

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services

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DIRECTIVE: Administrative Policy Issuance No. 05-01 – Change 1
DATE: January 3, 2025
TO: Compensation Review Board
Administrative Hearings Division
Office of Workers' Compensation
FROM: Dr. Unique Morris-Hughes
Director
SUBJECT: Amendment to Administrative Policy Issuance No. 05-01

I. Purpose

The purpose of this Administrative Policy Issuance is to amend Administrative Policy Issuance 05-01 and provide specific delegation of authority to review decisions of the custodian of the Special Fund to the Office of the Director. Specifically this issuance reviews the relevant background and legal authority, amends Section 3 to eliminate any conflicting language and to limit the delegation of the Director's authority to the Compensation Order Review Board to what has been mandated by statute, and amends Section 4 to include a new section delegating the Director's authority as the custodian of the Special fund to the OWC and setting forth a process to review the custodian's Determination of Payment from the Special Fund. Finally, this Administrative Policy Issuance also repeals the June 9, 2006 General Counsel Opinion (2006 GC Opinion), without replacement.

II. Background and Legal Authority

Pursuant to the District of Columbia Workers' Compensation Act of 1979, effective July 1, 1980, (D.C. Law 3-77; D.C. Code § 32-1519(e)) (the Act), a "compensation order" is an "order rejecting the claim [for compensation] or making the award." A final order from the Office of Workers' Compensation, which formalizes the outcome of an informal or vocational rehabilitation conference, is a "compensation order" under the Act. The "Mayor may, in h[er] discretion, and to the extent [s]he shall determine advisable . . . , make payment from [the special] fund upon *any award* made under this chapter." D.C. Code § 32-1519(b) (emphasis added).

In 2004, the D.C. Council enacted the "Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004" effective December 7, 2004 (D.C. Law 15-205; D.C. Code § 32-1521.01 *et seq.*) (Reform Act), which established the Compensation Order Review Board (CRB) and mandated that the CRB shall review "compensation orders" and "dispose of the matter

by affirming the compensation order; reversing the compensation order, in whole or in part, . . . or by remanding the order to the issuing Administrative Law Judge for further review.” D.C. Code § 32-1521.01(d).

Shortly thereafter, the Department of Employment Services issued the Director's Administrative Policy Issuance No. 05-01 (February 5, 2005) (API 05-01), which delegated the authority and assigned the responsibility to act for the Director in “the administrative review of compensation orders issued by the Administrative Hearings Division and OWC.” Section 3(a) of API 05-01. API 05-01 further elaborates “the administrative review authority formerly vested in the Office of the Director . . . is hereby delegated and assigned to the [CRB], which shall review and determine appeals from *decisions* of the Administrative Hearings Division and/or the OWC consistent with statutory authority.

Based on a request of the CRB, the Office of the General Counsel, through a June 9, 2006 General Counsel Opinion (2006 GC Opinion), opined that “the broad delegation to the CRB contained in Section 3(c) necessarily included the delegation of the Director’s authority to review included the delegation of the authority to review decisions of the Custodian of the Special Fund.”

In *McGee v. Custodian of the Special Fund*, CRB (Dir. Dkt.) No. 03-052, 2006 DC Wrk. Comp. LEXIS 277 (July 17, 2006) (*McGee*), the CRB initially noted that “decisions of the Special Fund are not ‘compensation orders’ or ‘awards’” and that there was no clear authority for CRB review of special fund orders. However, based on the 2006 GC Opinion, the CRB found that the Director could “assign the CRB additional review powers beyond what is included in the statute.” *McGee*, 2006 DC Wrk. Comp. LEXIS 277, at *9.

