

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**Department of Employment Services**

**MURIEL BOWSER**  
MAYOR



**DEBORAH A. CARROLL**  
ACTING DIRECTOR

**COMPENSATION REVIEW BOARD**

**CRB No. 14-121**

**DWAYNE ADAMSON,**  
**Claimant-Respondent,**

v.

**WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY,**  
**Self-Insured Employer-Petitioner.**

Appeal from an September 30, 2014 Compensation Order by  
Administrative Law Judge Joan E. Knight  
AHD No. 14-256, OWC No. 699769

Krista N. DeSmyter for Claimant  
Mark H. Dho for Employer

Before **JEFFREY P. RUSSELL**, **MELISSA LIN JONES**, and **HEATHER C. LESLIE**, *Administrative Appeals Judges*.

**JEFFREY P. RUSSELL** for the Compensation Review Board.

**DECISION AND ORDER**

**FACTS OF RECORD AND PROCEDURAL HISTORY**

Dwayne Adamson worked as a bus operator for Employer. His route assignment included routes U5, U6, U8, the Mayfair-River Terrace-Marshall Height bus corridor providing service to the Minnesota Avenue, NE Metro station.

In 2011, Claimant had a heated exchange in which he felt threatened by a passenger he confronted over an unpaid fare.

On December 14, 2012, while driving his bus along Benning Road, he heard gun shots. He stopped the bus, checked on the passengers, and inspected the exterior of the bus, revealing two

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bullet holes. He reported the incident to his supervisors via electronic communication, and the bus was taken out of service. Mr. Adamson was too shaken to drive the bus back to the yard. He has not returned to work since this incident.

Claimant obtained psychiatric care from Dr. Memunatu Bangura, who diagnosed him with post traumatic stress disorder (PTSD) resulting from the 2014 incident, prescribed Ativan, and placed him in an of-work status.

Claimant continued treatment with Dr. Bangura and a clinical counselor, Raymond Carnegie, Ph.D., who assessed a “cluster” of psychological depressive disorder, including anxiety, panic attacks, depression and adjustment disorder.

Claimant was evaluated by Dr. Bruce Smoller for an independent medical evaluation (IME) on March 26, 2013. Dr. Smoller felt that although Claimant no longer met the clinical criteria for PTSD, he did suffer from an anxiety disorder/adjustment disorder, he was not ready to return to operating a bus, but in six months’ time he would be so able.

Employer made voluntary payments of temporary total disability for a period of time. On November 14, 2013, Employer had Claimant evaluated by another psychiatrist, Dr. Brian Schulman, also for the purpose of an IME. Dr. Schulman opined that Claimant had recovered from the psychological injury that he had suffered, finding that the conditions had resolved. He assessed Claimant’s decision not to return to work as a bus operator to be the result of a rational decision making process in which he chose not to further subject himself to the risks associated with being a bus operator.

As a result of this IME, Employer terminated Claimant’s temporary total disability benefits as of November 23, 2013.

Claimant sought reinstatement of his benefits at a formal hearing conducted before an Administrative Law Judge (ALJ) in the Administrative Hearings Division (AHD) of the Department of Employment Services (DOES) on June 12, 2014. Following the hearing, the ALJ issued a Compensation Order on September 30, 2014, awarding Claimant temporary total disability benefits from the date of termination to the present and continuing and interest on accrued unpaid benefits, as well as causally related medical care.

Employer appealed the Compensation, arguing that the ALJ erred in finding that Claimant suffers from PTSD and that his decision to stay off work is not the result of a psychological injury. Employer also argues that the award of interest is unauthorized by statute and should be stricken.

Claimant opposes the appeal, asserting that Employer's appeal is unfounded in that the award is supported by substantial evidence, and that interest on accrued benefits are authorized by regulation and caselaw.

Because the finding that Claimant has a psychological disorder that prevents him from operating a bus is supported by substantial evidence, and because the award of interest on accrued benefits is in conformance with 7 DCMR § 209.11, we affirm the Compensation Order.

