GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR

F. THOMAS LUPARELLO
ACTING DIRECTOR

DEPT. OF EMPLOYMENT SERVICES
COMPENSATION REVIEW BOARD
2014 NOV 4 PM 1 27

COMPENSATION REVIEW BOARD

CRB 13-002 (R)

VIVIANA SANDOVAL,
Claimant,

v.

HOTEL & RESTAURANT EMPLOYEES INTERNATIONAL UNION and COMPANION PROPERTY & CASUALTY,
Employer and Insurer.

Decision on Remand from the District of Columbia Court of Appeals
No. 13-AA-535 (June 26, 2014)

And

CRB 13-024 (R)

PHYLLIS F. SINCLAIR,
Claimant,

v.

HOWARD UNIVERSITY HOSPITAL AND SEDGWICK CMS,
Self-Insured Employer and Administrator.

Decision on Remand from the District of Columbia Court of Appeals
No. 13-AA-442 (July 1, 2014)

David M. Snyder for Viviana Sandoval
Lauren M. Royer for Hotel & Restaurant Employees International Union

Krista N. DeSmyter for Phyllis F. Sinclair
William H. Schladt for Howard University Hospital

Before: LAWRENCE D. TARR, *Chief Administrative Appeals Judge*, and HEATHER C. LESLIE and HENRY W. MCCOY[1], Administrative Appeals Judges.

LAWRENCE D. TARR, for the Compensation Review Board.

INTRODUCTION

The District of Columbia Court of Appeals ("DCCA") has remanded these two cases to the Compensation Review Board ("CRB"). Although these two cases were not consolidated by the CRB, because of the similarity in remand instructions, the similarity in the written briefs, and the similarity in the oral arguments of all the parties, the CRB respectfully submits this Decision in response to the court's remand instructions in both cases.

In Ms. Sandoval's case, the court had before it Ms. Sandoval's appeal of the CRB's April 22, 2013, decision affirming ALJ Verma's December 7, 2012 Compensation Order.

The DCCA's remand opinion noted that Ms. Sandoval moved the court for a stay in light of these allegations concerning ALJ Verma:

- that ALJ Verma was not licensed to practice law in the District of Columbia or any other jurisdiction in the United States;
- that ALJ Verma was disbarred by the Indiana Supreme Court in 1998 and made false statements to the Maryland and Pennsylvania Bars, both of which denied his applications for admission; and
- that ALJ Verma subsequently obtained a position as an ALJ in the District of Columbia, but was not a member of any Bar during his service as an ALJ with the Department of Employment Services ("DOES").

In the June 26, 2014, opinion the court wrote:

> It appears to be undisputed that ALJ Verma lacked one of the qualifications that DOES requires of its ALJs. At a minimum, that raises a legitimate question about the validity of ALJ Verma's rulings.
>
> We are inclined to give substantial deference to DOES's judgment about the proper response to decisions rendered by an ALJ who lacks the qualifications required by DOES as the administrator of the Workers' Compensation Act.

[1] Judge McCoy, although a member of the Compensation Review Board, was temporarily assigned to serve as Chief Administrative Law Judge of the Administrative Hearings Division on August 26, 2014. By the terms of his temporary assignment, (Director's Administrative Issuance No. 14-03), Judge McCoy continued to be responsible for his Compensation Review Board assignments prior to August 26, 2014. Judge McCoy was assigned to this case prior to August 26, 2014.

* * *

> Under the circumstances, we conclude that it is in the interests of justice for this court to grant DOES's request that we vacate the CRB's order and remand the case to the CRB for the CRB to determine in the first instance how to proceed and to explain the reasons for its determination.

Sandoval v. DOES and Hotel & Restaurant Employee International Union, 93 A.3d 189 (D.C. 2014) (Citations omitted).

In Ms. Sinclair's case, the DCCA had before it her appeal of the CRB's April 23, 2013 decision in which the CRB vacated in part and affirmed in part ALJ Verma's February 7, 2013 Compensation Order on Remand.

