

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



F. THOMAS LUPARELLO
ACTING DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 14-034

**ROBERT L. JOHNSON,
Claimant-Petitioner,**

v.

**HAMILTON CROWNE PLAZA HOTEL¹
and ZURICH INSURANCE CO.,
Employer/Insurer-Respondent.**

Appeal from a February 27, 2014 Order by
Administrative Law Judge David L. Boddie
AHD No. 10-563, OWC No. 619635

Robert L. Johnson, self-represented Petitioner
Mark T. Krause for the Respondent

Before MELISSA LIN JONES, HEATHER C. LESLIE, and JEFFREY P. RUSSELL, *Administrative Appeals Judges*.

MELISSA LIN JONES for the Compensation Review Board.

DECISION AND REMAND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

On June 14, 2005, Mr. Johnson injured his back while working as a cook at the Hamilton Crowne Plaza Hotel ("Hotel").

In May 2011, an administrative law judge ("ALJ") conducted a formal hearing to adjudicate Mr. Johnson's entitlement to wage loss permanent partial disability benefits from March 16, 2011 to the

¹ The caption to the February 27, 2014 Order on appeal incorrectly states the employer is Hampton Crowne Plaza Hotel.

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2014 JUN 10 AM 9 05

date of the formal hearing and continuing. In a Compensation Order dated February 27, 2012, the ALJ granted Mr. Johnson the permanent partial disability benefits requested as well as payment and reimbursement of causally related medical expenses.²

On March 29, 2013, Mr. Johnson filed with the Office of Hearings and Adjudication, Administrative Hearings Division (“AHD”) a Motion for a Supplementary Order Awarding Penalties and Declaring a Default pursuant to D.C. Code §§32-1515(f) and 32-1519 on the grounds that the wage loss benefits awarded in the February 27, 2012 Compensation Order had not been paid timely or had not been paid.³ In response, the ALJ issued an Order to Show Cause directing Mr. Johnson to “set forth the amount of penalties that are to be assessed upon that amount which is due and owing pursuant to D.C. Code §32-1515(f).”⁴ In that same order, the ALJ directed the Hotel “to show cause why a Supplementary Compensation Order Awarding Penalties and Declaring a Default should not be entered in this Case.”⁵

On August 14, 2013, the ALJ issued an Order denying Mr. Johnson’s request for penalties and a default. The ALJ ruled that Mr. Johnson had failed “to establish that his wage loss after March 11, 2011 is causally related to and due to his June 14, 2005 work injury;”⁶ since June 14, 2005, Mr. Johnson had returned to work and had sustained several additional injuries, and as of March 11, 2011, Mr. Johnson had stopped working “not on advice of his physicians or due to or because of his June 14, 2005 work injury to his back.”⁷ The August 14, 2013 Order did not find that Mr. Johnson’s work-related back injury had healed, only that his ongoing wage loss was not a result of his back injury.

On December 16, 2013, Mr. Johnson filed with AHD a Motion requesting the Hotel “pay him ‘all in one lump sum and medical treatment for the rest of my life.’”⁸ Mr. Johnson had received a lump-sum payment for an April 27, 2003 right shoulder injury in a prior claim, and apparently, he felt entitled to some type of settlement for his June 14, 2005 back injury.

In his December 16, 2013 Motion, Mr. Johnson also seemed to assert he requires additional medical treatment at the Hotel’s expense, he is entitled to reimbursement for medical expenses paid through

² *Johnson v. Hampton Crowne Plaza Hotel*, AHD No. 10-563, OWC No. 619935 (February 27, 2012).

³ *Johnson v. Hampton Crowne Plaza Hotel*, AHD No. 10-563, OWC No. 619935 (May 7, 2013) (Order to Show Cause).

⁴ *Id.*

The CRB has taken administrative notice of the contents of the Administrative Hearings Division’s files regarding Mr. Johnson’s back injury. No findings of fact have been made based upon the contents of those files, but they have been reviewed in order to understand the posture of the case, the claims, and the defenses.

⁵ *Johnson v. Hampton Crowne Plaza Hotel*, AHD No. 10-563, OWC No. 619935 (May 7, 2013) (Order to Show Cause).

