

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**Department of Employment Services**

MURIEL BOWSER  
MAYOR



DEBORAH A. CARROLL  
DIRECTOR

**COMPENSATION REVIEW BOARD**

**CRB No. 16-056**

**RHONDA K. DAHLMAN,  
Claimant–Petitioner,**

**v.**

**AARP AND ZURICH NORTH AMERICA,  
Employer/Insurers-Respondents.**

Appeal from a March 29, 2016 Order  
of Administrative Law Judge Gerald Roberson  
AHD No. 09-056C, OWC No. 647286

DEPT. OF EMPLOYMENT  
SERVICES  
COMPENSATION REVIEW  
BOARD  
2016 OCT 7 PM 11 14

(Decided October 7, 2016)

Rhonda K. Dahlman, *pro se*  
D. Stephenson Schwinn for Employer

Before LINDA F. JORY, HEATHER C. LESLIE, and JEFFREY P. RUSSELL, *Administrative Appeals Judges.*

LINDA F. JORY, for the Compensation Review Board.

**DECISION AND ORDER TO DISMISS**

This case is before the Compensation Review Board (“CRB”) on the request of Rhonda K. Dahlman (“Claimant”) for review of a March 29, 2016 Order issued by Administrative Law Judge (“ALJ”) Gerald Roberson that granted the Employer’s Motion to Compel Discovery and ordered Claimant to file complete discovery responses and supply medical and claims records releases by May 16, 2016, and submit to a deposition on or before May 30, 2016 or suffer sanctions.

**FACTS OF RECORD AND PROCEDURAL HISTORY<sup>1</sup>**

<sup>1</sup> Because there is no transcript, the background facts are taken from the existing Decision and Order on Remand which is the law of the case. *See Dahlman v. AARP*, CRB No. 14-039, (February 1, 2015).

This matter was previously before the CRB following an appeal of a March 21, 2014 Compensation Order (CO). *Dahlman v. AARP*, AHD No. 09-056C (March 21, 2014). The CRB issued a Decision and Remand Order (DRO) on February 11, 2015 that affirmed the CO's determination that Claimant sustained an accidental injury on November 8, 2005. The DRO further concluded:

The conclusion that the accidental injury was not caused or aggravated by a work-related condition or event was reached without adequate or proper analysis under the *Ramey* doctrine, the presumption of compensability or in light of the treating physician preference, and is vacated. The matter is remanded for further consideration of the claim in a manner consistent with the foregoing [sic] Decision and Remand Order.

CRB 14-039 at 9.

The ALJ who previously heard the matter retired and the matter was assigned to ALJ Roberson, who issued an Order to Show Cause on July 8, 2015 and again on July 16, 2015 requesting the parties show cause why the pending matter could not be decided by him, based upon the existing record.

A Scheduling Order issued on October 16, 2015, scheduling a formal hearing for February 10, 2016. The hearing was continued several times. Employer served discovery requests on Claimant. Claimant filed with Administrative Hearings Division ("AHD") a Request for Protection regarding Employer/Carrier Discovery Requests on February 22, 2016. Employer filed a Motion to Compel Discovery and a Motion for Continuance on March 15, 2016.

On March 29, 2016, the ALJ issued the Order that is the subject of this Decision and Order. The Order states in its entirety:

Upon consideration of the Employer's Motion to compel Discovery, any opposition thereto, and being fully advised of the premises, it is by this Court, this 29<sup>th</sup> day of March, 2016; Ordered that the Motion to Compel Discovery be, and hereby is GRANTED

Claimant shall file complete discovery responses and supply medical and claims records release by 5/16/16 and submit to a deposition on or before 5/30/2016 or suffer appropriate sanctions, up to and including precluding any evidence and argument on the issue of causation.

On April 27, 2016, Claimant filed a request for review of the discovery order with the CRB stating that she would be aggrieved if Judge Roberson's Order is not reviewed and reversed. On the same date, the CRB issued an Order to Show Cause Why Claimant's Application for Review Should Not Be Dismissed because it is not an appeal from a final order.

On May 13, 2016, the CRB issued an Order Dismissing the Application for Review pursuant to 7 DCMR § 258.1, stating that Claimant had not filed a response to its Order to Show Cause. Subsequently, on May 16, 2016, the CRB issued an Order Vacating the May 13, 2016 Order because the CRB learned Claimant had misdirected her response to the show cause order to AHD. Claimant's response was received by the AHD on May 13, 2016. Employer was ordered to provide its response to Claimant's response by May 20, 2016.

Employer responded on May 20, 2016 and asserts:

Generally, rulings on discovery orders are not directly appealable.

