GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR

ODIE DONALD II
ACTING DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 15-037 (R)

KEITH CUNNINGHAM,
Claimant,

v.

DISTRICT OF COLUMBIA OFFICE OF THE CHIEF FINANCIAL OFFICER,
Employer.

On Remand by Order of the District of Columbia Court of Appeals
DCCA No. 15-AA-778 (April 7, 2016)

Appeal from a June 18, 2015 Compensation Review Board Decision and Order
Vacating a February 2, 2015 Compensation Order
by Administrative Law Fred D. Carney, Jr.
AHD No. PBL 12-043, DCP No. 30120321386-001

(Issued February 15, 2017)

Harold L. Levi for the Claimant[1]
Andrea G. Comentale for the Employer

Before JEFFREY P. RUSSELL, LINDA F. JORY AND HEATHER C. LESLIE, *Administrative Appeals Judges*.

JEFFREY P. RUSSELL for the Compensation Review Board.

DECISION AND ORDER ON REMAND

INTRODUCTION

This case is before the Compensation Review Board ("CRB") on the April 7, 2016 Order issued by the District of Columbia Court of Appeals ("DCCA") that granted Employer's motion to remand the CRB's June 18, 2015 decision. The CRB's decision had vacated a February 2, 2015 Compensation Order ("CO") issued by an administrative law judge ("ALJ") in the

[1] Claimant represented himself at the formal hearing. He was represented by Mr. Levi at the CRB and by Mr. Levi and Mr. Newman at the District of Columbia Court of Appeals.

Administrative Hearings Division ("AHD") of the Office of Hearings and Adjudications in the District of Columbia Department of Employment Services ("DOES").

BACKGROUND FACTS OF RECORD

In 2012, Claimant worked for the Office of The Chief Financial Officer as an "information technology specialist."[2] In 2006, Claimant had been diagnosed with scoliosis and degenerative lumbar osteoarthritis. In 2008, he had surgery after sustaining an inguinal hernia in a work-related accident while working for a different employer, the District of Columbia Lottery Board. In February 2012, Claimant asked Employer to accommodate his physical limitations resulting from his back surgery and his other physical limitations from the 2008 accident.

On March 28, 2012, Claimant was working for Employer when he felt a sharp pain in his abdomen and groin after he bent over to put a compact disc into a computer server. He tried to stand but fell to the floor when his left knee gave way. The incident was filmed by Employer's security camera.

The next day, Claimant notified his supervisors by email that he was injured:

> Let this email serve as my Official Statement of events that occurred yesterday, 3/28/2012 between 3:35 and 3:50 pm:
>
> While performing duties as assigned in the role of Information Technology Specialist (Network) I had an incident where I fell to the floor in the server room. There were no witnesses to the Incident, except the security camera located in the room.
>
> Leading up to the Incident I spent three quarters of the day in and out of the server room standing, bending and kneeling inserting and removing installation media into the five servers I was working on. Sometime between 3:35 and 3:50 p.m. while kneeling to insert the installation disk into the bottom server of the rack when [sic] I felt a sharp pain in the right abdomen area while trying to stand up my right knee gave way and I fell to the floor on my right side.
>
> The pain was in the same area of my body from a previous injury while working at the DC Lottery in 2008. According to DC Official Code 1-623.22 the time period has elapsed to make a claim against the previous DCLB Case. As a result I would like to open a new claim.
>
> I will have the area examined on Monday 4/2/2012, since I already had a scheduled Doctor's appointment at the VA.

[2] During all relevant times, claims of Claimant's employer were administered by the Government of the District of Columbia's Office of Risk Management Public Sector Worker's Compensation Program ("PSWCP"). In this decision, we shall use PSWCP to refer to the Office of The Chief Financial Office or Employer, unless otherwise noted.

Employer's ("ER" Exhibit 5

After receipt of Claimant's email, his supervisor completed two forms: a First Report of Injury or Illness, in which the supervisor stated that the part of Claimant's body affected was "abdomen including groin" and a "Supervisory Report-Form 2", stating the injury of which Claimant complained was "pain in abdomen lower area."

On April 2, 2012, Claimant attended an appointment that was scheduled before the work accident at the Veteran's Administration hospital where Cynthia DiCola, CRNP, examined him. Nurse Practitioner DiCola noted that Claimant's lumbosacral examination was "abnormal", ordered x-rays and a lumbar MRI of lower back, and determined Claimant was totally incapacitated to April 18, 2012. Nurse Practitioner DiCola also restricted Claimant from doing any bending, lifting or prolonged standing.

