

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

Department of Employment Services

VINCENT C. GRAY  
MAYOR



LISA M. MALLORY  
DIRECTOR

**COMPENSATION REVIEW BOARD  
CRB No. 11-019(2)**

**MARYANNE TAGOE,  
Claimant,**

**v.**

**HOWARD UNIVERSITY HOSPITAL AND SEDGWICK CMS,  
Employer and Carrier.**

DEPT. OF EMPLOYMENT  
SERVICES  
COMPENSATION REVIEW  
BOARD  
2012 MAR 14 AM 9 09

Maryanne Tagoe, Claimant, *pro se*  
William H. Schladt, Esquire, for Employer and Carrier

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

LAWRENCE D. TARR, for the Compensation Review Board. MELISSA LIN JONES, *Administrative Appeals Judge*, dissenting.

**ORDER MODIFYING DECISION**

This case is before the Compensation Review Board (CRB) on the most recent Motion For Reconsideration and Modification filed by the claimant, Maryanne Tagoe, on October 11, 2011. This Motion requests reconsideration of that part of the CRB's July 30, 2010, decision relating to her request for mileage reimbursement.

OVERVIEW

On October 4, 2000, Maryanne Tagoe, the claimant, suffered a stroke while working as a first-year resident physician for Howard University Hospital, the employer. In 2003, the claimant filed a claim for workers' compensation benefits asserting that she was disabled because of migraine headaches caused by the stroke. Since then, the litigation relating to this case has resulted in many administrative and judicial decisions.

It is sufficient for the purposes of the present litigation to state that the claimant did not prevail on her claims for any type of wage loss benefits or for reimbursement of vocational rehabilitation expenses. The claimant's migraine headaches were found to be causally related to her industrial accident and the claimant received an award for medical benefits causally related to the headaches.

The current dispute centers on the claimant's claim for travel cost reimbursement, sometimes called mileage reimbursement. Travel expenses to and from medical appointments are considered medical expenses for which an employer can be liable. See D.C. Code § 32-1507 (a).

The claimant originally was awarded causally related medical costs and other benefits on August 29, 2003, and that award was not vacated, reversed, or remanded in subsequent decisions.

On September 21, 2009, an administrative law judge (ALJ) in the District of Columbia's Administrative Hearings Division issued a Compensation Order on Remand which stated in the Findings of Fact section, "Claimant is entitled to reimbursable transportation expenses associated with her medical expenses." In a footnote to this sentence, the ALJ wrote:

The mileage rate for the year 2000 is \$.21 per mile. The mileage rate for the years 2001 to the present is .25 per mile.

In the Analysis Section, the ALJ further explained her decision:

In compliance with (7 DCMR § 212.18) the Office of Workers' Compensation has set forth mileage reimbursement rates as follows: from 1991 to June 2, 1994 the rate is .24 per mile; from June 3, 1994 to 2000 the rate is \$0.21 per mile; from 2001 to the present, the rate is \$0.25 per mile.

*Tagoe v. Howard University*, AHD No. 03-287; OWC No. 568310 (September 21, 2009) at 3, 7.

On Review, the claimant argued that the ALJ used the incorrect rate for the mileage rate reimbursement. The CRB affirmed the ALJ, stating:

As to mileage, the claimant argues that the ALJ used the wrong rates for assessing mileage reimbursement. We disagree.

7 DCMR § 212.18 provides that "Mileage shall be assessed in accordance with the mileage rates set by the Superior Court of the District of Columbia." Pursuant to this authority, the Office of Workers' Compensation issued a Memorandum titled "Mileage Reimbursements for Private Sector Workers' Compensation Claimants." We take official notice of this document and find that the ALJ's determination that the mileage rate was \$ 0.21 for 2000 and has been \$ 0.25 since 2001 is consistent with this document.

*Tagoe v. Howard University Hospital*, CRB No. 10-007, AHD No. 03-287; OWC No. 568310, (July 30, 2010).

