

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 15-169

SAMUEL MURRAY,
Claimant–Petitioner,

v.

DISTRICT OF COLUMBIA DEPARTMENT OF YOUTH SERVICES,
Employer-Respondent.

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2016 MAR 16 PM 10 19

Appeal of a September 9, 2015 Order Denying Claimant’s Motion for Default
by Administrative Law Judge Fred D. Carney, Jr.
AHD No PBL 13-037, DCP No. 3010886102-0001

(Decided March 16, 2016)

Johnnie Louis Johnson III for Claimant
Andrea G. Comentale Employer

Before LAWRENCE D. TARR, *Chief Administrative Appeals Judge*, LINDA F. JORY, and HEATHER
C. LESLIE, *Administrative Appeals Judges*.

LAWRENCE D. TARR for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

Samuel Murray (Claimant) was employed as a driver for the District of Columbia Department of Youth Services (Employer). On July 30, 2010, he injured his left shoulder in a work-related accident. His claim was accepted and Claimant received continuation of pay for August 26, 2010 through October 29, 2010 and, ultimately, on July 17, 2013 Employer paid temporary total disability benefits for October 30, 2010 through November 2, 2010.

Claimant filed a claim for additional temporary total disability benefits from December 17, 2012 to the present and continuing, surgical repair to his left rotator cuff, and for injections and medications. In a Compensation Order dated June 13, 2014, an Administrative Law Judge (“ALJ”) awarded the claim for medication but denied the claims for surgery and additional temporary total disability benefits. On appeal the Compensation Review Board (“CRB”) affirmed the finding that additional benefits were not time barred and, because that was Employer’s only defense, remanded the case to the ALJ to reinstate benefits.

On December 5, 2014, the ALJ issued a Compensation Order on Remand (“COR”) that again found the claim not time-barred, and granted the claims for surgery, injections, physical therapy, and medication and also held “Claimant’s request for benefits pursuant to the Act is not time barred by DCMR § 7-120.5. Neither party requested review of the COR.

On June 4, 2015, Claimant, by counsel, filed with the Administrative Hearings Division “Claimant Samuel Murray’s Motion For An Order Declaring Default That Respondent Has Willfully Failed And Refused To Timely Pay The Benefits Awarded By December 5, 2014 Order.” The motion sought a declaration the Employer was in default, a penalty for the default, awards for 2010-2015 in the total amount of \$308,000 and a notice of a right to file suit in the United States District Court against Employer.¹

The ALJ denied Claimant’s motion by Order dated September 9, 2015. Claimant filed his Application for Review with the Compensation Review Board on October 19, 2015. In opposition, Employer argues that the review should be dismissed because it was not timely filed, and also argues the ALJ’s Order is not in accordance with the law.

ANALYSIS

Under D.C. Code § 1-623.28 (a) (2001) and 7 DCMR § 258.2 (2005), an application for review must be filed within 30 days from the date of the decision appealed. Here, Claimant was required to file his review application within 30 days after September 9, 2015, or by Friday, October 9, 2015. The review request was not filed until October 19, 2015.

The regulations specifically provide that the time for filing of an application for review cannot be enlarged. 7 DCMR § 261.8. Therefore, Claimant’s appeal must be dismissed.

So ordered.

¹ Although Claimant’s motion was misfiled at the CRB, it was delivered to the Administrative Hearings Division on the day it was filed at the CRB.