

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA M. MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 11-015

**ISLAM A. SHABAZZ,
Claimant–Petitioner,**

v.

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

Appeal from a Order by
Administrative Law Judge Fred D. Carney, Jr.
AHD No. PBL 06-019C, DCP No. M7-BOEDU002611

Jennifer H. Griffith, Esquire, for the Petitioner
Pamela L. Smith, Esquire, for the Respondent

Before: HENRY W. MCCOY, HEATHER C. LESLIE¹, and JEFFREY P. RUSSELL², *Administrative Appeals Judges*.

HENRY W. MCCOY, *Administrative Appeals Judge*, for the Compensation Review Board.

DECISION AND ORDER

JURISDICTION

Jurisdiction is conferred upon the Compensation Review Board (CRB) pursuant to D.C. Official Code § 1-623.28, 7 DCMR § 118, and the Department of Employment Services Director’s Directive, Administrative Policy Issuance 05-01 (February 5, 2005).

¹ Judge Leslie has been appointed by the Director of DOES as an interim CRB member pursuant to DOES Policy Issuance No. 11-03 (June 13, 2011).

² Judge Russell has been appointed by the Director of the DOES as an interim CRB member pursuant to DOES Administrative Policy Issuance No. 11-01 (June 23, 2011).

PROCEDURAL HISTORY AND FACTS OF RECORD

Claimant alleges that on January 10, 2002 he injured his left knee while working as physical education teacher for Employer. Claimant filed for disability benefits but was denied by the Disability Compensation Program (DCP)³ ostensibly because the injury did not occur during the performance of his job.

The DCP Order of Denial, while stating the date of the alleged injury as January 10, 2002, carries an issue dated of November 26, 2000. Claimant filed for reconsideration on December 30, 2002. On June 14, 2006, DCP issued a Final Decision on Reconsideration denying the request for reconsideration as untimely as it was not filed within thirty (30) days of the Order of Denial.

On April 5, 2010, Claimant filed an Application for Formal Hearing (AFH) contesting the June 14, 2006 Final Decision on Reconsideration. Employer filed a motion to dismiss on July 13, 2010. An evidentiary hearing was held on July 14, 2010 resulting in a January 31, 2011 Compensation Order (CO) in which the presiding Administrative Law Judge (ALJ) determined that the April 5, 2010 AFH was filed more than 30 days after the final determination by DCP and thus he was without jurisdiction to make a determination on Claimant's claim for relief as the AFH must be dismissed.

Claimant has timely appealed with Employer filing in opposition.

STANDARD OF REVIEW AND ANALYSIS

The scope of review by the CRB is limited to making a determination as to whether the factual findings of the Order are based upon substantial evidence in the record and whether the legal conclusions drawn from those facts are in accordance with the applicable law.⁴ Section 1-623.28(a) of the District of Columbia Government Merit Personnel Act of 1978, as amended, D.C. Official Code § 1-623.1 *et seq.*, ("Act"). Consistent with this standard of review, the CRB and this Review Panel are 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.

In seeking reversal of the CO dismissing his AFH, Claimant argues there is no evidence in the record to support the ALJ's finding the Order of Denial was actually issued "on or about November 26, 2002" and, that the "November 26, 2000" date on the Order was a typographical error. Claimant further argues that as this unsupported finding by the ALJ "could be considered

³ Effective October 1, 2010, the Disability Compensation Program officially changed its name to the Public Sector Workers' Compensation Program.

⁴ "Substantial evidence," as defined by the District of Columbia Court of Appeals, is such evidence as a reasonable person might accept to support a particular conclusion. *Marriott International v. District of Columbia Department of Employment Services*, 834 A.2d 882 (D.C. 2003).

outcome determinative”, the CO must be vacated and remanded for findings consistent with the record evidence.⁵ In opposition, Employer argues that it is the date of the Final Decision on Reconsideration that is determinative in matter. We agree.

It is uncontested that Claimant allegedly injured himself on January 10, 2002 while on the job and filed a claim for benefits. This claim was denied in an Order of Denial dated November 26, 2000. It is also uncontested that Claimant filed a request for reconsideration of this denial on December 30, 2002.

Employer argues, contrary to Claimant, that given the date of the injury and the date of the request for reconsideration, it was reasonable for the ALJ to find and conclude that the Order of Denial was actually issued on November 26, 2002 and the date on the Order was a typographical error. We agree. The evidence presented is substantial enough to allow a reasonable person to conclude that the Order of Denial was issued after the date of injury but before the request for reconsideration.⁶

Even if we were to accept Claimant’s argument that the actual date of the Order of Denial was “November 26, 2000” or the date of the Final Decision on Reconsideration upon which this matter actually turns, we find no basis to reverse the ALJ in this matter. Pursuant to D.C. Code § 1-623.24(b)(1)⁷, Claimant had 30 days after the issuance of either order to challenge that order by either requesting reconsideration or requesting a formal hearing. In both instances, Claimant was not timely.

With regard to Order of Denial, Claimant filed for reconsideration on December 30, 2002. If we were to accept the incredible date of November 26, 2000 as the date of that order, then Claimant’s request for reconsideration was more than 765 days after the date of issuance; and, if the more reasonable date of issuance found to be November 26, 2002, the request for reconsideration should have been filed by December 26, 2002 and by filing on December 30th, Claimant was again untimely.

DCP did not issue a decision on Claimant’s December 30, 2002 request for reconsideration of the denial of benefits for the alleged left knee injury of January 10, 2002 until June 14, 2006. The record evidence supports the ALJ’s finding that Claimant did not file for a formal hearing to challenge this adverse ruling until April 5, 2010, four years later. As the period between the DCP’s final determination and the application for formal hearing exceeded thirty days, the ALJ correctly found there he was without jurisdiction to hear the claim. We find no error in this conclusion.

⁵ Claimant’s Memorandum of Points and Authorities in Support of Application for Review, pp. 2-3.

⁶ See *Marriott, supra*.

⁷ D.C. Official Code § 1-623.23.24(b)(1) states in pertinent part: “...a claimant for compensation not satisfied with a decision of the Mayor or his or her designee under subsection (a) of this section is entitled, on request made within 30 days after the date of the issuance of the decision to a hearing before the Department of Employment Services Disability Compensation Law Judge.”

CONCLUSION AND ORDER

The Compensation Order of January 31, 2011 is supported by substantial evidence in the record and is in accordance with the law. Accordingly, it is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

HENRY W. MCCOY
Administrative Appeals Judge

March 8, 2012
DATE