

File

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services
Office of the Director

Gregory P. Irish
Director



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| TREVOR RASBURY, |) |
| |) |
| Claimant, |) |
| |) |
| v. |) |
| |) |
| SODEXHO MARRIOTT COROPORATION |) |
| |) |
| and |) |
| |) |
| CRAWFORD & COMPANY, |) |
| |) |
| Employer/Carrier. |) |
| _____ |) |

Dir. Dkt. No. 03-16
OHA No. 99-062C
OWC No. 528771
(Private Sector)

Appeal of the Compensation Order of Linda F. Jory
Administrative Law Judge, Department of Employment Services

Matthew Peffer, Esquire, for the Claimant

Sarah O. Rollman, Esquire, for the Employer/Carrier

DECISION OF THE DIRECTOR

Jurisdiction

Employer files this appeal from the Compensation Order of Administrative Law Judge Linda F. Jory awarding Claimant's claim for workers' compensation benefits, pursuant to the provisions of the District of Columbia Workers' Compensation Act of 1979, as amended, D.C. Law 3-77, D.C. Official Code §§ 32-1501-1545 (2001) (Act).

EXHIBIT 1

Background

On May 7, 1998, Claimant, Trevor Rasbury, injured her back, left side and legs when she slipped and fell on a wet floor while working for Employer. Following the injury, Claimant requested wage loss benefits for the periods of May 7, 1998 to May 11, 1998 and from July 23, 1998 to August 6, 1998 as well as payment of medical expenses. Thereafter on April 8, 1999, the parties entered into a stipulation wherein employer voluntarily agreed to pay for all Claimant's lost time and medical expenses. This stipulation agreement was approved by the Office of Workers' Compensation on May 13, 1999.

In a Compensation Order dated March 23, 2001, Claimant was denied scheduled loss benefits for permanent partial disability to the left lower extremity inasmuch as Administrative Law Judge (ALJ) Jory determined that she was not yet at maximum medical improvement. In a Compensation Order issued on January 15, 2002, Claimant's request for authorization for a decompressive laminectomy and lumbar spine fusion was granted.

On June 20, 2002, Claimant filed another Application for Hearing requesting additional temporary total disability benefits from February 19, 2002 to the present and continuing. On November 19, 2002, ALJ Jory issued a Compensation Order awarding Claimant's claim for relief. On December 19, 2002, Employer filed an Application for Review of ALJ Jory's November 19, 2002 Compensation Order. On February 10, 2002, Claimant filed a response to Employer's Application for Review.

Analysis

The issues on appeal, based upon the Application for Review, are: (1) whether Claimant's request for additional temporary total disability benefits was a modification of an existing award under D.C. Official Code § 32-1524 and § 32-1508 (8); and (2) whether Claimant's request for temporary total disability benefits is time-barred pursuant to § 32-1524.

D.C. Official Code § 32-1524 (a) reads as follows:

At any time prior to 1 year after the date of the last payment of compensation or at any time prior to 1 year after the rejection of a claim, provided, however, that in the case of a claim filed pursuant to § 32-1508(a)(3)(V) the time period shall be at any time prior to 3 years after the date of the last payment of compensation or at any time prior to 3 years after the rejection of a claim, the Mayor may, upon his own initiative or upon application of a party in interest, order a review of a

compensation case pursuant to the procedures provided in § 32-1520 where there is reason to believe that a change of conditions has occurred which raises issues concerning:

- (1) the fact or the degree of disability or the amount of compensation payable pursuant thereto: or
- (2) The fact of eligibility or the amount of compensation payable pursuant to § 32-1509.

D.C. Official Code § 32-1508(8) (2001) states the following:

The Mayor may approve lump-sum settlements agreed to in writing by the interested parties, discharging the liability of the employer for compensation notwithstanding §§ 32-1516 and 32-1517, in any case where the Mayor determines that it is in the best interest of an injured employee entitled to compensation or individuals entitled to benefits pursuant to § 32-1509. The Mayor shall approve the settlement, where both parties are represented by legal counsel who are eligible to receive attorney fees pursuant to § 32-1530. These settlements shall be the complete and final dispositions of a case and shall be a final binding compensation order.

