

**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. 07-001**

**PATRICIA TELLISH,**  
Claimant–Petitioner,

v.

**DISTRICT OF COLUMBIA PUBLIC SCHOOLS,<sup>1</sup>**

Employer– Respondent.

Appeal from a Compensation Order of  
Administrative Law Judge Fred D. Carney  
OHA/AHD No. PBL 05-028A, DCP No. DCPS 007013

Benjamin T. Boscolo, Esq., for Claimant-Petitioner

Thelma Chichester Brown, Esq., for Employer- Respondent

Before E. COOPER BROWN, *Chief Administrative Appeals Judge*, JEFFREY P. RUSSELL, and SHARMAN J. MONROE, *Administrative Appeals Judges*.

E. COOPER BROWN, *Chief Administrative Appeals Judge*, on behalf of the Review Panel:

**DECISION AND REMAND ORDER**

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<sup>1</sup> On appeal to the CRB, the parties' captions to their respective pleadings include "D.C. Disability Compensation Program" as a named party respondent. However, as far as this Review Panel can determine, there is no institutional governmental entity known as the "District of Columbia Disability Compensation Program." The process of administering claims for benefits under D.C. Code § 1-623.1, *et seq.*, referred to hereafter as "the Act", which is the statutory basis for claims by District of Columbia government employees for work related injuries, is a program under the jurisdiction of the District of Columbia Office of Risk Management (ORM). ORM refers to that program as the "District of Columbia Disability Compensation Program". It is the Act that establishes the requirements for entitlement to benefits, and the process for obtaining those benefits, including the filing of claims, and consideration of those claims by ORM. The Act also establishes the method and manner of appeals of ORM decisions, which include obtaining a hearing by AHD, following which hearing further appeals lie with the Director of DOES, which review authority has been delegated to this Board by the Director and pursuant to those authorities described further in footnote 2, *infra*.

## 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>2</sup>

## BACKGROUND

This appeal follows the issuance of an Order by the Administrative Hearings Division (AHD), Office of Hearings and Adjudication, D.C. Department of Employment Services, dismissing Petitioner's Application for Formal Hearing (AFH) filed with AHD for lack of jurisdiction. The basis of the dismissal was that, in the presiding ALJ's view, AHD had no jurisdiction to conduct a formal hearing because the Office of Risk Management (ORM) had not issued a "final determination" within the meaning of D.C. Official Code §1-623.24(b)(1) disposing of Petitioner's claim before ORM; that in the absence of a written final determination by ORM there was no entitlement to a hearing before AHD on Petitioner's claim.

Petitioner, who alleges a work-related injury suffered on April 28, 2005, filed her initial claim with ORM on May 12, 2005. Subsequently, on August 24, 2005, ORM dismissed the claim for failure on the part of Petitioner to prosecute the matter. Petitioner filed an Application for a Formal Hearing (AFH) with AHD, whereupon, pursuant to agreement of the parties, AHD on November 22, 2005 vacated ORM's August 24<sup>th</sup> dismissal and remanded the case to ORM for further proceedings. Subsequently, on February 2, 2006, ORM's claims examiner issued a one-sentence statement addressed by fax transmission to Petitioner's counsel concerning Petitioner's claim, stating "Ms. Tellish right carpal tunnel syndrome has not been accepted at this time as being causal related to her lower back and right knee injury of 04/28/05." In response, on February 21, 2006, Petitioner filed with ORM a request seeking a formal written determination on Petitioner's claim within 30 days of submission of the request. When ORM failed to respond to Petitioner's February 21<sup>st</sup> submission within the time period requested, Petitioner filed the Application for Formal Hearing (on or about March 28, 2006) that was subsequently dismissed by the ALJ for lack of jurisdiction, the dismissal of which is now on appeal to the CRB.<sup>3</sup>

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<sup>2</sup> Pursuant to D.C. Official Code §1-623.28, DOES is afforded administrative review authority over awards for or against payment of compensation made pursuant to D.C. Official Code §1-623.24(b)(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 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.

<sup>3</sup> Given the limited administrative record before the CRB on appeal, it is difficult to determine what exactly transpired procedurally before the Office of Risk Management. What little we have been able to determine, recorded above, is based upon the mutual representations of the

In the Application for Review filed with the CRB, Petitioner asserts that ORM's failure to issue a formal written determination within the time period prescribed under D.C. Official Code §1-623.24(a) constituted a "constructive determination"<sup>4</sup> by ORM effectively denying her claim, such that Petitioner was entitled to invoke the jurisdiction of AHD by requesting a Formal Hearing.