The court's Order noted that Ms. Sinclair had filed a partial consent motion seeking to vacate the proceedings and to remand for a new hearing on the ground that Mr. Verma was not licensed to practice law in the District of Columbia or in any other jurisdiction. The court vacated our decision and remanded the case for the CRB:

> to determine in the first instance how to proceed in light of petitioner's challenge to ALJ Verma's qualifications and to explain the reasons for its determination.

Sinclair v. DOES and Howard University Hospital, et al., No. 13-AA-442 (July 1, 2004) (Citations omitted).

It appears representations were made to the DCCA that ALJ Verma was not licensed to practice law in the District of Columbia or in any other jurisdiction. However, in the pleadings submitted to the CRB and at oral argument, the parties did not stipulate nor concede this. [2]

Since there has been no stipulation nor adjudication regarding ALJ Verma's Bar status, the CRB's first response to the remand instructions would be that there must be a formal adjudication to determine whether ALJ Verma was licensed to practice law in the District of Columbia or any other jurisdiction in the United States during the time he worked as an ALJ at DOES.

It could be argued that this satisfies the court's remand instructions and our decision should conclude. However, the CRB interprets the remand instructions as asking for our view on the critical issue that appeared to be undisputed before the DCCA—the effect on the validity of ALJ Verma's decisions if he was not licensed to practice law in the District of Columbia or any other jurisdiction. Therefore, the CRB believes that a more comprehensive response is required.

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[2] 7 DCMR § 221.2 states "A Hearing or Attorney Examiner shall be an attorney admitted to the bar of the District of Columbia or the bar of some other jurisdiction of the United States.

POST-REMAND PROCEDURAL MATTERS

After the CRB received the DCCA's decision and advised the parties of the briefing schedule, the employer in *Sinclair v. Howard University Hospital*, moved the CRB on August 25, 2014 to consolidate the two cases and for an oral argument *en banc*. Both parties in *Sandoval* and the claimant in *Sinclair* opposed the motion. The CRB denied the motion on September 15, 2014.

On September 19, 2014, the District of Columbia government, through the Office of the Attorney General, petitioned the CRB for leave to file an *amicus curiae* brief in each case. The CRB granted the motion over the objections of both claimants. In light of the claimants' objections, the CRB will state its reasons for permitting the District of Columbia government to file an *amicus* brief.

The District of Columbia government administers the public sector workers' compensation system and was a party defendant in public sector cases that were decided by ALJ Verma. Although these two cases are private sector cases, the decision also will affect decisions by ALJ Verma in public sector cases in which the District of Columbia government was a party. It therefore has a legitimate and unique interest in the remanded cases.

In a case cited by the claimants in opposition to accepting the *amicus* brief, *Clement v. Sterne, Kessler, Goldstein & Fox*, CRB No. 13-134 (March 19, 2014), a second claimant's law firm sought and was denied *amicus* status. In *Clement* the claimant already was represented by experienced legal counsel and there was no question that her interests would be fully protected.

The CRB granted leave to file an *amicus* brief in these remanded cases because unlike *Clement,* none of the parties in the remanded cases represents the unique interest of the *amicus* as the public sector employer and administrator.[3]

The other post-remand procedural matter that should be identified is that on October 6, 2014, the parties were notified that the CRB had scheduled each case for oral argument pursuant to 7 DCMR § 263. Each claimant filed an "Omnibus Motion: To Postpone Oral Argument and Permit Additional Evidence To Be Adduced or, In the Alternative, To Strike the Brief of the *Amicus Curiae*." The CRB denied this motion and separate oral arguments took place on October 20, 2014.

ANALYSIS

The claimants argue that every decision that ALJ Verma issued during his tenure as an ALJ is void *ab initio*. The claimants assert that because ALJ Verma did not meet the qualifications to be an ALJ, his decisions can have no legal effect because he did not have jurisdiction to issue them.

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[3] It should be noted that as with all CRB decisions, the views expressed by the CRB in this decision are those of the CRB and not the District of Columbia government. Although each CRB member is an employee of an agency of the District of Columbia government, we sit as an independent administrative board.

