GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR

DEBORAH A. CARROLL
DIRECTOR

CRB No. 15-015

SILVIA LOYO,

Claimant–Respondent,

v.

THE COMPASS GROUP AND GALLAGHER BASSETT SERVICES.

Employer and Carrier-Petitioners.

DEPT. OF EMPLOYMENT SERVICES
COMPENSATION REVIEW BOARD
2015 JUN 10 AM 10 30

Appeal from a December 31, 2014 Compensation Order by
Administrative Law Judge Nata K. Brown
AHD No. 13-215A, OWC No. 678378

Jose Estrada for the Claimant
Joseph Tarpine for the Employer

Before HEATHER C. LESLIE, MELISSA LIN JONES, and JEFFREY P. RUSSELL, *Administrative Appeals Judges.*

HEATHER C. LESLIE, for the Compensation Review Board.

ORDER DENYING REQUEST FOR RECONSIDERATION

FACTS OF RECORD AND PROCEDURAL HISTORY

Claimant worked as a cafeteria worker for the Employer. On April 19, 2012, Claimant alleges her supervisor, Mr. Jeff Wingate, was standing behind her, yelling and clapping his hands. Claimant began to feel palpitations. Claimant sought treatment at Kaiser Permanent emergency care.

Claimant came under the care of Dr. Baker-Gurvitch, a psychiatrist and Dr. Barbara Rosenbaum. Dr. Baker-Gurvitch diagnosed her with adjustment disorder with mixed anxiety and depressed mood. Dr. Rosenbaum prescribed Zoloft and Ativan for anxiety symptoms.

Employer sent Claimant for an independent medical evaluation (IME) with Dr. Todd Christiansen on February 14, 2014. Dr. Christiansen took a history of the injury, treatment to date, and performed a psychiatric examination. Dr. Christiansen opined that Claimant's "anxiety symptoms are a direct result of her treatment by supervisors and her treatment through Kaiser

was medically indicated and appropriate." Employer's exhibit 4 at 16. In an addendum dated February 19, 2014, Dr. Christiansen cautioned his opinion was based upon the assumption that the history given by Claimant was truthful and accurate and was limited by having "access to potential witnesses or other direct evidence of such behavior." *Id.*

A full evidentiary hearing was held on May 19, 2014. Claimant sought an award of temporary total disability from April 19, 2012 through August 20, 2012 and payment for causally related medical treatment. The issues listed to be adjudicated were did Claimant give timely notice of her injury, did Claimant timely file her claim, whether Claimant's injury arose out of an in the course of Claimant's employment, and the nature and extent of Claimant's disability. A Compensation Order (CO) was issued on December 31, 2014 which granted, in part, Claimant's request. The CO ordered:

> It is hereby ORDERED that Claimant's claim for relief be, and hereby is, GRANTED IN PART. Claimant's temporary total disability from April 19, 2012 to August 20, 2012 is GRANTED with the exception of working days when Claimant was not excused by her treating physicians. Claimant is GRANTED reimbursement for causally related medical expenses.

CO at 9.

Employer appealed on February 3, 2015. On May 18, 2015, the CRB issued a Decision and Order (Order) dismissing the Employer's Application for Review as it was filed more than thirty calendar days from the date of the CO under review relying on D.C. Official Code § 32-1522(a) and 7 DCMR 258.2. On May 29, 2015 the Employer filed a Request for Reconsideration of the Order.

In its request, Employer argues that due to circumstances beyond its control, the Application for Review was delivered late and as such, equity requires the CRB toll the thirty day filing requirement, directing our attention to cases wherein the CRB has accepted timely appeals even when those appeals were filed with the wrong division. We disagree with Employer.

In arguing the late filing was due to circumstances beyond its control, Employer attaches two affidavits from law firm employees who both declare they requested the Application for Review to be delivered via certified overnight mail to ensure timely delivery. No further declaration is made regarding whether that request was fulfilled or when the mail was delivered. Employer argues,

> For unexplained reasons, the Application for Review was not delivered overnight and was not received by the Compensation Review Board until February 3, 2015.

Employer's argument at 4.

"Unexplained reasons" do not rise to the level required to toll the thirty day time period. Nor can we equate "unexplained reasons" to "circumstances beyond the undersigned's control" to toll the filing requirement without more support. Employer's argument at 5. The cases relied upon

by the Employer in argument are cases where the Application for Review was timely received by the agency, but at a different division, for instance the Administrative Hearings Division rather than the Compensation Review Board. We find those cases dissimilar to the facts before us. The Employer offers no explanation as to why, after it was requested that the Application for Review be sent overnight certified mail, it was not timely received by the Agency or the Compensation Review Board. Employer's argument is rejected.

Employer also points out that Claimant never moved to dismiss the application for being untimely. As we stated in our prior Order,

> 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.
>
> 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.
>
> 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 December 31, 2014 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 Friday, January 30, 2015 to be timely.
>
> A review of the administrative file reveals the Employer filed an application for review on Tuesday, February 3, 2015. The Employer's appeal is untimely. As such, the CRB is without jurisdiction to consider the appeal.

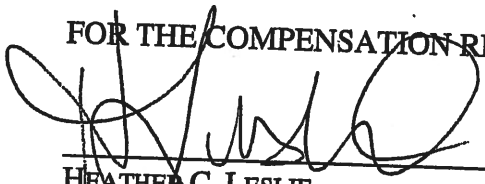
Order at 2-3.

Employer was fully aware of its appeal rights and does not argue otherwise. While we recognize that irregularities in the process of filing may be considered non-fatal to the timeliness of an appeal, such as where an appeal is filed within 30 days, but in the wrong division, or where a *pro se* litigant is provided inaccurate information by a "a senior attorney in the Director's office" concerning how much time a party has to file an appeal, an appeal that is not filed within the 30 day statutory period may still be considered timely. See for example, *Galligan v. DOES*, 918 A.2d 386, (DC 2007), at 388 – 389. However, such circumstances do not exist here. Regardless of whether Claimant raised this issue on appeal, Employer's Application for review was untimely.

CONCLUSION AND ORDER

Employer's Motion for Reconsideration is DENIED.

FOR THE COMPENSATION REVIEW BOARD:



HEATHER C. LESLIE
Administrative Appeals Judge

June 10, 2015
DATE