

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

**Office of Hearings and Adjudication**  
**Compensation Review Board**

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**CRB (Dir.Dkt.) No. 03-97**

**TAVIA COVINGTON,**

**Claimant – Respondent**

**v.**

**METRO PETS PALS, L.L.C.,**

**Employer/Carrier – Petitioner.**

Appeal from a Compensation Order of  
Administrative Law Judge Jeffrey P. Russell  
OHA No. 02-448A, OWC No. 583242

Metro Pet Pals. L.L.C., *Pro Se*<sup>1</sup>

John E. Carpenter, Esq., for the Respondent

Before E. COOPER BROWN, *Acting Chief Administrative Appeals Judge*, FLOYD LEWIS and SHARMAN J. MONROE, *Acting Administrative Appeals Judges*.

SHARMAN J. MONROE, *Acting Administrative Appeals Judge*, on behalf of the Review Panel:

**ORDER DENYING MOTION TO DISMISS**

**JURISDICTION**

Jurisdiction is conferred upon the Compensation Review Board pursuant to D.C. Official Code §§ 32-1521.01 and 32-1522 (2004), 7 DCMR § 230, and the Department of Employment Services Director's Directive, Administrative Policy Issuance 05-01 (February 5, 2005).<sup>2</sup>

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<sup>1</sup> The record indicates that Danny C. Onorato, Esq. represented the Employer-Petitioner at the formal hearing, but subsequent to the hearing his representation ceased.

<sup>2</sup> 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 D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, D.C. Official Code §32-1521.01. In accordance with the Director's

## BACKGROUND

This appeal follows the issuance of a Compensation Order by the Office of Hearings and Adjudication (OHA),<sup>3</sup> District of Columbia Department of Employment Services (DOES). In that Compensation Order, which was filed on March 6, 2003, the Administrative Law Judge (ALJ) awarded temporary total disability from May 6, 2002 through and including November 30, 2002, and from January 1, 2003 through the present and continuing, plus interest thereon and payment of causally related medical expenses requested by the Claimant-Respondent. The Employer-Petitioner now seeks review of that Compensation Order.

As grounds for this appeal, the Employer-Petitioner alleges as error the determination that the Claimant-Respondent is an employee of the Employer-Petitioner. In response, the Claimant-Respondent alleges, as an initial matter, that the Application for Review is untimely filed and moves that the Application be dismissed.

## ANALYSIS

The scope of review by the Compensation Review Board (CRB) and this Review Panel, as established by the Act and as contained in the governing regulations, 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. *See* D.C. Workers' Compensation Act of 1979, as amended, D.C. Official Code §32-1501 *et seq.*, at §32-1522(d)(2)(A). "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. District of Columbia Department of Employment Services*, 834 A.2d 882 (D.C. App. 2003). Consistent with this standard of review, the CRB and this Review Panel are constrained 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.

However, before addressing the merits the Employer-Petitioner on appeal, the issue raised by the Claimant-Respondent must be addressed. If the Application for Review is untimely, then the Board is without authority to address the Employer-Petitioner's appeal. *See Hughes-Smith v. D.C. Department of Fire and Emergency Services*, Dir.Dkt.No. 01-04, OHA No. PBL 00-043B, OBA No. 002120 (March 23, 2004).

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Directive, 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' Compensation Act of 1979, as amended, D.C. Official Code §32-1501 *et seq.*, and the D.C. Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Official Code §1-623.1 *et seq.*, 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.

<sup>3</sup> Pursuant to the Director's Directive, Administrative Policy Issuance 05-01, the functions of the Office of Hearings and Adjudication have recently been assigned to the Administrative Hearings Division. (AHD).

The Claimant-Respondent asserts that the Employer-Petitioner's Application for Review is untimely filed because the Compensation Order in this case was issued on March 6, 2003 and that, pursuant to the applicable regulations, the Employer had thirty (30) days after the Compensation Order was issued to file its Application for Review. The Employer-Petitioner's Application was filed with the Director on July 31, 2003, 150 days after the Compensation Order was issued.