On April 18, 2012, Dr. Jon White of the Veteran Affairs Medical Center diagnosed Claimant with degenerative lumbar spine joint disease. Dr. White reported Claimant could not return to full duty until May 7, 2012.

An April 19, 2012 MRI showed "Multilevel degenerative disease and facet arthrosis, most pronounced at L3-L4 and L4-L5 with degenerative end-plate changes, degenerative disc disease and facet arthrosis producing sever central canal compromise and severe bilateral neuroforaminal encroachment."

On April 24, 2012, Claimant completed the Public Sector Workers' Compensation Program's ("PSWCP") Form 1.[3] One of the questions on Form 1 asked Claimant to "Describe fully the events which resulted in injury or disease, what the employee was doing when injury (sic) and type of injury including parts of body affected." In response, Claimant wrote:

> I was bending down to insert a CD into server when I felt a sharp pain in my right groin. While trying to stand up, my (left) knee gave way and I fell to the ground.[4]

On May 2, 2012 Claimant was examined by PSWCP-approved Dr. John B. Cohen, an orthopedic surgeon, and by Gilbert R. Nelmes, PA-C, a certified registered physician's assistant. Their report described the accident and also noted claimant had a history of lumbar spine degenerative disc disease. Their impressions were: lumbosacral spine strain, preexisting degenerative disc disease with bulging discs, preexisting congenital canal stenosis, preexisting left knee degenerative joint disease with an ACL tear, preexisting cervical spine degenerative disc disease.

On May 7, 2012, Claimant returned to work in accordance with Dr. White's April 18, 2013 determination.

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[3] Although this document is titled "Employer & Employee First Report of Injury or Occupational Disease" it is used as an employee's claim to request workers' compensation benefits.

[4] During the hearing, Claimant acknowledged that the earlier statement in his e-mail that he injured his right knee was incorrect. Claimant testified his left knee gave way. HT 80-83.

On May 14, 2012, Nurse Practitioner DiCola completed a Form 3 (Physician's Report of Employee's Injury and Disability) regarding her April 2, 2012, examination. On that form she noted her examination showed abnormal blood pressure caused by pain and spasms and an abnormal lumbosacral physical examination.

Although Nurse Practitioner DiCola marked "undetermined" in response to the question whether the injury was work related, she hand wrote, "Patient's pain is related to his fall at work which caused spasms."

Dr. Cohen and PA-C Nelmes examined Claimant on May 15, May 29, June 12 and June 29, 2012. Those reports show they thought Clamant could do light duty work until June 29, 2012, when he was discharged with the only restrictions imposed being to prevent further injury.

On June 25, 2012, PSWCP's claims representative sent Claimant a Notice of Determination Regarding Denying Workers' Compensation Benefits ("NOD").

The NOD letter stated:

> Why You Have Received This Notice
> Based on the information you have provided, and the other information outlined in this letter, we conclude you are not eligible for workers' compensation benefits. This determination applies to all injury claims associated with this claim number.
>
> Basis for Your Claim
> You reported that on March 28, 2012, you sustained an injury to your groin area when you were trying to put a compact disc in a server and you felt a sharp pain in your groin area. You initially sought treatment at the VA Hospital and you were diagnosed with degenerative joint disease of the lumbar spine.
>
> You attended a follow up visit with Capitol Hill Orthopedics on May m 2012 in which your diagnosis included degenerative disc disease with bulging discs preexisting, congenital canal stenosis preexisting, degenerative joint disease with a tear of the ACL, preexisting to the left knee, degenerative disc disease/cervical spine preexisting and lumbosacral spine strain.
>
> We conclude that your accident did not occur while in the course and scope of employment.
>
> Initial Decision Denying Benefits
> At the time of your injury, you were a [sic] IT specialist, for the Office of Chief Financial Office. However, based on our investigation, outlined above, you are ineligible for Public Sector Workers' Compensation Benefits.

The letter concluded with a final paragraph that advised Claimant of his right to a hearing and what he must do to exercise that right.

THE ALJ'S COMPENSATION ORDER

A formal hearing was held on November 5, 2012. At the hearing Claimant sought continuation of pay, restoration of personal leave, temporary total disability benefits from March 28, 2012 through May 7, 2012, permanent partial disability benefits from May 8, 2012 through the date of the hearing and continuing, a functional capacity examination, and reasonable accommodations.

The hearing record closed on November 27, 2012. The ALJ issued the Compensation Order ("CO") on February 2, 2015.