It should be noted that during the pendency of that appeal, the claimant attempted to supplement the record with information from the Superior Court that, if accepted, would have shown that the mileage rates set forth in the Office of Workers' Compensation mileage reimbursement memorandum were not the rates set by the Superior Court.

The CRB rejected this information based on procedural grounds, stating:

On March 3, 2010, the claimant filed a Motion to Supplement that contained the yearly mileage reimbursement rates for 1995-2008, based on information from the

District of Columbia Superior Court and the General Services Administration web page. Nevertheless, the document issued by the Office of Workers' Compensation is the operative document for the purposes of determining the rate for mileage reimbursement in District of Columbia workers' compensation cases.

*Id.* at fn.10.

On remand, the ALJ issued a Compensation Order on February 18, 2011. In that Compensation Order the ALJ awarded the claimant \$287.24 for travel costs reimbursement.

The ALJ calculated the amount to which the claimant was entitled, as she did in her September 21, 2009, decision, using the Office of Workers' Compensation mileage reimbursement rates (\$ .24 for mileage from 1991 to June 2, 1994, \$.21 per mile for mileage from June 3, 1994 to 2000, and \$.25 for mileage beginning in 2001). *Tagoe v. Howard University Hospital*, AHD No. 03-287, OWC No. 568310 (February 18, 2011).

The claimant appealed the ALJ's February 18, 2011, Compensation Order on Remand. The claimant's application for review, among several challenges, again asserted the ALJ erred with respect to the award for her travel costs. On page 12 of her written statement the claimant wrote:

It is noted here that (the ALJ) again erroneously applied "OWC" mileage rates of \$0.21 and \$0.25 per mile, for 2000 and 2001-2008 respectfully, contrary to 7-DCMR §212.18 dc [sic] code §32-1507(f) and her decision in *Murray v. National Assoc. for Home Care, and the Hartford*, AHD No. 06-037, OWC No. 599140(2008)...

(The ALJ) again erred in not addressing in her Second Order dated Feb. 18, 2011, why she discriminated against claimant, when she applied DC Superior Court mileage rates in *Murray* supra which was never appealed and lower "OWC" rates in this instant case.

The CRB issued a Decision and Remand Order on October 11, 2011, and held it would not consider the claimant's challenge to the mileage reimbursement rate. The CRB held

The Decision and Limited Remand Order did not remand the case for reconsideration of the mileage rate applicable to the claimant's claim. The determination on that issue is final, and we will not entertain any further argument on it.

In response to the remand for clarification of the calculation of travel cost reimbursement, the ALJ sufficiently explained:

Thus, the following mileage should be awarded: in 2000, \$ 10.08; in 2001, \$ 3.90; in 2002, \$ 2.66; in 2003, \$ 13.80; in 2004, \$ 74.75; in 2005, \$ 3.75; in 2006, \$ 44.75; in 2007, \$ 74.87; and in 2008, \$ 49.68. The total mileage awarded is \$ 287.24. *Tagoe v. Howard*

*University Hospital*, AHD No. 03-287, OWC No. 568310  
(February 18, 2011), p.7.

*Tagoe v. Howard University Hospital*, CRB 11-019, AHD No. 03-287, OWC No. 568310  
(October 11, 2011). (Footnotes added into text).

On October 17, 2011, the claimant filed the present “Motion For Reconsideration and Modification of the Court’s October 11, 2011, Order” asking that the CRB

[V]acate its earlier decision that limited mileage rates per to me to ‘\$0.21 for 2000 and \$0.25 from 2001 to present.’ And issue an amended order with the statutorily mandated rates to be applied retroactively to 1994 when OWC incorrectly set mileage rates that were not in compliance [sic] with the statutorily mandated mileage rates.

Motion at 3.

In opposition, the employer does not dispute that effective January 1, 2011, the mileage rate for 2011 is \$0.51. The employer, apparently referring to our July 30, 2010, decision asserts

The Board correctly noted that the Office of Workers’ Compensation has issued a Memorandum entitled Mileage Reimbursement for Private Sector Workers’ Compensation Claimants. The document indicates that the mileage rate was \$0.21 for the year 2000 and has been \$0.25 from the year 2001 until 2010... There is no basis for reconsidering the Compensation Review Board’s Decision and the Motion should be denied.