The claimants further aver that to allow his decisions to stand would be to deny each claimant her constitutional right to due process.

The employers, and the District of Columbia in its *amicus* brief, take the opposite view. They argue that even if ALJ Verma was not licensed to practice law, all his decisions are valid because he was acting as a *de facto* officer and his decisions cannot be collaterally attacked.

The CRB does not believe that either the "all in" or "all out" theory is the proper way to proceed. As will be discussed, the CRB would find that some, but not all, of ALJ Verma's decisions are voidable.

The claimants' view that ALJ Verma did not have jurisdiction to decide any case and that every decision of ALJ Verma's is void *ab initio*, irrespective of what was decided, is inconsistent with the August 7, 2014 decision of *Felder v. DOES and Pepco, Intervenor,* 97 A.3d 86 (D.C. 2014). In *Felder,* the court identified a category of decisions by ALJ Verma that do not require remand because of his lack of Bar membership.

In *Felder,* the claimant was injured at work and received about $9,500 under Pepco's short-term disability program. Pepco also paid Mr. Felder temporary total workers' compensation disability benefits from July 1, 2010 to December 31, 2010 and continuing benefits that began on February 2, 2011.

A dispute arose over whether Pepco was entitled to a credit against its ongoing payment of workers' compensation disability benefits in the amount of the payments that were made under the short-term disability program. This dispute proceeded to a formal hearing on April 12, 2012 at which ALJ Verma presided.

In his June 29, 2012 Compensation Order, ALJ Verma held Pepco was entitled to the requested credit. The CRB affirmed ALJ Verma's decision and the claimant appealed to the DCCA.

The DCCA agreed with the parties that even though the Compensation Order was authored by ALJ Verma the court could decide the matter because the issue in dispute involved a pure question of law. The court stated:

> In the present case, the parties agree that there is no need to grant relief based on ALJ Verma's status, because the case turns on a pure question of law that this court can decide independent of ALJ Verma's ruling. We agree with the parties and therefore address the CRB's ruling on the merits.

Id, n. 2.

The CRB also does not agree with Employer and *amicus* that because he was acting as a *de facto* officer everything Verma decided as an ALJ is valid.

In their written statements, the employers and *amicus* cite several cases that rely on the *de facto* officer doctrine. Consistent with this doctrine, these cases hold that a party may not collaterally attack a decision if that attack challenges the qualifications of the person who made the decision.

A case cited by Hotel & Restaurant Employees International Union, *Orix Capital Markets, LLC v. American Realty Trust*, 356 S.W. 3d 748 (Tex. App. 2011), is representative of this line of cases.

Orix Capital Markets ("Orix") filed an action seeking to vacate a decision of a trial judge. Orix alleged that the trial judge was not qualified to be a judge because he did not meet the Texas constitutional requirements that a judge must be licensed to practice law and be a practicing lawyer in Texas for the four years preceding election as a judge.

Orix asserted that the trial judge did not meet these qualifications because the judge's law license had been suspended for about fourteen days during the four years prior to his investiture because he failed to pay Bar dues, attorney occupation taxes, and failed to comply with Texas's continuing legal education requirements.

Similar to claimants' argument in our two cases, Orix argued that the judge's decision was void because the judge did not have the authority to act since he did not meet the constitutional requirements to hold the office of district judge.

The Court of Appeals for the Fifth District of Texas affirmed the district court's decision denying Orix's claim. The court held:

> [A] duly elected judge holding office under color of law and discharging the duties of that office is considered to be a *de facto* judge and his acts are conclusive as to all parties except the State. "An official who holds office under color of title (such as an elected or retired judge) is considered to be a *de facto* official, even if all of the legal requirements for holding the office have not been met." In a case in which a criminal defendant sought to attack his conviction because the judge's appointment had not been confirmed by the Senate when the judge presided over the defendant's case, the Supreme Court of the United States stated that "where a court has jurisdiction of an offense and of the accused, and the proceedings are otherwise regular, a conviction is lawful, although the judge holding the court may be only an officer *de facto* . . . ." and "the title of a person acting with color of authority, even if he be not a good officer in point of law, cannot be collaterally attacked . . . ."
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> This is true, "irrespective of the question whether he was properly elected." In no event can a . . . de facto judge . . . be ousted, *or his official acts successfully challenged*, except in a direct proceeding to which he is a party." (emphasis added)("an officer whose election or appointment might be illegal and invalid is still a *de facto* official, and such is particularly true where there is an office to fill and an election had at the time and place authorized by statute").

