

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Department of Employment Services**

**VINCENT C. GRAY**  
**MAYOR**



**LISA MARÍA MALLORY**  
**DIRECTOR**

**Compensation Review Board**

**CRB No. 13-136**

**CAROLYN BRENT (ERIC BRENT, DECEDENT),**  
**Claimant–Petitioner,**

**v.**

**RITZ CARLTON HOTEL,**  
**Self Insured Employer – Respondent.**

An Appeal from a October 9, 2013 Compensation Order by  
Administrative Law Judge Linda F. Jory  
AHD No. 12-071, OWC No. 683328

Benjamin T. Boscolo, for the Claimant  
Joel Ogden, for the Employer

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

HEATHER C. LESLIE, *Administrative Appeals Judge*, for the Compensation Review Board.

**DECISION AND DISMISSAL ORDER**

**OVERVIEW**

This case is before the Compensation Review Board (CRB) on the request for review filed by the Claimant - Petitioner (Claimant) of the October 9, 2013, Compensation Order (CO) issued by an Administrative Law Judge (ALJ) in the Office of Hearings and Adjudication of the District of Columbia Department of Employment Services (DOES). In that CO, Claimant's request for permanent partial disability benefits that the decedent may have been entitled to as a result of a work injury on December 28, 2005 was denied.

**FACTS OF RECORD AND PROCEDURAL HISTORY**

On December 28, 2005, the decedent suffered a work injury which affected the use of his upper left extremity. The decedent received disability and medical benefits as well as vocational rehabilitation at the expense of the Employer. In a Compensation Order dated November 22, 2011, the decedent was found not to be entitled to any further temporary total disability benefits after April 18, 2011. The decedent passed away on September 6, 2012 for reasons unrelated to his injury.

In a CO dated October 9, 2013, Claimant's request for permanent partial disability benefits that the decedent may have been entitled to as a result of a work injury on December 28, 2005 was denied. Claimant appealed on November 12, 2013. Claimant also requested for an extension of time with which to file a memorandum in support of his application for review. This motion was granted. Claimant filed his memorandum on December 9, 2013 with the Employer filing its opposition on December 26, 2013.

### STANDARD OF REVIEW

The scope of review by the CRB, as established by the Act and as contained in the governing regulations, is generally limited to making a determination as to whether the factual findings of the 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. Workers' Compensation Act of 1979, as amended, D.C. Code § 32-1501, *et seq.*, (the Act) at § 32-1521.01 (d)(2)(A), and *Marriott International v. DOES*, 834 A.2d 882 (D.C. 2003). Consistent with this standard of review, the CRB must affirm a Compensation Order that is supported by substantial evidence, even if there is also contained within the record under review substantial evidence to support a contrary conclusion, and even where this panel might have reached a contrary conclusion. *Id.*, at 885.

### ANALYSIS

We note that as a matter of law, if an application for review is not timely filed, the CRB does not have the authority to consider an application for review.

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.

In addition, 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.

Finally, title 7 DCMR § 257.1 provides that,

Filings with the Board. . . shall be deemed effective upon actual receipt by the Office of the Clerk.

The CO herein appealed was issued by the ALJ on October 9, 2013 and served upon the parties the same day. Attached to the CO was a page which outlined the parties "Appeal Rights" stating where an Application for Review was to be sent and when. Any Application for Review had to be filed within 30 calendar days of the date of the Certificate of Service. Pursuant to the foregoing

provisions, an Application for Review should have been filed with the CRB on or before Friday, November 8, 2013, to be timely.

A review of the administrative file reveals Claimant filed an Application for Review on Tuesday, November 12, 2013. Claimant's appeal is untimely. As such, the CRB is without jurisdiction to consider the appeal.

**CONCLUSION AND ORDER**

The Application for Review was not filed in a timely fashion.

The Application for Review is dismissed.

FOR THE COMPENSATION REVIEW BOARD:

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HEATHER C. LESLIE  
*Administrative Appeals Judge*

\_\_\_\_\_  
December 31, 2013  
DATE