

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 15-034

ROSALIND M. FOWLER,
Claimant-Respondent,

v.

DISTRICT OF COLUMBIA DEPARTMENT OF MOTOR VEHICLES
Self-Insured Employer-Petitioner.

Appeal from a January 30, 2015 Compensation Order by
Administrative Law Judge Fred D. Carney, Jr.
AHD No. PBL 12-029A, DCP No. 30111224763-0001

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2015 JUL 7 PM 1 13

(Decided July 7, 2015)

Kirk D Williams for Claimant
Andrea G. Comentale for Employer

Before LINDA F. JORY, MELISSA LIN JONES, and JEFFREY P. RUSSELL, *Administrative Appeals Judges.*

LINDA F. JORY for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

Claimant worked for employer as a Staff Assistant. Claimant fell in a supply closet on February 16, 2010 and she landed with most of her weight on her right arm. The District of Columbia Office of Risk Management (ORM) accepted the claim for the right elbow in a Notice of Determination dated March 17, 2010.

Claimant received treatment for a fractured right elbow from Dr. Nicole Richardson. Dr. Richardson obtained x-rays of Claimant's right hip in December 2010 and diagnosed Claimant with an arthralgic hip or thigh. On December 22, 2010, Dr. Robert E. Collins, an orthopedic surgeon designated by the Employer for treatment, took x-rays of Claimant's hip. Dr. Collins noted Claimant stated "she fell on her right side, but that the right hip has been hurting her since that time, but is concentrating more on the elbow. Now that the elbow is a bit better, the hip has gotten worse." Dr. Collins diagnosed degenerative disk disease with right radiculopathy, and right hip strain. Claimant has not returned to work since 1994. On November 7, 2011, Dr.

Collins determined that the injury to the back and right hip was related to the February 16, 2010 fall, and provided a copy of his report to Employer's claims administrator, Sedgewick CMS.

On December 16, 2011, Claimant resubmitted claim forms to ORM in an attempt to add her back and hip to the accepted body parts, and the claim number assigned was 30111224763-0001. Claimant noted that she fell on her right side and alleged that she recently discovered that the injury to her back and hip were related to the February 16, 2010 accident. By letter dated January 17, 2012, ORM informed Claimant that the only previously accepted body part was the right elbow. On February 16, 2012, Claimant requested reconsideration of the decision to deny the newly filed claim. ORM issued a March 15, 2012 Final Decision on Reconsideration that denied Claimant's request for reconsideration as untimely. ORM calculated timeliness based on the date of the Notice of Determination Regarding the Original Claim for Compensation which was March 17, 2010.

The parties proceeded to a formal hearing and in a Compensation Order dated January 30, 2015, an administrative law judge (ALJ) determined the Department of Employment Services' (DOES) Administrative Hearing Division (AHD) had jurisdiction to review ORM's Final Decision on Reconsideration as the ALJ found Claimant's request for reconsideration was timely. The ALJ also concluded that Claimant's back and right hip pain is medically causally related to the February 16, 2010 fall.

Employer appeals the Compensation Order (CO), asserting that the CO is neither supported by substantial evidence and not in accordance with the law. Employer requests the Compensation Review Board (CRB) vacate the Compensation Order.

On March 3, 2015, Chief Administrative Appeals Judge Lawrence D. Tarr granted Employer's request for an extension of time to file its memorandum of points and authorities until March 9, 2015 and Claimant's response time was extended until March 24, 2015. On March 30, 2015, Claimant filed a Motion to file her memorandum of points and authorities out of time.

ISSUES ON APPEAL

1. Whether AHD has jurisdiction to decide the issue of whether Claimant's right hip and back pain are causally related to her February 16, 2010 fall.
2. Whether the ALJ's excusal of Claimant's lack of timely notice of the alleged back and hip injuries is supported by substantial evidence in the record and otherwise in accordance with applicable law.
3. Whether the ALJ's conclusion that Claimant's back and right hip are causally related to the February 16, 2010 fall is supported by substantial evidence in the record and otherwise in accordance with the law.

ANALYSIS¹

At the outset, we grant Claimant's un-opposed request to file her memorandum of points and authorities out of time.

A review of the administrative file, the Pre-Hearing Order (PHO) and hearing transcript (HT) reveals that there was no claim for relief before the ALJ that would allow for an award to be issued. Stated another way, the Claimant was not seeking an award of disability benefits or payment of causally related medical bills under D.C. Code §1-623.24 which would confer authority to the ALJ to adjudicate this case.

