

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Department of Employment Services**

**VINCENT C. GRAY**  
**MAYOR**



**LISA MARÍA MALLORY**  
**DIRECTOR**

**COMPENSATION REVIEW BOARD**

**CRB No. 10-096**

**ROLAND B. WILLIAMS,**  
**Claimant–Respondent,**

**v.**

**DISTRICT OF COLUMBIA DEPARTMENT OF PARKS AND RECREATION,**  
**Employer - Petitioner**

An Appeal from a March 3, 2010 Compensation Order by  
Administrative Law Judge Belva D. Newsome  
AHD No. PBL. 09-102, DCP No. 2007090389-0001

Matthew Peffer, Esquire, for the Claimant  
Lionel Sims, Esquire, for the Employer

Before: HEATHER C. LESLIE, JEFFREY P. RUSSELL, *Administrative Appeals Judges* and LAWRENCE  
D. TARR, *Chief Administrative Appeals Judge*

HEATHER C. LESLIE, *Administrative Appeals Judge*, for the Compensation Review Board.

**DECISION AND ORDER**

**OVERVIEW**

This case is before the Compensation Review Board (CRB) on the request for review filed by the Employer - Petitioner (Employer) of the March 3, 2010, Compensation Order (CO) issued by an Administrative Law Judge (ALJ) in the Office of Hearings and Adjudication of the District of Columbia Department of Employment Services (DOES). In that CO, Claimant's request continuing medical treatment to his right wrist was granted.

**FACTS OF RECORD AND PROCEDURAL HISTORY**

On August 30, 2007, the Claimant injured his right eyebrow and right wrist while moving bleachers at the Employer's gymnasium. The Employer accepted the Claimant's claim to the right wrist and a laceration to the right eye. The Claimant sought medical treatment with Dr. Peter E. Levine. Dr. Levine was referred to the Claimant by the Employer.

Dr. Levine diagnosed the Claimant with deQuervain syndrome of the right wrist. The Claimant underwent surgery to address his right wrist pain on March 28, 2008. The surgery was performed by Dr. Levine. The Claimant subsequently returned to work full duty with a wrist splint.

The Claimant ultimately became dissatisfied with Dr. Levine's care. Subsequently, the Claimant sought treatment with Dr. Rida Azer. Dr. Azer recommended an EMG/NCS and subsequently diagnosed the Claimant as having right carpal tunnel syndrome and tenosynovitis of his right wrist. Dr. Azer recommended surgery.

The Employer sent the Claimant for an additional medical evaluation (AME) with Dr. Richard Barth on June 3, 2009. Dr. Barth took a history of the injury, reviewed medical records, performed a physical examination, and reviewed x-rays. Dr. Barth opined that the Claimant's current symptoms related to his right wrist were unrelated to the work injury of August 30, 2007. Based on Dr. Barth's report, the Employer issued a Notice of Determination (NOD) on September 1, 2009 denying the Claimant's request for continued medical treatment.

The Claimant filed for a Formal Hearing, seeking continued medical treatment to the right wrist with Dr. Azer. The Employer contested the request, arguing the Claimant should have requested authority to change the treating physician from Dr. Levine to the Azer, pursuant to 7 DCMR § 120.4. As Dr. Azer was not the authorized treating physician, the Employer argued they were not responsible for the medical bills. A CO was issued on March 3, 2010 award the Claimant's request. The ALJ found that Dr. Azer was an authorized treating physician.

The Employer appealed. The Employer argues the CO is not supported by the substantial evidence in the record and is not in accordance with the law. Specifically, the Employer argues that ALJ failed to follow the CRB's reasoning in *Mitchell v. District of Columbia Public Schools*, CRB No. 09-109, AHD No. PBL 08-100 (December 11, 2009) which requires authorization from the Employer to switch physicians. The Claimant, in opposition, argues that the CO is supported by the substantial evidence in the record and in accordance with the law.

#### **STANDARD OF REVIEW**

The scope of review by the CRB, 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 on Remand 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. Comprehensive Merit Personnel Act of 1978, as amended, D.C. Code § 1-623.01, *et seq.*, (the Act) at § 1-623.28(a), and *Marriott International v. DOES*, 834 A.2d 882 (D.C. 2003).

Consistent with this standard of review, the CRB is 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.

## ANALYSIS

Prior to addressing the arguments raised, we note that 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. Code § 1-623.28(a) states in pertinent part:

The Director of the Department of Employment Services may review an award for or against payment of compensation on application by either the claimant or the Office of the Attorney General. An application for review pursuant to this subsection must be filed within 30 days after the date of the issuance of the decision of the Mayor or his or her designee pursuant to § 1-623.24(b)(1). . . .

In addition, 7 DCMR § 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 § 258.

The CO herein appealed was issued by the ALJ on March 3, 2010 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 April 2, 2010, to be timely.

A review of the administrative file reveals the Employer filed an application for review on April 5, 2010 along with a request for an extension of time to submit a memorandum of points and authorities to support the application for review.

The Employer's appeal is untimely. As such, the CRB is without jurisdiction to consider the appeal.

**CONCLUSION AND ORDER**

The Application for Review was not filed in a timely fashion.

The Application for Review is dismissed.

FOR THE COMPENSATION REVIEW BOARD:

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HEATHER C. LESLIE  
*Administrative Appeals Judge*

April 25, 2013  
DATE