

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA M. MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 12-163

EUGENE BONDS,
Claimant–Petitioner,

V.

DISTRICT OF COLUMBIA DEPARTMENT OF CORRECTIONS,
Employer–Respondent.

Appeal from an Order by
The Honorable David L. Boddie
AHD No. PBL08-061E, DCP No. 20080224100-0001

Kirk D. Williams, Esquire for Petitioner
Frank K. McDougald, Esquire for Respondent

Before MELISSA LIN JONES, HENRY W. MCCOY, and HEATHER C. LESLIE,¹ *Administrative Appeals Judges*.

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

DECISION AND 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

On November 30, 2011, another formal hearing was held before another ALJ. Following this proceeding, the ALJ denied Mr. Bonds' request for temporary total disability compensation benefits from July 27, 2010 to the date of the formal hearing and continuing. In a Compensation Order dated February 21, 2012, the ALJ ruled that the Office of Hearings and Adjudication ("OHA") lacked jurisdiction over his claim.⁶

Mr. Bonds' appealed the February 21, 2012 Compensation Order. While the appeal of that Compensation Order was pending, Mr. Bonds requested another formal hearing purportedly to restore his medical benefits; however, when the formal hearing convened, the claim for relief was changed to determine his entitlement to temporary total disability compensation benefits from July 27, 2010 to the date of this formal hearing and continuing:

During preliminary discussions held to determine the issue presented and claim for relief being sought it became clear that the Claimant was attempting to pursue a claim that was not the basis upon which the request for Formal Hearing was made.

Specifically, the official file reflects that a Notice of Determination Regarding Continuing Medical Treatment dated March 22, 2012 was attached to the Claimant's request for Formal Hearing. The notice denied the provision of further medical benefits for the Claimant's injury. However, at the time the Formal Hearing was convened the Claimant stated that he was bringing a claim for payment of temporary total disability compensation benefits from July [2]7, 2010 to the present and continuing.^[7]

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*, CRB No. 10-180, AHD No. PBL08-061B, DCP No. 200802241-00011 (April 12, 2011).

⁶ *Bonds v. D.C. Department of Correction*, AHD No. PBL08-061D, OWC No. 300903255759-001 (February 21, 2012).

⁷ *Bonds v. D.C. Department of Corrections*, AHD No. PBL 08-061E, OWC No. 20080224100-001 (September 14, 2012). The September 14, 2012 Order contains a typographical error; review of the administrative file clearly indicates Mr. Bonds' claim for relief was for temporary total disability compensation benefits from July 27, 2010, not July 7, 2010.

On September 14, 2012, a third ALJ issued an Order. This ALJ dismissed Mr. Bonds' Application for Formal Hearing for lack of jurisdiction; the ALJ determined that Mr. Bonds had failed to present a claim for which relief could be granted:

There being no Denial Order or Notice of Determination before me reflecting that a claim seeking temporary total disability compensation by the Claimant had been denied, as the basis for the request for Formal Hearing filed in the above-entitled matter, it was determined that the Claimant's claim was improper and that the Claimant's request for a Formal Hearing should be dismissed, for failure to state a claim upon which relief could be granted.^[8]

On appeal, Mr. Bonds asserts OHA did have jurisdiction over his claim for relief and requests his claim for relief be granted. On the other hand, Employer requests the September 14, 2012 Order be affirmed because it is not arbitrary, capricious, or an abuse of discretion and is in accordance with the law.

ISSUE ON APPEAL

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

ANALYSIS⁹

In order to secure a formal hearing, Mr. Bonds' attorney attached to the application for formal hearing a Notice of Determination Regarding Continuing Medical Treatment denying Mr. Bonds' request for medical treatment. At the formal hearing, however, Mr. Bonds' attorney substituted a different claim for relief-- The "claim for relief being brought by the Claimant is for temporary total disability benefits dating from July 27th, 2010 to the present and continuing."¹⁰

Mr. Bonds' attorney explained that the Office of Hearings and Adjudication "would not have issued a scheduling order had the application for formal hearing not been accompanied by a determination by DCP."¹¹ Mr. Bonds' attorney is correct that a Final Determination¹² is a condition precedent to OHA having jurisdiction over a public sector claim, but the Final Determination that confers jurisdiction on OHA must be the basis for the claim for relief that is presented at the resulting formal hearing. Mr. Bonds was not entitled to a formal hearing to adjudicate wage loss benefits predicated upon a Final Determination solely denying medical benefits.

⁸ *Id.*

⁹ Because the Order on review is not one based on an evidentiary record produced at a formal hearing, the applicable standard of review by which we assess the determination reached by the Office of Hearings and Adjudication is whether the decision is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. *See*, 6 Stein, Mitchell & Mezines, *Administrative Law*, § 51.03 (2001).

¹⁰ Hearing Transcript, p. 5.

¹¹ Hearing Transcript, p. 14.

¹² The term "Final Determination" is used generically to refer to any final decision rendered by the Office of Risk Management including but not limited to a Denial of Award of Compensation Benefits or Notice of Loss of Wage Earning Capacity.

Furthermore, as the ALJ stated, “the claim for relief before me is for the same period of time”¹³ as that requested at the November 30, 2011 formal hearing and as adjudicated in the February 21, 2010 Compensation Order that was on appeal to the CRB at the time Mr. Bonds’ attorney requested another formal hearing:

Judge Boddie: And from where I sit, you already have brought a claim for temporary total disability benefits from July 17, to the - - 27th, 2010 to the present and continuing. That claim was denied. I [*sic*] compensation order was issued. It’s on appeal. You have appealed it.

Mr. Williams: Yes, Your Honor.^[14]

Once a matter has been appealed to the CRB, that matter rests “squarely and solely” with the CRB:

The ALJ cites no authority for the proposition that AHD^[15] continued to maintain jurisdiction once the initial Petition for Review of July 11, 2006 had been filed with CRB, and indeed there could be none, given that once the matter had been appealed, the matter rested squarely and solely with the CRB.^[16]

While an appeal of the February 21, 2012 Compensation Order was pending, Mr. Bonds requested another formal hearing to determine his entitlement to the exact same claim for relief addressed in the February 21, 2012 Compensation Order. Because that appeal was pending, “the matter rested squarely and solely with the CRB.” Thus, the ALJ was correct in dismissing the Application for Formal Hearing albeit for the wrong reason.

CONCLUSION AND ORDER

OHA lacked jurisdiction to consider Mr. Bonds’ claim. The September 14, 2012 Order is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

MELISSA LIN JONES
Administrative Appeals Judge

December 5, 2012
DATE

¹³ Hearing Transcript, p. 7.

¹⁴ Hearing Transcript, p. 24.

¹⁵ As of February 2011, the Administrative Hearings Division's name changed to the Office of Hearings and Adjudication.

¹⁶ See *Lee v. D.C. General Hospital*, CRB No. 06-076, AHD No. PBL 05-009, DCP No. LTUNK000450 (November 1, 2006).