

**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. 08-028**

**MICHAEL PLUMMER,**

**Claimant – Petitioner**

**v.**

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

**Self-Insured Employer – Respondent.**

Appeal from a Compensation Order of  
Administrative Law Judge Fred D. Carney, Jr.  
AHD No. PBL 98-038A, DCP No. 2158919

Michael Plummer, for the Petitioner *Pro Se*

Thelma C. Brown, Esq., for the Respondent

Before FLOYD LEWIS, 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 §§ 32-1521.01 and 32-1522 (2004), 7 DCMR § 230, and the Department of Employment Services Director's Directive, Administrative Policy Issuance 05-01 (February 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 District of Columbia Fiscal Year 2005 Budget Support Act of 2004, Title J, the D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, sec. 1102 (Oct. 1, 1994), *codified at* D.C. Code Ann. § 32-1521.01 (2005). In accordance with the Director's Policy Issuance, 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. Code Ann. §§ 32-1501 to 32-1545 (2005) and the D.C. Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Code Ann. §§ 1-623.1 to 1.643.7 (2005), 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 Compensation Order 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 that Compensation Order, which was filed on September 28, 2007, the Administrative Law Judge (ALJ) denied the Claimant-Petitioner's (Petitioner) request for continuing wage loss and medical benefits caused by his June 7, 1997 work injury and for waiver of alleged liability for benefits overpayment. On October 31, 2007, the Petitioner filed an Application for Review requesting a review of the Compensation Order.<sup>2</sup> The Respondent did not file an Opposition.

As grounds for this appeal, the Petitioner alleges as error that the Compensation Order is not based upon the evidence.

## 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 § 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's decision is based upon inaccurate information. The Petitioner asserts that he complied with the all requests of the vocational rehabilitation counselor and wants to be treated fairly. The Petitioner maintains that he still experiences back pain. Finally, he asserts that the basis for the alleged overpayment is erroneous.

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<sup>2</sup> Although the Petitioner indicated that he attached a document to his appeal showing that he returned to his physician for follow-up treatment, on review no such document was found. Regardless, pursuant to 7 DCMR § 266.1, the CRB's appellate jurisdiction is limited to a review of the record made before AHD. It is not empowered to conduct a *de novo* review of matters appealed to it. In other words, the CRB cannot consider documents that were not submitted into evidence at the formal hearing before the ALJ.

Before addressing the merits of the Petitioner's appeal, the Panel must determine whether the Application for Review was timely filed. If the application was not filed within the timeframe dictated by the statute, the Panel does not have the authority to consider the appeal.

D.C. Official Code § 1-623.28(a), in pertinent part, states:

The Director of the Department of Employment Services may review an award for or against payment of compensation on application by either the claimant or the Office of the Attorney General. An application for review pursuant to this subsection must be filed *within 30 days after the date of the issuance of the decision* of the Mayor or his or her designee pursuant to § 1-623.24(b)(1). . . .

[emphasis added].

In addition, 7 DCMR §118.2 states:

Any party adversely affected or aggrieved by a compensation order or final decision issued by the Administrative Hearings Division with respect to a claim for disability benefits pursuant to Title XXIII of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (D.C. Official Code § 1-623.1 et seq. (2001)) may appeal said compensation order or final decision to the Board by filing an Application for Review with the Board *within thirty (30) calendar days from the date shown on the certificate of service* of the compensation order or final decision in accordance with and pursuant to the provisions of 7 DCMR section 258.

[emphasis added].

A review of the record shows that the September 28, 2007 Compensation Order in this case was certified as mailed to the parties on September 28, 2007. Pursuant to the applicable law, any application for Review must have been filed within thirty (30) calendar days hence or by October 28, 2007. As October 28<sup>th</sup> was a Sunday, any application had to be filed by October 29, 2007. Herein, the Petitioner's Application was filed on October 31, 2007, beyond the 30-day statutory timeframe. In that Petitioner's Application for Review is untimely, the Panel is without authority to address the merits of Petitioner's appeal or review the record before the ALJ. *See Gooden v. The Washington Post*, CRB (Dir. Dkt.) No. 04-44, OHA No. 97-25A; OWC No. 279073 (March 14, 2005). *See generally Jackson v. D.C. Department of Corrections*, Dir. Dkt. No. 25-03, PBL No. 96-92A (July 13, 2004).

CONCLUSION

The Petitioner's October 31, 2007 Application for Formal Hearing is untimely filed.

**ORDER**

The Petitioner's October 31, 2007 Application for Formal Hearing is dismissed as it is untimely filed.

FOR THE COMPENSATION REVIEW BOARD:

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SHARMAN J. MONROE  
Administrative Appeals Judge

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February 4, 2008  
DATE