

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA M. MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 12-038

EUGENE BONDS,
Claimant–Petitioner,

V.

DISTRICT OF COLUMBIA DEPARTMENT OF CORRECTION,
Employer–Respondent.

Appeal from a Compensation Order by
The Honorable Karen R. Calmeise
AHD No. PBL08-061D, DCP No. 300903255759-001

Kirk D. Williams, Esquire for Petitioner
Pamela L. Smith, Esquire for Respondent

Before MELISSA LIN JONES, LAWRENCE D. TARR, and HEATHER C. LESLIE,¹ *Administrative Appeals Judges*.

MELISSA LIN JONES, *Administrative Appeals Judge*, for the Compensation Review Board.²

DECISION AND REMAND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

On February 15, 2008, Mr. Eugene Bonds, a corporal in the District of Columbia Department of Corrections (“Employer”), was escorting an inmate to the mental health unit. The inmate punched Mr. Bonds multiple times and spit blood on Mr. Bonds. The blood covered Mr. Bonds’ face and went into his mouth and eyes.

During the altercation, Mr. Bonds injured his right hand and left knee. Employer accepted these injuries as compensable.

¹ Judge Leslie has been appointed by the Director of the Department of Employment Services (“DOES”) as a temporary Compensation Review Board (“CRB”) member pursuant to DOES Administrative Policy Issuance No. 12-02 (June 20, 2012).

² Jurisdiction is conferred upon the CRB pursuant to D.C. Code §1-623.28, 7 DCMR §118, and the DOES Director’s Administrative Policy Issuance No. 05-01 (February 5, 2005).

In addition to seeking treatment for his physical injuries, Mr. Bonds sought mental health treatment through the Employee Assistance Program and through Counseling Services of Mitchellville. Employer did not accept Mr. Bonds' psychological injury as compensable.

As a result, Mr. Bonds requested a formal hearing seeking an award for "[t]reatment for post-traumatic stress and payment of related medical expenses."³ The administrative law judge ("ALJ") awarded him his claim for relief because she determined his psychological condition is medically causally related to the work accident,⁴ and the CRB affirmed the Compensation Order.⁵

As of July 31, 2008, Mr. Bonds was released to full duty work by his treating physician. On July 5, 2011, the Office of Risk Management issued a Notice of Determination Regarding Original Claim for Compensation denying Mr. Bonds' request to continue in a light duty position and denying his request to have temporary total disability compensation benefits reinstated.

On November 30, 2011, another formal hearing was held before another ALJ. At that proceeding, Mr. Bonds contended that Employer had withdrawn his light duty assignment and that this withdrawal is the equivalent of a Notice of Determination terminating his disability compensation benefits. Consequently, he sought an award of temporary total disability benefits from July 27, 2010 to the date of the formal hearing and continuing.

In a Compensation Order dated February 21, 2012, the ALJ denied Mr. Bonds' claim for relief. The ALJ determined that Mr. Bonds had not filed a claim for wage loss benefits and that the Office of Risk Management had not issued a Final Determination⁶ on a request for wage loss benefits; therefore, the Office of Hearings and Adjudication ("OHA") lacked jurisdiction over Mr. Bonds' claim.⁷

On appeal, Mr. Bonds asserts OHA has jurisdiction over his wage loss claim and requests we reverse the Compensation Order. Employer asserts the Compensation Order is based upon substantial evidence and should be affirmed.

ISSUE ON APPEAL

1. Did OHA have jurisdiction to hear Mr. Bonds' case?

³ *Bonds v. D.C. Department of Corrections*, AHD No. PBL08-061B, DCP No. 20080224100-00011 (September 22, 2010).

⁴ *Id.* at p.5.

⁵ *Bonds v. D.C. Department of Corrections*, AHD No. PBL08-061B, DCP No. 200802241-00011 (April 12, 2011).

⁶ The term "Final Determination" is used generically to refer to any final decision rendered by DCP including but not limited to a Denial of Award of Compensation Benefits or Notice of Loss of Wage Earning Capacity.

⁷ *Bonds v. D.C. Department of Correction*, AHD No. PBL08-061D, OWC No. 300903255759-001 (February 21, 2012).

ANALYSIS⁸

In Claimant's Memorandum of Points and Authorities in Support of Application for Review, Mr. Bonds declares he "contacted his claims examiner on July 28, 2010 and July 29, 2010 to make a claim because his employer was changing his working conditions,"⁹ but there is no documentation in the record memorializing a claim for workers' compensation disability benefits from Mr. Bonds on July 28, 2010 or July 29, 2010. The only exhibit with a July 28, 2010 or July 29, 2010 date is an "E-mail concerning change available employment."¹⁰ This email sent from an America-On-Line email address to that same email address (not to the Office of Risk Management) can in no way be considered a request for benefits which the Office of Risk Management could be expected to address.

