GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services

VINCENT C. GRAY
MAYOR

LISA M. MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 12-110

MARYANNE TAGOE ,

Claimant–Petitioner,

v.

HOWARD UNIVERSITY HOSPITAL,

Self-Insured Employer Respondent.

Appeal from a Compensation Order of
Administrative Law Judge Amelia G. Govan
AHD No. 03-287, OWC No. 568310

Maryanne Tagoe, *pro se* Petitioner

William H. Schladt, Esquire, for the Respondent

Before JEFFREY P. RUSSELL,[1] MELISSA LIN JONES, AND LAWRENCE D. TARR, *Administrative Appeals Judges*.

JEFFREY P. RUSSELL, for the Compensation Review Board.

DECISION AND REMAND ORDER

BACKGROUND

This claim involves numerous compensation orders issued by the hearing section of the District of Columbia Department of Employment Services (DOES), decisions issued by the Compensation Review Board (CRB) in connection with appeals from those orders, District of Columbia Court of Appeals (DCCA) decisions, and many motions and ancillary orders. They will not be recounted here. All that will be addressed in this order are the orders and ancillary materials relevant to the order that has been appealed by Claimant, which was issued by an Administrative Law Judge (ALJ) in the hearings section of DOES on July 10, 2012. For the purposes of this Decision and Remand Order, we will refer to that compensation order as the Compensation Order on Remand, or COR.

[1] Judge Russell was appointed by the Director of DOES as a Board member pursuant to DOES Administrative Policy Issuance No. 12-01 (June 20, 2012).

The COR was necessitated as a result of our prior Decision and Remand Order issued October 11, 2011, and an Order Modifying Decision, issued March 14, 2012.

The Decision and Remand Order of October 11, 2011 disposed of multiple issues, affirming the bulk of the ALJ's Compensation Order on Remand issued February 18, 2011. The one issue that the CRB did find required further action by the ALJ concerned the interest rate to be assessed against the employer for unpaid reimbursements for out-of-pocket medical expenses incurred and paid by Claimant for which it was ultimately determined she was entitled to reimbursement. The CRB wrote:

> The February 28, 2011 Compensation Order on Remand is AFFIRMED IN PART and VACATED IN PART. The matter is remanded solely for a determination of the interest rate to be applied to the claimant's out-of-pocket medical expenses.

The Order Modifying Decision modified the Decision and Remand Order of October 11, 2011. The modification was a limited one: it determined that the mileage reimbursement rate applied by the ALJ in the earlier compensation order and affirmed by the CRB was premised upon a mistake by the Office of Workers' Compensation (OWC) which mistake was acknowledged by OWC while the earlier disputes were pending in the hearings and appeals sections of the agency. It modified the cents-per-mile rate allowable for travel expenses incurred by the Claimant from 21 cents to 32 ½ cents for travel in 2000, and from 25 cents to 34 ½ cents for 2001. The Order Modifying Decision contained this instruction to the ALJ, before whom the earlier remand was still pending:

> Therefore, for these reasons we hereby amend the CRB's October 11, 2011 Decision and Remand Order and find the mileage reimbursement rates to which the claimant is entitled is $0.325 for mileage driven in 2000 and $0.345 for mileage driven in 2001.
>
> This matter is remanded to the ALJ for entry of an Award consistent with this Order and, as further explained in the October 11, 2011 Decision and Remand Order, for a determination of the interest rate to be applied to the claimant's out-of-pocket medical expenses.

Subsequent to the issuance of this Order Modifying Decision, Claimant filed a Motion for Clarification seeking, among other things, clarification as to whether the ALJ was also to consider travel reimbursement claims for years subsequent to 2001; she asserted that she had presented claims for the years 2000 through 2009 to the ALJ. In response to the motion, the CRB issued a response to Claimant's Motion for Clarification on March 29, 2012. In it, the CRB stated:

> The CRB cannot tell from its file whether the claimant claimed mileage for 2001-2009. However, since this case is on remand this concern can be addressed by the ALJ on remand.

