

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA M. MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 12-001

**THEODORE E. POWELL,
Claimant–Petitioner,**

v.

**DISTRICT OF COLUMBIA PUBLIC SCHOOLS,
Self-Insured Employer-Respondent**

Appeal from an Order issued by
Administrative Law Judge David L. Boddie
AHD PBL No. 11-025, DCP No. 30101142114001

Theodore E. Powell, *Pro Se*
Kevin J. Turner, Esquire, For the Self-Insured Employer

Before LAWRENCE D. TARR, JEFFREY P. RUSSELL, AND HEATHER C. LESLIE, *Administrative Appeals Judges*.¹

LAWRENCE D. TARR, *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 claimant, Theodore E. Powell, of a November 14, 2011, Order issued by an Administrative Law Judge (ALJ) in the Office of Hearings and Adjudication of the District of Columbia's Department of Employment Services (DOES). In that Order, the ALJ dismissed without prejudice the claimant's application for formal hearing. We AFFIRM.

BACKGROUND FACTS OF RECORD

The claimant, Theodore E. Powell worked for the employer as a physical education teacher at Woodson High School. On April 29, 2011, the employer, by its Office of Risk Management,

¹ Judge Jeffrey P. Russell and Judge Heather C. Leslie have been appointed by the Director of DOES as CRB members pursuant to DOES Policy Issuance No. 11-03 (June 13, 2011).

issued a “Notice of Determination Regarding Original Claim For Compensation” in which it denied the claimant’s claim for workers’ compensation benefits. Thereafter, the claimant filed an Application for Formal Hearing with the Office of Hearings and Adjudication, Administrative Hearings Division.

The case was assigned to ALJ David L. Boddie who issued a Scheduling Order on June 10, 2011. The Order advised the parties that the formal hearing on the claim would take place at 11:00 a. m. on September 13, 2011.

On September 13, 2011, the parties convened before Judge Boddie for the formal hearing. On September 14, 2011, Judge Boddie issued an Order that explained why the formal hearing did not take place. Judge Boddie wrote:

At the time of the hearing, Theodore Powell (hereinafter, Claimant) appeared *pro se* and counsel for the Employer [sic].

However, it was noted at that time that the Pre-Hearing Order described in the Scheduling Order as required to be completed, jointly by the parties, prior to the Formal Hearing, had not been completed by the Claimant. It was further established that the Claimant had not read or done anything as instructed in the Scheduling Order, other than taking notice of the date scheduled for the Formal Hearing.

It was then determined, in response to questions by the Administrative Law Judge to the Claimant, appearing *pro se*, that he was not prepared to go forward to the Formal Hearing at this time, and that the above-entitled matter should be rescheduled to allow the Claimant time to adequately prepare.

The ALJ denied the employer’s motion to dismiss with prejudice the claimant’s application and rescheduled the formal hearing for November 10, 2011 at 9:00 a.m.

It should also be noted that at the September 13, 2011, hearing, the claimant was advised of the new hearing date and agreed that he was “available and in agreement” with the new hearing date and time of November 10, 2011, at 9:00 a.m. (Transcript at 26).

The hearing scheduled for November 10, 2011, did not proceed as scheduled because the claimant did not appear. As recited in the ALJ’s Order:

At the time for the Formal Hearing to be convened, the Employer appeared, with counsel. However, the Claimant *pro se* did not appear. A brief recess was held and upon attempting to call the Formal hearing to order at 9:30 a.m., the Claimant again was not present, and no explanation or communications regarding his failure to appear were received from him.

Having determined that notice was sent to the parties identifying the date and time of the Formal Hearing, and having received no communication from the Claimant

for his failure to appear, it is determined that the Claimant's Application For Formal Hearing should be dismissed, without prejudice.

The ALJ denied the employer's motion to dismiss the claimant's application with prejudice and entered an Order consistent with this determination.

The claimant timely appealed.²

THE STANDARD OF REVIEW

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 is whether the decision is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. *See*, 6 Stein, Mitchell & Mezines, *Administrative Law*, § 51.03 (2001).

ANALYSIS

We find the action taken by the ALJ in dismissing without prejudice the claimant's formal hearing application is not arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law.

The ALJ had the authority to dismiss the claimant's formal hearing application when the claimant failed to appear for the hearing. When we consider the facts that the first hearing was rescheduled because the claimant was not prepared and did not comply with the scheduling order, that the claimant agreed to the new date and time of the hearing, and that the claimant failed to appear and failed to advise the ALJ that he could not appear or would be late, we agree that the ALJ acted properly.³

CONCLUSION AND ORDER

The November 14, 2011, Order is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

Lawrence D. Tarr
Administrative Appeals Judge

March 5, 2012
DATE

² The Clerk of the CRB interpreted the claimant's filing as an appeal of Judge Boddie's Order because it was titled "Appeal of Hearing" even though the document requested remedies, such as monetary damages for "cruel and unusual punishment and treatment," for which the CRB does not have authority.

³ We point out that when an Application for Formal Hearing is dismissed without prejudice as here, the Application is removed from the hearing docket. The underlying claim is not dismissed. The claimant can re-apply for a Formal Hearing.