⁶ *Johnson v. Hampton Crowne Plaza Hotel*, AHD No. 10-563, OWC No. 619935 (August 14, 2013).

⁷ *Id.*

⁸ *Johnson v. Hampton Crowne Plaza Hotel*, AHD No. 10-563, OWC No. 619935 (February 27, 2014).

other insurance, and he deserves “an award for medical costs incurred in the amount of \$47,655.25, and 12 million dollars, with a 20% penalty assessed against the Employer.”⁹ In an Order dated February 27, 2014, the ALJ denied Mr. Johnson’s request for a penalty because Mr. Johnson had not met his burden of proof; the ALJ also denied Mr. Johnson’s possible request for additional medical treatment on the grounds that Mr. Johnson had not requested a formal hearing to adjudicate that entitlement.¹⁰ This appeal of the February 27, 2014 Order ensued.

PRELIMINARY MATTERS

On March 27, 2014, Mr. Johnson filed with the Compensation Review Board (“CRB”) an “Order Opposing Points and Authorities Motion to [Pursue] my Case.” In that pleading, which is accepted as an Application for Review of the February 27, 2014 Order, Mr. Johnson raises a number of allegations; however, jurisdiction is given to the CRB by D.C. Official Code §§32-1521.01 and 32-1522 (2004), 7 DCMR § 250, *et seq.*, and the Department of Employment Services Director’s Directive, Administrative Policy Issuance 05-01 (February 5, 2005), and this jurisdiction is limited to resolving appeals brought for workers’ compensation claims under §32-1521.01(d)(2)(A) of the District of Columbia Workers’ Compensation Act of 1979, D.C. Code, as amended, §32-1501 *et seq.* (“Act”). The CRB has no authority to resolve claims under the Americans with Disabilities Act, the Occupational Safety and Health Act of 1970, or Title VII of the Civil Rights Act of 1964.

In addition, Mr. Johnson submitted correspondence, Department of Labor reports and forms, medical reports, salary receipts, prior pleadings, and bills with his various pleadings in this appeal. The function of the CRB is appellate review; depending upon the type of order on appeal, the standard of review applied by the CRB differs. When a party appeals a Compensation Order, the CRB is limited to making a determination as to whether the factual findings of the appealed Compensation Order are based upon substantial evidence in the record and whether the legal conclusions drawn from those facts are in accordance with applicable law; if the Compensation Order is supported by substantial evidence, even if there also is contained within the record under review substantial evidence to support a contrary conclusion and even if the CRB might have reached a contrary conclusion, the CRB must affirm that Compensation Order.¹¹ In this case, Mr. Johnson appeals an Order issued in response to a motion;¹² therefore, the CRB must affirm that order unless it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.¹³ Nonetheless, whether the CRB is reviewing a Compensation Order or an Order issued in response to a motion, the CRB does not have the power to conduct additional fact finding, and “[n]o

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Marriott International v. DOES*, 834 A.2d 882, 885 (D.C. 2003).

¹² Neither “compensation order” nor “final decision” is defined in the Act or the governing regulations; however, in limiting the CRB’s appellate authority to review of compensation orders or final decisions, the regulations and the Act make a distinction between orders that represent a final pronouncement as to whether or not a worker is entitled to compensation and orders that neither award nor deny such compensation as a final matter. See 7 DCMR §251.2.

¹³ See 6 Stein, Mitchell & Mezines, *ADMINISTRATIVE LAW*, §51.93 (2001).

additional information shall be submitted by the claimant or other interested parties after the date of hearing, except under unusual circumstances as determined by the Mayor.”¹⁴

The purpose underlying the requirement of “unusual circumstances” is “to prevent a hearing from being reopened simply for the purpose of introducing new or additional evidence when that evidence could have reasonably been presented at the hearing.”¹⁵ In other words, reasonable grounds must exist for not introducing the evidence before the ALJ¹⁶ because the CRB does not have the power to accept additional evidence or to compel an ALJ to consider additional evidence unless

(a) that the additional evidence is material, and

(b) that there existed reasonable grounds for the failure to present the evidence while the case was before the Administrative Hearings Division or the Office of Workers’ Compensation (depending on which authority issued the compensation order from which appeal was taken).^[17]

The CRB has reviewed the record created by the ALJ and has taken official notice of the AHD’s administrative files; however, absent a showing by Mr. Johnson that the documents attached to his pleadings are material and could not reasonably have been presented to the ALJ except for unusual circumstances, the CRB has not reviewed these documents because it is not permitted to do so.

