

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



ODIE DONALD II
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 17-090

**ANGELA ASHTON,
Claimant-Petitioner,**

v.

**DISTRICT OF COLUMBIA DEPARTMENT OF MOTOR VEHICLES,
Employer-Respondent,**

and

**OFFICE OF RISK MANAGEMENT
Administrator-Respondent.**

Appeal from an August 22, 2017 Compensation Order Dismissing the Case for Lack of Jurisdiction issued by Administrative Law Judge Robert J. Hildum of the Office of Administrative Hearings
OAH No. 2017-PSWC-00029, DCP No. 30081122563-0001

(Decided November 15, 2017)

Angela Ashton, *pro se* Claimant
Andrea Comentale and Nada Paisant for Respondent

Before GENNET PURCELL, HEATHER C. LESLIE, and JEFFREY P. RUSSELL, *Administrative Appeals Judges*.

GENNET PURCELL, for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

The following facts are taken from the Order on appeal:

On October 20, 2008 Claimant sustained a work-place injury while employed with the District of Columbia Department of Motor Vehicles. This case has been the subject of lengthy litigation in which Claimant ultimately prevailed. On

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August 26, 2015, a Compensation order was issued by the Office of Hearings and Adjudication (OHA) which awarded Claimant temporary total disability benefits and related medical expenses for the October 20, 2008, injury retroactive to March 18, 2010.

On March 29, 2017, claimant filed form A-1, Request for an Audit or Certification of Award, with the Chief Risk Officer (CRO). On May 5, 2017, the CRO issued a Decision and calculated Claimant's compensation rate from March 18, 2010 to the present. The CRO made several calculations and concluded that Claimant's "compensation rate has been both correct and incorrect throughout the history of this claim." The CRO remanded the case to the Public Sector Worker's Compensation Program (Program) to determine whether any underpayment is due to Claimant or whether any overpayment is due to the Program.

The May 5th Decision states that it is not a final agency decision. The letter is also unaccompanied by a notice of appeal rights or instructions for requesting a formal hearing before OAH. Claimant nonetheless requested a formal OAH hearing based on the May 5th Decision.

Angela Ashton v. Office of Risk Management, OAH No. 2017-PSWC-00029 (August 22, 2017) ("Order").

The Order noted the transfer of jurisdictional authority effected by the Office of the Administrative Hearings Establishment Act, D.C. Code § 2-1831.03 (b) (1) ("Act"). The Act, *inter alia*, outlines the transfer of responsibility for hearing public sector workers' compensation cases from the Department of Employment Services ("DOES") to the Office of Administrative Hearings ("OAH").

The Order summarized the decisions of the Office of Risk Management ("ORM") for which appeal to the OAH are proper:

Beginning December 1, 2016, the following decisions shall be appealed to the Office of Administrative Hearings (OAH):

- (a) Initial awards for or against compensation benefits pursuant to Section 2324(b) of the Act;
- (b) Final decisions concerning the necessity, character or sufficiency of medical care or services following an appeal to a utilization review pursuant to Section 2323 (a-2)(4) of the Act; and
- (c) Modification of awarded benefits pursuant to Section 2324(d) of the Act.

Order at 2.

The Administrative Law Judge (“ALJ”) concluded that Claimant’s dispute with ORM did not qualify as a decision that may be appealed to OAH pursuant to § 2-1831.03 (b) (1) of the Act and dismissed the case for lack of jurisdiction.

Attached to the Final Order is a statement of appeal rights advising that Claimant had the right to file an appeal of the order with the Compensation Review Board (“CRB”) in the Department of Employment Services (“DOES”) within 30 calendar days of the date of the Order.

On September 22, 2017, Petitioner filed a signed, handwritten document titled Application For Review with the CRB. It reads as follows:

I disagree with the Compensation Order Dismissing the Case for Lack of Jurisdiction issued on August 22, 2017 by ALJ Robert Hildum.

Attached to the AFR was a copy of the Order.

On October 6, 2017, Respondent filed Respondent’s Opposition to Claimant’s Application for Review.

ANALYSIS

The Order under review did not result from a formal hearing at which a record was created, either by way of testimony or documentary exhibits. Therefore, our standard of review is to determine whether the Order is arbitrary, capricious, an abuse of discretion, or not otherwise in accordance with the law. *See* 6 Stein, Mitchell & Mezines, ADMINISTRATIVE LAW, § 51.03 (2001).

Claimant’s only argument on appeal is that she disagrees with the Order.

In opposition, Employer argues that the Order is supported by substantial evidence and is in accordance with the law. Employer also argues that the AFR was not timely filed, and as a matter of law, the CRB does not have the authority to consider the merits of the appeal.

D.C. Official Code § 32-1522(a) states in pertinent part:

A party aggrieved by a compensation order may file an application for review with the Board within 30 days of the issuance of the compensation order.

Correspondingly, 7 DCMR § 258.2 states:

An Application for Review must be filed within thirty (30) calendar days from the date shown on the certificate of service of the compensation order or final decision from which appeal is taken.

The Order under review was issued by the ALJ on August 22, 2017 and served upon the parties the same day. Attached to the Order is a statement of appeal rights advising that Claimant had

the right to file an appeal of the order with the CRB within 30 calendar days of the date of the order. Pursuant to the appeal rights provisions, an application for review should have been filed with the CRB on or before September 21, 2017, to be timely.

Employer asserts that Claimant's AFR of the Order issued on August 22, 2017 was filed untimely with the CRB on September 22, 2017, exactly 31 days later and beyond the 30 day time limit under the statute as well as the District of Columbia Municipal Regulations. Relying on *Jackson v. D.C. Department of Corrections*, Dir. Dkt, No 25-03, OHA PBL No. 96-92A No. 362-911-A (July 13, 2004), Employer assert that there is no statutory authority or regulatory basis that permits the CRB to waive the late filing of an appeal. We agree.

A review of the administrative file confirms that Claimant filed the AFR with the CRB on September 22, 2017. Accordingly, the AFR is dismissed as being untimely.

CONCLUSION AND ORDER

The Application for Review was not timely filed. The Application for Review is **DISMISSED**.

So ordered.