The Director of the Department of Employment Services (Director) must affirm the Compensation Order under review if the findings of fact contained therein are supported by substantial evidence in the record considered as a whole and if the law has been properly applied. *See* D.C. Official Code § 32-1522 (2001); 7 DCMR § 230 (1986). Substantial evidence is such relevant evidence as a reasonable mind might find as adequate to support a conclusion. *George Hyman Construction Company v. D.C. Department of Employment Services*, 498 A.2d 563, 566 (D.C. 1985).

In support of its Application for Review, Employer argues that the ALJ did not properly apply the law to the facts of this case under D.C. Official Code § 32-1524 and § 32-1508(8). In this regard, Employer asserts that the ALJ failed to recognize that Claimant's request for additional temporary total disability benefits was a modification of an existing award under § 32-1524 and § 32-1508(8). Employer contends that because the current claim for benefits was requested over three years after the last payment of benefits was made, the claim is time-barred pursuant to D.C. Official Code § 32-1524.

In response, Claimant asserts that her claim is not time-barred by D.C. Official Code § 32-1524. Claimant argues in her brief that D.C. Official Code § 32-1524 only applies

when a previous claim has been decided by a Compensation Order. Claimant contends that the stipulation agreement entered into by the parties on April 8, 1999 was not a Compensation Order within the meaning of D.C. Official Code § 32-1524. Because no previous order had been entered with respect to temporary total disability, Claimant urges the Director to affirm the ALJ's ruling that the filing requirements of D.C. Official Code § 32-1524 do not apply in this case.

The Director agrees with the ALJ's ruling that the stipulation agreement entered into by the parties on April 8, 1999 and approved by the Office of Workers' Compensation on May 13, 1999 was not a full and final settlement pursuant to D.C. Official Code § 32-1508(8). The plain language of paragraph six (6) of the stipulation agreement itself sets out that Claimant would not be limited from receiving future workers' compensation benefits. Paragraph six (6) states, in pertinent part, that ". . . nothing herein is intended to, or shall be construed in any way as to limit the claimant's right to receive future workers' compensation benefits arising from this claim not covered by expressed terms of this stipulation." Clearly, on its face, this stipulation agreement is not a full and final settlement as the ALJ properly found. Compensation Order at 5.

The immediate case is analogous to *Kalbak v. Washington Hospital Center*, Dir. Dkt. No. 99-50, OHA No. 99-14, OWC No. 24658 (2001). In *Kalbak*, the parties entered into a stipulation concerning wage payments which was approved by the Office of Workers' Compensation. The claimant later moved for a modification of the stipulation based on a change in condition. At the formal hearing, the employer contended that the stipulation agreement executed by the parties was a full and final settlement of the claim. The hearing examiner determined that the stipulation was not a full and final settlement.

The employer in *Kalbak* appealed the hearing examiner's ruling to the Director. On review, the Director determined that there was substantial evidence in the record to support the hearing examiner's decision that the stipulation agreement was not a full and final settlement. The Director pointed out that there was language in the stipulation that was not indicative of a complete and final disposition of all of the issues in the case. Similarly to the instant case, the stipulation agreement in *Kalbak* also left open the possibility for additional benefits if there was a change in the claimant's condition. For the same reasons outlined in *Kalbak*, the Director determines that the stipulation agreement in the immediate case is not a settlement of the claim. As such, Employer's arguments that the current claim is a modification of an existing award by way of a settlement agreement must fail.

The Director likewise rejects Employer's argument that the stipulation agreement entered into by the parties constitutes a Compensation Order. 7 D.C.M.R. §299.1 (1986) defines "Compensation Order" as "an order of a Hearing or Attorney Examiner of the Office which rejects a claim or which makes an award of compensation respect of a claim under the Act." In the immediate case, the ALJ reasonably concluded that the stipulation, although

approved by the Office of Workers' Compensation, was merely a representation of a voluntary payment to be made by Employer and was neither an award of benefits, a rejection of a claim, or a Compensation Order. Compensation Order at 5.

