpretation of the Act which makes an *initial administrative determination* a prerequisite to an adjudicative determination. According to the Act, claimant had the right to apply for a formal hearing only after a final determination by DCP.

Order at p. 2 [emphasis added].

The Petitioner appealed the dismissal to the CRB.

On May 30, 2007, the previous Panel issued a Decision and Remand Order. Therein, the previous Panel, citing *Tellish v. D.C. Public Schools*, CRB No. 07-001, AHD No. PBL 05-028A, DCP No. DCPS 007013 (February 16, 2007), held that the AHD had jurisdiction over this matter since the DCP failed to issue a written initial determination within the statutorily prescribed 30-

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<sup>1</sup> The parties attached exhibits to their briefs, per the ALJ's direction at the April 26, 2006 hearing. *See* Hearing Transcript at pp. 14-19. Although the ALJ accepted and relied upon them in rendering the January 3, 2007 Order and the instant Compensation Order on Remand, the ALJ failed to formally enter the exhibits into evidence. However, since neither party objects to the lack of formal admittance, the Panel will also accept and rely upon the exhibits.

<sup>2</sup> A review of the applicable regulations reveals that the correct citation is 7 DCMR § 3131.15.

day period. The ALJ was directed on remand to determine whether the Petitioner's claim was "deemed accepted", pursuant to D.C. Official Code § 1-623.24(a-3)(1), or whether the Mayor had provided written notice of extenuating circumstances within the prescribed period, thereby rendering subsection (a-3)(1) inapplicable.

After a review of the record in this case, this Panel rejects the Petitioner's assertion that the ALJ failed to correctly identify the issue in dispute. The issue before the ALJ at the hearing held on April 26, 2006 and the issue the parties submitted briefs on was whether the AHD has jurisdiction to review an application for formal hearing when the DCP fails to issue an initial determination within thirty (30) days after receiving a new claim for benefits. This was also the issue that was appealed to the CRB, that was ruled upon in its May 30, 2007 Decision and Remand Order and that the ALJ was directed to further address on remand.

The Panel rejects the Petitioner's argument that her second application, filed on January 27, 2006, referred to the Respondent's failure to issue a notice either awarding or denying benefits within thirty (30) days after September 14, 2005. The cover letter attached to the second application states:

Claimant herein files her Application for Formal Hearing. In support thereof, please find a copy of Claimant's April 14, 2005 Notice of Determination, original Application for Formal Hearing and October 24, 2005 Order.

There is nothing in the second Application indicating that the Petitioner was addressing a thirty (30) day period beginning after September 14, 2005, when she submitted her medical reports to the Respondent. Likewise, no such argument was made by the Petitioner at the April 26, 2006 formal hearing or in her May 2006 brief.

It appears that the Petitioner's argument derives from her concession that the Respondent's April 14, 2005 Notice of Determination was legally appropriate pursuant to D.C. Official Code § 1-623.24(a-3)(1) and 7 DCMR § 3131.15. *See* Claimant's Memorandum of Law in Support of Application for Review at p. 5. However, the Petitioner's argument fails to recognize that the issue of whether the thirty-day period of D.C. Official Code § 1-623.24(a-3)(1) and 7 DCMR § 3131.15 remains applicable after an injured worker complies with the instructions in the DCP's Notice of Determination containing a controversion was not placed before the ALJ for resolution. If an issue is not raised in the proceeding before the ALJ, in other words, if an issue is not preserved before the ALJ, the issue cannot be raised to and decided by the CRB. *See Waugh v. D.C. Department of Employment Services*, 786 A.2d 595, 597 (D.C. 2001).

With respect to the merits of this appeal, the Panel determines that the Compensation Order on Remand is supported by substantial evidence and is in accordance with the law. As directed by the previous Panel, the ALJ reviewed the evidence to determine the whether the Petitioner's claim was "deemed accepted" per D.C. Official Code § 1-623.24(a-3)(1). The ALJ found that Petitioner's claim was not "deemed accepted" since the Respondent provided written notice, within 30 days of receiving the Petitioner's claim, of extenuating circumstances which precluded it from making a decision an award for or against compensation. The ALJ further found that a lack of medical reports constituted "extenuating circumstances" under the Act, precluding DCP

from rendering a decision on the Petitioner's claim within the prescribed 30-day period, which determination the Panel affirms.

**CONCLUSION**

The Compensation Order of November 20, 2007 is supported by substantial evidence in the record and is in accordance with the law.

**ORDER**

The Compensation Order of November 20, 2007 is hereby **AFFIRMED**.

**FOR THE COMPENSATION REVIEW BOARD:**

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SHARMAN J. MONROE  
Administrative Appeals Judge

March 14, 2008  
DATE