

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 13-024 (R) (2)

**PHYLLIS F. SINCLAIR,
Claimant,**

v.

**HOWARD UNIVERSITY HOSPITAL and
SEDGWICK CMS,
Employer and Third-Party Administrator.**

On Remand from the District of Columbia Court of Appeals
DCCA No. 15-AA-474, Memorandum Opinion & Judgment (April 7, 2016)

On Appeal of a Compensation Review Board Decision
CRB No. 13-024 (R) (November 4, 2014)

On Remand Order from the District of Columbia Court of Appeals
DCCA No. 13-442 (July 1, 2014)

On Appeal of Two Compensation Review Board Decision and Remand Orders
CRB No. 12-043 (November 21, 2012) and CRB No. 13-024 (April 23, 2013)

On Review of Administrative Hearings Division
Compensation Order issued February 21, 2012 and
Compensation Order on Remand issued February 7, 2013
by Anand K. Verma, AHD No. 07-353B, OWC No. 604720

(June 21, 2016)

LAWRENCE D. TARR, *Chief Administrative Law Judge*, for the Compensation Review Board.

DECISION AND REMAND ORDER

On November 21, 2012, the Compensation Review Board (“CRB”) issued a Decision and Order that affirmed (then) Administrative Law Judge Anand K. Verma’s February 21, 2012 Compensation Order denying Claimant Phyllis F. Sinclair’s request for temporary total disability (TTD) benefits from April 21, 2011 to the present and continuing. The CRB affirmed Verma’s holding that Claimant did not qualify for benefits because she had voluntarily limited her income and because she had not pursued suitable alternative employment.

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2016 JUN 21 PM 1 33

The CRB remanded that case because the ALJ used an incorrect standard of proof in deciding Claimant's other claim for medical care. The ALJ issued a Compensation Order on Remand that decided the medical care issue. On appeal, the CRB affirmed in part and reversed in part the ALJ's decision regarding medical care. The CRB, without discussion, also affirmed its earlier denial of TTD benefits. See *Sinclair v Howard University Hospital*, CRB 13-024 (April 23, 2014)

Claimant appealed the CRB's decision to the District of Columbia Court of Appeals (DCCA). While that appeal was pending, Claimant moved the Court for a stay of the appeal because of allegations that Verma was not licensed to practice law as was required by regulation. The DCCA remanded the pending appeal so that the CRB could determine how to proceed in light of Claimant's challenge to Verma's qualifications to serve as an ALJ.

On November 4, 2014, in response to the remand, the CRB determined that some, but not all, of Verma's decisions were tainted by his not being licensed to practice law. The CRB's remand decision stated the criteria that needed to be met for a new hearing, and that upon proper application to the Administrative Hearings Division ("AHD"), parties who met the stated criteria would be entitled to a new hearing.

The CRB further held that Claimant did not meet the criteria for a new hearing. The November 4, 2014 decision, decided by a different panel than the panel which affirmed Verma's Compensation Order, did not re-review Verma's February 21, 2012 decision denying Claimant's claim nor the CRB's April 23, 2013 Decision and Order affirming Verma's decision.

After the CRB's November 4, 2014, decision, Claimant petitioned the DCCA seeking a new hearing before a qualified ALJ and also challenging the CRB's November 21, 2012 and April 23, 2013 affirmations of Verma's decision denying her claim for ongoing temporary total disability benefits. On May 17, 2016, the DCCA issued a Memorandum Opinion and Judgment that reversed and remanded the CRB's affirmation of Verma's Compensation Order and further held that it was expressing no view on the CRB's criteria for new hearings of Verma's decisions.

The DCCA noted that the CRB affirmed Verma's findings that Claimant did not qualify for benefits for two reasons; (1) she had voluntarily limited her income and (2) she had not pursued suitable alternative employment. The DCCA found that neither basis for denying the claim was supported by substantial evidence in the record.¹

¹ Specifically, the DCCA held the record evidence did not support the finding that Claimant declined to accept a job at Dr. Nolte's office. The DCCA noted there was inconsistent evidence regarding whether there was a job for Claimant at Dr. Nolte's office. Since there was conflicting evidence regarding the position at Dr. Nolte's office the ALJ, and the CRB, needed to give full and reasoned consideration to this issue.

The DCCA further faulted the ALJ and the CRB for relying on a labor market survey with respect to the defense that Claimant failed to pursue suitable employment. The Court held that the ALJ committed an error of law by shifting the burden at the second prong of the analysis established by *Logan v. DOES*, 805 A. 2d 237 (D.C. 2012).

The Court held that the ALJ prematurely shifted the burden to Claimant at the second prong of *Logan* because the ALJ did not reconcile Claimant's four hour light-duty restriction with the positions in the labor market survey that were full-time positions. Moreover, the Court pointed out that the record did not corroborate criticism of Claimant's

The DCCA held:

In light of the lack of substantial evidence to support the CRB's (and ALJ's) findings, we reverse the CRB's order and remand this case for further proceedings to determine whether (Claimant) is entitled to temporary total disability benefits. We leave it to the newly assigned ALJ and the parties to determine whether to reopen the existing record or to start the proceedings anew.

Sinclair v. DOES, No. 15-AA-474, Mem. Op. & J. at 8 (D.C. May 17, 2016)

CONCLUSION

Therefore, consistent with the remand instructions from the DCCA, this case is remanded to the AHD for further proceedings before an ALJ to determine, on the existing record or after a new formal hearing, whether Claimant is entitled to temporary total disability benefits.

So ordered.

job search efforts because it showed Claimant conducted an independent job search and applied for job leads provided to her, and the record was not clear whether the job leads were for the same jobs in the labor market survey or whether Claimant was provided a copy of the labor market survey prior to the formal hearing.