

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 15-074

**CLARENCE T. JONES,
Claimant-Petitioner,**

v.

**DISTRICT OF COLUMBIA PUBLIC LIBRARY,
Self-Insured Employer-Respondent.**

Appeal from an April 2, 2015 Compensation Order
by Administrative Law Gwenlynn D'Souza
AHD No. PBL12-057A, DCP No. 30101157722-0001

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2015 AUG 21 AM 10 49

(Decided August 21, 2015)

Michael J. Kitzman for the Claimant
Lindsay M. Neinast for the Employer

Before MELISSA LIN JONES, LINDA F. JORY, and HEATHER C. LESLIE, *Administrative Appeals Judges.*

MELISSA LIN JONES for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

On September 9, 2010, Mr. Clarence T. Jones, a police officer, injured his right knee as he arrested a patron of the District of Columbia Public Library ("Employer"). The Public Sector Workers' Compensation Program ("PSWCP") accepted Mr. Jones' claim for benefits for a right knee injury, and he received temporary total disability compensation benefits and medical benefits from the date of his injury through April 8, 2013.

Following surgery on his right knee in early 2011, Mr. Jones purportedly began favoring his right knee and taxing his left knee. Mr. Jones completed an Employer & Employee First Report of Injury or Occupational Disease on January 10, 2013. On March 5, 2013, PSWCP issued a

Notice of Determination Regarding Original Claim for Compensation; it neither accepted nor denied Mr. Jones' claim for a left knee injury.

Mr. Jones filed an Application for Formal Hearing ("Application") seeking reinstatement of temporary total disability compensation benefits from April 8, 2013 to the date of the formal hearing and continuing and authorization for medical expenses. Following a formal hearing, an administrative law judge ("ALJ") dismissed Mr. Jones' Application in a Compensation Order dated April 2, 2015. *Jones v. D.C. Public Library*, AHD No. PBL12-057A, DCP No. 30101157722-0001 (April 2, 2015). Mr. Jones appeals that compensation order.

Mr. Jones asserts, "The Compensation Order failed to make a determination whether or not the government had received sufficient evidence to make a determination, or to address the claims for relief, including compensation benefits." Memorandum of Points and Authorities in Support of Application for Review, p. 3. Mr. Jones also asserts the documentation submitted to PSWCP and to the ALJ suffice for issuance of a decision on the merits. Finally, Mr. Jones asserts the ALJ erred by citing *Ashton v. D.C. Department of Motor Vehicles*, CRB No. 10-193, AHD No. PBL10-065, DCP No. 30100438785-0001 (July 7, 2011) because the CRB issued a subsequent decision in that case on August 22, 2011 and because in that case the CRB did not find that an injury must be accepted in order to be addressed. For these reasons, Mr. Jones requests the Compensation Review Board ("CRB") vacate the Compensation Order.

In response, Employer argues the ALJ properly determined the January 25, 2011 Notice of Determination does not confer jurisdiction on the Office of Hearings and Adjudication, Administrative Hearings Division ("AHD") because that Notice of Determination accepted only Mr. Jones' right knee injury. Similarly, Employer argues the ALJ properly determined the March 5, 2013 Notice of Determination does not vest jurisdiction in AHD because it does not satisfy §§ 1-624.23(a) or 1-624.23(b)(1) of the D.C. Comprehensive Merit Personnel Act of 1978, as amended. Employer requests the CRB affirm the Compensation Order.

ISSUE ON APPEAL

Does AHD have jurisdiction over Mr. Jones' claim for a left knee injury?

ANALYSIS¹

To begin, Mr. Jones is correct that the ALJ erred by citing *Ashton v. D.C. Department of Motor Vehicles*, CRB No. 10-193, AHD No. PBL10-065, DCP No. 30100438785-0001 (July 7, 2011) because that decision was vacated, *Ashton v. D.C. Department of Motor Vehicles*, CRB No. 10-193, AHD No. PBL10-065, DCP No. 30100438785-0001 (July 29, 2011); however, the ALJ's error is harmless. This matter falls squarely within the mandates set forth in *Sisney v. D.C. Public*

¹ The scope of review by the CRB is limited to making a determination as to whether the factual findings of the appealed 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 § 1-623.28(a) of the D.C. Comprehensive Merit Personnel Act of 1978, as amended. D.C. Code § 1-623.01 *et seq.*, ("Act"). Consistent with this standard of review, the CRB is constrained to uphold a Compensation Order that is supported by substantial evidence, even if there also is contained within the record under review substantial evidence to support a contrary conclusion and even if the CRB might have reached a contrary conclusion. *Marriott International v. DOES*, 834 A.2d 882, 885 (D.C. 2003).

Schools, CRB No. 08-200, AHD No. PBL08-066, DCP No. DCP007970 (July 2, 2012), and Mr. Jones' arguments are rejected.

On January 25, 2011, PSWCP accepted Mr. Jones' claim for a right knee injury. Employer's Exhibit 3. Mr. Jones did not claim a left knee injury until January 10, 2013. Employer's Exhibit 2.

In response to Mr. Jones' January 10, 2013 Employer & Employee First Report of Injury or Occupational Disease, PSWCP issued a Notice of Determination Regarding Original Claim for Compensation on March 5, 2013. Employer's Exhibit 1. In that Notice of Determination, PSWCP controverted Mr. Jones' request to add another body part to the September 19, 2010 claim because it was waiting to receive forms and medical documentation from Mr. Jones. PSWCP did not accept or deny a claim for left knee injury.