Thus, the combined effect of these CRB orders was that the ALJ was to do three things: first, having already determined to which out-of-pocket medical expenses Claimant was entitled to

reimbursement (and hence, were subject to interest assessment), the ALJ was to determine what legal interest rate should be assessed against the employer during the period when they had not been paid; second, the ALJ was to award travel expenses for the years 2000 and 2001 at the rate specified by the CRB; and third, the ALJ was to determine whether a claim had been made by Claimant at the formal hearing for reimbursement of mileage expenses for the years 2002 through 2009 (and presumably, if so, rule upon the claim and make such an award as the facts support according to the rates in effect for those years, which rates were not in dispute).

In response to these directives, the ALJ issued a Compensation Order on Remand on July 10, 2012, which is the compensation order before us in the present appeal. Claimant timely appealed the COR; Employer Howard University Hospital has file a timely opposition. We affirm the interest rate determination and the awards of travel expense mileage reimbursement for the years 2000 through 2008. We remand for consideration of any claims for such travel expense mileage reimbursement that may have been raised for the year 2009.

STANDARD OF REVIEW

The scope of review by the CRB is generally 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, *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 and this review panel must affirm 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 this panel might have reached a contrary conclusion. *Id.*, at 885.

DISCUSSION AND ANALYSIS

While Claimant re-raises many legal complaints and issues that have been disposed of in past appeals and/or, are pending review at this time before the DCCA, we will not address them, as they are not related to the three issues that were to be addressed by the ALJ in this particular side branch of the great river that constitutes the history of this case. We will address these three matters only, as they are the only matters properly before us.

Regarding the interest rate which the ALJ determined to be applicable to the out-of-pocket medical expenses that were awarded, the ALJ started with the proposition that that rate is established, pursuant to 7 DCMR §209.11,[2] by reference to the civil judgment interest rate as set by the District of Columbia Superior Court pursuant to D.C. Code § 28-3302 (c). This is the correct approach, as it is mandated by our governing regulations. However, in the Discussion, the ALJ does not disclose what that rate is, and merely references the fact that the statute permits the rate to be lowered by "a court of competent jurisdiction …for good cause shown".

[2] That regulation states that "Interest on accrued benefits shall be calculated at the same rate as that utilized by the Superior Court of the District of Columbia for civil judgments." Claimant asserts that the 6% pre-judgment rate is the proper rate. That assertion runs contrary to the plain language of the regulation.

The ALJ thereupon stated that due to "the duration of the proceedings, the various cases pending, conflicting evidence of out-of-pocket expenses and complications surrounding the amount of damages awarded, good cause is shown to lower the rate of interest to that provided by the applicable allowable municipal regulatory scheme". The ALJ recited that "pursuant to the D.C. Courts Website Inertest Rate Schedule, on February 18, 2011, the Judgment Interest Rate was two percent (2%) per annum." Despite suggesting that the circumstances warranted a reduction from the established rate, she awarded that amount.

Reference to the statute reveals that the civil judgment interest rate:

> shall be 70% of the rate of interest set by the Secretary of the Treasury pursuant to section 6621 of the Internal Revenue Code of 1986, approved October 22, 1986 (100 Stat. 2744; 26 U.S.C.S. § 6621), for underpayments of tax to the Internal Revenue Service, rounded to the nearest full percent, or if exactly 1/2 of 1%, increased to the next highest full percent; provided, that a court of competent jurisdiction may lower the rate of interest under this subsection for good cause shown or upon a showing that the judgment debtor in good faith is unable to pay the judgment.

The referenced U.S. Code section provides that the tax underpayment rate is 3% plus the "Federal short term rate", which, in February 2011, was .51%. See, the IRS website, www.irs.gov/pub/irs-drop/rr-11-04.pdf. Thus, the applicable interest rate as established by 7 DCMR 209.11 is 70% of 3.51%, rounded to the nearest full percent.