#### ANALYSIS

The CRB’s previous decision relied on an ALJ’s decision that, in turn, relied on an OWC administrative document that we now know mistakenly stated the mileage rates for 2000 and 2001. We shall grant the claimant’s motion because not correcting the mileage reimbursement rates results in an award that is inconsistent with 7 DCMR § 212.18.

7 DCMR § 212.18 requires that the mileage reimbursement rate shall be in accordance with the mileage rates set by the Superior Court of the District of Columbia. Pursuant to this authority, several years ago the Office of Workers’ Compensation (OWC) issued a Memorandum titled “Mileage Reimbursements for Private Sector Workers’ Compensation Claimants.” That memorandum said the Court’s mileage reimbursement rate for 2000 was \$0.21 and, beginning in 2001, was \$0.25 per mile.

In the September 21, 2009, Compensation Order on Remand, the ALJ used the OWC’s memorandum, and held the claimant’s mileage reimbursement rate was \$0.21 per mile for 2000 and \$0.25 per mile for 2001. In our July 30, 2010, decision, the CRB took official notice of OWC’s memorandum, recognized it as “the operative document for determining the rate for

mileage reimbursement in District of Columbia workers' compensation cases" and affirmed the ALJ.

We now know that the document upon which the ALJ and the CRB relied, OWC's memorandum, contained incorrect information. The mileage rates for 2000 and 2001 should have been \$.325 and \$.345. This mistake was acknowledged by OWC almost one year after the CRB's July 30, 2010, decision in its most recent OWC mileage reimbursement rate memorandum, issued on July 21, 2011.<sup>1</sup>

In *Washington Hospital Center v. Middledorf Kelly*, 983 A.2d 961 (D.C. 2009), the Court of Appeals permitted a claimant to challenge the calculation of her average weekly wage used to calculate her disability benefits, even though the challenge was made eight years after the parties had stipulated to the average weekly wage calculation. The Court held the challenge was not barred by the doctrine of *res judicata* because (1) the original calculation resulted from a mutual mistake of fact and (2) even if there was no mutual mistake, the average weekly wage calculation could be changed because the (mistaken) rate resulted in a wage that was inconsistent with the statute. *Id.* at 967-968.

Both elements stated in *Middledorf Kelly* are present in this case. The original mileage reimbursement rate was the result of the parties and the tribunal mistaken reliance on an incorrect document. Additionally, because of that good faith, but erroneous reliance, the mileage reimbursement rates awarded by the ALJ for 2000 and 2001 were not inconsistent with 7 DCMR §212.18.

We respectfully disagree with our dissenting colleague's position that the ALJ did not err when the ALJ awarded the claimant a different mileage reimbursement rate than was published by the Superior Court. Two different numbers cannot be in conformance with each other. Therefore, an award of 25 cents per mile is not in accordance with either an award of 32.5 cents per mile or an award of 34.5 cents per mile.

We further note that OWC has interpreted "in accordance with" to mean "identical to." The July 21, 2011, Memorandum set the mileage rate for travel beginning January 1, 2011, at a rate equal to the Court's rate, \$.51.

## CONCLUSION

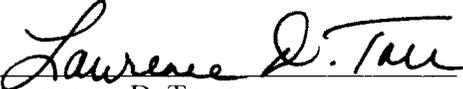
Therefore, for these reasons we hereby amend the CRB's October 11, 2011, Decision and Remand Order and find the mileage reimbursement rates to which the claimant is entitled is \$0.325 for mileage driven in 2000 and \$0.345 for mileage driven in 2001.

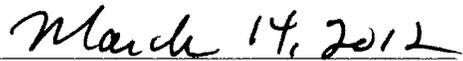
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<sup>1</sup> In his July 21, 2011 Memorandum, the Deputy Associate Director of OWC referred to the internet link [www.gsa.gov/mileage](http://www.gsa.gov/mileage) "for further information pertaining to mileage reimbursement" and attached copies of the information from that link which showed that the mileage rate was \$0.325 from January 14, 2000 to January 2001 and \$0.345 from January 22, 2001 to January 21, 2002.