#### ANALYSIS

This case is not without its difficulties. First among them is that the ALJ made a clear error in finding that, as of the date of the Compensation Order, Claimant suffers from Post Traumatic Stress Disorder (PTSD). Compensation Order, p. 5. As Employer points out, although Claimant was diagnosed initially with PTSD by Dr. Bangura, review of the doctor's treatment reports makes clear that in all likelihood Claimant's diagnosis ceased being PTSD possibly as early as January 8, 2013, where Dr. Bangura described his then-current diagnosis as "anxiety symptoms" with a "past history" of PTSD. Regardless, by the report of March 19, 2013, Dr. Bangura ceases reference to PTSD, and from that point on characterizes Claimant's condition as "anxiety disorder not otherwise specified" or "NOS". Cf., CE 1, dated April 17, 2014, and CE 3 notes of January 8, 2013, January 22, 2013, February 2, 2013, March 19, 2013 and April 22, 2014.

This panel's task, however, is to assess whether this error is sufficient to remand the matter for further consideration, and we have concluded that it is not.

This is because at root, the ALJ decided to accept the views of Claimant's treating physician that Claimant suffers from a "disorder", in contrast to Dr. Schulman, Employer's IME physician, who opines that Claimant's "disorders" have all resolved. In other words, while Dr. Schulman acknowledges that Claimant does not wish to return to driving a bus out of fear for his personal safety, he concludes that this is a non-pathological response to having experienced two harrowing events while so employed in the past and not wishing to subject himself to such risks in the future, while Dr. Bangura views this same decision or mindset by Claimant to be a manifestation of a "disorder".

While there is some intuitive force to Employer's and Dr. Schulman's characterization of Claimant's unwillingness to return to work as being no more than a personal choice by a rational individual, we do point out that the restriction imposed by Dr. Bangura is a complete discontinuation of driving any bus, on any route, at any time, not just specific buses on particularly problematic routes. Taking Dr. Bangura's views in their totality, he opines that Claimant suffers from a work-related disorder, that a return to driving buses will exacerbate that disorder, and that a return to operating buses would be unsafe.

Our decision might be different if there were something in the record to which we have been directed or could find ourselves that would suggest that the specific diagnosis of "PTSD" as opposed to a "disabling anxiety disorder not otherwise specified" is of some signal significance to either the ALJ's decision or Claimant's legal entitlement to compensation benefits. But there

is nothing in this record from which we can conclude that the erroneous finding that Claimant currently suffers specifically from PTSD has any impact upon the opinions of Dr. Bangura concerning whether Claimant suffers from a work-related mental disorder that prevents him from safely driving a bus.

For the purposes of this case, therefore, we will exercise our statutory authority to amend the Compensation Order by striking the words "post traumatic stress disorder and" from the final line on page 5 thereof as being unsupported by substantial evidence, but retaining the finding that "Claimant displays [an] anxiety-related mental impairment that currently precludes his ability to safely resume his duties as a transit bus operator." See D.C. Code § 32-1521.01 (d)(2).

Regarding Employer's contention that an award of interest on accrued benefits is not authorized by the Act, we merely note that, contrary to Employer's characterization, interest is not a "penalty" imposed or a bonus awarded. It is the method provided by the properly promulgated implementation regulations under the Act, found at 7 DCMR § 209.11, to promote a claimant's receiving the full value of the benefits to which he or she has been found to have been entitled, the receipt of which has been delayed by the dispute resolution process taking time to work itself out. This regulation has long been applied in such cases, and we see no reason or authority to disregard it now.

WMATA argues the plain text of the regulation is silent as to its applicability to benefits awarded in a compensation order, as opposed to those paid voluntarily. WMATA also argues that without specific authority, an ALJ does not have the power to create an additional benefit, fee, penalty, or fine.

Mr. Adamson responds to WMATA's argument by relying on the plain, logical definition of the term "accrued benefits" and on over thirty years of decisions by administrative law judges, the Director of the Department of Employment Services, and the Compensation Review Board.

On appeal here is the assessment of interest on benefits awarded in a compensation order. To that end, WMATA is correct that 7 DCMR § 209.11 falls under the heading "Voluntary Payment of Compensation;" however, while a heading can assist in resolving an ambiguity, it is not definitive.<sup>1</sup> More appropriately, "accrued interest" is defined as "[i]nterest that is earned but not yet paid," BLACK'S LAW DICTIONARY 830 (8<sup>th</sup> ed. 2004), and this definition supports assessment of interest regardless of whether the benefits are payable voluntarily or under an order so a claimant receives the full value of the benefits.

