

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services
Labor Standards Bureau

Office of Hearings and Adjudication
COMPENSATION REVIEW BOARD



(202) 671-1394-Voice
(202) 673-6402-Fax

CRB No. 05-12

RONALD BURTON (Deceased),

Claimant - Respondent

v.

HARRY'S RESTAURANT AND OHIO CASUALTY CO.,

Employer/Carrier - Petitioner

Appeal from an Order of
Claims Examiner Eucharía C. Eleweanya
OWC No. 564506

David M. Schloss, Esquire, for the Respondent

Paul Gallo, Esquire, for the Petitioner

Before LINDA F. JORY, SHARMAN J. MONROE, *Administrative Appeals Judges* and FLOYD LEWIS,
Acting Administrative Appeals Judge.

LINDA F. JORY, *Administrative Appeals Judge*, on behalf of the Review Panel:

DECISION AND ORDER

JURISDICTION

Jurisdiction is conferred upon the Compensation Review Board (CRB) pursuant to D.C. Official Code § 32-1521.01 and 32-1522 (2004), 7 DCMR § 230 (1994), and the Department of Employment Services Director's Directive, Administrative Policy Issuance 05-01 (February 5, 2005).¹ Pursuant to § 230.04, the authority of the Compensation Review Board extends over

¹ Pursuant to Administrative Policy Issuance No. 05-01, dated February 5, 2005, the Director of the Department of Employment Services realigned the Office of Hearings and Adjudication to include, *inter alia*, establishment of the Compensation Review Board (CRB) in implementation of the District of Columbia Fiscal Year 2005 Budget Support Act of 20024, Title J, the Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, sec. 1102 (Oct. 1, 1994) *codified at* D. C. Code Ann. §§ 32-1521.01, 32-1522 (2005). In accordance with the Director's Policy Issuance, the CRB replaces the Office of the Director in providing administrative appellate review and disposition of workers' and disability compensation claims arising under the D.C. Workers'

appeals from compensation orders including final decisions or orders granting or denying benefits by the Administrative Hearings Division (AHD) or the Office of Workers' Compensation (OWC) under the public and private sector Acts.

BACKGROUND

This appeal follows the issuance by the Office of Workers' Compensation (OWC) in the District of Columbia Department of Employment Services (DOES) of an order approving a lump sum settlement agreement, filed on December 27, 2004 pursuant to D. C. Official Code §32-1508(8). The lump-sum settlement amount approved was \$70,089.51 with attorney fees in the amount of 14,017.80 and costs in the amount of \$2507.04 to be deducted from the lump-sum amount.

Employer/Carrier-Petitioner (Petitioner) has filed a Motion to Stay Payment of Compensation Order of Lump-Sum Settlement, an Application for Review and a Memorandum of Points and Authorities in Support of Application of Review with the CRB. Petitioner contends the settlement is not a valid contract that the dissemination of benefits is unsupported by substantial evidence and, therefore, must be reversed and the matter remanded to AHD for further proceedings.

ANALYSIS

In the review of an appeal from OWC, the Board must affirm the order under review unless it is determined to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. *See* 6 Stein, Mitchell & Mezines, ADMINISTRATIVE LAW, §51.93 (2001).

Pursuant to D.C. Official Code § 32-1522(b)(2), "the payment of any amounts required by a compensation order shall not be stayed pending final decision on review unless so ordered on the grounds that irreparable injury would otherwise ensue to the employer." As it is well settled in this jurisdiction, lump-sum settlements that discharge the liability of the employer for compensation constitute a final binding compensation order once approved by the agency. *See* D. C. Code § 32-1505(8); *Sodexo Marriott Corp. v. Dist. Of Columbia Dept. of Employment Servs.*, 858 A.2d 452 (D.C. App. 2004)

Accordingly, in order for Petitioner to avoid payment of the lump-sum payment, Petitioner must show that irreparable injury would result if it did so. In support of its Motion to Stay Payment, Petitioner asserts that should the lump sum payment be paid prior to a final decision on review, it would suffer irreparable harm in that they would have forfeited the entire amount prior to an opportunity to have the Application for Review considered. Additionally, Petitioner asserts it is unclear as to whether an estate has been created at this time, therefore it does not appear as if any harm would be incurred by the estate.

Compensation Act of 1979, as amended, D.C. Code Ann. §§ 32-1501 to 32-1545 (2005) and the D.C. Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Official Code §§ 1-623.1 to 1.643.7 (2005), including responsibility for administrative appeals filed prior to October 1, 2004, the effective date of the D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004.