This same analysis applies to the correspondence attached to Employer/Carrier’s Opposition to Application for Review. Absent a showing by the Hotel that the correspondence attached to its pleading is material and could not reasonably have been presented to the ALJ except for unusual circumstances, the CRB has not reviewed that correspondence because it is not permitted to do so.

ADDITIONAL MEDICAL TREATMENT AND MODIFICATION OF PRIOR COMPENSATION ORDER

In his appeal, Mr. Johnson states, “The Administrative Judge, Judge Boddie denied my claim on 2-27-2014 saying that I was not [entitled] to workman compensation, no kind of benefits and no medical treatment, I disagree.”¹⁸ This description does not accurately describe the content of or the effect of the February 27, 2014 Order.

Mr. Johnson’s current entitlement to wage loss benefits and causally-related medical expenses was most recently established in the August 14, 2013 Order which holds Mr. Johnson failed “to establish

¹⁴ Section 32-1520(c) of the Act

¹⁵ *Young v. DOES*, 681 A.2d 451, 454 (D.C. 1996).

¹⁶ *Bennett v. DOES*, 629 A.2d 28, 30 (D.C. 1993), citing *King v. DOES*, 560 A.2d 1067, 1073 (D.C. 1989).

¹⁷ 7 DCMR 264.

¹⁸ Order Opposing Points and Authorities Motion to [Pursue] my Case, unnumbered pp. 1-2.

that his wage loss after March 11, 2011 is causally related to and due to his June 14, 2005 work injury.”¹⁹ Neither party appealed the August 14, 2013 Order, and that Order is final; that Order is not on appeal.

The February 27, 2014 Order on appeal denied Mr. Johnson penalties on medical expenses. It did not grant or deny Mr. Johnson additional medical treatment that is reasonable, necessary, and causally-related to his June 14, 2005 back injury nor did it grant or deny Mr. Johnson any wage loss benefits.

Because Mr. Johnson’s entitlement to wage loss benefits and medical benefits has been established by the August 14, 2013 Order that remains in full force and effect, in order to modify that Order, either party can request a formal hearing.²⁰ The ALJ denied Mr. Johnson’s apparent request for “medical treatment, and possibly additional disability compensation benefits [because] the proper procedure is to request and file an Application for Formal Hearing (which the Claimant appearing *pro se* apparently has done on more than one occasion).”²¹ Although Mr. Johnson has exercised his right to not be represented by an attorney, in order to ensure due process including proper notice and an opportunity to address the issues, claims, and defenses, he must comply with the procedural requirements set forth in the Act and its regulations. If Mr. Johnson intended to request modification of the August 14, 2003 Order, it was his responsibility to convey that request to the ALJ:

Nevertheless, it is the Petitioner's responsibility, as it is the responsibility of any person or entity seeking relief from an adjudicatory body, to make sure that the decision-maker, in this case the ALJ, accurately understands what relief is being sought. Such a responsibility is not beyond the abilities of a reasonable person appearing *pro se*. A decision-maker is not, and is not expected to be, clairvoyant. More importantly, the type of relief being sought determines the kind of evidence that must be presented to the decision-maker by the person seeking relief.^[22]

It also was Mr. Johnson’s responsibility to make that request properly. He did not do so; therefore, the ALJ did not err in not addressing a possible claim for additional medical treatment or additional wage loss benefits.

BAD FAITH PENALTY AND DEFAULT

Regarding Mr. Johnson’s request for “an award for medical costs incurred in the amount of \$47,655.25, and 12 million dollars, with a 20% penalty assessed against the Employer,”²³ the ALJ

¹⁹ *Johnson v. Hampton Crowne Plaza Hotel*, AHD No. 10-563, OWC No. 619935 (August 14, 2013).

²⁰ Section 32-1524 of the Act

²¹ *Johnson v. Hampton Crowne Plaza Hotel*, AHD No. 10-563, OWC No. 619935 (February 24, 2013), unnumbered p. 3.

