

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA M. MALLORY
DIRECTOR

**COMPENSATION REVIEW BOARD
CRB 11-042**

**CAROLYN RAWLINGS,
Claimant-Petitioner,**

v.

**HOWARD UNIVERSITY AND LIBERTY MUTUAL INSURANCE COMPANY,
Employer and Insurance Carrier-Respondents.**

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2011 AUG 16 PM 10 55

Appeal from an Order by
Administrative Law Judge Gerald D. Roberson
AHD No. 010-486, H & AS No. 94-166, OWC No. 255872

Frank R. Kearney for the Claimant
Richard W. Souther for the Employer and Insurance Carrier

Before LAWRENCE D. TARR, MELISSA LIN JONES, and HENRY W. MCCOY, *Administrative Appeals Judges.*

LAWRENCE D. TARR, *Administrative Appeals Judge*, for the Compensation Review Board:

DECISION AND ORDER

OVERVIEW

This case is before the Compensation Review Board (CRB) on the request of Denise Rawlings (claimant) for review of the March 31, 2011, Order 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 Order, the ALJ dismissed the claimant's application for hearing without holding a formal hearing. We affirm.

BACKGROUND FACTS OF RECORD

The claimant worked for this employer as a librarian. On June 29, 1993, the claimant injured her back at work after she fell off a stool. The employer voluntarily paid the claimant benefits from June 29, 1993, to December 13, 1993, and from March 15, 1994, to July 5, 1994.

On February 17, 1995, a Hearings and Appeals Examiner held a formal hearing to consider the claimant's application for temporary total disability benefits from December 13, 1993, to March 15, 1994, and from June 4, 1994, through the date of the hearing and continuing. In his January 19, 1996, Compensation Order, the examiner awarded the claimant temporary total disability benefits only from June 29, 1993 to December 13, 1993.

The examiner also found that the claimant's disability had completely resolved as of November 11, 1993. *Rawlings v. Howard University Hospital* (sic), H&AS No. 94-166, OWC No. 255872 (January 19, 1996).

The Director of DOES, who had appellate authority from hearing examiner decisions at that time, affirmed the examiner's decision that the claimant's injuries had resolved by November 11, 1993. The Director held:

Claimant's treating physician, Dr. Grant, held that claimant was temporarily totally disabled until January 10, 1994. Thereafter, Claimant's physician authorized claimant to go back to light duty work, which the employer provided. The employer's physician, Dr. Levitt, stated in his medical report that claimant's injury had resolved by November 11, 1993. The Director finds no error in Hearing Examiner's finding that claimant's physical injuries were resolved on November 11, 1993.

Rawlings v. Howard University, Dir. Dkt. No 96-26, H&AS No. 94-166, OWC No. 255872 (August 19, 1996) (Emphasis added).

The claimant returned to work for the employer and continued working until 2003. She has not worked for any employer since. The employer last paid indemnity compensation benefits to the claimant in 1995.¹

On September 19, 2006, the claimant filed her current claim in which she sought temporary total disability benefits from August 26, 2010, to the present and continuing. The ALJ convened a formal hearing on February 10, 2011 at which he reminded the parties of his earlier ruling that this hearing would be one pursuant to *Snipes v. DOES*, 542 A.2d 832 (D.C. 1988). (HT at 6).

The ALJ ruled at the *Snipes* hearing:

I'm not satisfied that the claimant has met her burden with respect to section 32-1524. Therefore, I'm going to dismiss this case. The Act clearly states that she has an obligation to file a claim within one year.

Obviously, the main issue is, or the sticking point is the compensation order back in 1996 expressly stated that (claimant) only had a lumbar strain, and that her medical treatment has resolved. So, the claimant as an obligation to come back within the one year limitation period and she failed to do so, therefore, her case is dismissed

Id. at 16.

¹ Because there has not been an evidentiary hearing on the present claim, we rely on the unchallenged factual representations in the parties' memoranda for background information.

