

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

Department of Employment Services

MURIEL BOWSER  
MAYOR



DEBORAH A. CARROLL  
DIRECTOR

**COMPENSATION REVIEW BOARD**

**CRB No. 15-116**

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

v.

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

Appeal from a June 2, 2015 Compensation Order on Remand  
by Administrative Law Judge Gregory P. Lambert  
AHD No. 10-563, OWC No. 619635

(Decided January 19, 2016)

Robert L. Johnson, pro se Petitioner  
Mark T. Krause for Employer

Before JEFFREY P. RUSSELL, and LINDA F. JORY, *Administrative Appeals Judges*, and LAWRENCE D. TARR, *Chief Administrative Appeals Judge*.

JEFFREY P. RUSSELL for the Compensation Review Board.

**DECISION AND REMAND ORDER**

**FACTS OF RECORD AND PROCEDURAL HISTORY**

The following background information is taken from the Decision and Remand Order (DRO) issued June 10, 2014 by the Compensation Review Board (CRB), which is the order upon which the Compensation Order on Remand (COR) at issue in the instant appeal is premised. The bracketed material appeared in the original as footnotes:

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

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

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

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;” [ *Johnson v. Hampton Crowne Plaza Hotel*, AHD No. 10-563, OWC No. 619935 (August 14, 2013)] 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.” [*Id.*] 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’ ” [*Johnson v. Hampton Crowne Plaza Hotel*, AHD No. 10-563, OWC No. 619935 (February 27, 2014).] 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 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."*Id.* 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. *Id.* This appeal of the February 27, 2014 Order ensued.

DRO at 1 – 3.

Following a lengthy and exhaustive discussion of other matters not pertinent here, the CRB ruled as follows:

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.

DRO at 7, "Conclusion and Order".

On October 7, 2014, the Chief ALJ of the Administrative Hearings Division (AHD) sent a letter to Mr. Johnson (Claimant) advising him of his obligation to identify for the ALJ handling the matter on remand any medical bills for reasonable and necessary treatment for Claimant's back injury that Claimant had been required to pay himself after Hamilton Crowne Plaza Hotel (Employer) refused to make payment. The letter also advised Claimant that upon his submission of the requested documents, the ALJ handling the case would issue a Show Cause Order directing Employer to state why the penalty request should be denied.

On December 10, 2014, the ALJ to whom the remand had been assigned advised Claimant by letter that said documents were required to be submitted on or before January 15, 2015. In response, Claimant filed what is described in the COR as "several hundred pages of unbound exhibits and a supporting brief entitled 'Plaintiff Motion to Pursue His Case'". COR at 2.

On February 18, 2015, the ALJ conducted a status conference attended by Claimant and Employer. At the conference, Claimant advised the ALJ and Employer that he believed that there were additional documents he would like to submit, and the ALJ granted Claimant until March 3, 2015 to submit them. On that same date the ALJ issued an Order to Show Cause as previously described.

Subsequently, Claimant filed an additional six pages of medical documents.<sup>1</sup>

On March 16, 2015, Employer filed Employer/Carrier's Response to Order to Show Cause. Attached to that response was a letter from Employer's counsel to Claimant dated July 3, 2013, and a listing of copayments that Employer claimed it was aware of that Claimant had made totaling \$912.43, of which it maintained reimbursements had been made in the amount \$267.85, and asserting that it would issue an additional payment for the balance of \$644.58. In the body of the response, Employer asserted that it had reviewed the materials submitted by Claimant in the instant proceedings, and argued that they do not comport with the instructions of the Chief ALJ or by the ALJ, in that they lacked sufficient organization and specificity to demonstrate any unreimbursed out-of-pocket medical expenses incurred by Claimant.

On March 3, 2015, the ALJ and AHD issued a Scheduling Order bearing three separate AHD case file numbers, being AHD Nos. 14-389, 10-563, and 10-563A. The instant appeal concerns AHD No. 10-563. The Scheduling Order stated that a formal hearing was to occur on July 16, 2015 on all three cases.

