COMPENSATION REVIEW BOARD

CRB No. 12-076

LUIGI BUITRAGO,
Claimant–Petitioner,

v.

DISTRICT OF COLUMBIA HEALTH-HIV/AIDS ADMINISTRATION,
Employer–Respondent.

Appeal from an Order of
Administrative Law Judge Fred D. Carney, Jr.
AHD No. PBL10-032C, DCP No. 761010-006-0001

Michael J. Kitzman, Esquire, for Petitioner
Justin Zimmerman, Esquire, for Respondent

Before MELISSA LIN JONES, JEFFREY P. RUSSELL, and HEATHER C. LESLIE, *Administrative Appeals Judges*.

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

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL POSTURE

At some point, Mr. Luigi Buitrago must have been receiving temporary total disability compensation benefits pursuant to the District of Columbia Government Comprehensive Merit Personnel Act of 1978, D.C. Code §1-623.1 *et seq*. ("Act") because on January 11, 2012, his attorney sent an email to a claims adjuster at Sedgwick:

> Mr. Buitrago was recently released from his employment by the DC government. In light of this change in his condition, and the ongoing limitations as a result of his injury, please advise if you are re-instituting TTD benefits in his case.

The next day, Mr. Buitrago's attorney received an email reply:

> Mr. Buitrago's TTD benefits will not be reinstated.

Based upon this email and reply, Mr. Buitrago filed an Application for Formal Hearing.

On April 12, 2012, the parties attended an on-the-record conference before an administrative law judge ("ALJ").[1] At the conference, the District of Columbia Health – HIV/AIDS Administration ("Employer") moved to dismiss Mr. Buitrago's Application for Formal Hearing for lack of jurisdiction. In an Order dated April 27, 2012, the ALJ granted Employer's motion on the grounds that Mr. Buitrago had not presented a Final Determination[2] as required by §1-623.24(b)(1) of the Act.[3]

On appeal, Mr. Buitrago contends the April 27, 2012 Order fails to determine whether his attorney's email to a claims examiner at Sedgwick constitutes a claim and whether the claims examiner's email response constitutes a Final Determination such that he is entitled to a hearing on the merits of his request for additional benefits. In response, Employer contends the claims examiner's email response to an inquiry by Mr. Buitrago's attorney does not qualify as a Final Determination because the original email inquiry was not a claim.

ISSUES ON APPEAL

1. Has Mr. Buitrago made a claim for reinstatement of benefits pursuant to the Act?

2. Does a claims examiner's reply to an email inquiry by an attorney constitute a Final Determination entitling Mr. Buitrago to a formal hearing on the merits of his request for benefits?

ANALYSIS[4]

In order to receive benefits pursuant to the Act, a claimant must file a claim.[5] Pursuant to §1-613.21 of the Act,

> (a) Compensation under this subchapter may be allowed only if an individual or someone on his or her behalf makes claim therefor. The claim shall:
>
> (1) Be made in writing within the time specified by §1-623.22;

[1] Although the Order states the conference was held on April 11, 2012, a review of the transcript reveals the correct date is April 12, 2012.

[2] The term "Final Determination" is used generically to refer to any final decision rendered by the Public Sector Workers' Compensation Program including but not limited to a Denial of Award of Compensation Benefits or Notice of Loss of Wage Earning Capacity.

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

[4] Because the Order on review is not one based on an evidentiary record produced at a formal hearing, the applicable standard of review is whether the decision is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. 7 DCMR §266.3; see also 6 Stein, Mitchell & Mezines, *Administrative Law*, § 51.03 (2001).

[5] A "claim" is "an assertion properly filed and otherwise made in accordance with the provisions of this chapter that an individual is entitled to benefits under the Act." 7 DCMR §199.1.

(2) Be delivered to the Office of the Mayor or to an individual whom the Mayor may designate by rules and regulations, or deposited in the mail properly stamped and addressed to the Mayor or his or her designee;

(3) Be on a form approved by the Mayor;

(4) Contain all information required by the Mayor;

(5) Be sworn to by the individual entitled to compensation or someone on his or her behalf; and

(6) Except in case of death, be accompanied by a certificate of the physician of the employee stating the nature of the injury and the nature and probable extent of the disability.

(b) The Mayor may waive paragraphs (3) through (6) of subsection (a) of this section for reasonable cause shown.

Importantly, these requirements apply to the initial claim for benefits under the Act.

This interpretation of this portion of the Act is confirmed by the reference to §1-623.22 "Time for making claim" which specifically states, "An original claim for compensation for disability or death must be filed within 3 years after the injury or death."[6] The implementing regulations, too, support this interpretation; 7 DCMR §111.4 states, "A new claim shall be denied or controverted when an employee fails to cooperate by following the procedures set forth in this chapter,"[7] and 7 DCMR §101.1 states, "Any notices, claims, requests, applications, or certificates that the Act or this chapter requires to be made shall be on approved forms." The Act does not require any specific process for requesting additional benefits after a claim has been accepted based upon the initial claim.

Given the plain language in the Act and its implementing regulations as well as the doctrine of statutory construction referred to as *expressio unius est exclusio alterius*,[8] although a claimant must comply with specific requirements for filing an initial claim for benefits, once that claim has been accepted, there are no such similar requirements when requesting additional benefits, (except in the

[6] Section 1-623.22(a) of the Act. This section of the Act is modified by 7 DCMR §119.1:

> In order to be eligible to receive benefits pursuant to this chapter, an employee or an employee's representative must file an initial claim for benefits within two (2) years after the date of the injury or death.

[7] 7 DCMR §111.4.

[8] "The express mention of one thing excludes others." 73 AM. JUR. 2D Statutes § 211 (1974). See also, *Smith v. D.C. Dept of Employment Services,* 548 A.2d 95, 100 n.13 (D.C. 1988) ("Where a statute, with reference to one subject, contains a given provision, the omission of such provision from a similar statute concerning a related subject . . . is significant to show that a different intention existed.")

case of a recurrence of injury).[9] As such, an email may suffice to establish a request for additional benefits; however, in this case, it does not. Mr. Buitrago's attorney did not request additional benefits; he inquired if benefits would be "re-institut[ed]" on an unspecified date for a reason that does not demonstrate any certain basis for entitlement to additional benefits, namely Mr. Buitrago's release from employment.

CONCLUSION AND ORDER

As a matter of law, Mr. Buitrago's attorney's email inquiry does not qualify as a claim for reinstatement of benefits pursuant to the Act. Because Mr. Buitrago has not made a claim, the response to this email inquiry cannot constitute a Final Determination sufficient to vest jurisdiction in the Office of Hearings and Adjudication to conduct a formal hearing on the merits of Mr. Buitrago's entitlement to additional benefits pursuant to the Act, and the Order is affirmed.

FOR THE COMPENSATION REVIEW BOARD:

_____
MELISSA LIN JONES
Administrative Appeals Judge

March 20, 2013
DATE

[9] See 7 DCMR §120.1:

> An employee who received indemnity compensation for which payments have ceased who suffers a recurrence of the same compensable injury must notify the Program in writing of the recurrence**.** The employee shall provide notice of the recurrence within thirty (30) days of the recurrence or within thirty (30) days of when the claimant first became aware or reasonably should have become aware of the recurrence and its relationship to the original claim.

and 7 DCMR §120.2:

> An employee who reports a recurrence of an injury shall provide the Program with medical evidence that the recurrence is the same injury for which the claim was originally accepted, and shall follow all requirements in this chapter relevant to receiving benefits, including the requirements of §§ 123 and 124 of this chapter.