

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA MARÍA MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 13-045

PATRICIA SNEED,
Claimant–Petitioner,

v.

LAKEVIEW CENTER, INC. and UNITED STATES FIRE INSURANCE CO.,
Employer & Carrier - Respondents

An Appeal from a February 25, 2013 Compensation Order by
Administrative Law Judge David L. Boddie
AHD No. 12-071, OWC No. 683328

Isang E. Umoren, Representative, for the Claimant
Joel Ogden, Esquire, for the Employer

Before: HEATHER C. LESLIE, JEFFREY P. RUSSELL, *Administrative Appeals Judges* and LAWRENCE
D. TARR, *Chief Administrative Appeals Judge*

HEATHER C. LESLIE, *Administrative Appeals Judge*, for the Compensation Review Board.

DECISION AND ORDER

OVERVIEW

This case is before the Compensation Review Board (CRB) on the request for review filed by the Claimant - Petitioner (Employer) of the February 25, 2013, Compensation Order (CO) issued by an Administrative Law Judge (ALJ) in the Office of Hearings and Adjudication of the District of Columbia Department of Employment Services (DOES). In that CO, the Claimant's request for disability benefits was denied.

FACTS OF RECORD AND PROCEDURAL HISTORY

On or about June 18, 2011, the Claimant alleged an injury occurred to her left foot. After a full day of working, the Claimant's left foot became swollen. The Claimant received some medical treatment.

The Employer sent the Claimant for an independent medical evaluation (IME) with Dr. Robert Gordon on February 7, 2012. Dr. Gordon took a history of the injury, reviewed medical records,

and performed a physical examination. Dr. Gordon opined that the Claimant's current symptoms were unrelated to any work activity and that the Claimant could return to work with no limitations.

The Claimant filed for a Formal Hearing, seeking an award of temporary total disability benefits from December 26, 2010 to November 27, 2011, permanent partial disability to the left foot, and payment of related medical expenses. A full evidentiary hearing was held on July 12, 2012. The issues raised by the Employer were whether or not the Claimant suffered an accidental injury which arose out of and in the course of the Claimant's employment, whether timely notice of the injury was given, whether the claim was timely filed, and the nature and extent of the Claimant's disability, if any. A CO was issued on February 25, 2013 denying the Claimant's claim for relief. The ALJ concluded that an accidental injury did not occur.

The Claimant appealed on April 9, 2013. We gather from the application for review the Claimant is alleging the CO is unsupported by the substantial evidence in the record and not in accordance with the law.¹

On April 17, 2013, the Employer filed a Motion to Dismiss Claimant's Application for Review, arguing the application was untimely.

STANDARD OF REVIEW

The scope of review by the CRB, 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 on Remand 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. Workers' Compensation Act of 1979, as amended, D.C. Code § 32-1501, *et seq.*, (the Act) at § 32-1521.01 (d)(2)(A), and *Marriott International v. DOES*, 834 A.2d 882 (D.C. 2003).

Consistent with this standard of review, the CRB is constrained 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.

ANALYSIS

Addressing first the Employer's Motion to Dismiss we note that as a matter of law, if an application for review is not timely filed, the CRB does not have the authority to consider an application for review. The Employer relies, in part, on *Thompson v. DOES*, 848 A.2d 593 (D.C. 2004). We agree.

D.C. Official Code § 32-1522(a) states in pertinent part:

A party aggrieved by a compensation order may file an application for review with the Board within 30 days of the issuance of the compensation order.

¹ We must note that much of the Claimant's arguments are difficult to follow and understand.

In addition, 7 DCMR § 258.2 states:

An Application for Review must be filed within thirty (30) calendar days from the date shown on the certificate of service of the compensation order or final decision from which appeal is taken.

The CO herein appealed was issued by the ALJ on February 25, 2013 and served upon the parties the same day. Attached to the CO was a page which outlined the parties "Appeal Rights" stating where an application for review was to be sent and when. Any Application for Review had to be filed within 30 calendar days of the date of the Certificate of Service. Pursuant to the foregoing provisions, an Application for Review should have been filed with the CRB on or before March 27, 2013, to be timely.

A review of the administrative file reveals the Employer filed an application for review on April 9, 2013. The Employer's appeal is untimely. As such, the CRB is without jurisdiction to consider the appeal.

CONCLUSION AND ORDER

The Application for Review was not filed in a timely fashion.

The Application for Review is dismissed.

FOR THE COMPENSATION REVIEW BOARD:

HEATHER C. LESLIE
Administrative Appeals Judge

April 26, 2013
DATE