To the contrary, the CO lists as the "Claim for Relief" that "Claimant seeks clarification of this administrative court's jurisdiction" and added in a footnote "Based on the posture of the case, and the unsettled case law at the time, Claimant did not continue to seek medical benefits and temporary total disability at the time of the hearing." CO at 2, n. 1. Review of the hearing transcript reveals that a lengthy dialog took place between counsel for Claimant and the ALJ regarding the claim for relief, which includes, in part, the following:

Judge Carney: You have to make a claim for relief.

Mr. Williams: Was – that's not a claim for relief? Claimant's clarification of AHD's jurisdiction?

Judge Carney: So you want a decision—

Mr. Williams: Your Honor

Judge Carney: -- you want a declaratory decision giving you a legal opinion about the jurisdiction in this case?

Mr. Williams: Well, your Honor –

Judge Carney: That's your claim?

HT at 24.

¹ The scope of review by the Compensation Review Board (CRB) and this Review Panel (hereafter, the Panel) as established by the Act and as contained in the governing regulations is limited to making a determination as to whether the factual findings of the 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. See § 1-623.28(a) of the D.C. Comprehensive Merit Personnel Act of 1978, as amended. D.C. Code § 1-623.01 *et seq.*, ("PSWCA"). "Substantial evidence", as defined by the District of Columbia Court of Appeals (DCCA), is such evidence as a reasonable person might accept to support a particular conclusion. *Marriott Int'l. v. DOES* 834 A.2d 882 (D.C. App. 2003)(*Marriott*). Consistent with this scope of review, the CRB and this panel are bound to uphold a Compensation Order that is supported by substantial evidence, even if there is also contained within the record under review substantial evidence to support a contrary conclusion, and even where the reviewing authority might have reached a contrary conclusion. *Marriott*, 834 A.2d at 885.

The discussion continued:

Judge Carney: I mean this is your claim. Now you're – and I -- and I'm just trying to fashion it, or –

Mr. Williams: Well –

Judge Carney: -- otherwise I have to dismiss it based on failure to state a claim on which relief can be granted. Now, from what I understood you said, you want an order declaring that the Defendant has not issued a final determination?

Mr. Williams: Yes.

HT at 26, 27.

The ALJ later advised the parties that he was taking a ten minute recess and ordered counsel for Claimant to “Fashion me a claim for relief on which relief can be granted”. HT at 28, 29. After the recess Counsel advised the ALJ that Claimant’s claim for relief was a ruling that her back and hip are causally related to the work accident of February 16, 2010”. HT at 29, 30. The ALJ advised that he was changing the claim for relief and was providing counsel for employer a chance to look at the pre-hearing order and initial it. However, the evidence file contains only a PHO that does not contain a signature of counsel for employer and does not appear to be altered. The PHO includes a heading: “State what claimant requests as a result of the hearing”. The PHO states “Clarification of AHD’s jurisdiction”.

Nevertheless, as noted above, the CO states the Claim for Relief is “Claimant seeks clarification of this administrative court’s jurisdiction”.

An ALJ is not granted the authority to issue advisory opinions. The ALJ’s authority is limited to adjudicating claims for compensation, that is, claims for payment for disability, death, or for medical services and supplies. As the ALJ stated in the CO, Claimant did seek medical benefits or wage loss benefits at the time of the hearing which are the only contested issues in this case for which an award of compensation can be made. Therefore, the ALJ did not have authority to decide the issue of whether the claimant’s right hip and back pain are causally related to the work injury.

Nothing in the PSWCA authorizes a DOES ALJ to issue decisions on hypothetical or contingent issues. All that the statute authorizes is a review of a concrete claim for specific benefits to which a claimant is or is not entitled. *See Heyward v. Metro Homes, Inc.*, CRB No. 12-123, AHD No. 12-145, OWC No. 682864 (September 25, 2012)(*Heyward*). Although *Heyward* is a case involving the private sector District of Columbia Workers’ Compensation Act of 1979, as amended, D.C. Code §32-1501, the underlying principles governing the nature of DOES’s authority to issue Compensation Orders and awards of compensation are in this instance analytical very similar. Neither Act authorizes advisory decisions or hypothetically contingent awards.

CONCLUSION AND ORDER

The January 30, 2015 Compensation Order is not in accordance with the applicable law. It is REVERSED and the award VACATED.

So Ordered