This matter is remanded to the ALJ for entry of an Award consistent with this Order and, as further explained in the October 11, 2011, Decision and Remand Order, for a determination of the interest rate to be applied to the claimant's out-of-pocket medical expenses.

FOR THE COMPENSATION REVIEW BOARD:

  
LAWRENCE D. TARR  
*Administrative Appeals Judge*

  
DATE

MELISSA LIN JONES, *Administrative Appeals Judge*, dissenting:

This matter has a considerable procedural history, but pertinent to disposing of Petitioner's Motion for Reconsideration and Modification of the Court's October 11, 2011 Order ("Motion"), on September 21, 2009, an administrative law judge ("ALJ") issued a Compensation Order on Remand which was appealed to the CRB. On July 30, 2010, the CRB remanded this matter for limited purposes:

- (1) Determination of the out-of-pocket medical expenses for which interest is awarded,
- (2) Clarification of whether the ALJ made a typographical or mathematical error in finding that the claimant should be reimbursed \$215.00 for out-of-pocket expenses related to Dr. P.T. Pham's treatment,
- (3) Identification of the ALJ's rationale and calculation regarding her decision that the claimant should be paid \$573.74 for travel cost reimbursement,
- (4) Explanation, in detail, as to why the ALJ rejected the claim for reimbursement of the items referred to in Dr. Goodman's May 18, 2009 letter, and
- (5) Determination of whether the e-mail communications referred to by the claimant are part of the record, and if so, whether the employer has agreed to pay for the medical expenses mentioned in those communications.<sup>[2]</sup>

In response, the ALJ issued the February 18, 2011 Compensation Order on Remand. In that Compensation Order on Remand, the claimant was awarded "interest. . . on Claimant's out-of-pocket medical expenses. Further, Claimant is entitled to \$287.24 for travel cost reimbursements.

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<sup>2</sup> *Tagoe v. Howard University Hospital*, CRB No. 10-007, AHD No. 03-287, CRB No. 10-009, AHD No. 03-286, OWC No. 568310 (July 30, 2010) ("Decision and Limited Remand Order").

Finally, any electronic communications transmitted by the parties are not part of the official record.”<sup>3</sup>

Ms. Tagoe appealed the February 18, 2011 Compensation Order on Remand, and on October 11, 2011, the CRB issued a Decision and Remand Order. The February 18, 2011 Compensation Order on Remand was vacated in part and remanded “solely for a determination of the interest rate to be applied to the claimant’s out-of-pocket medical expenses.”<sup>4</sup>

On October 17, 2011, Ms. Tagoe filed the Motion. In her Motion, Ms. Tagoe requests reconsideration of the CRB’s interpretation and application of travel mileage reimbursement rates.

Ms. Tagoe’s Motion is virtually identical to the mileage reimbursement issue she raised in the appeal resulting in our October 11, 2011 Decision and Remand Order. In that Decision and Remand Order, we addressed the issue as follows:

#### PRELIMINARY MATTERS

##### CLAIMANT’S MOTION – REQUEST TO RECONSIDER

On March 25, 2011, the claimant filed “a formal letter to the board to request a vacation of part of its earlier decision in CRB No. 10-007/10-009 on Medical Travel Mileage rates for DC Private Sector Workers’ Compensation Claimants.” The claimant asserts “OWC has been providing incorrect rates to DC DOES for the last seventeen (17) years.”

The Decision and Limited Remand Order the claimant refers to issued on July 30, 2010. To the extent the claimant’s March 25, 2011 letter can be considered a request for reconsideration, pursuant to DCMR 7-268.1,

[a]ny party may, within ten (10) calendar days from the date shown on the certificate of service of the Decision and Order of the Board or of any order issued by the Board, file a request for reconsideration thereof with the Clerk of the Board.

