

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services
Labor Standards Bureau

Office of Hearings and Adjudication
COMPENSATION REVIEW BOARD



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CRB No. 07-110

ROSS BUCHHOLZ,

Claimant - Respondent

v.

D. C. OFFICE OF THE ATTORNEY GENERAL

Employer - Respondent

Appeal from a Compensation Order of
Administrative Law Judge Reva M. Brown
AHD PBL No. 04-027A, DCP No. 761037-0001-20002-0001

Kirk D. Williams, Esquire for the Respondent

Thelma Chichester Brown, Esquire, for the Petitioner

Before LINDA F. JORY, JEFFREY P. RUSSELL, *Administrative Appeals Judges* and E. COOPER BROWN, *Chief Administrative Appeals Judge*.

LINDA F. JORY, *Administrative Appeals Judge*, on behalf of the Review Panel

DECISION AND ORDER

JURISDICTION

Jurisdiction is conferred upon the Compensation Review Board pursuant to D.C. Official Code §1-623.28, §32-1521.01, 7 DCMR § 118, Department of Employment Services (DOES) Director's Directive, Administrative Policy Issuance 05-01(February 5, 2005)¹.

¹Pursuant to Administrative Policy Issuance No. 05-01, dated February 5, 2005, the Director of the Department of Employment Services realigned the Office of Hearings and Adjudication to include, *inter alia*, establishment of the Compensation Review Board (CRB) in implementation of the D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, D.C. Official Code § 32-1521.01. In accordance with the Director's Directive, the CRB replaces the Office of the Director in providing administrative appellate review and disposition of workers' and disability compensation claims arising under the D.C. Workers' Compensation Act of 1979, as amended, D.C. Official Code §§ 32-1501 to 32-1545 (2005) and the D.C. Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Official Code §§ 1-623.1 to 1-643.7 (2005), including responsibility for administrative appeals filed prior to October 1, 2004, the effective date of the D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004.

BACKGROUND

This appeal follows the issuance of an Order Declaring Default (ODD) by the Administrative Hearings Division (AHD) in District of Columbia Department of Employment Services (DOES). In that Order, which was filed on May 23, 2007, the Administrative Law Judge (ALJ) granted Petitioner's request for a penalty pursuant to D.C. Code §1-623.24(g).

Employer-Petitioner (Petitioner) filed an Application for Review (AFR) of the May 23, 2007 Order requesting that the award be reversed as AHD did not have jurisdiction to render a finding of default in a matter that has been appealed to the CRB, the order was not in accordance with the law.

Claimant – Respondent (Respondent) filed its response to the AFR asserting Petitioner's reliance on a private sector Court of Appeals case dealing with modification of private sector awards in support of its AFR is misplaced and the AFR should be denied.

ANALYSIS

As an initial matter, the scope of review by the Compensation Review Board (CRB) and this Review Panel (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* D.C. Comprehensive Merit Personnel Act of 1978, as amended, D.C. Official Code §1-623.01, *et seq.*, at §1-623.28 (a). "Substantial evidence", as defined by the District of Columbia Court of Appeals, is such evidence as a reasonable person might accept to support a particular conclusion. *Marriott Int'l. v. District of Columbia Department of Employment Services* 834 A.2d 882 (D.C. App. 2003). Consistent with this scope of review, the CRB and the 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.

Turning to the case under review herein, Petitioner essentially asserts that once the AFR of the CO was filed with this Office, the ALJ no longer has jurisdictional authority to render a decision unless the subject of the motion is severable from the issues pending before the CRB. Petitioner cites to Court of Appeals' decision in the private sector matter of *Georgetown University Hospital v. District of Columbia Department of Employment Services*, 659A.2d 832 (D.C. 1995)(*Georgetown*). As Respondent properly asserts, Petitioner's reliance on *Georgetown* is misplaced. Petitioner specifically argues:

In *Georgetown*, a claimant sought modification of a compensation order while the order was under review by the Office of the Director. *Id.* Citing the possibility of incongruent findings, the Court of Appeals rejected the claimant's application for

modification. In the instant matter, [Respondent] does not seek modification of the existing order. Instead, Respondent seeks enforcement of the existing order. The Agency has never ruled that *Georgetown* could be used to prevent the enforcement of an effective compensation order. Indeed, such a ruling would render D.C. Code §1-623.24(g) superfluous.

The Panel agrees with Respondent's position and adds the CRB had no obligation to rule on the request for a stay notwithstanding the fact that a Decision and Order issued from the CRB on June 7, 2007 affirming the Compensation Order which would render the motion for stay moot. The Panel further finds nothing in the current regulations pertaining to applications for review filed with the CRB that supports Petitioner's position that a request for a stay of a compensation order stays the effectiveness of the compensation order or precludes AHD from ruling on a request for penalties. *See* 7 DCMR §§118 and 260. If this were true every employer would file a request for a stay with its AFR, notwithstanding the fact that a stay will be granted only on the grounds that the employer would suffer irreparable injury by complying with the compensation order. *See* 7 DCMR §260.3.

The Act clearly states:

The Mayor or his or her designee shall begin payment of compensation to the claimant within 30 days after the date of an order from the Department of Employment Services Administrative Law Judge

See §1-623.24(b)(3). And §1-623.24(g) states in pertinent part:

If the Mayor or his or her designee fails to make payments of the award for compensation as required by subsection (a-3)(1), (a-4)(2)(b) of this section, the award shall be increased by an amount equal to one month of the compensation for each 30 day period that payment is not made.

In that Petitioner proffered no statute or case law in support of its position that AHD lacked jurisdiction to address a request for penalty on delayed payment, the Panel can find no reason to disturb the ALJ's conclusion and order in this regard.

CONCLUSION

The ALJ's Order Declaring Default and ordering Petitioner to tender payment to Respondent payment of the penalty due under D.C. Code §1-623.24(g) is in accordance with the law.

ORDER

The Order Declaring Default of May 23, 2007 is hereby **AFFIRMED**.

FOR THE COMPENSATION REVIEW BOARD:



LINDA F. JORY
Administrative Appeals Judge

July 27, 2007

Date