

**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**  
**(202) 673-6402-Fax**

**CRB No. 07-33**

**THE ESTATE OF MERICHA BLAIR,**

**Claimant – Petitioner**

**v.**

**D.C. DEPARTMENT OF CORRECTIONS,**

**Employer – Respondent.**

Appeal from an Order of  
Administrative Law Judge Fred D. Carney, Jr.  
AHD No. PBL 05-0121A; DCP No. LTDMPS0006365

Kirk D. Williams, Esquire for the Petitioner

Andrea G. Comentale, Esquire for the Respondent

Before: LINDA F. JORY, FLOYD LEWIS and JEFFREY P. RUSSELL, *Administrative Appeals Judges.*

FLOYD LEWIS, *Administrative Appeals Judge*, on behalf of the Review Panel:

**DECISION AND REMAND ORDER**

**JURISDICTION**

Jurisdiction is conferred upon the Compensation Review Board pursuant to D.C. Official Code § 1-623.28, § 32-1521.01, 7 DCMR § 118, and DOES Director's Directive Administrative Policy Issuance No. 05-01 (Feb. 5, 2005).<sup>1</sup>

---

<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 D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, D.C. Official Code § 32-1521.01. In accordance with the Director's Directive, 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. Official Code § 32-1501 *et seq.*, and the D.C. Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Official Code § 1-623.1 *et seq.*, 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.

## BACKGROUND

This appeal follows the issuance of an 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 Order, which was filed on January 3, 2007, the Administrative Law Judge (ALJ) dismissed the application for formal hearing by Claimant-Petitioner (Petitioner) and remanded this matter to the Disability Compensation Program (DCP) for a final determination of Petitioner's claim.

As grounds for this appeal, Petitioner alleges as that the ALJ's decision is not based upon substantial evidence and is not in accordance with the law.

## ANALYSIS

As an initial matter, the scope 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 § 1-623.28(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. Dist of Columbia Dep't. of Employment Servs.* 834 A.2d 882 (D.C. App. 2003). Consistent with this scope 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.

Turning to the case under review herein, Petitioner alleges that the Order is erroneous and should be reversed, contending that the AHD has jurisdiction when the DCP fails to issue a decision for or against payment of compensation within 30 days of application. Employer-Respondent (Respondent) counters that Petitioner's application for formal hearing was correctly dismissed by the ALJ as premature and that the CRB lacks jurisdiction to hear this appeal, as the ALJ decision was not a final order and not subject to appeal.

On May 25, 2005, Petitioner received a Notice of Determination from DCP indicating that Petitioner's disability claim was being controverted and after completing its investigation and receiving all documentation, a determination on Petitioner's claim would be made. After Petitioner withdrew her application, AHD issued an Order on October 24, 2005 dismissing Petitioner's application and remanded the matter to DCP for further action. On October 31, 2005, Petitioner died and on January 27, 2006, Petitioner's estate filed an application for formal hearing. Respondent filed a motion to dismiss Petitioner's application, contending that no final order had been issued by DCP and as such, Petitioner's request for a hearing was premature. Respondent argues that the Act provides that the jurisdictional authority of AHD to adjudicate claims is found in D.C. Official Code § 1-623.24 (b)(1), which gives a dissatisfied claimant the right to a hearing before AHD, if a request is made within 30 days after the date of issuance of a decision. In this

matter, since DCP has not issued a decision, Respondent contends that the ALJ was correct and AHD has no jurisdiction to hear this matter.

This Panel must note that after the ALJ issued the Order in this case, CRB addressed this argument concerning D.C. Official Code § 1-623.24 (b)(1) and also language found in D.C. Official Code §1-623.24(a-3)(1), stating that if there has been a failure to make the necessary findings and an award for or against payment of compensation within 30 days from the date of the filing of the claim, “the claim shall be deemed accepted,” thus obligating commencement of the payment of compensation “on the 31<sup>st</sup> day following the date the claim was filed..” However, this obligation of payment does not apply “if the Mayor provides notice in writing that extenuating circumstances preclude the Mayor from making a decision within this period, which shall include supporting documentation stating the reasons why a finding of facts and an award for or against compensation cannot be made within this period.”

After reviewing these provisions, the CRB held that in interpreting § 1-623.24(b)(1), “to read this subsection as permitting the invocation of AHD’s jurisdiction only upon the issuance of a formal written decision by the Office of Risk Management (ORM) would be not only to misconstrue the express language of the subsection, such a construction would render the provisions of subsections (a-3)(1) and (a-4)(2) meaningless and without recourse”. *Tellish v. District of Columbia Public Schools*, CRB No. 07-001, AHD No. PBL 05-028A, DCP No. DCPS 007013 (February 16, 2007) at 4. Therefore, in *Tellish*, the CRB remanded that matter to AHD and held that AHD had jurisdiction because of the lack a formal written determination within the statutorily prescribed 30-day period.

As the CRB noted in *Tellish*, whether the lack of a formal written determination by DPM is sufficient in the instant matter to warrant a determination that Petitioner’s claim was “deemed accepted” and as a result, requiring payment of compensation, requires further inquiry by the ALJ. Thus, this matter must be remanded to the ALJ and upon remand, the ALJ must determine, upon a full development of the record, whether Petitioner is entitled to an award of the claim because of the failure of DCP to issue a timely formal written decision.

#### CONCLUSION

The ALJ’s dismissal of Petitioner’s application for a formal hearing in the Order of January 3, 2007 for lack of jurisdiction is not in accordance with the law. The ALJ had the necessary jurisdiction to hear Petitioner’s application for formal hearing, despite the lack of a formal written determination by DCP on Petitioner’s claim for disability benefits. Upon remand, the ALJ must determine whether Petitioner’s claim was “deemed accepted,” requiring payment of the claim.

**ORDER**

The Order of January 3, 2007 is VACATED and REMANDED to the Administrative Hearings Division for further proceedings consistent with the above-discussion.

FOR THE COMPENSATION REVIEW BOARD:

---

FLOYD LEWIS  
Administrative Appeals Judge

May 30, 2007  
DATE