²² *Hensley v. Cheechi & Company*, CRB No. 04-97, OHA No. 92-359G, OWC No. 115568 (April 26, 2007).

²³ *Johnson v. Hampton Crowne Plaza Hotel*, AHD No. 10-563, OWC No. 619935 (February 24, 2013), unnumbered pp. 2-3.

denied this request on the grounds that “[t]he Act does not provide for the assessment of penalties or a default based upon the provision of nonpayment or for reimbursement of medical expenses” because medical payments do not qualify as compensation.²⁴ This ruling is not in accordance with the law.

Under specific circumstances, a claimant’s payment of medical bills may qualify as compensation and, consequently, may qualify for a penalty and default pursuant to §32-1519 of the Act:

Section 32-1519 of the Act provides for the issuance of an order declaring a default when an employer has failed to pay a compensation award. Although this section does not specifically articulate the default order to be an available remedy for non-payment of medical expenses, based upon the determinations made by the Courts in *Marshall [v. Pletz*, 317 U.S. 383, 63 S.Ct. 284, 87 L.Ed 348 (1943)] and *Lazarus [v. Chevron* 958 F.2d 1297 (5th Cir. 1992)], medical expenses constitute compensation when employer refuses to pay such expenses and is thereafter required to reimburse employee pursuant to an award. . . . As § 32-1519 of the Act provides for collection of defaulted compensation payments and *Marshall* and *Lazarus* have determined medical benefits constitute compensation in circumstances such as these, Petitioner is entitled to seek an order of default for medical benefits pursuant to § 32-1519.^[25]

Nonetheless, in order to obtain an order of penalty or default, the claimant

must first obtain a compensation order identifying with specificity which medical bills in what amounts are to be paid, beyond the current existing compensation order which merely orders that causally related medical care be provided, but does not identify specific bills or services by date and amount. Upon obtaining that compensation order, Petitioner can, if the specific bills remain unpaid, return and seek a default order after the period for compliance has passed.^[26]

Because the ALJ denied a penalty on the grounds that medical payments do not qualify as compensation, the law requires we vacate that portion of the Order and remand to provide Mr. Johnson an opportunity to prove entitlement to a penalty by identifying with specificity any medical bills for reasonable and necessary treatment for his June 14, 2005 back injury that the Hotel refused to pay and that Mr. Johnson paid himself.

²⁴ *Id.* at unnumbered p. 3.

²⁵ *Middledorf v. Washington Hospital Center*, CRB No. 08-190, AHD No. 96-321, OWC No. 261445 (June 17, 2010) quoting *Tagoe v. Washington Hospital Center*, CRB No. 08-187, AHD No. 03-287, OWC No. 568310 (February 13, 2009).

²⁶ *Id.*

REIMBURSEMENT FOR MEDICAL EXPENSES

The ALJ denied Mr. Johnson's request for "medical expenses that were paid by other insurance for his work injury that the Employer is liable for and that he or his insurance carrier should be reimbursed for."²⁷ There is no evidence in the record that that any insurer has required Mr. Johnson repay any funds expended for medical treatment not covered by that insurance but instead covered by workers' compensation insurance; therefore, any claim for such expenses was properly denied.

CONCLUSION AND ORDER

The August 14, 2013 Order remains in effect. If Mr. Johnson has not been paid timely or properly in accordance with that Order, he may be entitled to a penalty; in order to be entitled to that penalty, Mr. Johnson must identify for the ALJ any medical bills for reasonable and necessary treatment for his June 14, 2005 back injury that the Hotel refused to pay and that Mr. Johnson paid himself. The portion of the February 27, 2014 Order denying Mr. Johnson a penalty is VACATED, and this matter is remanded solely to provide Mr. Johnson an opportunity to prove entitlement to a penalty on medical expenses. The remainder of the February 27, 2014 Order is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:


MELISSA LIN JONES

Administrative Appeals Judge

June 10, 2014

DATE

²⁷ *Johnson v. Hampton Crowne Plaza Hotel*, AHD No. 10-563, OWC No. 619935 (February 24, 2013), unnumbered p. 2.