> To hold otherwise would subject judges, who hold office by color of law through either an appointment or an election, to "having their authority questioned incidentally in litigation between other parties." And it protects "the public and individuals who have dealings with the official by ensuring that the official's acts will subsequently be recognized." "[A]s long as a duly elected judge is holding office under color of law, his actions will be binding on the parties and subject to appeal as in any other lawsuit."
>
> In this case, the new judge was elected to the office of judge of a district court, sworn in as the duly elected judge, and discharged the duties of that office. Because the new judge was occupying the office of district judge under color of an election, our jurisprudence holds that he was the *de facto* judge of that court and that his actions are conclusive as to all parties except the State.

Id. at 754-755. (Citations omitted. Italics in original).

While this case supports the employers' position, there is not unanimity among the decided cases regarding the applicability of the *de facto* officer doctrine.

An example of a decision that is contrary to the *Orix* decision is *United States v. Garcia-Andrade*, 2013 U.S. Dist. LEXIS 110759 (S.D. Cal Aug. 6, 2013). *Garcia-Andrade* involved a challenge to an indictment because the U. S. Attorney who participated in the grand jury proceedings was not a Bar member.

Garcia-Andrade and a codefendant were indicted on a charge of conspiracy to distribute marijuana. The assistant U.S Attorney who participated in the grand jury proceedings in California when the indictment was returned was Ms. Jaime Parks.

Ms. Parks had been an inactive or associate member of the Virginia State Bar before she moved to California. On January 23, 2013 she wrote to the Virginia State Bar requesting it change her Bar status to "active" and asked that the change take place on or before February 1, 2013. The Virginia State Bar responded by letter advising her that she needed to complete 4 Continuing Legal Education ("CLE") hours before it could change her to active status.

The grand jury at which Ms. Parks participated returned its indictment on March 19, 2013.

The Virginia State Bar sent Ms. Parks another letter on April 17, 2013, telling her that because she still had not completed the CLE requirement she still was listed as an associate member and could not practice in Virginia.

On May 21, 2013, the Bar sent Ms. Parks a letter that said her membership status had been changed to active membership, effective May 7, 2013. Ms. Parks wrote the Bar asking for reconsideration of the date she converted to active status.

On May 29, 2013, the Virginia State Bar wrote Ms. Parks and advised her that it had changed her Bar status to active. In a subsequent letter the Bar advised her that "active membership was effective on February 1, 2013."

Thereafter, Garcia-Andrade and his codefendant filed a motion to dismiss the indictment for lack of jurisdiction. They asserted that because Ms. Parks was not an active member of any Bar when she participated in the grand jury proceedings in March 2013 she was not "a proper representative of the Government", which is a statutory requirement before a court can obtain jurisdiction over an indictment.

The United States District Court for the Southern District of California agreed with Garcia-Andrade and his codefendant:

> Some courts have found that "a prosecution pursued by a prosecutor without a proper license is still valid because, although not qualified for her job as a prosecutor, she was nevertheless given the job by the government. This made her a *'de facto* officer' whose acts on behalf of the government were valid." *Woods v. United States*, 2010 U.S. Dist. LEXIS 121845, 2010 WL 4746138, at *1 (M.D.N.C. Nov. 16, 2010); see also *Parker v. United States*, 2006 U.S. Dist. LEXIS 64666, 2006 WL 2597770, at *13-15 (E.D. Ark. Sept. 8, 2006); *United States v. Deaton*, 2005 U.S. Dist. LEXIS 43519, 2005 WL 1922877, at *3-4 (E.D. Ark. Aug. 9, 2005). The Court declines to adopt the reasoning of these cases to the present situation as none of these cases considered whether the district court had *jurisdiction* to proceed. In *Woods*, for example, the petitioner brought claims for relief under 28 U.S.C. § 2255 and alleged a due process violation on the theory that the prosecutor was unlicensed. The *Woods* court rejected the due process claim on the grounds that there is no constitutional right to a properly licensed prosecutor. Likewise, both Parker nor Deaton reviewed this issue on a § 2255 motion, and neither court addressed jurisdiction. Rather, they focused on prosecutorial misconduct. *Parker*, 2006 U.S. Dist. LEXIS 64666, 2006 WL 2597770, at *13-15; *Deaton*, 2005 U.S. Dist. LEXIS 43519, 2005 WL 1922877, at *3-4 ("[P]rosecutors who did not have actual authority to prosecute a defendant were acting as a 'de factor official' and the defendant could not collaterally attack the prosecutor's lack of authority to prosecute.").
>
> These cases found in the situations before them that even if the prosecutor was unlicensed, she was nevertheless a de facto officer of the government. However, being a de facto officer for the purposes of prosecutorial misconduct and due process violations does not equate to being a proper representative of the government for jurisdictional purposes. In fact, the dictionary definition of "de facto" is: (1) "Actual; existing in fact; having effect even though not formally or legally recognized;" (2) "Illegitimate but in effect." Black's Law Dictionary 479 (9th ed. 2009). An officer that is not "legally recognized" or "illegitimate" does not equate to a "proper" representative of the government. Accordingly, the Court declines to extend the aforementioned district courts' line of reasoning to the context of jurisdiction.

Id. at p.5.

The court dismissed the indictment against Garcia-Andrade and the codefendant because "on March 19, 2013, when Ms. Parks obtained the indictment against Defendants, she was an associate member who was not eligible to practice law in this Court." *Id.* at 7.

These inconsistent holdings underscore the conflict in authority with respect to the *de facto* officer doctrine. In this regard, we find this statement about the *de facto* officer doctrine by the U.S. Court of Appeals for the District of Columbia Circuit instructive:

> It should be noted that the case law in general is at best spotty and ambiguous concerning the scope and current vitality of the doctrine.

Andrade v. Lauer, 729 F. 2d 1475, n. 36 (D.C. Cir. 1984).

DECISION

Assuming, as we have, that ALJ Verma was not a member of any Bar when he worked as an ALJ for DOES, the CRB finds that some of his decisions cannot stand and that a party, upon proper application to the Administrative Hearings Division at DOES, would be entitled to a new hearing on some, or all, of the issues that ALJ Verma decided.

Our decision is premised on the important role that ALJs have in the workers' compensation system and the need to have confidence in those decisions of an ALJ on which we must rely.

The ALJs in the workers' compensation system make very important decisions that greatly affect the lives of the working women and men in the District of Columbia. Often, a disabling accident at work affects a family's sole or primary wage earner. The women and men of the District must rely on the workers' compensation system for its tax-free indemnity benefit when the worker suffers a loss of wages because of the accident.

The medical benefit provided by workers' compensation can be as important to the injured worker as the wage replacement benefit. Workers' compensation is the only social program that provides full medical coverage for the lifetime of the injured worker without co-payments or deductibles for all causally related medical conditions.

In contested cases, ALJs are called upon to make the critical decision whether an injured worker qualifies for the safety net that workers' compensation provides. Often these decisions involve deciding whether a witness is telling the truth. It is therefore essential that the person making that decision be of sufficient character, as evidenced by being licensed to practice law and being certified in good standing, so that his or her decision is above suspicion.

If the representations to the DCCA are accurate, ALJ Verma was not disbarred for technical reasons unrelated to his ability to carry out the responsibilities of an ALJ. The traits of which ALJ Verma was found to lack and which caused his disbarment in Indiana "to protect the public

and the profession" -- his having "a history of conduct involving dishonesty", his "serious lack of candor and trustworthiness" and his being "unable, truthfully and within the bounds of basic precepts professional ethics, to represent the cause of others as an officer of the court"-- at a minimum, make his decisions suspect.