The issue of the CRB’s authority was raised again in *Cisneros-Campos v. D.C. Dep’t of Emp. Svcs.*, No 22-AA-640, Mem. Op. & J. (June 7, 2024) (“*Cisneros-Campos DCCA*”), where the District of Columbia Court of Appeals (DCCA) held that it lacked jurisdiction to hear an appeal of a CRB order affirming a Special Fund Order to deny payment. While, the DCCA expressly declined to address whether such decisions by the Special Fund were “compensation orders,” the DCCA clearly found that the Special Fund orders were not “agency actions” in contested-cases. *Cisneros-Campos DCCA* at 4. Ultimately, the claimant was not entitled to a trial-type hearing by statute, regulation or the Due Process clause for a decision determining payment from the special fund and the DCCA directed the claimant to file a claim with the D.C. Superior Court.

The Director has ultimate and broad authority in interpreting the Act. *Smith v. District of Columbia Department of Employment Services*, 548 A.2d 95, 97 (D.C. 1988). Therefore, based on the background and legal authority presented herein, a “Determination of Payment from the Special Fund”¹ is not a contested case, an award, or a compensation order, under the Act and its implementing regulations.

¹ This used to be called a “Special Fund Order” but to eliminate any confusion with an award or compensation order, they are now a “Determination of Payment from the Special Fund.”

III. Amendments to Section 3: Delegation of Authority and Assignment of Responsibilities

The following amendments to “3. Delegation of Authority and Assignment of Responsibilities” are made in order to eliminate any conflicting language and to limit the delegation of the Director’s authority to the CRB to what has been mandated by statute.

(A) Section 3(c) is deleted and replaced with the following “(c) Consistent with D.C. Code § 32-1521.01, the administrative review of compensation orders, formerly vested in the Office of the Director under the public and private sector Acts, is hereby delegated and assigned to the CRB. Compensation orders are orders rejecting the claim for compensation or making the award for compensation, and include final orders issued by OWC.”

(B) A new Section 3(d) is added to read as follows:

“(d) The role as the custodian of the Special fund, including the administration of the Special Fund, in accordance with the Act and its implementing regulations, is hereby delegated and assigned to the Associate Director, or designee, of OWC.”

IV. Amendment to Section 4 – Composition and Organizational alignment of the Administrative Hearings Division

Section 4 is amended to add a section delegating the Director’s authority as the custodian of the Special fund to the OWC and set forth a process to address a claimant, beneficiary or attorney’s request to review the custodian’s Determination of Payment from the Special Fund. AHD’s paragraph remains the same.

(A) Section 4 is deleted in its entirety and replaced with the following:

“4. The Administrative Hearings Division and the Office of Workers Compensation – Special Fund:

(A) Administrative Hearings Divisions: The Administrative Hearings Division shall be headed by a Chief Administrative Law Judge, who shall report to the Deputy Director of the Labor Standards Bureau, and shall be composed of a minimum of ten Administrative Law Judges, and such paralegals, clerical staff, staff assistants and secretaries as deemed necessary. For organizational purposes, the Administrative Hearings Division is placed within the OHA, Office of the Assistant Director/Labor Standards Bureau, and it is hereby established in that Office.

(B) Office of Workers’ Compensation – Special Fund: The Office of Workers’ Compensation shall be headed by the Associate Director, who shall report to the Deputy Director of the Labor Standards Bureau. The Associate Director, or designee, is designated as the custodian of the special fund and is responsible for administering the fund in accordance with the Act and its implementing regulations. Specifically, the custodian may, in its

discretion, and to the extent advisable after consideration of current commitments, make payment from the Special Fund through a "Determination of Payment from the Special Fund" ("Payment Determination").

