

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 15-043

**RICHARD A. WALSH,
Claimant - Petitioner,**

v.

**VERIZON COMMUNICATIONS and
SEDGWICK CLAIMS MANAGEMENT SERVICES,
Employer/Third-Party Administrator-Respondents.**

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2016 AUG 3 PM 12 21

Appeal from an December 31, 2014 Order
by Administrative Law Judge Gregory Lambert
AHD No. 07-122F, OWC No. 563988

(Decided August 3, 2015)

Matthew J. Peffer for the Claimant
James D. Reed for the Employer

Before HEATHER C. LESLIE, MELISSA LIN JONES, and LAWRENCE D. TARR, *Chief Administrative Appeals Judge.*

HEATHER C. LESLIE, for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

The facts surrounding the Claimant's injury have been the subject of several Compensation Orders at the Administrative Hearings Division. Claimant was injured in the course of his employment and was placed under permanent restrictions. Claimant was paid disability benefits under a previous Compensation Order. *Walsh v. Verizon Communications, Inc.*, AHD No. 07-122, OWC No. 563988 (September 13, 2007). Vocational rehabilitation ensued and thereafter Employer alleged Claimant failed to cooperate with vocational rehabilitation. After an evidentiary hearing, a Compensation Order was issued wherein Claimant's entitlement to benefits was suspended due to an unreasonable refusal to cooperate with vocational

rehabilitation. *Walsh v. Verizon Communications*, AHD No. 07-122E, OWC No. 563988 (August 28, 2014).

Claimant, through counsel, thereafter indicated to the Employer a willingness to cooperate with vocational rehabilitation verbally and in writing, beginning on September 5, 2014. Employer did not reinstitute vocational rehabilitation and Claimant filed for a Formal Hearing, seeking to modify the August 28, 2014 Compensation Order suspending disability benefits.

A full evidentiary hearing occurred on December 1, 2014. Claimant sought reinstatement of vocational rehabilitation services, authorization for an MRI of his spine, and penalties pursuant to D.C. Code § 32-1515 and § 32-1528. The issue to be adjudicated was whether Claimant had exhibited a willingness to cooperate with vocational rehabilitation services. A Compensation Order (hereinafter CO) was issued on December 31, 2014 concluding:

After a review of the evidentiary record and Mr. Walsh's demeanor at the hearing, I find by a preponderance of the evidence that he has demonstrated a willingness to reengage with vocational rehabilitation services and has met the legal requirements necessary to cure his prior failure to cooperate. Benefits under the Act are reinstated, including the payment of causally-related medical expenses, if any, that are reasonable and necessary.

Mr. Walsh's request for penalties against Verizon are denied.

CO at 5.

The CO was not appealed by either party.

On or about January 9, 2015, Employer paid Claimant temporary total disability benefits from December 31, 2014 through January 6, 2015. Thereafter Claimant filed a Motion for Order Declaring Default based upon Employer's failure to pay disability benefits from September 5, 2014 through December 30, 2014.

On February 19, 2015, an Order was issued denying Claimant's Motion for Order Declaring Default. Specifically,

The December 31, 2014 Compensation Order did not specify a date that Claimant cured his failure to cooperate. Claimant argues in favor of September 5, 2014, which is the date that counsel communicated a desire to restart vocational rehabilitation. Employer argues in favor of either December 31, 2014, the date of the Order, or December 1, 2014, the date of the hearing.

Claimant cured his unreasonable failure to cooperate on December 31, 2014. Only at the time that I signed the December 31st Order was I persuaded that Claimant had done so. I reached this conclusion after a post-hearing review of both the documentary exhibits and his in-person testimony. No penalties are

assessed against the Employer for failure to pay from September 5, 2014 until December 31, 2014.

Claimant appealed the Order to the CRB. Claimant argues the ALJ's determination that December 31, 2014, the date of the CO, is the date the Claimant cured his failure to cooperate with vocational rehabilitation is erroneous and inconsistent with the plain language of the statute. Further, Claimant argues this determination does not flow rationally from the substantial evidence in the record. Employer opposes the appeal, arguing the Order is in accordance with the law and should be affirmed.

THE STANDARD OF REVIEW

As an initial matter, in its review of an appeal from an Order when there is no evidentiary record, the Compensation Review Board (CRB) must affirm said decision 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).

DISCUSSION AND ANALYSIS

Claimant correctly notes that after a finding that an injured worker has unreasonably refused to cooperate with vocational rehabilitation, a Claimant may cure this conclusion by cooperating with the process or expressing a willingness to do so. *Brown v. Pepco*, CRB No. 10-141(2)(R), 2014 DC Wrk. Comp. Lexis 146, at *25 (April 7, 2014). Claimant argues that the Order erred when it determined the date of the CO was the date of cure, and not several earlier dates, beginning with September 5, 2014.

What is problematic to Claimant's argument is that Claimant did not specify a date of cure at the Formal Hearing. When asked to state his claim for relief at the Formal Hearing, Claimant, through counsel, replied:

Claimant's claim for relief is reinstatement of vocational rehabilitation services, also authorization for MRI of the cervical spine.

Hearing transcript at 9.

In closing statement, Claimant's counsel stated:

Mr. Walsh asked in September for vocational rehabilitation to be reinstated. Mr. Walsh asked again in September, asked again in October. Nothing. Then in November he gets his deposition taken.

Hearing transcript at 103.

The "Claim for Relief" listed in the CO is the following:

Mr. Walsh seeks the reinstatement of vocational rehabilitation services and authorization for an MRI of his spine. He also seeks penalties under D.C. Code §32-1515 and §32-1528.

CO at 2.

The joint pre-hearing statement lists as the Claim for Relief:

Reinstatement of Vocational Rehabilitation and temporary total disability benefits from August 15, 2014 through the present and continuing....

We are uncertain of the significance of the August 15, 2014 as Claimant, in argument, does not reference this date. Regardless, at the Formal Hearing, Claimant did not specify a date of cure when temporary total disability benefits should be reinstated. The CO reflected this omission by not finding a specific date of cure. Employer promptly paid from the date of the CO.

We cannot agree with Claimant's argument that the date of cure was effectively taken out of his hands and placed into the hands of the ALJ whenever he or she issues an order. Quite simply, while various references to the months of September, October, and November were made in argument in front of the ALJ, and correspondence submitted into evidence reflecting dates Claimant's counsel requested vocational rehabilitation be reinstated, no specific date was put forth by Claimant when asking for a reinstating of disability benefits and no specific date of date of cure was specified in the CO.

Claimant did not appeal the CO to the CRB arguing the ALJ's lack of specifying a date of cure was not in accordance with the law. The ALJ correctly denied the Motion for Default as the Employer cannot be found to be in default of an order which did not specify a date to begin payment, other than the date the CO was issued. We affirm the Order.

CONCLUSION AND ORDER

The February 19, 2015 Order denying Claimant's Motion for Order Declaring Default is AFFIRMED.

So Ordered.