Fortunately, the statutory and regulatory procedure enacted by City Council for the workers' compensation system has provided a safeguard for many of ALJ Verma's decisions. Any party aggrieved by one of his decisions could have, without cost, filed for review and could have had that decision reviewed by the CRB.

The statutory and regulatory appeals procedure has provided a safeguard because when reviewing an appealed decision by ALJ Verma, the CRB was not required to affirm ALJ Verma's decisions if they involved findings of fact and conclusions of law that were not supported by substantial evidence in the record, thus allowing them to be reversed and remanded. In addition, incorrect interpretations or applications of law were vacated upon appeal to the CRB. Therefore, the review process has served as an important check and balance over many of ALJ Verma's decisions.

However, the intra-agency appellate procedure created by the statute and regulations was not foolproof with respect to all of ALJ Verma's appealed decisions. That is because the CRB was required to give deference to ALJ Verma's credibility and factual findings if those findings were based upon substantial evidence.

It is therefore essential that the ALJ's contested credibility and contested factual findings were honestly and impartially made. Because he was found by the Supreme Court of Indiana to be dishonest, to lack candor and trustworthiness and incapable of being an officer of the court, the CRB does not have the requisite confidence in those decisions of ALJ Verma that involved contested credibility and contested factual findings of fact.

It is for that reason that we find some of ALJ Verma's decisions must be reheard -- those decisions that were appealed to the CRB and which involved credibility determinations or contested factual determinations for which the CRB did not reweigh the evidence but instead deferred to ALJ Verma's factual findings as being supported by substantial evidence.

The two cases that were remanded by the DCCA provide examples that can further explain our decision.

In *Sandoval,* ALJ Verma issued one Compensation Order. His December 7, 2012 decision involved Ms. Sandoval's claim for schedule permanent partial disability awards for the alleged 27% and 8% loss for her right and left upper extremities. Accepting the opinion of the claimant's treating physician over the opinions of the two IME doctors, ALJ Verma determined that Ms. Sandoval had a 5% permanent partial disabilities in each extremity and entered an award to that effect and for causally related medical expenses.

This decision was appealed to the CRB which affirmed it because it was supported by substantial evidence in the record and was in accordance with the law. In reaching this conclusion, the CRB deferred to ALJ Verma's decision, stating that to do otherwise would be to reweigh the evidence.

Since that decision was appealed (and assuming that ALJ Verma was not licensed to practice law) in accordance with our view, the CRB would find that Ms. Sandoval, upon application, would be entitled to a new hearing.[4]

ALJ Verma's decision resolved conflicting facts (the disparate medical opinions), his decision was appealed, and the issue on appeal was not decided by the CRB independently of ALJ Verma's decision. The CRB was required to, and did, defer to ALJ Verma's discretionary decision in accepting the treating physician's opinion over that of the IME doctors.

The *Sinclair* case involved two decisions by ALJ Verma on one claim that involved several issues. Ms. Sinclair sought an award for continuing temporary total disability benefits beginning April 21, 2011, interest, and medical expenses related to right wrist surgery.

In his February 12, 2012, Compensation Order ALJ Verma held Ms. Sinclair proved her right knee injury was medically causally related to her accident and awarded related medical expenses. ALJ Verma denied Ms. Sinclair's claim for temporary total disability benefits, finding Ms. Sinclair voluntarily limited her income when she failed to contact her employer about a light duty offer of employment when she returned from a scheduled vacation.

ALJ Verma's decision was appealed to the CRB. On November 21, 2012, the CRB issued a Decision and Remand Order. The CRB vacated the award of medical benefits for injury to claimant's right knee because ALJ Verma used the wrong standard of proof. The CRB affirmed ALJ Verma's decision that Ms. Sinclair voluntary limited her income.

In his February 7, 2013 Compensation Order on Remand, ALJ Verma awarded the Claimant's claim for medical expenses related to her right knee and right wrist. Claimant again appealed his decision denying temporary total disability benefits. Employer appealed ALJ Verma's decision awarding medical expenses for Claimant's right knee and right wrist.

