

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



F. THOMAS LUPARELLO
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 13-143

**SUSAN BARON,
Claimant-Petitioner,**

v.

**MPS GROUP, INC., and BROADSPIRE,
Employer/Carrier-Respondents.**

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2014 DEC 12 AM 10 07

Appeal from an October 22, 2013 Compensation Order by
Administrative Law Judge Joan E. Knight
AHD No. 03-163D, OWC No. 581446

Susan Baron, *Pro Se* Petitioner
Mary G. Weidner, for the Respondents

Before: LAWRENCE D. TARR, *Chief Administrative Appeals Judge*, JEFFREY P. RUSSELL, and
MELISSA LIN JONES, *Administrative Appeals Judges*.

LAWRENCE D. TARR for the Compensation Review Board.

DECISION AND ORDER

PROCEDURAL HISTORY AND FACTS OF RECORD

This case is before the Compensation Review Board on the request of the claimant (Susan Baron) for review of an October 22, 2013, Compensation Order (CO) issued by an Administrative Law Judge (ALJ) in the Administrative Hearings Division (AHD), Office of Hearings and Adjudication (OAH), Department of Employment Services (DOES).

In that CO, the ALJ granted Employer's request to suspend Claimant's temporary total disability benefits for failure to comply with vocational rehabilitation from December 26, 2011 to the present and continuing or until such time as Claimant cures the non-compliance by fully

cooperating with Employer's vocational rehabilitation services. *Baron v. MPS Group, Inc.*, AHD No. 03-163D, OWC No. 582146 (October 22, 2013).

Claimant was working for Employer as a temporary paralegal on August 15, 2002 when she fell and sustained injuries to her jaw, neck, and upper extremities. As a result of these injuries, Claimant has been disabled from returning to her pre-injury work duties with Employer and through a series of compensation orders has been awarded temporary total disability benefits. *Baron v. MPS Group, Inc.*, AHD No. 03-163, OWC No. 582146 (December 30, 2005); *Baron v. MPS Group, Inc.*, AHD No. 03-163B, OWC No. 582146 (April 18, 2008); *Baron v. MPS Group, Inc.*, AHD No. 03-163C, OWC No. 582146 (February 16, 2010).

On September 7, 2011, Employer commenced rehabilitation services for Claimant and she subsequently met with a certified rehabilitation consultant. While she attended the first couple of scheduled meetings with the consultant, Claimant decline to provide requested work history information that would facilitate a vocational assessment. Without the requested work history information, the vocational consultant was unable to complete vocational testing so as to identify Claimant's current skills, determine her occupational interests, and identify suitable positions in the local labor market.

On June 19, 2012, Claimant's treating physician recommended a Functional Capacity Evaluation (FCE) but it had to be scheduled three times and a car service had to be approved by Employer before Claimant attended. On August 29, 2012, Claimant was seen at Rehab at Work but limited her participation to such an extent that a proper assessment of her functional abilities could not be completed. In February 2013, Claimant informed Employer's vocational consultant that she would not be attending any further meetings and would be pursuing her own vocational rehabilitation under the American's with Disabilities Act.

The ALJ concluded that since December 26, 2011, Claimant had unreasonably failed to cooperate with Employer's rehabilitation efforts by refusing to complete vocational testing, refusing to attend scheduled vocational meetings, and refusing to complete the FCE assessment. After a formal hearing on Employer's request to suspend disability benefits for failure to cooperate with vocational rehabilitation pursuant to D.C. Code § 32-1507(d), the ALJ granted Employer's request. Claimant filed an appeal with Employer filing in opposition and also filing a motion to dismiss on the basis that the Application for Review was not filed timely.

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 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 to 32-1545 (2005), at § 32-1521.01(d)(2)(A).

Consistent with this standard of review, the CRB and this Review Panel are 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.

Employer has raised the issue that pursuant to D.C. Code § 32-1522(b)(2A)(A), Claimant's Application for Review was not filed timely. As a matter of law, if an Application for Review is not filed timely, the CRB does not have authority to consider the merits of the appeal.

D.C. Code § 32-1522(b)(2A)(A) states:

A party aggrieved by a compensation order may file an application for review with the [CRB] within 30 days of the issuance of the compensation order. A party adverse to the review may file an opposition answer within 15 days of the filing of an application for review.

In addition, 7 DCMR § 258.2 provides:

[f]ilings with the Board of any permitted pleading, including the Application for Review, shall be deemed effective upon actual receipt by the Office of the Clerk.

Finally, 7 DCMR § 299 defines the word "day" as a "calendar day, unless otherwise specified in the Act or this chapter"; however, pursuant to 7 DCMR § 256.3,

[t]he Office of the Clerk of the Board shall be open from 8:30 a.m. to 5:00 p.m. on all days except Saturdays, Sundays, and legal holidays, for the purpose of receiving Applications for Review and such other pleadings, motions and papers as are pertinent to any matter before the Board.

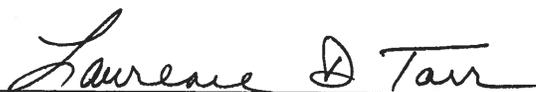
The Certificate of Service attached to the Compensation Order in *Baron v. MPS Group, Inc.*, AHD No. 03-163D, OWC No. 582146 (October 22, 2013), in the instant appeal, shows it issued on October 22, 2013 and was served upon the parties the same day. The 30-day calendar period, in which an aggrieved party had to file an application for review, began on that date and ended on November 21, 2013, a Thursday.

Thus, in order to meet the statutory framework and to be timely filed, Claimant's Application for Review must have been filed by the close of business on Thursday, November 21, 2013. Claimant filed her Application for Review on November 22, 2013, as noted by the CRB's date-stamp, and therefore is not timely.

CONCLUSION AND ORDER

Employer's Motion to Dismiss Claimant's Application for review is granted. Claimant's Application for Review is hereby **DISMISSED** as untimely filed. Any and all remaining issues are moot.

FOR THE COMPENSATION REVIEW BOARD:



LAWRENCE D. TARR

Chief Administrative Appeals Judge

December 12, 2014

DATE