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This is consistent with the longstanding judicial doctrine disfavoring appeals from interlocutory orders. Under the collateral order doctrine a ruling (such as the denial of a motion to dismiss) may be appealable if it has "a final an irreparable effect on important rights of the parties". *Bible Way Church of Our Lord Jesus Christ of the Apostolic Faith v. Beards*, 680 A.2d 419, 425 (D.C. 1996)(internal quotation marks and citation omitted). Otherwise, the aggrieved party must wait for determination of the issue on review of a final order. This doctrine prompts judicial economy by preventing piecemeal appeals.

On May 27, 2016, the CRB received from Claimant's healthcare provider a request that the CRB extend the time for Claimant to file her memorandum in support of her Application for Review. On June 6, 2016, the CRB issued an order which granted Claimant's request and directed Employer to respond by July 18, 2016. The order also stated:

In addition to all other issues that may be relevant to this matter, the parties are also directed to address in their respective memoranda the issue of whether the CRB has jurisdiction to consider an appeal of an interlocutory discovery orders as is presented in this case.

On June 23, 2016, Claimant filed a request for a reasonable accommodation to submit her filing by mail on August 15, 2016 instead of the date ordered by the CRB. Claimant included another letter in support from her occupational therapist.

On August 15, 2016, Claimant filed a Supplemental Application for Review and Claimant's Points and Authorities in Support of Her Application for Review (Claimant's Brief) . Employer was notified that it had an additional 14 calendar days to file an opposition. Employer filed Employer's Opposition to Petition for Review (Employer's Brief) on August 29, 2016.

## ANALYSIS<sup>2</sup>

Claimant asserts the CRB does have jurisdiction over what she describes as the “third round of discovery in this matter”. Claimant further provided a detailed procedural history of events that occurred prior to the issuance of the Compensation Order but did not address the jurisdictional issue..

In addition, Claimant asserts that Employer ignored Judge Roberson’s order for depositions “de bene esse” by issuing a Notice of Deposition to appear personally. Claimant conceded the Employer sent multiple Notices of Deposition to Claimant and that she contacted Judge Roberson to advise him that Employer was violating his Scheduling Order by ordering her to return to its lawyer’s office for a second deposition to discuss all matters in its “third round of Discovery” when she had already been submitted to a twelve hour, two-day deposition.

Claimant further asserts that:

The only job of the lower Court is to examine the evidence already “adduced” by AARP. AARP, while beating a dead horse, is now harassing the Claimant with even further discovery of her personal relationship from 2000 to the present with the support of the lower court.

Claimant’s Brief at 13.

Employer argues the CRB should dismiss the discovery order as it is an interlocutory order and does not fall within the very limited exception to the rule prohibiting interlocutory appeals. Employer again relies on the collateral order doctrine outlined in *Bible Way Church of Our Lord Jesus Christ of the Apostolic Faith v. Beards*, 680 A.2d 419, 425 (D.C. 1996)(*Bible Way Church*):

The Supreme Court cautions that the collateral order doctrine is “modest” in scope and described the conditions required for its application as “stringent.” *Will v. Hallock*, 546 U.S. 345, 349-50 S. Ct. 952, 163 L. Ed. 2d 836 (2006). In order to qualify for immediate appellate review, the ruling must satisfy three requirements: (1) it must conclusively determine a disputed a question of law; (2) it must resolve an important issue that is separate from the merits of the case itself; and (3) it must be effectively unreviewable on appeal from a final judgment.

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Plainly, Judge Roberson’s discovery order did not conclusively resolve an important question of law, unrelated to the merits of the case, which would

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<sup>2</sup> In review of an appeal which is based not upon factual findings made on an evidentiary record, but rather is based upon review of the administrative record, the filings of the parties, and the orders, the Board must affirm the order under review unless it is determined to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. See, 6 Stein, Mitchell & Mezones, ADMINISTRATIVE LAW, § 51.03 (2001).

otherwise evade review on appeal. Claimant was merely required to provide discovery responses and submit to a deposition.

Employer's Brief at 3.

We conclude that the Claimant has not proven that her request for review of the March 29, 2016 Order qualifies for immediate review under the collateral order doctrine. Therefore, the CRB does not have jurisdiction to review the March 29, 2016 Order.

#### **CONCLUSION AND ORDER**

The Claimant has not proven that her request for review of the March 29, 2016 Order qualifies for immediate review under the collateral order doctrine. Therefore, the CRB does not have jurisdiction to review the March 29, 2016 Order. Claimant's request for review is accordingly **DISMISSED**.

*So ordered.*