In its April 23, 2013 decision, the CRB restated its affirmation of the earlier denial of the claim for temporary total disability benefits, vacated the award of medical care to the right knee and affirmed the award of medical expenses related to the right wrist injury. The CRB vacated the award for medical care to the right knee because "it was not a contested issue before the ALJ to consider." The CRB affirmed the award for medical care for Claimant's right wrist, finding that

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[4] The process that we envision would be a relatively simple one. A party to a claim that ALJ Verma decided that believes it is eligible for a new hearing would file a claim with AHD identifying the issue or issues decided by ALJ Verma that were appealed to the CRB which the party believes should be reheard. After giving the opposing party a chance to object, AHD would issue an Order stating whether a new hearing will be required and the reasons therefor.

ALJ Verma's decision to accept the opinion of the treating physician over that of the IME doctor was supported by substantial evidence in the record.

Applying our present decision, the CRB would find that Ms. Sinclair is not eligible for a new hearing on either the denial of temporary total benefits or the denial of medical care for her right knee problem. Although Claimant appealed these decisions, thus satisfying the first requirement for a new hearing, claimant does not qualify for a new hearing on these two issues because the CRB's decision regarding Claimant's voluntarily limiting her income that led to the denial of temporary total benefits and the CRB's decision denying the award for medical care to her right knee were both pure legal questions that were decided independently of ALJ Verma's analysis.

For similar reasons, Employer would be eligible to a new hearing on the question of whether Claimant's right wrist injury is medically causally related to her accident at work. In reaching his decision, ALJ Verma chose between competing medical evidence; the opinion of the treating physician and that of the IME doctor. Employer, upon application, is eligible for a hearing on only this issue, because it appealed the decision and because the CRB deferred to ALJ Verma's decision without an independent analysis.

The claimants also have argued that they would be entitled to new hearings in those cases that were decided by ALJs other than ALJ Verma if those cases involved a subsequent claim to a claim that was heard and decided by ALJ Verma. We do not agree.

The ALJs hearing subsequent claims are required to make factual findings to support their decisions. The ALJ hearing a subsequent claim does this by making his or her own factual findings or by explicitly or implicitly accepting as his or her own, the factual findings of the ALJ who decided the previous claim.

Therefore, a new hearing is not necessary for a subsequent claim to a claim that was heard and decided by ALJ Verma because the factual findings in the later claim are the factual finding of that ALJ, not ALJ Verma.[5]

While we do not believe that our decision today will result in the catastrophic chaos that the employers and *amicus* fear, we recognize that that there will be some systemic instability. For example some claimants now receiving benefits that were awarded by ALJ Verma may have those benefits suspended and possibly ended, employers will be exposed to new liability for claims previously denied by ALJ Verma, some attorneys who received attorney's fee assessments may have those awards voided, while other attorneys who did not qualify may be eligible to be awarded fee assessments.

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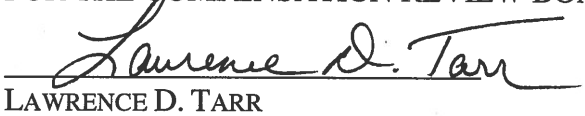
[5] Before the DCCA issued the *Sandoval* and *Sinclair* decisions, the CRB remanded for new hearings all of the cases on the review docket that involved ALJ Verma decisions. AHD also reassigned to different ALJs those cases in which ALJ Verma held formal hearings but did not issue a decision before his departure. We see nothing wrong with this even if some of those cases would not meet the criteria for requiring a new hearing. Nothing in our decisions limits DOES from voluntarily authorizing new hearings.

While the CRB regrets any insecurity and uncertainty inherent in requiring new formal hearings, we believe such hearings are necessary to remove the stain created by ALJ Verma's deciding cases after his disbarment.

FOR THE COMPENSATION REVIEW BOARD:



LAWRENCE D. TARR
Chief Administrative Appeals Judge

November 4, 2014
DATE