The claimant’s request to reconsider the July 30, 2010 Decision and Limited Remand Order is denied.<sup>[5]</sup>

And

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<sup>3</sup> *Tagoe v. Howard University Hospital*, AHD No. 03-287, OWC No. 568310 (February 18, 2011).

<sup>4</sup> *Tagoe v. Howard University Hospital*, CRB No. 11-019, AHD No. 03-287, OWC No. 568310 (October 11, 2011), p.9.

<sup>5</sup> *Tagoe v. Howard University Hospital*, CRB No. 11-019, AHD No. 03-287, OWC No. 568310 (October 11, 2011), p.4.

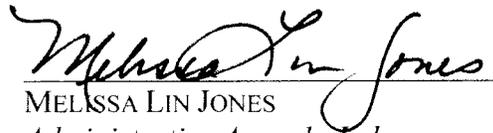
THE RATIONALE FOR AND CALCULATION OF TRAVEL COST REIMBURSEMENT

The Decision and Limited Remand Order did not remand the case for reconsideration of the mileage rate applicable to the claimant's claim. The determination on that issue is final, and we will not entertain any further argument on it.<sup>6]</sup>

Ms. Tagoe's Motion raises no new facts or applicable legal arguments that were not raised and addressed previously, and for this reason I would deny her Motion.

Furthermore, I cannot agree with the majority that the awarded rates are inconsistent with 7 DCMR §212.18. That regulation states, "Mileage shall be assessed in accordance with the mileage rates set by the Superior Court of the District of Columbia." To be in accordance means "to be in conformity or compliance,"<sup>7</sup> not "to duplicate," and I see no error in the ALJ's assessing mileage at the rates endorsed by the Department of Employment Services at the time the decision issued; while not identical to the rates set by the Superior Court, the rates endorsed by the agency at that time certainly were in accordance with the rates set by the Superior Court.

For these reasons, I dissent.

  
MELISSA LIN JONES  
*Administrative Appeals Judge*

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<sup>6</sup> *Tagoe v. Howard University Hospital*, CRB No. 11-019, AHD No. 03-287, OWC No. 568310 (October 11, 2011), p.7.

<sup>7</sup> *Garner's Dictionary of Legal Usage* 12 (3rd ed. 2011).

## APPEAL RIGHTS

Any party aggrieved by this Decision and Order may petition the District of Columbia Court of Appeals for its review. D.C. Court of Appeals Rule 15 (a) requires that the Petition for Review be filed within thirty (30) calendar days of the mailing date shown on the Certificate of Service.

The Court of Appeals is located at 430 E Street, N.W. Washington, D.C. 20001. The Court is open from 8:30 a.m. to 5:00 p.m., Monday through Friday, except legal holidays.

In addition to filing a Petition for Review with the Court of Appeals, you must send a copy of the Petition and any motions, briefs, or other documents that you submit to the court, to the opposing party in this case, and also to:

Todd S. Kim, Solicitor General  
Office of the Solicitor General  
441 4<sup>th</sup> Street NW, Suite 600 S  
Washington, DC 20001

and

Chief Clerk  
Compensation Review Board  
Labor Standards Bureau  
Department of Employment Services  
64 New York Avenue, N.E., 3<sup>rd</sup> Floor  
Washington, D.C. 20002

**MARYANNE v. HOWARD UNIVERSITY HOSPITAL  
CRB No. 11-039(2)**

**CERTIFICATE OF SERVICE**

I certify that on March 14, 2012 the attached Order Modify Decision was deposited in the U.S. Mail, postage prepaid or hand delivered, addressed as indicated below:

Maryanne Tagoe  
4860 W. Braddock Road, Apt. 40  
Alexandria, VA 22311

Certified Mail; Return Receipt Requested  
No. 7005 3110 0000 9465 7051

William H. Schladt, Esq.  
Godwin, Erlandson, MacLaughlin, Vernon  
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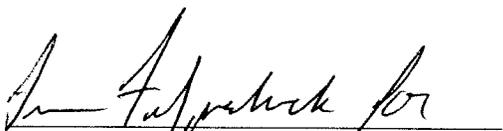
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Clerk, Compensation Review Board