Pursuant to § 1-624.23(b)(1) of the Act,

[b]efore review under §1-623.28(a), a claimant for compensation not satisfied with a decision of the Mayor or his or her designee under subsection (a) of this section is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on the claim before a Department of Employment Services Disability Compensation Administrative Law Judge. At the hearing, the claimant and the Corporation Counsel are entitled to present evidence. Within 30 days after the hearing, the Mayor or his or her designee shall notify the claimant, the Corporation Counsel, and the Office of Personnel in writing of his or her decision and any modifications of the award he or she may make and the basis of the decision.

The CRB has interpreted this provision to require issuance of a Final Determination² by PSWCP in order to vest jurisdiction in the Administrative Hearings Division:

The plain language of §1-623.24(b)(1) of the Act requires "the issuance of a decision" by DCP before an injured worker may request a formal hearing:

The authority of this Agency to review disputes arising out of the Public Sector Workers' Compensation Act is wholly governed by the terms of that Act. D.C. Code §1-623.24(b)(1) provides for an appeal or review of a final decision of [PSWCP] Determinations by an ALJ in DOES. As a general principle, the only matters that DOES has authority to review are matters upon which [PSWCP] has rendered a decision, and it is that decision that is reviewed by DOES. In the absence of an operative decision, there is nothing for DOES to review and rule upon. [*Minter v. D.C. Office of the Chief Medical Examiner*, CRB Nos. 11-024 and 11-035, AHD No. PBL073A, DCP No. 761035-0001-2006-0014 (December 15, 2011).]

² The term "Final Determination" is used generically to refer to any final decision rendered by PSWCP including but not limited to a Denial of Award of Compensation Benefits or Notice of Loss of Wage Earning Capacity.

In other words, the Act is clear that the actual issuance of a Final Determination is a prerequisite to AHD's adjudication of the request for benefits:

While the courts have broad grants of authority to adjudicate matters, the adjudicatory authority of an administrative agency is limited by an enabling act. Under the Act governing this matter, a claim for benefits for a work-related injury must first be made to the Public Sector Division of the Office of Workers' Compensation, that is, the OBA. See D.C. Official Code §1-623.24 (a); 7 DCMR §§104, 105, 106, 199. The OBA, now the TPA, is responsible for conducting necessary investigations into an injured worker's claim and then making an initial determination either to award or deny disability compensation benefits for that claim. It is only if the injured worker is dissatisfied with the determination the worker can request a hearing before the ALJ. See D.C. Official Code §1-623.24(b)(1). Thus, an ALJ is without ancillary authority to adjudicate claims for compensation that have not been first presented to the OBA, or the TPA, for investigation and resolution. [*Burney v. D.C. Public Service Commission*, CRB No. 05-220, OHA No. PBL97-016A, DCP No. 345126 (June 1, 2005) (Emphasis added.)]

Sisney, supra.

Applying these concepts to Mr. Jones' case, the ALJ wrote:

a. Jurisdiction over Initial Claim

This administrative court has jurisdiction over a determination for or against the payment of compensation pursuant to D.C. Code § 1-623.24. *Carrington*, CRB No. 13-093. In this case, Employer disputes jurisdiction based on the scope of the accepted claim. Claimant has the burden of proof to establish jurisdiction by showing that he provided notice within the time constraints set forth in the Act and showing that the accepted claim included the specific body part.

Claimant filed an original claim around November 29, 2010, and Employer accepted the claim for the right knee on January 25, 2011. (EE 2, EE 3) Although Claimant argued that the filing of the initial claim included a claim for the left knee, the facts indicate otherwise. Claimant did not submit a copy of the initial claim into evidence. Claimant testified that his initial treatment was for the right knee (HT 45-46). Claimant indicated that the damage to the left knee arose around the time of his first surgery for the right knee in early 2011. (HT 46-47, 53-55).

Based on these facts, I find that the initial claim, which was filed around November 29, 2010 and accepted on January 25, 2011, did not initially include a

claim for the subsequent injury to the left knee. Therefore, Claimant has failed to show Employer accepted a claim for the left knee through the January 25, 2011 Notice of Determination. Accordingly, I find that jurisdiction does not arise over a purported claim to the left knee pursuant to the January 25, 2011 Notice of Determination.

a. Jurisdiction over Amendment to Claim

Alternatively, an initial claim may be amended to include an additional body part or injury. See 7 DCMR § 111.8. Jurisdiction over such a claim arises under D.C. Code 1-623.24(b)(1) which provides review of decisions under subsection (a). Subsection (a), however, is limited to determinations about “findings of facts and an award for or against payment of compensation.” At this time, although a document entitled “Notice of Determination” has been issued, Employer is holding the claim “in abeyance without further action.” Because Employer has not made a determination about whether to accept or deny a claim for compensation, jurisdiction over such a decision does not arise pursuant to D.C. Code 1-623.24(b)(1).

Nor is jurisdiction lost under the deemed accepted provision since it only applies to initial claims. D.C. Code 1-623.24(a-3)(1). Also, pursuant to 7 DCMR § 112.1, claims for an amended notice of determination or any other request for benefits may not be deemed accepted.

Jones, supra, at p. 4.

PSWCP has not issued a Final Determination regarding Mr. Jones’ left knee injury. AHD, therefore, lacks jurisdiction to adjudicate his claim for workers’ compensation disability benefits for a left knee injury, and there is no error in the ALJ’s ruling that “[b]ecause evidence establishing jurisdiction is lacking, this case must be dismissed, and this administrative court may not decide the remaining issues.” *Id.*

CONCLUSION AND ORDER

AHD does not have jurisdiction over Mr. Jones’ claim for a left knee injury because PSWCP has not issued a Final Determination accepting or denying a claim for a left knee injury. The April 2, 2015 Compensation Order is AFFIRMED.

So ordered.