In *Brown v. Blake Construction Company*, Dir. Dkt. No. 95-74, H&AS No. 93-116, OWC No. 059059 (1998), the parties memorialized the employer's payment of permanent partial disability to the foot by a written stipulation in 1985. The claimant in that case later filed an application for permanent total disability benefits beginning May 24, 1992. At the hearing, an issue arose as to whether the stipulation agreement previously executed by the parties was considered a Compensation Order. The employer argued that the claimant's request for modification was not timely for failure to reopen within one year after the approval of the stipulation in accordance with D.C. Code §36-324 [now D.C. Official Code § 32-1524]. However, the hearing examiner concluded that the written stipulation did not bar the claimant's claim since it was not a Compensation Order. The hearing examiner ruled that the claimant's application was not a modification of a prior award because there was no Compensation Order or a prior award. Although this case was remanded to the hearing examiner for other reasons, it was ultimately determined that the claimant was entitled to permanent total disability benefits.

There are significant similarities between the immediate case and *Brown*. In *Brown*, as in the instant case, the parties had previously entered into a voluntary stipulation agreement that was subsequently approved by the Office of Workers' Compensation. The hearing examiner in that case concluded that the stipulation was not a Compensation Order and that the claimant's application was not considered a modification pursuant to then §36-324. In the immediate case, the Director sees no reason to depart from the reasoning in *Brown* with regard to this issue.

To the extent that Employer asserts that there is nothing in D.C. Code Official §32-1524 that requires the issuance of a Compensation Order to begin the one year statute of limitations, the Director rejects this argument. The Director acknowledges that D.C. Official Code §32-1524 of the Act, entitled "Modification of Awards" does not specifically state that an award can only be a Compensation Order. However, D.C. Official Code § 32-1524 (c) states that "Upon completion of a review conducted pursuant to subsection (a) of this section, the Mayor shall issue a new Compensation Order which may terminate, continue, reinstate, increase, or decrease such compensation previously paid, or award compensation." The Director's agrees with the ALJ's reasoning that this language infers that a Compensation Order has already been issued. Compensation Order at 5.

In further support of her position that D.C. Official Code § 32-1524 does require the issuance of a Compensation Order to trigger the running of the statute of limitations, Claimant relies upon *Short v. D.C. Department of Employment Services*, 723 A.2d 845, 849 (D.C. 1998). In *Short*, the Court of Appeals stated the following:

[T]he Act creates a specific procedure to revisit issues **previously decided by compensation order**. Up to one year after the last disability payment, the compensation order may be reviewed and modified “where there is reason to believe that a change of conditions has occurred.” . . . Thus, when a claimant injures himself [or herself], returns to work, but the original injury worsens (e.g., new symptoms manifest themselves,) causing him to be unable to work again, the claimant may avail himself [or herself] of a review procedure to modify the compensation order and seek additional benefits. (emphasis added).

In *Short*, the Court of Appeals explains the filing requirements set forth in D.C. Official Code § 32-1524. The Director agrees with Claimant that the language in *Short* further supports the conclusion that in order for Section 32-1524 to apply, a Compensation Order must have previously been issued. *Short, supra*.

The Director determines that because no previous Compensation Order had been entered with respect to temporary total disability, D.C. Official Code § 32-1524 is inapplicable based upon these facts.

Accordingly, the November 19, 2002 decision awarding Claimant’s claim for temporary total disability benefits is supported by substantial evidence, and is in accordance with the law.

Conclusion

Claimant’s request for additional temporary total disability benefits was not a modification of an existing award under D.C. Code Official Code § 32-1508(8) and § 32-1524. The ALJ’s ruling that Claimant’s claim for benefits is not time-barred by D.C. Official Code § 32-1524 is supported by substantial evidence and is in accordance with the law.

Decision

The November 19, 2002 Compensation Order awarding Claimant's claim for benefits is AFFIRMED.



Gregory P. Irish
Director

APR 16 2003

Date

Appeal Rights

Any party aggrieved by this Order may petition the D.C. Court of Appeals for its review. D.C. App. 15 (a) requires that the Petition for Review be filed within 30 days of notice of a final order. The Court is located at 500 Indiana Avenue, N.W., Washington, D.C. 20001.

In addition to service upon opposing counsel in this proceeding, copies of the Petition for Review and all motions, briefs or other documents filed in connection with such appeal shall be served upon the following:

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Certificate of Service

I hereby certify that, on this 16th day of April, 2003, a copy of the foregoing Decision of the Director was mailed by certified mail to the following:

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