

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 15-107

BRYANT MOORE,
Claimant–Petitioner,

v.

MARSHALL HEIGHTS COMMUNITY DEVELOPMENT ORGANIZATION, INC.,
Employer–Respondent.

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2015 OCT 30 AM 10 47

Appeal from a May 29, 2015 Compensation Order by
Administrative Law Judge Mark W. Bertram
AHD No. 12-386, OWC No. 649418

(October 31, 2015)

Bryant Moore, *Pro Se*
Gerard J. Emig for Employer

Before LINDA F. JORY, HEATHER C. LESLIE, and JEFFREY P. RUSSELL, *Administrative Appeals Judges.*

LINDA F. JORY for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

Bryant Moore (Claimant) was involved in a motor vehicle accident (MVA) while in the course of his employment with Marshall Heights Community Development Organization, Inc. (Employer). Employer was uninsured at the time of Claimant's injury, however Claimant's claim was accepted and medical and wage loss payments benefits were made to Claimant.

On March 29, 2010, a Final Order issued from the Office of Worker's Compensation granting Claimant authorization to see a neurosurgeon and reimbursements of all of his work related medicals. Employer made payments to Claimant from September 2, 2010 to June 15, 2011 for a total of \$15,325.73.

Claimant maintained a third-party claim against the party that allegedly caused the MVA. Claimant, through his Counsel, settled the third-party claim for \$15,000.00. Employer was not notified of this settlement and was not included in the negotiation of the settlement.

Upon receipt of an Application for Formal Hearing (AFH), a Formal Hearing (FH) was scheduled for October 15, 2012 before the Administrative Hearings Division (AHD). On June 22, 2012, AHD received a letter from counsel for Claimant stating he had been discharged as Claimant's attorney.

Claimant attended the October 15, 2012 FH, however Employer did not attend or send representation. On November 1, 2012 an Administrative Law Judge (ALJ) issued an Order to Show Cause why an order should not be issued based upon the October 15, 2012 FH record. Employer responded that it was unaware of the FH and it was attempting to obtain Counsel.

On November 4, 2013, the ALJ issued an Order to Schedule a Status Conference which set forth the procedural history and stated that "due to the passage of time and in the interest of reaching a fair and just resolution to the matter, a scheduling conference would be scheduled". On December 3, 2013, Counsel for Employer entered his appearance. On December 5, 2013, the ALJ issued an Order scheduling a status conference for January 7, 2014. On January 22, 2014, Counsel for Employer filed a Motion to Dismiss Claimant's AFH based upon Claimant's settlement of his third-party claim without notice to Employer.

The ALJ who handled the matter resigned from her employment with the agency and the matter was re-assigned to another ALJ. The parties agreed to have a FH on March 24, 2015. At the commencement of the FH, the ALJ advised the parties that the status of the hearing was changed to "status/hearing conference". Employer's Motion to Dismiss and Claimant's opposition were discussed. The parties were ordered to submit additional briefs on the dismissal issue and Claimant was afforded an additional opportunity to adduce evidence that the Employer had advance knowledge of Claimant's settlement of his third-party claim. The record closed on April 23, 2015 and a Compensation Order (CO) issued on May 29, 2015.

The ALJ concluded that Claimant had compromised his workers' compensation claim by settling his third-party claim without the consent of the Employer and that Employer is no longer liable for Claimant's workers' compensation benefits including wage loss benefits and medical benefits for his injury of April 2, 2008.

Claimant filed a timely appeal requesting that the CO be reversed and Employer ordered to pay Claimant's medical expenses and temporary total disability benefits.

Employer filed an opposition asserting the CO should be affirmed.

ISSUE ON APPEAL

Is the May 29, 2015 Compensation Order supported by substantial evidence and in accordance with the law?

ANALYSIS¹

In support of his Application for Review, Claimant asserts that Employer's right to a statutory lien requires that liability for damages by "some person other than those enumerated" must be on account of a disability, — therefore Employer remains liable. Claimant asserts that there is no evidence that the third-party settlement was due to Claimant's disability. Claimant argues the settlement occurred in February 2012, over two years after Claimant's last disability, and he was not seeking ongoing temporary total disability (TTD). Claimant's Brief at 2.

Without specifically contending the third-party settlement was solely for emotional duress, pain and suffering, Claimant does state "Notably, in personal injury cases, settlement monies may address such issues as emotional duress, pain and suffering." *Id.*

Employer asserts Claimant has no basis in law to argue that some or all of his settlement of his third party claim is not subject to the employer's lien simply because it is classified as a specific type of legal damage. We agree with Employer that "to permit such an argument to stand would allow claimants to file personal injury claims without protecting the employer's lien simply by classifying the settlement funds as payment for noneconomic damages." Employer's Brief at 4.

Second, Claimant asserts that because D.C. Code § 32-1535 concerns third party claims with respect to an employer *and* its insurance carrier and because it is undisputed that Employer is an uninsured employer, § 32-1535 does not apply and Employer remains liable. Employer responds that its failure to obtain workers' compensation insurance does not preclude the protection afforded by § 32-1535 and Claimant cannot create a new remedy for the Employer's failure to obtain worker's compensation insurance.

We note that § 32-1535(h) states "Where the employer is insured and the insurance carrier has assumed the payment of the compensation, the insurance carrier shall be subrogated to all the rights of the employer under this section." We conclude that the Act contemplates that not all employers will obtain workers' compensation insurance to assume payments of workers' compensation benefits. It is undisputed that Employer did make payment of wage loss and medical benefits to Claimant.

We agree that Employer had a statutory lien it was entitled to protect and failure to secure insurance did not preclude it from the protection afforded under D.C. Code § 32-1535.

¹ The scope of review by the Compensation Review Board (CRB) is 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. D.C. Code § 32-1521.01(d)(2)(A) of the District of Columbia Workers' Compensation Act, as amended, D.C. Code § 32-1501 to 32-1545 ("Act"). "Substantial evidence", as defined by the District of Columbia Court of Appeals, is such evidence as a reasonable person might accept to support a particular conclusion. *Marriott Int'l. v. DOES* 834 A.2d 882 (D.C. 2003). Consistent with this scope of review, the CRB and this Panel are bound to uphold 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 the reviewing authority might have reached a contrary conclusion. *Marriott*, 834 A.2d at 885.

Because we find no merit in Claimant's arguments and no error committed by the ALJ, we conclude the CO is in accordance with the law and must be affirmed.

CONCLUSION AND ORDER

The May 29, 2015 Compensation Order is in accordance with the law and is accordingly AFFIRMED.

So ordered.