In this case, 70% of 3.51% is 2.457%. When rounded to the nearest full percent, the result is 2%. Claimant complains that the ALJ's "lowering" of the interest rate is inappropriate in this case, because the delays cited by the ALJ as the basis for lowering the rate are part and parcel of the nature of this type of litigation, and don't amount to any circumstance outside the usual, and for other reasons.

However, given that what was awarded was the legal rate, without reduction, we discern no error.[3] Given that Employer asserts no error in the award, we affirm.

The ALJ did as she was directed to do with regard to the award of interest: set the rate. That is all she was advised to do in the Remand Order. The remainder of Claimant's concerns goes beyond complaints that the ALJ failed to carry out the CRB's directives, and are thus not cognizable complaints of error, at least in this venue at this time.

Turning to the second and third issues, review of the Compensation Order on Remand demonstrates that, while the ALJ did not engage in any discussion concerning *whether* claims for travel reimbursement had been raised for the years 2002 through 2009, she treated the matter as if they had been raised for the years 2000 through 2008, and made awards for each of those years. Further, the ALJ recalculated the awards made with respect to the years 2000 and 2001, utilizing the reimbursement rates as specified by the CRB in its Order Modifying Decision issued March 14,

[3] The ALJ did not specify a URL for the source of the 2% Superior Court civil judgment rate. However, we have located a Superior Court site that confirms that the February 2011 judgment interest rate was, and presently remains, 2%. See, www.dccourts.gov/internet/faqlocator.jsf.

2012, and recalculated the amounts due for the years 2002 through 2008 utilizing higher rates which, while not having been the subject of the prior CRB orders, are not challenged in this appeal.

However, Claimant continues to dispute the adequacy of these awards.

She laments the lack of any award for the year 2009. We note that a formal hearing was held June 3, 2009, as noted in the February 18, 2011 COR. The ALJ did not address the question of whether travel reimbursement mileage claims for 2009 had been presented for resolution at that time, and thus we must again remand the matter so that the ALJ can review the record before her, including the pretrial submissions of the parties, the transcript of the formal hearing, and the evidentiary submissions of the Claimant and ascertain whether a claim for mileage reimbursement was made for the year 2009, and if so, make appropriate findings of fact concerning whether Claimant is entitled to an award for mileage reimbursement for that year, and if so, what the amount of that award should be.

The remainder of Claimant's complaints concerning the inadequacy of the award is repetition of earlier arguments made and errors alleged to have been committed which were previously addressed, and will not be re-addressed here.

We close by taking this opportunity to register our consternation with the highly inflammatory and baseless personal attacks upon the integrity and competence of the ALJ which are contained in the Claimant's supporting memorandum in this appeal. If authored by an attorney we have no doubt that such language would subject the attorney to disciplinary proceedings. If spoken by a party in the course of a formal hearing, such language could well subject the speaker to a contempt certification under D.C. Code §32-1529 (b). As it is, we merely point out to the Claimant that it does nothing to enhance her stature or advance her cause in this litigation.

CONCLUSION

The failure of the ALJ to address whether a claim for reimbursement for travel expense mileage reimbursement had been presented for 2009 , and if so, to consider such request, was not in accordance with the prior directive of the CRB and hence was not in accordance with the law. The establishing of a 2% rate of interest to be applied to the award for out-of-pocket medical expenses is in accordance with the Act and the implementing regulations.

ORDER

The award of 2% interest in connection with the award for reimbursement of out-of-pocket medical expenses is affirmed. The awards made with respect to travel expenses in the years 2000 through 2008 are affirmed. The matter is remanded for further consideration of whether there are pending claims for travel expense mileage reimbursement for 2009, and if it is determined that such a claim has been presented, the ALJ shall consider it based upon the consideration of the record evidence relevant thereto and make or deny such an award as the law requires.

FOR THE COMPENSATION REVIEW BOARD:

_____
JEFFREY P. RUSSELL
Administrative Appeals Judge

_September 18, 2012 _____
DATE