

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Department of Employment Services

VINCENT C. GRAY  
MAYOR



LISA M. MALLORY  
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 12-041

ALLEN LOVE,  
Claimant–Petitioner,

v.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY and XCHANGING,  
Employer/Third Party Administrator-Respondent.

Appeal from an Order by  
The Honorable Anand K. Verma  
AHD No. 05-288A, OWC No. 550539

Matthew J. Peffer, Esquire for the Petitioner  
Donna J. Henderson, Esquire for the Respondent

Before MELISSA LIN JONES, JEFFREY P. RUSSELL,<sup>1</sup> and HENRY W. MCCOY *Administrative Appeals Judges*.

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

**AMENDED DECISION AND REMAND ORDER**

JURISDICTION

Jurisdiction is conferred upon the Compensation Review Board (“CRB”) pursuant to §§32-1521.01 and 32-1522 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 Administrative Policy Issuance 05-01 (February 5, 2005).

FACTS OF RECORD AND PROCEDURAL HISTORY

On February 13, 2001, Mr. Allen Love appeared before administrative law judge (“ALJ”) David L. Boddie for a formal hearing to resolve the issue of Mr. Love’s entitlement to permanent partial disability benefits for his left leg injury. On April 29, 2002, ALJ Boddie issued a Compensation Order denying Mr. Love’s claim for relief.

<sup>1</sup> Judge Russell has been appointed by the Director of the DOES as a Compensation Review Board (“CRB”) member pursuant to DOES Administrative Policy Issuance No. 11-01 (June 23, 2011).

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On October 21, 2011, Mr. Love filed another Application for Formal Hearing. A Scheduling Order issued on December 20, 2011, and the matter was assigned to ALJ Anand K. Verma.

In response, on February 23, 2012, the Washington Metropolitan Area Transit Authority (“WMATA”) filed a Motion to Dismiss or, In the Alternative, for Summary Judgment (“Motion”) raising a statute of limitations argument. On February 24, 2012, without giving Mr. Love any opportunity to respond, ALJ Verma granted WMATA’s Motion and dismissed Mr. Love’s Application for Formal Hearing.

On appeal, Mr. Love asserts ALJ Verma violated his right to due process by denying him an opportunity to respond to WMATA’s Motion. Without such an opportunity, Mr. Love argues he had no ability to protect his rights.

On the other hand, WMATA argues this case falls with a Sixth Circuit exception to the rule allowing an opposing party an opportunity to file a response to a motion. WMATA contends that an ALJ need not wait for a response if the opposing party has made no effort to demonstrate a disputed fact and has made no attempt to show why the motion should be denied.

#### ISSUE ON APPEAL

1. Does the issuance of the February 24, 2012 Order without affording Mr. Love an opportunity to respond violate due process?

#### ANALYSIS<sup>2</sup>

Neither the Act nor the regulations implementing the Act provide any specific authority for filing dispositive motions or for responding to such motions. Nonetheless, the practice has become accepted.

Lacking any specific timelines for filing or responding to such motions, an ALJ could rely upon Superior Court Rules or the regulations governing the CRB for guidance. In a civil proceeding, an opposing party has ten days within which to file an opposition to a motion;<sup>3</sup> before the CRB, an opposing party has five calendar days from the receipt of a copy of a motion to file a written response.<sup>4</sup> Regardless of whether an ALJ elects to adopt a ten-day period or a five-day period or some other reasonable period, fundamental notions of fair play require a party be given an opportunity to respond to a dispositive motion. Failure to afford a party an opportunity to respond to a motion denies that party any opportunity to demonstrate a disputed fact, any reason why the motion should be denied, and due process,<sup>5</sup> and in the absence of some reasonable procedure

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<sup>2</sup> Because the Order on review is not one based on an evidentiary record produced at a formal hearing, the applicable standard of review is whether the decision is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. 7 DCMR §266.3; see 6 Stein, Mitchell & Mezones, *Administrative Law*, § 51.03 (2001).

<sup>3</sup> Super. Ct. Civ. R. 12-I (e).

<sup>4</sup> 7 DCMR §265.4.

<sup>5</sup> *Puckrein v. Jenkins*, 884 A.2d 46 (D.C. 2005).

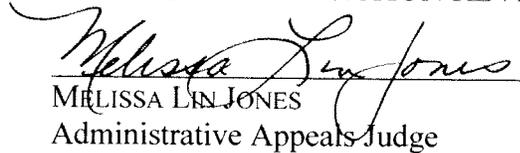
affording an opportunity to be heard, the dismissal of an Application for Formal Hearing cannot stand.

In addition, modification of an existing Compensation Order, if applicable, may be timely based upon multiple considerations.<sup>6</sup> The ALJ addressed only one such consideration. Beyond that, the Motion was granted without providing any detailed factual statements relevant to the contested issue so that the CRB could determine whether the ALJ has resolved that issue in conformity with the law.<sup>7</sup>

CONCLUSION AND ORDER

Failure to afford Mr. Love an opportunity to respond to WMATA's Motion violated due process. The February 24, 2012 Order is VACATED. The matter is remanded to afford Mr. Love an opportunity to respond to the Motion, and in the Order ruling upon the Motion, the ALJ shall provide detailed factual statements and a thorough analysis of the issues and responses raised.

FOR THE COMPENSATION REVIEW BOARD:

  
MELISSA LIN JONES  
Administrative Appeals Judge

May 15, 2012

DATE

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<sup>6</sup> See §32-1524 of the Act.

<sup>7</sup> See *Jones v. DOES*, \_\_\_ A.3d \_\_\_ (D.C. 2012).