

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 (Dir. Dkt.) No. 03-05

OUIDA MORRISON,

Claimant – Petitioner

v.

GREATER SOUTHEAST COMMUNITY HOSPITAL,

Self-Insured Employer – Respondent.

Appeal from an Order of
Administrative Law Judge Jeffrey P. Russell
OHA No. 96-94B, OWC No. 279949

W. Scott Fungler Esquire, for the Petitioner

Ross Buckholtz. Esquire, for the Respondent

Before: E. Cooper Brown, *Chief Administrative Appeals Judge*, FLOYD LEWIS and SHARMAN J. MONROE, *Administrative Appeals Judges*.

FLOYD LEWIS, *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).¹

¹ 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, 32-1522 (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

BACKGROUND

This appeal follows the issuance of an 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 Order, which was filed on December 27, 2002, the Administrative Law Judge (ALJ) denied the motion by Claimant-Petitioner (Petitioner) for a Supplemental Order of Default. Petitioner now appeals that Order.

As background, after the issuance of a May 29, 1998 Compensation Order, Petitioner filed for a Motion for Order of Default and on August 15, 2001, the ALJ issued an Order Declaring Respondent in Default. On August 5, 2002, the ALJ rescinded the August 15, 2001 Default Order and denied Petitioner's Motion for Supplemental Order Declaring Default. After an appeal by Petitioner, the Director issued a Decision and Remand Order on December 3, 2002, which remanded this matter back to the ALJ. On December 27, 2002, the ALJ again denied Petitioner's Motion for a Supplemental Order of Default, which was then appealed to the Director by Petitioner. The ALJ's December 27, 2002 Order now is the subject of Petitioner's instant appeal before the CRB.

ANALYSIS

As an initial matter, the scope 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 §32-1522(d)(2). "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. App. 2003). Consistent with this scope 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, Petitioner alleges that the ALJ's decision is inconsistent with the findings of the Decision and Remand Order of the Director, issued on December 3, 2002 and as such, should be reversed in part, and remanded for further proceedings. Respondent counters that the Order should be affirmed in all respects.

After a formal hearing, the Hearings & Appeals Examiner (HE) issued a Compensation Order, dated May 29, 1998, which found that Petitioner was temporarily totally disabled, but the HE also found that Petitioner had voluntarily limited her income, by failing to accept suitable employment. Pursuant to a Stipulation Agreement, Respondent had been voluntarily paying Petitioner, but

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.

Respondent reduced the amount of benefits it had been paying, based on Petitioner's refusal to accept suitable employment. In the Compensation Order, the HE denied Petitioner's claim for relief, for failing to accept suitable employment.

After Petitioner filed a Motion for Order of Default, the ALJ issued an Order Declaring Employer in Default on August 15, 2001. Petitioner then filed the Order Declaring Employer in Default with the District of Columbia Superior Court. On September 7, 2001, the Court issued an Order only acknowledging the Order Declaring Default had been filed, but no judgment was ever issued by the Court.

Then, after Petitioner filed a Motion for Supplemental Order Declaring Default, the ALJ rescinded the August 15, 2001 Order Declaring Default and on August 5, 2002, the ALJ denied Petitioner's Motion for Supplemental Order, stating that based upon further review, he concluded that the Compensation Order issued by the HE did not award any benefits and there could be no default based on it. Petitioner appealed the ALJ's denial and in a Decision and Remand Order, dated December 3, 2002, the Director reversed and remanded this matter.

In this appeal, Petitioner argues that the instant December 27, 2002 Order denying the Motion for Supplemental Order of Default is inconsistent with the Director's Decision and Remand Order, which stated that "On May 29, 1998, Hearing and Appeals Examiner Gail Davis issued a Compensation Order regarding this matter, that established Employer's obligation to pay claimant temporary partial disability benefits at the reduced rate that was first paid by employer in August of 1997." Decision and Remand Order of the Director, at 2.

Upon reviewing the record in this matter, this Panel feels it is important to emphasize the point that the ALJ clearly made in the Order denying Petitioner's Motion for Supplemental Default:

Further, the undersigned reasoned that the Compensation Order of May 29, 1998, does not order the employer to do anything, and thus it could not form the basis of a default claim. Rather the Compensation Order was a denial of claimant's request for an order increasing claimant's ongoing temporary partial disability rate. At the hearing on July 31, 2001 on the claimant's motion, neither party was able to cite any legal authority for the proposition that the undersigned could read into the "order" portion of a Compensation Order a directive to pay . . . which is absent from the order itself . . . in order to support a request for a default order, there must be a clear and unambiguous order to pay ongoing benefits for the period of the alleged default, and there is no such thing in this case as yet. Simply put, it is not possible to be in default of an order which does not exist. This conclusion was likewise not disturbed by the Director.

It should be stressed that in the Compensation Order of May 29, 1998, the HE only stated, "It is hereby ORDERED that claimant's claim for relief be DENIED." Compensation Order at 7. Also, the Compensation Order stated that the claim for relief by Petitioner was the resumption of disability benefits at the rate of \$1,257.72 every two weeks. The HE concluded that Petitioner voluntarily limited her income due to her refusal to accept suitable employment.

After looking at this matter closely, this Panel feels that the language by the HE stating, “I conclude that Claimant is temporarily partially disabled”, simply must be viewed within the framework of whether Petitioner’s benefits could be reduced in good faith by Respondent. There was never an issue of whether Petitioner was temporarily partially disabled, as Respondent had voluntarily paid Petitioner benefits. Once the HE concluded that Petitioner voluntarily limited her income by refusing to accept suitable employment and that Respondent did not act in bad faith, this did not result in an obligation for Respondent to continue to pay the reduced amount.

This Panel also feels that the language by the Director that seems to state that the HE obligated Respondent to pay Petitioner temporary partial benefits at the reduced rate that was first paid by Respondent in August of 1997, is somewhat puzzling. Respondent suggests that this statement, which appears in the “Background” section of the Remand Order, logically can only possibly be read within the framework that Respondent had been voluntarily paying Petitioner workers’ compensation benefits and as the basis for which Respondent had been making those voluntary payments to Petitioner. However, what does seem clear is that once the HE concluded that Petitioner had voluntarily limited her income, contrary to the Director’s statement, the HE did not order Respondent to pay benefits. There simply was no order by the HE obligating Respondent to pay benefits after Respondent ceased making voluntary payments.

Accordingly, after a complete review of the record, this Panel can find no reason to disturb the ALJ’s conclusion to deny Petitioner’s Motion for Supplemental Order of Default in this matter.

CONCLUSION

The Order of December 27, 2002 is supported by substantial evidence in the record and is in accordance with the law.

ORDER

The Order of December 27, 2002 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

FLOYD LEWIS
Administrative Appeals Judge

March 15, 2007
DATE