In response, Respondent asserts that the ALJ correctly dismissed Petitioner's AFH in the absence of a formal written determination by ORM; that ORM's delay in issuing a determination was justified due to Petitioner's failure to provide adequate documentation in support of her claim; and that "rather than comply with the mandates of D.C. Code §1-623 *et seq.*, and provide [ORM] necessary documentation and medical support of her claim, [Petitioner] seeks to force Respondent into making a determination through an application for review" with the CRB. AHD, Respondent asserts, "is without jurisdiction to adjudicate a matter in which a written determination has not been issued [by ORM] and [the CRB] has no authority to grant jurisdiction where none exists."

#### ANALYSIS

As an initial matter, the scope of review by the Compensation Review Board (CRB) and this Compensation Review Panel, whether as established by the District of Columbia Workers' Compensation Act of 1979, as amended (as set forth in footnote 2, *infra*, the private sector act), or pursuant to the District of Columbia Comprehensive Merit Personnel Act of 1978, as amended, D.C. Official Code § 1-623.01, *et seq.*, (the public sector act, or the Act) at § 1-623.28(a), and as contained in the governing regulations, is limited to making a determination as to whether the factual findings of an order under review are based upon substantial evidence in the record, and whether the legal conclusions drawn from those facts are in accordance with applicable law. "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 standard of review, the CRB and this Review Panel are constrained to uphold an 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, so long as the decision in that order is in accordance with the law. *Marriott*, 834 A.2d at 885.

The instant appeal presents the CRB with the legal question of whether AHD's jurisdiction to entertain an Application for Formal Hearing pursuant to D.C. Official Code §1-623.24(b)(1) may only be invoked subsequent to the issuance by ORM of a formal written determination, including findings of fact and an award for or against payment of compensation, or whether AHD's jurisdiction may be invoked where, as in the instant case, no formal written determination has

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parties before the CRB on appeal and upon our authority to take administrative notice of those ORM records submitted.

<sup>4</sup> Before AHD, Petitioner used the term "constructive denial" to characterize the non-decision of ORM. We view the terminology chosen as without distinction for purposes of this decision.

been issued by ORM within the 30-day time period prescribed by D.C. Official Code §1-623.24(a).

As previously noted, in the instant case Petitioner's counsel requested a formal written decision from ORM following issuance by ORM of a one-line fax communication seemingly denying Petitioner's claim, issued a little over two months after Petitioner's claim had been remanded by AHD to ORM for further proceedings following an earlier request for Formal Hearing. Through counsel, Petitioner requested that the written determination be issued within 30 days of the date of her request (February 21, 2006), stating that in the absence of a written determination within the prescribed period she would treat ORM's non-action as a denial of her claim. Petitioner asserts that the failure of ORM to issue a written determination within 30 days of Petitioner's February 21, 2006 request constitutes a constructive denial entitling Petitioner to review of her claim before AHD.

The statutory provision governing when and how ORM is to render a decision granting or denying a claim under the Act is found at D.C. Official Code § 1-623.24. Subsection (a) provides that following the filing of a claim for benefits, "the Mayor or his or her designee [in this instance ORM] shall determine and make a finding of facts and an award for or against payment of compensation ... within 30 days after the claim was filed." If, however, ORM fails to make the necessary findings and an award for or against payment of compensation within 30 calendar days from the date of the filing of the claim, "the claim shall be deemed accepted," thus obligating commencement of the payment of compensation "on the 31<sup>st</sup> day following the date the claim was filed." D.C. Official Code §1-623.24(a-3)(1). The foregoing does not apply, however, "if the Mayor [ORM] provides [the claimant with] notice in writing that extenuating circumstances preclude [ORM] from making a decision within this period, which shall include supporting documentation stating the reasons why a finding of facts and an award for or against compensation cannot be made within this period." *Id.*

Whether ORM's February 2, 2006 one-sentence fax communication regarding Petitioner's claim constitutes a denial of the claim under section 623.24(a) notwithstanding its obvious defects, and thus Petitioner's subsequent request for a full written determination constitutes a request for reconsideration pursuant to section 623.24(a-4)(1),<sup>5</sup> the failure of ORM to issue a formal written determination after Petitioner's claim had been pending for more than four months following its remand from AHD (November 22, 2005) surely constitutes the very concern that the City Council, in adopting these provisions sought to resolve.

