

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA MARÍA MALLORY
DIRECTOR

Compensation Review Board

CRB No. 11-134

JAMES DAVIDSON
Claimant – Respondent,

v.

DISTRICT OF COLUMBIA FIRE AND EMERGENCY MEDICAL SERVICES DEPARTMENT,
Employer - Petitioner

Appeal from a October 31, 2011 Compensation Order by
Administrative Law Judge Fred Carney
AHD No. PBL. 99-073A, DCP No. 761033000319990005

Richard Link, Esquire, for the Claimant
Frank McDougald, Esquire, for the Employer

Before: HEATHER C. LESLIE, JEFFREY P. RUSSELL, *Administrative Appeals Judges* and LAWRENCE
D. TARR, *Chief Administrative Appeals Judge*

HEATHER C. LESLIE, *Administrative Appeals Judge*, for the Compensation Review Board.

DECISION AND ORDER

OVERVIEW

This case is before the Compensation Review Board (CRB) on the request for review filed by the Employer - Petitioner (Employer) of the October 31, 2011, Compensation Order (CO) 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 CO, the Claimant's request for temporary total disability benefits from February 18, 2011 to the present and continuing, payment of related medical expenses and bills, and authorization for continuing treatment with Dr. Hampton Jackson was granted. We AFFIRM.

FACTS OF RECORD AND PROCEDURAL HISTORY

The Claimant was employed as an emergency paramedic. On February 3, 1999, the Claimant injured his lower back. The Claimant subsequently came under the care and treatment of Dr. Hampton Jackson.

The Claimant's claim was accepted by the Employer, who paid disability benefits until February 17, 2011. On that date, the Claimant's benefits were terminated based on the additional medical evaluation (AME) of Dr. Robert Gordon. The Claimant timely appealed this termination.

A full evidentiary hearing was held on May 3, 2011. At that hearing, the Claimant sought reinstatement of temporary total disability benefits from February 18, 2011 to the present and continuing, payment of related medical expenses and bills, and authorization for treatment with Dr. Jackson. The Employer contested the nature and extent of the Claimant's disability. A Compensation Order on Remand (CO) was issued on October 31, 2011. In that CO, the ALJ awarded the Claimant the requested claim for relief.

The Employer timely appealed on November 29, 2011. The Employer appeals only that part of the CO that awards the Claimant ongoing medical treatment with Dr. Hampton Jackson, arguing that the ALJ lacked the authority to award continuing treatment with Dr. Jackson, pursuant to our holding in *Mitchell v. District of Columbia Public Schools*.¹ Specifically, the Employer argues that as there is no proof that Dr. Jackson was affiliated with the managed care organization known as OCCUNET PPO, the Employer is not liable for any treatment rendered by Dr. Jackson.

The Claimant opposed the Employer's application for review, arguing that as the Employer did not raise the issue at the Formal Hearing, the issue is not appropriate for appellate review.

STANDARD OF REVIEW

The scope of review by the CRB, 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 on Remand 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. Comprehensive Merit Personnel Act of 1978, as amended, D.C. Official Code § 1-623.01, *et seq.*, at § 1-623.28(a), and *Marriott International v. D. C. Department of Employment Services*, 834 A.2d 882 (D.C. 2003).

Consistent with this standard of review, the CRB is 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.

ANALYSIS

Turning to the Employer's sole argument, the Employer argues the ALJ did not have jurisdiction to award any medical treatment rendered by Dr. Jackson as there was no evidence that Dr. Jackson was affiliated with the statutory mandated managed care organization, as explained in *Mitchell, supra*.

A review of the hearing transcript reveals the Employer never raised this argument as a defense at the Formal Hearing. To raise the issue before us is prejudicial to the Claimant. No evidence was

¹ CRB No. 09-109, AHD No. 08-0001, DCP No. 30080441654-0001 (December 11, 2009).

presented regarding this issue allowing the Claimant to respond to this defense or to allow the ALJ to make any findings of fact or conclusions of law.

As the District of Columbia Court of Appeals has stated, in the absence of exceptional circumstances, claims not raised below will not be entertained by an appellate agency. *Waugh v. DOES*, 786 A.2d 595, 597 n.2 (D.C. 2001), quoting *Glenbrook Rd. Ass'n v. District of Columbia Bd. Of Zoning Adjustment*, 605 A.2d 22, 33 (D.C. 1992). No exceptional circumstances have been shown by the Employer. Thus, by not raising the issue at the Formal Hearing, we conclude the Employer waived any objection relating to whether Dr. Jackson was a participant in the statutory mandated care organization. The Employer's argument is rejected.

CONCLUSION AND ORDER

The October 31, 2011 Compensation Order is **AFFIRMED**.

FOR THE COMPENSATION REVIEW BOARD:

HEATHER C. LESLIE
Administrative Appeals Judge

July 24, 2013

DATE