The ALJ held that Claimant that Claimant first became aware of the association between the March 28, 2012 accident at work and his back problems at the April 2, 2012 examination by Nurse Practitioner DiCola and that he gave Employer "specific notice" when Nurse Practitioner DiCola sent in the May 14, 2012 Form 3.

The ALJ further held that although Claimant did not provide notice within 30 days, late notice was excused because Employer had notice of a "general injury to the right side" through the video of the accident. CO at 5. Additionally, the ALJ excused Claimant's failure to give notice within 30 days because Employer had "actual notice of a general injury to the back" because of the video of Claimant's accident.

The ALJ also held that Claimant timely filed his claim on the day after the accident when he sent in the e-mail. The ALJ, then relying regulations that were not in effect on the date of Claimant's accident, held Claimant claimed a back injury when the May 14, 2012 physician's report Form 3 was filed.

As to AHD jurisdiction, the ALJ determined that the NOD's general denial of "all injury claims associated with this claim number" was a final determination on the claims which were identified in two medical reports; Dr. White's April 18, 2012 diagnosis of "degenerative joint disease of the lumbar spine" and Nurse Practitioner DiCola's May 14, 2012 Form 3.

The ALJ granted in part and denied in part Claimant's claim. The ALJ held Claimant sustained a back injury in the performance of his work because the March 28, 2012 event aggravated Claimant's preexisting back condition. The ALJ further held that Claimant was temporary totally disabled and entitled to continuation of pay and workers' compensation benefits from April 2 until May 7, 2012, and that Claimant did not prove he was permanently and partially disabled from May 8, 2012 to the present and continuing.

PSWCP appealed only two of the ALJ's decisions to the CRB: the ALJ's "excusal of Claimant's lack of timely notice of the back injury" and "the ALJ's conclusion that Claimant filed a timely claim for a back injury." Employer's Memorandum of Points and Authorities In Support of Its Application For Review" at 3.

THE CRB'S DECISION

The CRB issued its Decision and Remand Order ("DRO") on June 18, 2015. The CRB reversed the ALJ's findings that Clamant gave timely notice of, and timely filed a claim for, a back injury.

The CRB held that the ALJ erred in finding that Claimant provided timely notice of his back injury by the e-mail because there was no indication in the e-mail that Claimant sustained a back injury. The CRB held that the video did not provide the requisite notice because, contrary to the ALJ's finding, "There is no provision in the act [sic] for 'general notice about an injury'".

The CRB did not decide whether a Form 3 could provide notice because it held that, as a matter of law, Claimant did not provided timely notice:

> even if a medical report could satisfy a claimant's requirement of providing timely written notice, the (Form 3) reference by the ALJ is dated more than thirty days after Mr. Cunningham's accident and more than thirty days after April 2, 2012 when he was aware that his March 28, 2012 injury resulted in work-related lumbar spasms. As a matter of law, Mr. Cunningham as not provided timely notice of his back injury and Employer did not have actual notice of Mr. Cunningham's back injury.

DRO at 5.

The DRO further held that there was no evidence in the record that Clamant timely filed any claim for a back injury and vacated the ALJ's February 2, 2013 CO.

After the CRB denied Claimant's Motion for Reconsideration on July 8, 2015, Claimant appealed to the District of Columbia Court of Appeals ("DCCA").

THE REMAND FROM THE DCCA

After Claimant filed his brief at the DCCA, the DOES – the respondent in this appeal – filed a Motion to Remand to which Claimant did not object. The motion stated that "a remand is warranted because the CRB has not yet addressed key legal issues that (Claimant) raises on appeal."

The key legal issues identified related to the two issues on which it had appealed to the CRB; whether Claimant had given timely notice and whether Claimant timely filed a claim for his back injury. The DOES s motion stated the issues were"

> 1. Did Employer have actual knowledge of Claimant's back injury within 30 days of his accident at work and was Employer not prejudiced by Claimant's failure to give notice.

DOES asserted in its motion to the DCCA that in resolving this issue the CRB may have to decide (1) if the videotape of Claimant's accident at work amounted to notice of his back injury,

(2) whether Employer's Form 3 and other medical reports constituted notice of his back injury and (3) when Claimant learned his back pain was related to his accident at work.

> 2. Whether Employer's Form 3 and the other medical reports submitted by medical professionals are part of Claimant's claim such that a claim for a back injury was made and whether Employer's Notice of Determination ruled on a claim for a back injury.

