

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



ODIE DONALD II
ACTING DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 16-143

**ABDURRAHAMAN HENDERSON,
Claimant-Respondent,**

v.

**VERIZON WASHINGTON, DC, INC., and
SEDGWICK CMS, INC.,
Employer/Third-Party Administrator-Petitioner.**

Appeal from an October 24, 2016
Supplemental Compensation Order Declaring Default with Penalties
by Administrative Law Judge Amelia G. Govan
AHD No. 13-484B, OWC No. 697203

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2017 FEB 28 PM 11 53

(Decided February 28, 2017)

Benjamin E. Douglas for Claimant
Curtis B. Hane for Employer

Before JEFFREY P. RUSSELL, LINDA F. JORY, and GENNET PURCELL, *Administrative Appeals Judges.*

JEFFREY P. RUSSELL for the Compensation Review Board.

DECISION AND REMAND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

The following background is from the Supplemental Compensation Order Declaring Default With Penalties ("Default Order 2") issued October 24, 2016 by an Administrative Law Judge ("ALJ") in the Administrative Hearings Division of the Office of Hearings and Adjudication in the District of Columbia Department of Employment Services, which is before us on this appeal brought by Employer:

After timely notice, a full evidentiary hearing in the above-captioned matter was held on December 4, 2014 before [the ALJ]. A Compensation Order issued on January 30, 2015 awarding Abdurrahman Henderson ("Claimant") temporary total disability benefits beginning August 25, 2014, to the present and continuing.

On March 19, 2015, the undersigned received, from Claimant, a Motion for Supplementary Order Declaring Default for outstanding compensation benefits against Verizon/Sedgwick CMS ("Employer"). Claimant requested issuance of an Order, as well as a penalty of an additional 20% of the amount due, pursuant to § 32 of the District of Columbia Workers' Compensation Act, D.C. Code, as amended, §32-1515 (f).

On March 27, 2015, Employer was ordered to show cause as to why an Order of Default, awarding the requested outstanding compensation and assessing the requested penalty against the Employer, should not issue. Employer filed its Employer/TPA'S Response to Order to Show Cause ("Response") on April 9, 2015. Employer argued that Claimant incorrectly calculated the amount due to Claimant when he "lump[ed] all deductions from gross wages together" and "fail[ed] to distinguish between tax deductions and deductions that inure to Claimant's benefit." Response at 2.

Claimant filed a Response to Employer's Response ... on April 17, 2015.

Claimant reiterated his request for outstanding compensation benefits or alternatively, the reduced compensation benefit suggested by Employer.

Default Order 2 at 1-2.

On May 13, 2015, the ALJ issued a Supplemental Order Declaring Default ("Default Order 1"). In Default Order 1, the ALJ ordered that "Employer is in default of the Compensation Order dated January 30, 2015 ... that Employer pay claimant \$8,614.75 along with a 20% penalty; and ... to pay Claimant's continuing benefits **WITHOUT FURTHER DELAY**" *Id.*, at 3.

Continuing from Default Order 2:

Claimant filed a Motion for Supplementary Order Declaring Default on June 22, 2016. Claimant alleged that Employer was ordered to pay \$8,614.75, plus a penalty of \$1,722.95, for a total amount of \$10,337.70, pursuant to the Compensation Order issued January 30, 2015. Employer paid Claimant \$8,156.47 in benefits, plus a \$1,631.00 penalty, for a total amount of \$9,787.47. Claimant requested that Employer be ordered to pay the balance owed in addition to a twenty percent (20%) penalty of \$110.05, totaling \$660.28.

On June 27, 2016, Employer was ordered to show cause as to why an order should not be issued declaring default for failure to pay the remaining balance due in the instant matter. Employer filed its Response to Order to Show Cause on July 11, 2016. Employer alleged that it is entitled to a credit in the amount of \$458.28 for duplicate temporary total disability benefits paid to Claimant from March 15, 2016 to March 17, 2016. Employer claimed that the Parties agreed that duplicate benefits were paid, and that Employer was entitled to the credit. However,

Claimant objected to Employer's calculation that assessed a twenty percent (20%) penalty to the balance due after deducting the credit, instead of calculating the penalty against the entire balance of \$8,614.75, the amount Employer was ordered to pay. The difference between the ordered amount and the balance (minus credit to Employer), was \$91.95. Employer subsequently paid Claimant the difference of \$91.95.

On October 6, 2016, Claimant filed a Motion for Penalties on Unpaid Sums. Claimant alleged that he *missed work due to his illness* on August 11, 2016 to August 22, 2016 and on August 30, 2016 to October 5, 2016, for a total of forty-four (44) days. Claimant informed Employer that he was ill and unable to work on the above mentioned days. Employer paid Claimant \$152.76 in disability benefits for September 6, 2016. Claimant argued that Employer has not paid \$6,568.60 in delinquent disability benefits for Claimant's missed days from work.

Default Order 2 at 2 (emphasis added).