The ALJ memorialized his bench ruling in the March 31, 2011, Order that is the subject of this review. The ALJ held that the present claim was barred by the one-year time limitation in D.C. Code §32-1524:

On February 10, 2011, the parties advised this Office Claimant has not received compensation payments in this matter since 1995. As such, this Office, effective February 10, 2011, dismissed the Application for Formal Hearing without prejudice for failure to comply [sic] Section 32-1524 of the Act.

The claimant timely appealed.

THE STANDARD OF REVIEW

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 ALJ's 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).

ANALYSIS

Two code sections are relevant to this appeal: D.C. Code § 32-1524 and D.C. Code §1514.

D.C. Code § 32-1524, titled "Modification of awards," establishes a procedure that permits a party to review a previously issued compensation order provided the request is filed within one year after the last payment of compensation or within one year after a claim is rejected. That section states:

(a) At any time prior to 1 year after the date of the last payment of compensation or at any time prior to 1 year after the rejection of a claim, provided, however, that in the case of a claim filed pursuant to § 32-1508(3)(V) the time period shall be at any time prior to 3 years after the date of the last payment of compensation or at any time prior to 3 years after the rejection of a claim, the Mayor may, upon his own initiative or upon application of a party in interest, order a review of a compensation case pursuant to the procedures provided in § 32-1520 where there is reason to believe that a change of conditions has occurred which raises issues concerning:

(1) The fact or the degree of disability or the amount of compensation payable pursuant thereto; or

(2) The fact of eligibility or the amount of compensation payable pursuant to § 32-1509.

(b) A review ordered pursuant to subsection (a) of this section shall be limited solely to new evidence which directly addresses the alleged change of conditions.

(c) Upon the completion of a review conducted pursuant to subsection (a) of this section, the Mayor shall issue a new compensation order which may terminate, continue, reinstate, increase, or decrease such compensation previously paid, or award compensation. An award increasing or decreasing the compensation rate may be made and shall be effective from the date of the Mayor's order for a review of the compensation case. If, since the date of the Mayor's order for a review of the compensation case, the employer has made any payments of compensation at a rate greater than the rate provided in the new compensation order, the employer shall be entitled to be reimbursed for the difference in accordance with rules promulgated by the Mayor. If, since the date of the Mayor's order for review of the compensation case, the employer has made any payments of compensation at a rate less than the rate provided in the new compensation order, the employee shall be entitled to the difference as additional compensation in accordance with rules promulgated by the Mayor.

(d) A compensation order issued pursuant to subsection (c) of this section shall be reviewable pursuant to § 32-1522.²

D.C. Code § 1514, "Time for filing claims" pertains to new claims and provides in relevant part:

(a) Except as otherwise provided in this section, the right to compensation for disability or death under this chapter shall be barred unless a claim therefor is filed within 1 year after the injury or death. If payment of compensation has been made without an award on account of such injury or death, a claim may be filed within 1 year after the date of the last payment. Such claim shall be filed with the Mayor. The time for filing a claim shall not begin to run until the employee or beneficiary is aware, or by the exercise of reasonable diligence should have been aware, of the relationship between the injury or death and the employment. Once a claim has been filed with the Mayor, no further written claims are necessary.

This section requires a claimant to file a new claim for compensation benefits within one year from the time the claimant knew, or should have known, of the injury *Millhouse supra* at 1220 and fn. at 1223.

As these two Code sections show, it is the nature of the claim that determines which Section applies; if the claim seeks to modify or change an issue previously decided in a prior compensation order, then §32-1524 applies and the claim must be filed within one year from the date compensation was last paid.³ If the claim does not require review of an issue previously decided in a previous compensation order, then §32-1514 applies and the claim must be filed within one year from when the claimant knew, or should have known, of the injury.

² The District of Columbia Court of Appeals has held that Code § 32-1524 (a) is an exception to the doctrine of *res judicata* that otherwise would prevent relitigation between the same parties of a claim that previously was adjudicated on the merits. *WMATA v. DOES and Millhouse, Intervenor*, 981 A.2d 1216 (October 1, 2009) citing *Short v. DOES*, 723 A.2d 845 (D.C. 1998) and *Walden v. DOES*, 759 A.2d 186 (D.C. 2000).