Mr. Bonds argues the withdrawal of his light duty position is the equivalent of a Final Determination. It is not; an employer's revocation of a light duty position is not a Final Determination from the Office of Risk Management.

Employer, however, concedes "Counsel for the Claimant sent letters to the Office of Risk Management on March 8, 2011 and June 10, 2011, requesting reinstatement of [temporary total disability] benefits due to an alleged re-occurrence of the injury to Claimant's left knee."¹¹ Nonetheless, a request alone is insufficient to confer jurisdiction on OHA in a public sector workers' compensation case; a Final Determination is a prerequisite to OHA's adjudication of a request for benefits.¹²

The only Notice of Determination included in the record is dated July 5, 2011. In this Notice of Determination, the Office of Risk Management references a March 8, 2011 letter from Mr. Bonds' attorney to Mayor Vincent Gray that specifically notes a claim for "reinstatement of disability benefits."¹³ Although it does not specify what benefits Mr. Bonds wanted reinstated, the Notice of Determination denies reinstatement of his benefits.

The Notice of Determination mentions a light-duty assignment, but a light duty assignment is not a "benefit" under the Act. The Notice of Determination cannot be read as a denial of reinstatement of a light-duty position; it must be read as a denial of workers' compensation disability benefits inuring

⁸ The scope of review by the CRB is limited to making a determination as to whether the factual findings of the appealed Compensation Order are based upon substantial evidence in the record and whether the legal conclusions drawn from those facts are in accordance with applicable law. See D.C. Comprehensive Merit Personnel Act of 1978, as amended. D.C. Code §1-623.01 et seq., at §1-623.28(a). Consistent with this standard of review, the CRB is constrained to uphold a Compensation Order that is supported by substantial evidence, even if there also is contained within the record under review substantial evidence to support a contrary conclusion and even if the CRB might have reached a contrary conclusion. *Marriott International v. DOES*, 834 A.2d 882, 885 (D.C. 2003).

⁹ Claimant's Memorandum of Points and Authorities in Support of Application for Review, p. 3.

¹⁰ Index to Claimant's Exhibits.

¹¹ Respondent's Opposition to Petitioner's Application for Review, p. 2.

¹² *Sisney v. D. C. Public Schools*, CRB No. 08-200, AHD No. PBL08-066, DCP No. DCP007970 (July 2, 2012).

¹³ Claimant's Exhibit 7.

as a result of an inability to work. The Notice of Determination together with the medical records previously submitted to the Office of Risk Management¹⁴ qualifies to confer jurisdiction upon OHA to adjudicate the merits of Mr. Bonds' request for ongoing temporary total disability compensation benefits beginning July 27, 2010.

In closing, we note that Mr. Bonds attempts to liken this matter to a modification of an existing Compensation Order pursuant to §32-1524 of the District of Columbia Workers' Compensation Act of 1979, D.C. Code, as amended, §32-1501 *et seq*: "In the instant matter, the claimant filed a claim because the employer altered his work conditions not because of a change in his medical condition. Accordingly, his claim for reinstatement is based upon an economic change of condition and not a medical change of condition."¹⁵ First, the only modification provision in the public sector workers' compensation act pertains to the Office of Risk Management's ability to

modify an award of compensation if the Mayor or his or her designee has reason to believe a change of condition has occurred. The modification shall be made in accordance with the standards and procedures as follows:

(A) The Mayor shall provide written notice to the claimant of the proposed modification with the supportive documentation relied upon for the modification;

(B) The claimant shall have at least 30 days to provide the Mayor with written information as to why the proposed modification is not justified; and

(C) The Mayor shall conduct a full review of the reasons for the proposed modification and the arguments and information provided by the claimant.

which would result in the issuance of a Final Determination thereby triggering jurisdiction before OHA.¹⁶ Moreover, there is no prior Compensation Order in this matter awarding Mr. Bonds wage loss benefits that could be subject to modification. Thus, Mr. Bonds' modification argument is misplaced.

¹⁴ See Claimant's Exhibit 2.

¹⁵ Claimant's Memorandum of Points and Authorities in Support of Application for Review, p. 5.

¹⁶ See §1-623.24(d) and §1-623.24(f) of the Act.

CONCLUSION AND ORDER

The July 5, 2011 Notice of Determination confers jurisdiction on OHA to adjudicate the merits of Mr. Bonds' request for ongoing temporary total disability compensation benefits from July 27, 2010. The February 21, 2012 Compensation Order is vacated, and this matter is remanded for further proceedings consistent with this Decision and Remand Order.

FOR THE COMPENSATION REVIEW BOARD:

MELISSA LIN JONES
Administrative Appeals Judge

December 6, 2012
DATE