

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA M. MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 11-038

**WINFIELD A. GREGORY, SR.,
Claimant–Petitioner,**

v.

**HEALTH CARE INSTITUTE and SISCO, INC.,
Employer/Carrier-Respondent.**

Appeal from an Order by
The Honorable David L. Boddie
AHD No. 97-573E, OWC No. 503402

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2011 OCT 13 PM 12 02

Michael Kitzman, Esquire for the Petitioner
Samuel J. DeBlasis, II, Esquire for the Respondent

Before MELISSA LIN JONES, HENRY W. MCCOY, and LAWRENCE D. TARR, *Administrative Appeals Judges*.

MELISSA LIN JONES, *Administrative Appeals Judge*, for the Compensation Review Board.

DECISION AND ORDER

JURISDICTION

Jurisdiction is conferred upon the Compensation Review Board (“CRB”) pursuant to §§32-1521.01 and 32-1522 (2004) of the District of Columbia Workers’ Compensation Act of 1979, D.C. Code, as amended, §32-1501 *et seq.* (“Act”), 7 DCMR §250, *et seq.*, and the Department of Employment Services Director’s Directive, Administrative Policy Issuance 05-01 (February 5, 2005).

ANALYSIS

Because the Order on review is not one based on an evidentiary record produced at a formal hearing, the applicable standard of review by which we assess the determination reached by the Office of Hearings and Adjudication is whether the decision is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.¹

¹ See, 6 Stein, Mitchell & Mezines, *Administrative Law*, § 51.03 (2001).

ISSUE ON APPEAL

1. Is the March 28, 2011 Order arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law?²

FACTS OF RECORD, PROCEDURAL HISTORY, AND ANALYSIS

On March 17, 2011, a hearing was called to order by the presiding administrative law judge (“ALJ”). Based upon the parties’ Joint Pre-Hearing Statement and the discussions held off the record, the issue to be resolved at that hearing was

a determination of the calculation of [Mr. Winfield Gregory, Sr.’s] permanent partial disability award from a compensation order that was issued on July 21, 2009.^{3]}

On March 28, 2011, the ALJ issued an Order dismissing the Application for Formal Hearing without prejudice because there was “no distinction between the issue [presented at the March 17, 2011 hearing] and the claim for relief previously presented and adjudicated [in the July 21, 2009 Compensation Order].” The ALJ also determined that there had been no change of condition since the prior compensation order had issued and that the request for relief was barred by *res judicata*.⁴

On appeal, Mr. Gregory argues the issue for resolution was “what, if any [*sic*] benefits [he] is entitled to as a result of the 2009 Compensation Order.”⁵ Specifically, he asserts he is entitled to a formal hearing to determine the “calculation of wage loss benefits in the instant matter”⁶ because “the prior Compensation Order did not express the amount of benefits that [he] is entitled to.”⁷

Health Care Institute asserts the issue for resolution at the formal hearing focused on “disagreement between the parties as to how the award should be calculated” and “calculation of permanent partial disability benefits.”⁸ Health Care Institute requests the Order be affirmed.

² In the Memorandum of Points and Authorities in Support of Application for Review, Mr. Gregory asserts the proper standard of review is “substantial evidence.” As explained in the Analysis, *supra*, the proper standard of review is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law.

³ Hearing Transcript, p.6.

⁴ *Gregory v. Health Care Institute*, AHD No. 97-573E, OWC No. 503402 (March 28, 2011), p.2.

⁵ Memorandum of Points and Authorities in Support of Application for Review, unnumbered p.5.

⁶ Memorandum of Points and Authorities in Support of Application for Review, unnumbered p.2.

⁷ Memorandum of Points and Authorities in Support of Application for Review, unnumbered p.5.

⁸ Memorandum of Points and Authorities in Support of Employer/Carrier-Respondent’s Opposition to Claimant-Petitioner’s Application for Review, p. 2.

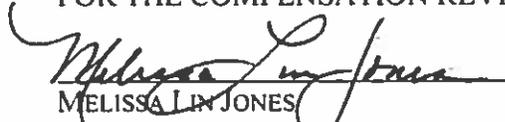
In the July 21, 2009 Compensation Order, the issues for resolution were timely request for modification of a prior Compensation Order, voluntary limitation of income, and Mr. Gregory's partial disability benefits rate.⁹ In response, the ALJ ordered Health Care Institute to pay permanent partial disability benefits pursuant to §32-1508(V)(i) beginning September 3, 2003 through April 13, 2008, but Mr. Gregory's partial disability payments, pursuant to §32-1508(3)(V)(iii), were to be reduced to reflect his voluntary limitation of income effective October 16, 2003 and ceasing April 13, 2008.¹⁰ The Compensation Order was affirmed by this tribunal on April 22, 2010, and neither party raised any issue regarding a need to clarify the award in that Compensation Order.¹¹

Because the parties did not agree as to how the award should be calculated, Mr. Gregory requested a formal hearing for the issuance of another Compensation Order "to address the calculation of wage loss benefits in the instant matter;"¹² however, a Compensation Order is "an order of a[n Administrative Law Judge] which rejects a claim or which makes an award of compensation in respect of a claim under the Act." 7 DCMR 299.1. In essence, the parties disagree as to whether or not there has been compliance with the terms of the July 21, 2009 Compensation Order. That issue is one to be raised in a Motion for Default, not an Application for Formal Hearing.¹³

CONCLUSION AND ORDER

The March 28, 2011 Order is not arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law. It is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:


MELISSA LIN JONES
Administrative Appeals Judge

October 13, 2011

DATE

⁹ *Gregory v. Health Care Institute*, AHD No. 97-573D, OWC No. 503402 (July 21, 2009), p.3.

¹⁰ *Id.* at p.7.

¹¹ *Gregory v. Health Care Institute*, CRB No. 09-126, AHD No. 97-573D, OWC No. 503402 (April 22, 2010) (The April 22, 2010 Decision and Order contains a typographical error in the last paragraph of the Analysis section; Mr. Gregory's permanent partial disability rate, not his temporary partial disability rate, was to be diminished and calculated based on a 40-hour work week.)

¹² Memorandum of Points and Authorities in Support of Application for Review, unnumbered p.2.

¹³ See §32-1519 of the Act.