In an Order dated April 7, 2016, the DCCA, in part, held:

> ORDERED that respondent's motion to remand is granted and this case is remanded to the agency for further proceedings consistent with the statements made in respondent's motion.

On June 3, 2016, Claimant, without request, filed "Response to Notice of Assignment and Order Regarding Supplemental Filing."

On June 7, 2016, the CRB notified the parties that it was deferring consideration of this matter until after the DCCA issued its disposition in another case that was pending at the DCCA, *Reyes v. DOES*, DCCA No. 15-AA-648, because it appeared *Reyes* involved similar issues to those in this case.

The DCCA issued its decision in *Reyes* on December 26, 2016, shortly after the CRB reinstated the case to the review docket. The parties filed written statements discussing whether the *Reyes* decision was controlling authority for this appeal.

DISCUSSION

THE REYES DECISION

The facts presented in *Reyes* are similar to the present claim. Like Mr. Cunningham, Dr. Reyes was an employee of the District of Columbia government who suffered a workplace injury and notified her employer of several injuries (injuries to her face, head and back) in her First Report of Injury. She did not initially notify her employer of another injury (injury to her right knee) that she later asserted was injured in the workplace accident.

Employer accepted Dr. Reyes's claim for "headache, cervical and lumbar sprain, rib contusion, and face contusion." Employer sent Dr. Reyes to an Additional Medical Examination (AME) for the accepted injuries. During the examination, she advised the doctor of her right knee difficulties and told him it had locked and buckled in December 2011 (one month before the accident at work). She did not tell the doctor she injured her knee during the accident at work.

Relying on the AME, Employer sent Dr. Reyes a NOD that said it was terminating benefits, primarily because the AME doctor had said her right knee problems were not related to the accident at work. The NOD stated:

> We intend to close your public sector workers' compensation claim. Benefits will be terminated on November 4, 2012. You no longer meet the requirements for continued claim payments. This conclusion is based on an Additional Medical Evaluation performed by Dr. Stanley Rothschild on July 7, 2012. Dr. Rothschild does not believe that your current complaints to the knee are related to the accident of January 26, 2011. He also believes that you are at maximum medical improvement for all other body parts related to the incident of January 26, 2011 (cervical and lumbar spine, rib contusion, face contusion); that you require no further medical treatment and you can work full duty without restrictions.

Dr. Reyes asked for reconsideration, which was denied by a Final Decision on Reconsideration.

After a formal hearing, an ALJ restored benefits to Dr. Reyes, finding that her right knee injury was a work-related aggravation of a pre-existing condition and therefore was compensable. On appeal, the CRB reversed.

The CRB noted that our prior decisions held that before AHD has jurisdiction, there must be a final determination by the PSWCP on the specific claim for which a hearing was requested.[5] The CRB further held that "arguably" PSWCP issued a Final Determination regarding Dr. Reyes's right knee injury.

However, the CRB vacated the award restoring benefits to Dr. Reyes, relying on an unpublished DCCA decision, *Jackson v. D.C. Housing Authority, rev'd sub nom, D.C Housing v. DOES*, No 12-AA1824, Mem. Op. & J. (D.C. March 31, 2014). In *Jackson,* the DCCA reversed the CRB's decision that AHD had jurisdiction to adjudicate a back claim, even though the claimant had not identified any back injury on his claim form.[6]

The DCCA held the CRB's determination that AHD lacked jurisdiction to hear Dr. Reyes's right knee claim was erroneous:

> The CRB understood this court to have held in *Jackson* that a DOES ALJ only has jurisdiction to hear claims for which the claimant had given timely notice and for which the Program had issued a final decision. Although the CRB acknowledged that *Jackson*, as an unpublished decision, "is not to be viewed as having precedential authority," it felt "obligated to adopt" what it understood to be the court's reasoning therein. Accordingly, the CRB concluded that the ALJ lacked jurisdiction to adjudicate Dr. Reyes's claim, and vacated the ALJ's compensation order. Dr. Reyes then filed the petition for review now before us.

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[5] The term "Final Determination" is used generically to refer to any final decision rendered by PSWCP, such as an NOD.

[6] The CRB recognized that *Jackson* was an unpublished opinion and was not precedential authority. However, the CRB believed *Jackson* was "informative regarding the Court's position on this legal issue." While an unpublished opinion may hot have precedential authority, because the CRB was reversed in *Jackson*, it felt obligated to adopt the Court's reasoning.

Reyes at 4.

