

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

**Office of Hearings and Adjudication**  
**COMPENSATION REVIEW BOARD**



**(202) 671-1394-Voice**  
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**CRB No. 06-67,**

**SYLVESTER LEE,**

**Claimant – Respondent**

**v.**

**D. C. GENERAL HOSPITAL**

**AND THIRD PARTY ADMINISTRATOR, CLW/DCM,**

Employer/Carrier-Respondent.

Appeal from a Compensation Order of  
Administrative Law Judge Melissa Lin Klemens  
AHD No. PBL05-009, DCP No. LTUNK000450

Kirk D. Williams, Esq., for the Respondent

Pamela Smith Esq., for the Petitioner

Before LINDA F. JORY, SHARMAN J. MONROE, *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 §§ 32-1521.01 and 32-1522 (2004), 7 DCMR § 230, and the Department of Employment Services Director's Directive, Administrative Policy Issuance 05-01 (February 5, 2005).<sup>1</sup>

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<sup>1</sup> Pursuant 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 District of Columbia Fiscal Year 2005 Budget Support Act of 2004, Title J, the D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, sec. 1102 (Oct. 1, 1994), *codified at* D.C. Code Ann. § 32-1521.01 (2005). In accordance with the

## BACKGROUND

This appeal follows the issuance of a Compensation Order from the Administrative Hearings Division (AHD) of the Office of Hearings and Adjudication (OHA) in the District of Columbia Department of Employment Services (DOES). In that Compensation Order, which was filed on June 8, 2006, the Administrative Law Judge (ALJ) awarded Petitioner past and future temporary total compensation benefits based upon his wages from his full-time and part-time jobs with two separate employers. The Employer-Petitioner (Petitioner) now seeks review of that Compensation Order pursuant to the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (D.C. Official Code §1-623.1 (2001)(the Act) .

Specifically Petitioner asserts the ALJ's decision is not based upon substantial evidence and is based upon an error in law.

Petitioner has not filed a Memorandum of Points and Authority with the CRB despite its request for permission to file the same within 30 days.

Claimant-Respondent (Respondent) has responded with a Motion to Dismiss Petition for Review, asserting the petition was not timely filed.

## ANALYSIS

As an initial matter, the standard of review by the Compensation Review Board (CRB) and this Review 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. D.C. Official Code §§ 1-633.28(a) and 32-1521.01 (d)(2)(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 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.

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Director's Policy Issuance, 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. Code Ann. §§ 32-1501 to 32-1545 (2005) and the D.C. Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Code Ann. §§ 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.

The question before the Panel at this juncture is whether the Petitioner's Petition for Review filed with the CRB on July 11, 2006 constitutes a timely filed Application for Review.

7 D.C.M.R. §118.2 states:

Any party adversely affected or aggrieved by a compensation order or final decision issued by the Administrative Hearings Division with respect to a claim for disability benefits pursuant to Title XXIII of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (D.C. Official Code 1-623.1 et seq. (2001)) may appeal said compensation order or final decision to the Board by filing an Application for Review with the Board within thirty (30) calendar days from the date shown on the certificate of service of the compensation order or final decision in accordance with and pursuant to the provisions of 7 DCMR section 258.2.

The Compensation Order in this case was issued on June 8, 2006. The certificate of service attached to the Compensation Order shows that it was sent on June 8, 2006, via certified mail, to Petitioner at the same address Petitioner has listed on the form filed with the CRB entitled "Employer's Petition for Review" and to the attention of the same attorney filing the Petition for Review. Pursuant to the regulations governing procedures before the CRB, Petitioner should have filed an Application for Review with the CRB within 30 days of June 8, 2006 or by July 8, 2006. Giving Petitioner the benefit of the fact that the CRB does not accept filings on Saturday or Sunday, (June 8 and 9, 2006), Petitioner would be afforded 2 additional days until Monday July 10, 2006 in which to timely file its Petition for Review. However, the Panel agrees that filing on July 11, 2006 is not timely pursuant to the regulations and Respondent's Motion to Dismiss the Petition as untimely must be granted. *See generally, See Yvette Jackson v. D.C. Department of Corrections*, Dir. Dkt. No. 25-03, PBL No. 96-92A (July 13, 2004).

In that Petitioner's Application for Review is untimely, the Panel is without authority to address the merits of Petitioner's appeal or review the record before the ALJ. *See Gooden v. The Washington Post*, CRB (Dir. Dkt.) No. 04-44, OHA No. 97-25A; OWC No. 279073 (March 14, 2005).

### CONCLUSION

Petitioner's Application for Review was not timely filed pursuant to the Act. The Board, is therefore, without authority to address the Petitioner's appeal or review the record created by the ALJ.

**ORDER**

The Jul 11, 2006 Application for Review is hereby **DISMISSED**, as untimely filed.

FOR THE COMPENSATION REVIEW BOARD:

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LINDA F. JORY  
Administrative Appeals Judge

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August 9, 2006

DATE

