

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services
Labor Standards Bureau

Office of Hearings and Adjudication
COMPENSATION REVIEW BOARD



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CRB (Dir. Dkt.) No. 04-70

GRACE BASSEY,

Claimant–Petitioner,

v.

GEORGE WASHINGTON UNIVERSITY HOSPITAL AND CONSTITUTION STATE SERVICES CO.,

Employer/Carrier–Respondent.

Appeal from a Final Order of Larry Barron, Supervisor,
Office of Workers' Compensation Claims Division
OWC No. 585463

Alan S. Toppelberg, Esquire, for the Petitioner

David C. Numrych, Esquire, for the Respondent

Before JEFFREY P. RUSSELL, SHARMAN J. MONROE, and FLOYD LEWIS, *Administrative Appeals Judges.*

JEFFREY P. RUSSELL, *Administrative Appeals Judge*, for the Compensation Review Panel:

DECISION AND ORDER

JURISDICTION

Jurisdiction is conferred upon the Compensation Review Board (CRB) pursuant to D.C. Official Code §§ 32-1521.01 and 32-1522 (2004), 7 DCMR § 230, and the Department of Employment Services Director's Directive, Administrative Policy Issuance 05-01 (February 5, 2005).¹ Pursuant

¹ Pursuant to Administrative Policy Issuance No. 05-01, dated February 5, 2005, the Director of the Department of Employment Services realigned the Office of Hearings and Adjudication to include, *inter alia*, establishment of the Compensation Review Board (CRB) in implementation of the District of Columbia Fiscal Year 2005 Budget Support Act of 2004, Title J, the District of Columbia Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, *codified at* D.C. Official Code § 32-1521.01. In accordance with the Director's Directive, the CRB replaces the Office of the Director in providing administrative appellate review and disposition of workers' and disability compensation claims arising under the District of Columbia Workers' Compensation Act of 1979, as amended, D.C. Code Ann. §§ 32-1501 to 32-1545 (2005), and the District of Columbia Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Code Ann. §§ 1-623.1 to 1-643.7 (2005), including responsibility for administrative appeals filed prior to October 1, 2004, the effective date of the District of Columbia Workers'

to § 230.04, the authority of the CRB extends over appeals from compensation orders, including final decisions or orders granting or denying benefits, by the Administrative Hearings Division (AHD) or the Office of Workers' Compensation (OWC), under public and private sector Acts.

BACKGROUND

This appeal follows the issuance of a Final Order dated June 3, 2004, issued by Larry Barron, Supervisor of the Claims Processing Division of OWC, purporting to adopt the Memorandum of Informal Conference issued by Claims Examiner Myrna Parada on August 25, 2003. In that Memorandum, the Claims Examiner recommended denial of Petitioner's claim for temporary total disability, based upon an average weekly wage of \$1,677.38, from October 8, 2002 through and including November 18, 2002, alleged to result from a claimed work injury of October 8, 2002. The reason for the denial recommendation is as follows: "Based upon the medicals [sic] documentation from the treating physician this accident is not a work related injury". This statement follows a description of the "Documentation/Support of position:" which is as follows: "Initial medical report from Kaiser Permanent [sic] (Dr. Krishnamurthy) dated 10/10/00 indicate [sic] that the claimant's injury occurred on 10/9/00 while she was getting into her car."

ANALYSIS

In review of an appeal from OWC, the Board must affirm the order under review unless it is determined to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. *See*, 6 Stein, Mitchell & Mezones, ADMINISTRATIVE LAW, § 51.93 (2001).

However, before this panel or board can consider the grounds for this appeal or the merits thereof, we must address whether the appeal is properly before us, in light of Respondent's claim that the Application for Review was untimely filed. *See* Argument 2, "Employer's Opposition to Claimant's Application for Review", page 5. As asserted by Respondent therein, at the time that this appeal was filed, D. C. Code § 32-1522 (b) provided that a final order of OWC must be appealed to the Director of DOES within 30 days of the date of the order being appealed.² The date of the Final Order of Mr. Barron is June 3, 2004. Accordingly, in order to be timely, the AFR had to have been filed (meaning received by the Office of the Director) on or before Tuesday, July 6, 2004 (July 4, 2004 was a Sunday, with the attendant holiday observance having been Monday, July 5, 2004).

Respondent asserts that the AFR was filed on July 9, 2004. Review of the file created by the Office of the Director reveals that it includes the document then routinely issued in the normal course of notifying the parties that an AFR has been filed, entitled "Notice of Application for Review Filed". That document, executed by an authorized staff member of DOES on behalf of Michael Milwee, Senior Counsel to the Director, was issued and bears a Certificate of Mailing date of July 13, 2004, and states that the AFR had been filed on July 9, 2004.

Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004.

² The 30 day time limit remained unchanged when the CRB was created and assumed jurisdiction to consider appeals formerly considered by the Director of DOES.

Petitioner has not responded to Respondent's argument or assertion as to the date of the filing of the AFR. The CRB file, which consists of the file previously created and maintained by the Office of the Director, plus those materials submitted to CRB subsequent to its creation, does not contain a document that appears to be an original AFR; similarly, the OWC file forwarded from that office to CRB contains no such original. Finally, review by the panel of the file maintained in the Administrative Hearings Division indicates that it contains no such original. Accordingly, the only document maintained and created in the ordinary course of the business of this agency which includes a date of filing of the AFR is the Notice of Application for Review Filed, asserting that the AFR was filed July 9, 2004, which is not timely, requiring that this appeal be dismissed.

Accordingly, we need not address whether appeal of the Memorandum's denial of the claim is likewise time-barred, considering the fact that the recommendations contained in the Memorandum of Informal Conference were neither rejected within 14 days thereof as required by 7 DCMR 219.20, nor was an Application for Formal Hearing (AFH) filed with the Office of Hearings and Adjudication until October 6, 2003, beyond September 29, 2003, which was the 35th day following the issuance of the recommendation contained in the Memorandum of Informal Conference (the 34th day deadline for filing such an AFR as provided in 7 DCMR 219.22 being a Sunday), nor can we address the specifics of Petitioner's complaints concerning the merits of the appeal as they relate either to the Final Order or the recommendations contained in the Memorandum.

CONCLUSION

The Application for Review seeking reversal of the Final Order dated June 3, 2004 is dismissed as being time barred.

ORDER

The Application for Review of the Final Order of June 3, 2003 is hereby DISMISSED, and the Final Order is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

JEFFREY P. RUSSELL
Administrative Appeals Judge

March 7, 2006
DATE