On June 2, 2015, the ALJ issued the COR, in which the ALJ denied the claim for a penalty. On that same date, the ALJ issued an Order in AHD No. 10-563A, dismissing a claim related to Claimant's left elbow, which dismissal is substantively unrelated to the instant appeal. However, the concluding paragraph of the Order stated:

Mr. Johnson has two other matters before the Administrative Hearings Division: AHD Nos. 10-563 and 14-389. This Order does not alter in any way the posture of those claims. A hearing is still set for July 16, 2015 at 10:00 a.m.

On June 29, 2015, Claimant filed a document titled "Plaintiff Motion to Pursue His Case" with the CRB. Attached to the document was a copy of the COR, the March 3, 2015 scheduling order, a Joint Pre-Hearing Statement, and five handwritten pages authored by Claimant.

The CRB deems this filing to constitute an Application for Review (AFR) of the COR in AHD No. 10-563.

On July 27, 2015, Employer filed Respondent's Opposition to Application for Review.

On August 3, 2015, Claimant filed a document titled "Order Notice of Application for Review" with 40 pages of attached documents, including a scheduling order, medical records, handwritten lists purporting to set forth the dates of medical office visits, but containing no actual bills or evidence of payment being made by Claimant or anyone on Claimant's behalf.

For the reasons set forth below, we vacate COR and remand the matter to provide Claimant with an opportunity to present his claim for a penalty at a formal hearing.

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<sup>1</sup> The COR states that these additional documents were submitted February 13, 2015. That date is obviously an error, inasmuch as it predated the status conference.

## ANALYSIS

Claimant raises no substantive objection to the COR. The only complaint that we can discern is contained in the following portion of the AFR:

Mr. Johnson received from the D.C. Dept. of Employment Se Employment Services [sic] an order for rehearing in his Workers' Comp claim against Hampton Crowne Plaza Hotel and American Zurich Ins. Co. While Mr. Johnson was preparing for his rehearing, he received a Compensation Order on Remand from the very same Judge in the very same case, seeming to resolve the issue. Finally, Mr. Johnson stated that although he was granted Permanent Partial Disability benefits from MAR. 16, 2011 on, he has not received any checks.

Mr. Johnson is wondering why the case was ordered for rehearing, and then apparently decided before the rehearing, and what it is he should do next.

Provided insurance company with medical bill; continue moving forward with rehearing based on assumption that it is still happening; write letter to Dept. of Employment Services to inform them that Mr. Johnson has not received any benefits, despite being granted permanent partial disability, and enclose copy of order saying that he was granted that.

AFR at 1 – 2.

While we recognize that this case is procedurally complex and that the sheer size of the record is daunting, Claimant's procedural complaint has merit. While the ALJ and Employer may have been aware that the penalty matter was going to be decided by way of show cause proceedings, this *pro se* claimant had been advised to submit documents supporting the penalty claim, which he did (in the sense that he submitted documents that he views as supporting his claim), was advised by an AHD Scheduling Order that this claim and two others would be the subject of a formal hearing set to occur July 16, 2015, and was advised again by Order of June 2, 2015 that dismissal of one of the two other pending claims "does not alter in any way the posture" of the remaining claims, of which the instant matter was one.

While it may be that on their face and by themselves the documents submitted and reviewed by the ALJ do not meet Claimant's burden of proving entitlement to any penalty, neither we nor the ALJ have any way of knowing what additional evidence, such as testimonial evidence from himself or others, Claimant intended to rely upon at the July 16, 2015 formal hearing.

Issuing the COR without first conducting the formal hearing, obtaining Claimant's consent to proceed in the absence of the scheduled hearing, or at least advising him that there would be no such further hearing and providing an opportunity to interpose an objection, is a denial of fundamental procedural fairness.

## CONCLUSION AND ORDER

The issuance of the Compensation Order on Remand prior to the conduct of the scheduled formal hearing is not in accordance with the law. The Compensation Order on Remand is vacated and the matter is remanded to AHD for further proceedings, including the conduct of a formal hearing as was previously scheduled but did not occur on this issue. This order is not intended to and does not reopen discovery or extend any period for production of additional documents, except to the extent that the ALJ may consider any request for such extension or reopening of time for such production, at the ALJ's reasonable discretion.

*So ordered.*