

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

**VINCENT C. GRAY
MAYOR**



**LISA M. MALLORY
DIRECTOR**

CRB No. 12-011

SPECIAL SWANSON,

Claimant–Petitioner,

v.

DISTRICT OF COLUMBIA DEPARTMENT OF CORRECTIONS,

Employer–Respondent.

Appeal from a Compensation Order of
Administrative Law Judge Chief Administrative Law Judge George W. Crawford
AHD No. PBL 11-024, DCP No. 761032-0001-20000-005

Special Swanson, *pro se* Petitioner

Justin Zimmerman, Esquire, for the Respondent

Before JEFFREY P. RUSSELL,¹ LAWRENCE D. TARR and HENRY W. MCCOY, *Administrative Appeals Judges*.

JEFFREY P. RUSSELL, for the Compensation Review Board:

DECISION AND ORDER

BACKGROUND

Petitioner Special Swanson injured her right side, right hip and lower back when she slipped and fell in the course of her employment as a correctional officer on August 27, 2000. She received disability benefits from September 18, 2000 through May 7, 2011, when they were terminated by the Office of Risk Management (ORM), responsible for the administration of the Disability Compensation Program (DCP). The decision by ORM to discontinue further disability compensation was based upon the opinion of Dr. Paul Wright, who performed an “Additional Medical Evaluation” (AME) at ORM’s request, and who opined that Ms. Swanson had fully

¹ Judge Russell is appointed by the Director of DOES as an Interim Board Member pursuant to DOES Administrative Policy Issuance No. 11-02 (June 13, 2011).

recovered from her work injury. Ms. Swanson requested that the termination of benefits be reconsidered by ORM, which denied her request. Ms. Swanson sought a formal hearing in the hearings section of the Department of Employment Services to seek reinstatement and continuation of those benefits.

A formal hearing was convened on August 6, 2011 before Administrative Law (ALJ) Judge David L. Boddie. Following that formal hearing, on December 27, 2011, Chief ALJ George W. Crawford (the authoring ALJ) issued a Compensation Order in which Ms. Swanson's request was denied. He premised the denial upon the AME opinions of Dr. Wright and Dr. Kevin Hanley, and upon the lack of medical opinion presented to support the claim by Ms. Swanson. On January 27, 2011, Ms. Swanson filed an Application for Review with the Compensation Review Board (CRB), to which ORM filed an opposition.

JURISDICTION AND STANDARD OF REVIEW

Review by the CRB is limited to making a determination as to whether the factual findings of the Compensation Order are based upon substantial evidence in the record, and whether the legal conclusions drawn from those facts, and the resulting order granting or denying benefits, are in accordance with applicable law. *See*, D.C. Comprehensive Merit Personnel Act of 1978, as amended, D.C. Official Code § 1-623.01, *et seq.*, at § 1-623.28 (a). "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 Int'l. v. District of Columbia Department of Employment Services*, 834 A.2d 882 (2003). Consistent with this standard of review, the CRB is constrained to uphold a Compensation Order that is supported by substantial evidence and is otherwise in conformance with the law, 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.

DISCUSSION

D.C. Code § 1-623.28 (a) governs the time within which a Compensation Order must be appealed. Review is instituted by filing an application for review. That section reads in pertinent part:

[...] 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). The decision of the Mayor or his or her designee pursuant to § 1-623.24(b)(1) may be affirmed, modified, revised, or remanded [...].

The Compensation Order was issued December 27, 2011. Thirty days from that date was January 26, 2012, which is the last date upon which an Application for Review of the Compensation Order in this case could have been filed. Review of the agency administrative file reveals that Ms. Swanson's Application for Review was received, delivered by the United States Post Office, on January 27, 2012; that date is the date that the packet of documents containing the AFR was date stamped as received by this office. Consequently, the Application for Review is untimely.

CONCLUSION

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

ORDER

The Application for Review is dismissed.

FOR THE COMPENSATION REVIEW BOARD:

JEFFREY P. RUSSELL
Administrative Appeals Judge

March 21, 2012
DATE