Counsel for the deceased, (Respondent) filed a response asserting Petitioner's Motion to Stay must be denied as it has failed to show "irreparable injury" as required by § 32-1522(b)(2). Respondent asserts "the only instance in which it appears that irreparable harm can be established . . . so as to warrant the stay of a workers' compensation order is when payment of the compensation order imminently threatens the solvency of the moving party", citing *Mary Witson v. The Washington Home/Hospice*, Dir. Dkt. No. 00-57, OHA No. 00-148, OWC No. 548138 (October 5, 2000).

Initially, the Panel must agree that there is no allegation of insolvency on Petitioner's part if it were to issue payment of the lump sum payment pursuant to the settlement agreement. Moreover, review of the Settlement agreement reveals that item # 10 (ten) of said agreement specifically indicates that upon approval of this settlement, the employer and carrier will issue two checks, one made payable to the estate of the respondent for the net settlement proceeds, the other payable to counsel for the approved attorney's fee and costs. Thus, it the Panel's conclusion that in the event an estate has not been created, any check made payable to the estate could not be legally cashed. Accordingly, Petitioner's only basis for its alleged irreparable injury is unfounded as it would not suffer injury if its check could not be cashed. Absent any additional persuasive showing of irreparable injury the Panel must deny Petitioner's request for a Stay of Payment.

With regard to the settlement agreement, Petitioner contends the agreement "is not a valid contract as it was not signed by all interested or potentially interested parties such as the claimant, a representative for the Estate of the Claimant or any party identified as a dependent upon the Claimant at the time of the injury", citing 7 D.C.M.R § 226.1. Petitioner essentially is contending that Mary Burton, who signed the agreement as "Mother of Ronald Burton" is not the legal representative for the Estate of the Claimant nor a dependent and therefore not a proper party to the agreement.

Counsel for the deceased has filed a response to Petitioner's appeal asserting an approved settlement agreement is not subject to modification and cannot be reopened. Counsel further advises that when the Act was amended in 1999, specific language was added to D.C. Official Code § 32-1508(a) stating the "Mayor shall approve the settlement, where both parties are represented by legal counsel". Counsel refers to the Director's Decision in *Wesley Fludd v. Trak Auto and Kemper Insurance*, Dir. Dkt. No., 02-02, OHA No. 01-438, OWC No. 533378 (January 29, 2004), and asserts therefore, "this Agency has no further jurisdiction over this claim.

Petitioner's reference to *Fludd*, case issued by the Director is not unfounded and the panel agrees that with the 1999 amendments to the Act, specifically to §32-1508 (a), OWC is no longer required to consider the four teets recorded in 7 D.C.M.R § 226 to explain why the settlement is or is not in the best interest of a claimant when both parties are represented by legal counsel. *See Amy DeWitt v. Baker & Botts*, Dir. Dkt. No. 93-21, OHA No. 92-869, OWC No. 219753 (September 7, 1994). Nevertheless, the Panel does not agree that the amendment added to §32-1505(a) forbids the Mayor or designee to review an approved settlement agreement due to alleged erroneous conduct on the part of the parties or OWC in the handling of the settlement. *Dewitt, supra* at 3.

Petitioner's serious allegation that the settlement agreement may not have been entered into by the proper parties in the Panel's view, raises such a concern inasmuch as the injured party is deceased and the Compensation Order Approving the Lump Sum Payment contains no indication how OWC ascertained that Mary Burton who signed the settlement agreement was designated to oversee the legal affairs of the deceased or in other words was appointed the legal representative. *See* §§ 32-1508(4)(e); 32-1509 (4). While it is agreed OWC is no longer required to determine if an agreement is in the best interest of the parties, the approval by OWC contains no formalized writing reflecting that the mother of the deceased was in fact a proper party to the agreement.

As properly acknowledge by Petitioner, the Panel lacks jurisdiction to review or set aside the settlement agreement entered into by the parties and approved by OWC, or to grant the relief requested by Petitioner or the Respondent. The Panel does have the authority to request OWC identify the legal status of the parties to the approved settlement.

Accordingly, the matter must be remanded to OWC for a conference to determine the validity of the settlement reached in this case. Said conference is to be conducted within the guidelines set forth in § 32-1508(4) and 32-1509(4).

CONCLUSIONS

Petitioner has not established irreparable injury would ensue if payment per the Settlement agreement were made. Nevertheless, the Order approving said settlement shall not be considered valid until OWC ascertains the agreement has been reached by the proper parties pursuant to the Act.

ORDER

Accordingly this matter is REMANDED to OWC to reassess the validity of the settlement agreement it previously approved by issuing a memorandum confirming that the agreement was entered into by the proper parties pursuant to § 32-1508(4) and 32-1509(4).

FOR THE COMPENSATION REVIEW BOARD

LINDA F. JORY
Administrative Appeals Judge

July 20, 2005
DATE