Decisions addressing this issue are arguably inconsistent. In *Clark v. Verizon Communications*, Dir. Dkt. No. 03-92 OHA No. 92-793B OWC No. 279179 (February 10, 2004), the Director specified that interest applies to voluntary payment of benefits:

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<sup>1</sup> The reduction in permanent partial disability benefits for schedule members also falls under this heading (7 DCMR § 209.17), but there is no doubt these reductions apply to permanent partial disability benefits paid voluntarily or pursuant to an award in a compensation order. The same is true for the 500 week cap on temporary or partial disability benefits (7 DCMR § 209.13) and the cost of an independent medical examination (7 D.C.M.R. § 209.16).

District of Columbia Municipal Regulation (DCMR) § 7-209.11, which pertains to the voluntary payment of compensation benefits, provides that “Interest on accrued benefits shall be calculated at the same rate as that utilized by the Superior Court of the District of Columbia for civil judgments.” DCMR § 7-209.11. ...

(Emphasis added.) On the other hand, in *Hill v. Greyhound Line, Inc.*, Dir. Dkt. No. 96-039, H&AS NO. 87-759B, OWC No. 0115712 (January 31, 1997), the Director awarded interest on benefits awarded in a Compensation Order:

As to claimant’s third argument on interest, the Hearing Examiner ruled in an Amended Supplementary Compensation Order dated March 22, 1996, that the claimant is entitled to interest on his disability benefits awarded in the June 30, 1992 Compensation Order on Remand. The Director concurs with this ruling. In the case of *Bolden v. Embassy Dairy*, H&AS No. 83-192, OWC No. 001777 (February 15, 1984), it was held that interest is assessable on accrued benefits. The Director therefore acknowledges that an oversight has occurred with respect to the awarding of interest in this case. Accordingly, the Director orders that the employer pay to claimant interest on temporary total disability benefits from February 19, 1987 to June 1, 1988, from June 8, 1988 to June 13, 1988 and from October 25, 1988 to December 23, 1988. Said interest, as ordered by the Hearing Examiner in the Amended Supplementary Compensation Order (March 22, 1996), shall be paid at the rate payable at the D.C. Superior Court on judgments. 7 D.C.M.R. § 209.11 and § 221.5 Employment Benefits. Inasmuch as the oversight on interest has been corrected herein, the Director takes this opportunity to state that the portion of the Order of the Director issued on June 16, 1994 which denies claimant interest is hereby vacated and set aside.

WMATA’s reliance on *Mitchell v. D.C. Public Schools*, CRB No. 11-007, AHD No. PBL08-100A, DCP No. 30080441654-0001 (October 5, 2011) is *misplaced*. *Mitchell* is a public sector case, and the dissent that WMATA relies on specifically distinguishes public sector cases from private sector cases because

[g]iven the text of 7 DCMR 209.11, the Director’s determination that “there was authority for the hearing officer, now ALJ, to assess interest on accrued benefits [in private sector workers’ compensation cases]” does not, in the absence of a similar provision in the public sector workers’ compensation disability act, make such awards proper in public sector workers’ compensation disability cases. The public sector workers’ compensation disability act is duly enacted legislation and had the City Council intended to allow the assessment of interest it would have so provided in the Act.

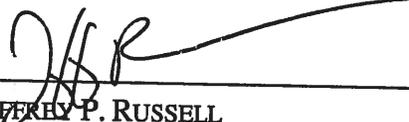
*Id.* (Jones, *dissenting*).

Thus, there is precedent for the long-standing practice of awarding interest on benefits awarded in a Compensation Order, and I would rely on that precedent in conjunction with my statutory analysis to award interest in this private sector case.

#### CONCLUSION AND ORDER

The finding that Claimant suffers from a psychological disorder that prevents him from operating a bus is supported by substantial evidence, and because the award of interest on accrued benefits is in conformance with 7 DCMR § 209.11, the Compensation Order, as amended herein, is affirmed.

FOR THE COMPENSATION REVIEW BOARD:

  
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JEFFREY P. RUSSELL  
*Administrative Appeals Judge*

March 17, 2015  
DATE