> The procedural history of *Jackson* is distinguishable and the CRB misunderstood the nature of our decision in that case. *See Nunnally v. District of Columbia Metro. Police Dep't*, 80 A.3d 1004, 1012 (D.C. 2013) ("An agency's interpretation of our case law does not trigger an obligation of deference on our part."). In *Jackson*, the CRB upheld an ALJ's review of a request for benefits never presented to or decided by the Program, reasoning that the Program had failed to challenge the ALJ's jurisdiction and had thus waived any such argument. This court reversed the CRB, pointing out that Jackson's back claim was never asserted to DCHA. *Jackson* had no occasion to address, and thus did not decide, the question of whether an initial failure to allege an injury to a specific part of the body creates a jurisdictional bar even if the agency thereafter considers that alleged injury and decides on the merits that the alleged injury does not provide a basis for an award. This case presents that question, because Dr. Reyes did ask the Program to consider her right knee claim (in a motion for reconsideration), and the Program in fact did consider and reject that claim in its Final Decision on Reconsideration. *Jackson* is thus inapposite.

Reyes at 7. (Underline added).

Reyes clarified that the failure to identify a specific injury on a First Report or on a Form 1 claim form is not a bar to AHD's jurisdiction. However, the underlined portions of the above-quoted passage from *Reyes* can be interpreted in two ways.

The first possible interpretation is that there is one condition precedent for AHD jurisdiction: PSWCP must have considered the later-identified injury and decided on the merits that the injury doesn't qualify for an award.

This interpretation would rely on the DCCA's description of what it did not decide in *Jackson*. ("*Jackson* had no occasion to address, and thus did not decide, the question of whether an initial failure to allege an injury to a specific part of the body creates a jurisdictional bar even if the agency thereafter considers that alleged injury and decides on the merits that the alleged injury does not provide a basis for an award." *Id.*)

The second interpretation would be that there are two conditions precedent: (1) a claimant must at some time ask PSWCP for consideration of the later-identified injury and (2) PSWCP must have considered that injury and decided on the merits in a final decision that the injury doesn't qualify for an award.

This interpretation would rely on the DCCA's explanation of the issue presented in *Reyes*. ("This case presents that question, because Dr. Reyes did ask the Program to consider her right knee claim (in a motion for reconsideration), and the Program in fact did consider and reject that claim in its Final Decision on Reconsideration. *Jackson* is thus inapposite." *Id.*,)

We find the first interpretation is the proper analysis for determining AHD jurisdiction of a claim involving an injury not identified on a first report or claim form. That is, a claimant would not be barred from having a formal hearing for a claim relating to an injury that was not identified on the first report or claim, so long as PSWCP considered the alleged later-identified injury and issued a final determination on the merits of the later-identified injury.

To require a claimant to ask PSWCP to consider a claim for which PSWCP already had all the information it needed to investigate and issue a final determination would require a claimant to do a useless act. If PSWCP did not have sufficient notice of the later-identified injury and could not have fully investigated (including ordering an AME) the claim related to that injury, it would not have issued a final decision on the merits of the claim.

THE ISSUES ON REMAND

Did Employer have actual knowledge of Claimant's back injury within 30 days of his accident at work and was Employer not prejudiced by Claimant's failure to give notice.

The first issue on remand is whether Employer had actual notice, through the videotape of Claimant's accident, Employer's Form 3 or otherwise of the back injury claim and when did Claimant learn his back pain was related to the work accident.

Notice by Videotape

The CRB finds that while a videotape of an accident potentially could amount to actual notice, the evidence presented at the hearing and the factual findings of the ALJ, do not support the finding that this Employer had actual notice from this videotape.

First, there was no evidence that Employer ever reviewed the videotape. Assuming that it did, the ALJ found the videotape showed Claimant "attempting to stand" and "an injury to (Claimant's) right side". Significantly, the videotape of Claimant's accident did not show an injury to the back. Therefore, the videotape of the accident is insufficient to impute notice of a back injury to Employer.

Notice by Employer's Form 3 and Other Medical Reports

This remand instruction relates to whether a medical report filed by a medical provider that identifies a specific injury that was not identified by a claimant can be considered notice of that injury to meet the statutory and regulatory requirements.

By code and by regulation, injured workers are required to give timely notice of their injuries. D.C. Code § 1-623.19 requires an injured public sector worker to give written notice of his or her injury within 30 days after the injury and identifies other information that is to be provided with the notice.

Subsection (6) of § 1-623.19 requires the notice to "State the cause and nature of the injury".

7 DCMR § 108.1 states:

> An employee shall give notice of an injury, or an employee's representative shall give notice of an employee's death to the employee's official superior within thirty (30) days of the injury or death, and all information that is required by section 2319 of the Act shall be supplied to the Program within that period.