Petitioner is thus correct in her assertion that a "constructive determination" was effected by ORM as a matter of law, due to the lapse of the statutorily prescribed 30-day period without ORM having rendered a formal written determination, sufficient for Petitioner to invoke the jurisdiction of AHD pursuant to D.C. Official Code § 1-623.24(b)(1). To read this subsection as permitting the invocation of AHD's jurisdiction only upon the issuance of a formal written

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<sup>5</sup> D.C. Official Code § 1-623.24(a-4)(1) states, in pertinent part, "A claimant who disagrees with a decision of the Mayor or his or her designee under subsequent (a) of this section shall have the right to request reconsideration of that decision within 30 days after the issuance of the decision." Petitioner's counsel asserts on appeal, however, that Petitioner's February 21, 2006 correspondence was not a request for reconsideration.

decision by ORM would be not only to misconstrue the express language of the subsection,<sup>6</sup> such a construction would render the provisions of subsections (a-3)(1) and (a-4)(2) meaningless and without recourse. Surely this could not have been the intent of the City Council in adopting these provisions. As the Court of Appeals has repeatedly held, a proper construction “must give effect to all of the provisions of [a statute], so that no part of it will be either redundant or superfluous.” *Baghini v. D.C. Dept. of Employment Services*, 525 A.2d 1027, 1029 (D.C. 1987). *Accord, Office of People’s Counsel v. Public Service Commission*, 477 A.2d 1079, 1084 (D.C. 1984); *Tuten v. United States*, 440 A.2d 1008, 1010 (D.C. 1982) (“A statute should not be construed in such a way as to render certain provisions superfluous or insignificant.”).

*However*, whether the lack of a formal written determination by ORM is sufficient in the instant case to warrant the further determination that Petitioner’s claim must, as a matter of law, be “deemed accepted”, thus requiring payment of compensation pursuant to §1-623.24(a-3)(1) [(a-4)(2)], necessitates further inquiry given the limited nature of the existing record. Upon remand, the ALJ must determine, upon a full development of the record, whether Petitioner is entitled, as matter of law, to award of her claim given the failure of ORM to issue a timely formal written decision, or whether ORM is legally excused from complying with the prescribed period for issuing its decision under the provisions of subsection 623-24(a-3)(1). As previously noted, this subsection provides that the lack of a written determination by ORM will not be deemed an acceptance of the claim (thereby triggering the requirement of payment) if extenuating circumstances can be satisfactorily demonstrated that prevented ORM from making a formal decision within the statutorily-prescribed period.<sup>7</sup>

In remanding this matter to AHD for further proceedings, we make clear that our holding is limited to the determination that AHD’s jurisdiction was successfully invoked by Petitioner due to the failure of ORM to render a formal written determination within the statutorily prescribed 30-day period. We are *not* at this time holding that ORM’s lack of a formal written determination constitutes, as a matter of law, a constructive *award* of Petitioner’s claim. That determination must now be made upon remand to AHD and further development of the record.

#### CONCLUSION

The dismissal by AHD of Petitioner’s Application for a Formal Hearing for lack of jurisdiction, as contained in the Order of September 13, 2006, is not in accordance with the law. AHD had the necessary jurisdiction to hear Petitioner’s Application for Formal Hearing notwithstanding the lack of a formal written determination by ORM denying Petitioner’s claim for disability

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<sup>6</sup> Section 623.24(b)(1) states in pertinent part: “[A] claimant for compensation not satisfied with a decision of the Mayor or his or her designee under subsection (a) of this section is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on the claim before a [DOES] Administrative Law Judge.” The operative language of this subsection is “issuance of *the decision*” as opposed to issuance of a formal or written decision.

<sup>7</sup> The instant record before the CRB does not provide an answer to the question of whether ORM, as prescribed by subsection 623.24(a-3)(1), provided the necessary notice that “extenuating circumstances” existed absolving ORM from making a formal written determination within the required 30-day period.

benefits. Upon remand, AHD must determine whether a constructive determination requiring payment of Petitioner's claim was thus effected as a matter of law, or whether extenuating circumstances excused ORM's failure to issue a timely written determination.

**ORDER**

The Order of September 13, 2006 herein appealed is not in accordance with the law. The matter is remanded to AHD for further proceedings consistent with the foregoing Decision and Order.

FOR THE COMPENSATION REVIEW BOARD:

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E. COOPER BROWN  
Chief Administrative Appeals Judge

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February 16, 2007  
DATE