³ "Compensation" referred to in this section means indemnity benefits, not medical benefits. *Millhouse v. WMATA*, CRB No. 06-085, AHD No. 95-348B, OWC No. 285708 (July 20, 1998) at page 6.

In 1996, a hearings examiner held, and the Director affirmed, that all physical injuries from the claimant's June 29, 1993, accident at work resolved. The claimant's present claim alleges that she is disabled again from those physical injuries. To prevail in her present claim, she must modify or change the previously decision that her injuries resolved. Therefore, the ALJ correctly determined §32-1524 applies and the claim, filed more than one year after the last payment of compensation, was not timely.

Contrary to the claimant's argument, the ALJ's decision is consistent with the DCCA's *Millhouse* decision.

In *Millhouse*, the claimant sustained a work-related injury on July 14, 1993. Pursuant to a Compensation Order, she was awarded temporary total disability benefits from July 29, 1995, to September 10, 1995. Unlike in the present case, benefits were not ended upon a finding that Ms. Millhouse's injuries had resolved. Benefits ended because the claimant returned to full-duty work. *Millhouse v. WMATA*, H&AS No. 95-348 (December 1, 1995).

After this determination, the claimant filed two applications for hearing. The first application was amicably resolved and dismissed by Order dated December 17, 1996. *Millhouse v. WMATA*, H&AS No. 95-348A (December 17, 1996).

Ms. Millhouse filed another application for hearing on April 10, 2006. This application alleged the claimant was again disabled from working because of a recurrence of her 1993 injury and sought an additional period of temporary total disability benefits from March 9, 2006, to the present and continuing. An ALJ held the new application alleged "a separate and distinct claim for relief, and is not barred by the limitations set forth in §32-1524 (a)" and entered an award for the benefits sought. *Millhouse v. WMATA*, AHD No. 95-348B, OWC No. 285708 (August 16, 2006). The CRB affirmed, *Millhouse v. WMATA*, CRB No 06-085 (July 20, 2007).

The DCCA affirmed. In language that is relevant to the present case, the DCCA held:

The only other case to consider a subsequent claim following the same accident at work, and the one we find most instructive, is *Capitol Hill Hosp. v. D.C. Dep't of Employment Servs.*, 726 A.2d 682 (D.C. 1999). There, after the claimant had suffered an injury and been awarded temporary total disability benefits, it was determined that the injury resulted in a permanent ten percent physical impairment, and the claimant sought compensation for the resulting loss. *See id.* at 683. Though her employer argued that the claimant's request was barred by section 32-1524 because the one-year period for requesting a modification had lapsed, we held that she was not barred from filing a new claim, adopting DOES's interpretation that [section 32-1524] is designed for the review of a specific compensation award covering an issue 'previously decided' by that order, and is not addressed to new issues that were not decided in the prior compensation award." *Id.* at 685.

WMATA v. Millhouse, *supra* at 1221.

In the present claim, the claimant does not allege she is disabled from a new injury medically causally related to the 1993 injury or from an aggravation of that injury. Although the claimant now seeks benefits for a different period of disability, the present claim involves the same issue that was previously decided against her—whether all physical injuries from her June 1993 accident resolved by November 11, 1993. Therefore, the present claim would be subject to the limitations period of D.C. Code § 32-1524 and is filed too late.

In the case at bar, the ALJ correctly based his decision on what was decided in the previous decision, not to the relief sought in the present claim. We find the ALJ properly held that the claimant's present claim is subject to §32-1524 and properly dismissed the claim because it was not filed within one year from the date compensation was last paid.

CONCLUSION AND ORDER

The ALJ's March 31, 2011, Order is neither arbitrary, capricious, nor an abuse of discretion and is in accordance with the law. That Order is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:



Lawrence D. Tarr
Administrative Appeals Judge

August 16, 2011
DATE