The ALJ then proceeded to make the following findings of fact:

Employer has not acted in an appropriate manner by properly paying benefits to the Claimant for a total of forty-four (44) missed days of work, which Employer is responsible for paying under the January 30, 2015 Compensation Order. Further, Employer has not shown that its untimely payment of benefits due is the result of conditions over which it had no control. The D.C. Court of Appeals has clearly indicated that the mandate of D.C. Code §32-1515(f) is unequivocal and must be strictly applied, noting that the statute does not limit application to "unreasonable" delay or provide agency discretion as to the proper penalty amount. *Hard Rock Café [v. DOES]*, 911 A.2d 1217 (D.C. 2006)].

Accordingly, Claimant herein is entitled to delinquent disability benefits for forty-four (44) days in addition to a twenty percent (20%) penalty due to the late payment of benefits awarded in the January 30, 2015 Compensation Order.

ORDER

Based upon the foregoing, it is hereby **ORDERED** that Employer is in default for non-compliance with the January 30, 2015 Compensation Order. Employer is further **ORDERED** to pay any and all delinquent temporary total disability benefits, in addition to a twenty percent (20%) penalty, to Claimant, pursuant to D.C. Code, as amended, §32-1515(f).

Default Order 2 at 3-4.

On November 2, 2016, Employer filed Employer/Carrier's Application for Review and Employer/Carrier's Memorandum of Points and Authorities in Support of Application for

Review (“Employer’s Brief”), with the Compensation Review Board (“CRB”), seeking reversal of Default Order 2, and remand for a formal hearing on the issue of Employer’s alleged default.

On November 9, 2016, Claimant filed Claimant’s Opposition to Employer and Insurer’s Application for Review and Claimant’s Memorandum of Points and Authorities in Support of Claimant’s Opposition to Employer and Insurer’s Application for Review (“Claimant’s Brief”), opposing the Application for Review as being “without merit”, but does not state what disposition, if any, the CRB should make.

From the administrative file of AHD, as well as from Claimant’s Response in Opposition to Employer and Insurer’s Application for Review, we note that on October 27, 2016, Employer filed an Application for Formal Hearing in AHD, seeking modification of the January 30, 2015 Compensation Order due to a change in Claimant’s condition.

Because the ALJ did not properly adhere to the requirements of the default provisions of D.C. Code § 32-1519 (a) governing determination of the fact and amount of an alleged default on compensation payments, including failing to conduct a formal hearing and failing to make a determination as to the amount of any default, we vacate the Supplemental Compensation Order Declaring Default With Penalties issued October 24, 2016.

ANALYSIS

D.C. Code § 32-1519 (a) governs procedures with respect “Collection of defaulted payments”, which is in fact the title of the section. It provides in relevant part:

In case of default by the employer in the payment of compensation due under any award of compensation for a period of 30 days after the compensation is due and payable, the person to whom such compensation is payable may, within 2 years after such default, make application to the Mayor for a supplementary order declaring the amount of the default. After investigation, notice and hearing, as provided in § 32-1520, the Mayor shall make a supplementary order, declaring the amount of the default, which shall be filed in the same manner as the compensation order. ... The applicant may file a certified copy of such supplementary order with the Clerk of the Superior Court of the District of Columbia. Such supplementary order shall be final, and the Court shall, upon the filing of the copy, enter judgment for the amount declared in default by the supplementary order. ... The Court shall modify such judgment to conform to any later compensation order upon presentation of a certified copy thereof to the Court.

Employer argues that Default Order 2 “fails to apply any applicable legal standard recognized under the law of the District of Columbia in addressing the issue of payment of [temporary total disability] benefits under the D.C. Act” relying instead upon adoption of an “appropriate manner” and/or “proper payment” standard to conclude Employer has failed to pay for 44 days of benefits owed. Employer’s Brief at 3.

Employer also complains that Default Order 2's conclusion with respect to the unpaid benefits is based on "nothing more than Claimant's unsworn allegations in his Motion—that Claimant 'informed Employer that he was ill and unable to work'", which beyond being mere unsworn allegations, "standing alone [are] not a finding that Claimant was temporarily totally disabled and unable to work due to a causally related condition of his work injury." Employer's Brief at 4 and nt. 4.

Lastly, Employer requests a remand for the purpose of a formal hearing. Employer's Brief at 5.

Claimant opposes the Application for Review, but does not address the lack of record-based evidentiary support for the default declaration, and does not argue or suggest that the statutory procedures were followed in the issuance of Default Order 2.

We vacate the order and remand the matter for the conduct of the statutorily mandated formal hearing.

With respect to the ALJ ordering payment without further delay, and since this matter is being returned to AHD we shall take this opportunity to remind all concerned that the default provisions do not contemplate that DOES or AHD act in an enforcement capacity. The agency has the authority to make awards of compensation, including awards of medical benefits, but the agency does not "order" that payment be made. There is no such authority in the Act. Rather, enforcement of awards is a matter left to the Superior Court. It is for that purpose that the Act requires that a declaration of default be specific as to the *amount* of that default, so that a judgment can be entered (or modified upon presentation of a later compensation order) by the Court.

CONCLUSION AND ORDER

The Supplemental Compensation Order Declaring Default with Penalties issued October 24, 2016 was issued without the required formal hearing, is not based upon any record evidence, and does not comport with the requirement that a default declaration include the amount of any default that has been established. It is therefore not in accordance with the law, and is VACATED. The matter is REMANDED to the Administrative Hearings Division for further proceedings consistent with the foregoing Decision and Remand Order.

So ordered.