- (i) A Payment Determination is an agency action on a non-contested matter that makes payment for:
 - (1) Any compensation order made under the Act where there has been a default by reason of the employer's insolvency or other circumstances precluding payment including:
 - (a) Compensation benefits pursuant to D.C. Code § 32-1508;
 - (b) Death benefits pursuant to D.C. Code § 32-1510;
 - (c) Supplemental allowances pursuant to D.C. Code § 32-1506;
 - (d) Medical services and supplies pursuant to D.C. Code § 32-1507; and
 - (e) Attorneys' fees pursuant to D.C. Code § 32-1530; or
 - (2) Any necessary medical, surgical and other treatment required by D.C. Code § 32-1507 in any case of disability, defined as "physical or mental incapacity because of injury which results in the loss of wages" (D.C. Code § 32-1501(8) *where there has been a default* in furnishing medical treatment by reason of the insolvency of the employer.
- (ii) Before seeking a Payment Determination, a claimant shall:
 - (1) File an application for a formal hearing with AHD for a Supplementary Order declaring the amount in default. After investigation, notice and hearing, as provided in D.C. Code § 32-1520, the ALJ shall issue a Supplementary Order, declaring the amount of default including the amount for any necessary medical, surgical and other treatment required by D.C. Code § 32-1507. The Supplementary Order shall be final and filed in the same manner as the compensation order. D.C. Code § 32-1519.
 - (a) If the amount in default is an installment of the full award, the ALJ may declare the full amount of the award in default in the Supplementary Order. D.C. Code § 32-1519.
 - (b) If the compensation order awards claimant with benefits that are payable to the present and continuing, the claimant must seek a new Supplementary Order for each period of default requested.
 - (2) File a certified copy of the Supplementary Order with the Clerk of the Superior Court and the Court shall enter a default judgment for the amount declared in default by the Supplementary Order.
- (iii) To determine whether to make a payment from the Special Fund, the custodian shall only consider:

- (1) Whether the Claimant submitted both a supplemental order from AHD and a default judgement from the Superior Court;
 - (2) Whether the employer or carrier is insolvent; and
 - (3) Whether current commitments payable from the special fund prohibit the requested payment.
- (iv) When issuing a “Determination of Payment from the Special Fund,” the custodian may request supporting documentation that demonstrates employer’s insolvency or the necessity for medical, surgical and other treatment required by D.C. Code § 32-1507.
- (v) A claimant, beneficiary or attorney who is dissatisfied with a Determination of Payment from the Special Fund may request a review of the custodian’s determination to the Director. The Request for Review of the custodian’s determination shall:
- (1) Be filed within fifteen (15) days from the date the custodian’s determination was issued, unless otherwise provided or good cause is established when filed after fifteen (15) days to permit consideration of the appeal;
 - (2) Contain information required under the Act; and
 - (3) Include all documents and other evidence in support of the requester's arguments.
- (vi) The Director shall affirm the custodian’s determination if it is supported by substantial evidence in the record. Otherwise, at the discretion of the Director, the requester’s review may be dismissed for failure to state a claim, lack of jurisdiction, procedural errors, or other appropriate reason or the determination may be affirmed, modified, or remanded to the custodian with instructions.
- (vii) The Director shall notify the claimant in writing of its decision within thirty (30) days after receipt of the appeal. If no decision is issued within the thirty (30)-day period, the Program's decision shall be deemed the final decision of the agency for appeal to the Superior Court of the District of Columbia, unless the Director issues a decision before the date on which the appeal to the Superior Court is filed. The final decision of the agency may be reviewed by the Superior Court of the District of Columbia on timely petition for review by the requester pursuant to District of Columbia Superior Court Rules of Civil Procedure Agency Review Rule 1.
- (viii) AHD shall dismiss *sua sponte* any matters that name the Special Fund as a party.

V. Practices and Procedure

The June 9, 2006 General Counsel Opinion (2006 GC Opinion) is hereby repealed, without replacement. DOES will issue emergency rulemaking in the coming weeks that promulgates the amendments made in this issuance.

For any pending matters that were remanded back to the custodian from the CRB² prior to the effective date of this issuance, the custodian will issue a new Payment Determination that replaces/supersedes the prior “Special Fund Order.”

VI. Effective Date

This administrative issuance is effective immediately.

² CRB does not have authority to remand to the custodian of the Special Fund under D.C. Code § 32-1521.01(d)(B)(2).