Under the Act and its governing regulations, an Application for Review must be filed with the Mayor within thirty (30) days from the date that the compensation order is certified as having been mailed to the parties. See *Williams v. Town Center Management*, Dir. Dkt. No. 97-39, H&AS No. 96-408, OWC No. 296619 (August 27, 1997); D.C. Official Code § 32-1522 (b) (2); 7 DCMR § 230.2. The Mayor has delegated his functions under the Act to the Director, Department of Employment Services. See 7 DCMR § 200.3. "Day" is defined in the implementing regulations as a calendar day, unless otherwise specified. See 7 DCMR § 299.

Based upon the foregoing, the Employer-Petitioner's Application would have had to have been filed with the Director by April 7, 2003.<sup>4</sup> As previously noted, the Employer-Petitioner's Application was not filed with the Director until July 31, 2003. A review of the records, however, shows that the Employer-Petitioner's Application for Review was initially mis-filed with the Office of Hearings and Adjudication on March 26, 2003 (notwithstanding that the Appeal Rights attached to the Compensation Order states that appeals are to be filed with the Director). Given this situation, the Board must consider whether the filing with the Office of Hearings and Adjudication constitutes a timely filing with the Director under the Act.

In *White v. American Elevator Services*, Dir. Dkt. No. 89-140, H&AS No. 88-431 (March 2, 1995), the Director held that an Application for Review that had been mis-filed with the Hearing and Adjudication Section would nevertheless be accepted as timely for purposes of appeal to the Office of the Director, as long as the Application was timely filed with Hearings & Adjudication within the required 30-day period. The Director's holding in *White* is consistent with the more recent decision of the Director in which he accepted as timely an appeal filed beyond the 30-day period where petitioner detrimentally relied upon erroneous information issued by an agency official concerning the requirements for filing. See *West v. Washington Hospital Center*, Dir. Dkt. No. 99-97, OHA No. 99-276 (March 30, 2000). The Director's decision in both instances is a recognition that the filing of a timely appeal is not a jurisdictional prerequisite to intra-agency appellate review, but a requirement that, like a statute of limitations, is subject to waiver, estoppel, and equitable tolling when equity so requires. See, e.g., *Terry Kidwell v. District of Columbia*, 670 A.2d 349, 353 (D.C. 1996). The Board sees no reason to diverge from the Director on this subject. By holding compliance with the filing period to be not a jurisdictional prerequisite, but a requirement subject to waiver, as well as tolling when equity so requires, the Board honors the remedial purpose of the D.C. Workers' Compensation Act as a whole, without negating the particular purpose of the filing requirement. See *Zipes v. TWA*, 455 U.S. 385, 393, 398 (1982).<sup>5</sup>

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<sup>4</sup> In the instant case, the 30<sup>th</sup> day fell on April 5, 2003. However, since April 5<sup>th</sup> was a Saturday, the Employer-Petitioner had until April 7, 2003 to file its Application. See *Jackson v. District of Columbia Employees' Compensation Appeals Board*, 537 A.2d 576, 577 (D.C.1988).

<sup>5</sup> The Board notes that a copy of the mis-filed Application for Review was served on the counsel for the Claimant-Respondent on March 26, 2003.

The Employer-Petitioner's Application for Review was filed with the Office of Hearings and Adjudication on March 26, 2003, well before the 30-day period expired. Notwithstanding its mis-filing with the Office of Hearings and Adjudication, the Board accepts the Application as timely filed.

#### CONCLUSION

The Employer-Petitioner's Application for Review, having been filed, albeit erroneously, with the Office of Hearings and Adjudication within the 30-day limitation period, is accepted by the Board as timely filed.

#### ORDER

The Claimant-Respondent's Motion to Dismiss the Employer-Petitioner's Application for Review is DENIED.

The Employer-Petitioner's Application for Review is returned to the Review Panel for disposition on the merits in accordance with the dictates of the D.C. Workers' Compensation Act.

FOR THE COMPENSATION REVIEW BOARD:

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SHARMAN J. MONROE  
Acting Administrative Appeals Judge

March 18, 2005

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DATE