7 DCMR § 108.3 says "The employee shall provide all information required by the Program to make a determination on the claim." 7 DCMR § 108.4 lists information that "shall" be in the notice. Relevant to the present discussion, subsection (d), also requires the notice to state "the cause and nature of the injury."

Previously, in *Linnen v. D.C. Public Schools*, CRB 15-111 (November 13, 2015), the CRB has rejected the view that a medical provider's reports or forms can be considered notice by the employee to meet the statutory or regulatory requirement. We affirm the *Linnen* decision.

The two primary purposes of notice provisions are "[f] irst, to enable the employer to provide immediate medical diagnosis and treatment with a view to minimizing the seriousness of the injury; and second, to facilitate the earliest possible investigation of the facts surrounding the injury." 2B A. LARSON, *The Law of Workmen's Compensation*, § 78.10, (1989).

Medical reports often refer to many different body parts for which a doctor examined an injured worker. It is unreasonable in our view to expect an employer to parse a medical report to figure out which body part may be claimed.

The statute and regulations place the responsibility on the claimant to provide proper notice. We think such a significant change as suggested by Claimant is a matter for statutory or regulatory change and should not be accomplished by administrative fiat.

D.C. Code § 1-623.19 (b) (1) provides that the failure to give notice will not bar a claim if PSWCP "had actual knowledge of the injury or death and its relationship to the employment and the employer has not been prejudiced by the failure to give notice."

Since PSWCP did not have actual notice of Claimant's back injury (either through the videotape or medical reports), there was no requirement that PSWCP prove prejudice.

When did Claimant learn his back pain was related to the work accident?

We should note that the record regarding when Claimant learned that his back injury was related to his work injury is not as clear as our previous decision might have indicated. However, we do not need to decide that issue in light of our decisions that Claimant did not give timely notice or timely file a claim for a back injury.

Whether Employer's Form 3 and the other medical reports are part of Claimant's claim such that a claim for a back injury was made and whether Employer's Notice of Determination ruled on a claim for a back injury.

The first issue raised by this remand relates to the obligation to file a timely claim. It asks us whether the Form 3 or other medical reports that identifies a body party can be considered part of a claimant's claim, such that a claim for the specific body part was made. We agree with Employer that Claimant, by virtue of Form 3 or the other medical reports, has not made a claim for a back injury.

As with notice, the statute and regulations place the burden on the claimant to timely file a claim. And as indicated in our discussion of notice, medical reports often refer to many different body parts that were examined by the doctor but have no relation to the accident at work. It is inconsistent with the statute and regulations, and indeed unfair, if not a due process violation, to say as a matter of law, that a claim has been made for every body part mentioned in a medical report.

The final issue on remand is whether PSWCP issued a final decision on the merits of Claimant's back claim. Consistent with our view of *Reyes,* we must decide if PSWCP considered and issued a final decision on the merits of Claimant's back injury claim. We find it did not.

The NOD does not show PSWCP considered and issued a decision on the merits of Claimant's back injury claim. The NOD did not deny a back claim. While the NOD recited the medical reports and the opinion of the doctors, the NOD concluded that Claimant's accident did not arise out of and in the course of his employment. This is a legal conclusion, not a medical determination and does not reject Claimant's back claim.

We disagree with Claimant's argument that the general denial in the NOD is a final decision on his back claim. The CRB has never held, and Claimant has not provided any authority, for the proposition that a general denial of all claims, such as the statement in the NOD ("This determination applies to all injury claims associated with this claim number") is the basis of jurisdiction for injuries specifically identified in the NOD.

Moreover, claimant did not file a back claim. Therefore, even if a general denial was the equivalent of a final decision, this general denial was ineffective as a final decision since it was limited to "all injury claims".

AHD has jurisdiction to only decide what the PSWCP resolved, whether Claimant's accident arose out of and in the course of his employment.

AHD's jurisdiction upon the PSWCP's issuance of the NOD was limited to determining whether the fall alleged to have injured Claimant constituted a compensable event under the worker's compensation law governing District of Columbia government employees. Since the NOD did not consider and reject Claimant's back injury claim, we respectfully submit that, in light of the post-remand *Reyes* decision, the issues related to Claimant's back injury that were identified in

PSWCP's motion to remand are immaterial since AHD does not yet have jurisdiction to hear that claim.

However, since the remand instructions have not been modified or withdrawn, we have responded.

So ordered.