

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Department of Employment Services**  
**Office of the Director**

**Gregory P. Irish**  
Director



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MARIA ECHEVARRIA,	)
	)
Claimant,	)
	)
v.	)
	)
RITZ-CARLTON HOTEL,	)
	)
and	)
	)
MARRIOT CLAIMS SERVICES,	)
	)
Employer/Carrier.	)

Dir. Dkt. No. 02-45  
OHA No. 02-005  
OWC No. 517977  
(Private Sector)

REC'D  
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OFFICE OF HEARING & ADJUDICATIONS

**Appeal of the Compensation Order of Reva M. Brown**  
**Administrative Law Judge, Department of Employment Services**

**Benjamin T. Boscolo, Esquire, for the Claimant**

**Curtis B. Hane, Esquire, for the Employer/Carrier**

***DECISION OF THE DIRECTOR***

**Jurisdiction**

Claimant files this appeal from the Compensation Order of Administrative Law Judge Reva M. Brown pursuant to the provisions of the District of Columbia Workers' Compensation Act of 1979, as amended, D.C. Law 3-77, D.C. Official Code §§ 32-1501-1545 (2001) ("Act").

**Background**

Claimant, a housekeeper, injured her left shoulder, resulting in surgery, after a supervisor tugged on her arm on July 27, 1997. Claimant returned to work part-time in April or May of 1999, as a "turn down attendant." On May 15, 1999, Claimant had an automobile

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accident and she injured her neck. She stopped working, but then resumed her part-time work around August of 1999. Claimant began to complain of pain in her right shoulder in October of 1999 and she had surgery on her right shoulder on December 30, 2000.

At the hearing, Claimant sought an award for temporary partial disability benefits from July 17, 2001 to the present and continuing. In a Compensation Order, dated March 18, 2002, Administrative Law Judge Brown concluded that Claimant had sustained a compensable accidental injury to her left shoulder and that she was entitled to receive temporary partial disability benefits from July 17, 2001 onward. However, the Administrative Law Judge concluded that Claimant's right shoulder injury was not causally related to her work injury.

Claimant filed an Application for Review on March 18, 2002 and Employer then filed a response to the appeal.

#### Analysis

The issue on appeal is whether the Office of Hearings and Adjudication (OHA) erred in exercising jurisdiction over the issue of whether Claimant's right shoulder condition was medically causally related to the work injury of July 27, 1997.

The Director of the Department of Employment Services ("Director") must affirm the Compensation Order under review if the findings of fact contained therein are supported by substantial evidence in the record considered as a whole and the law has been properly applied. See D.C. Official Code § 32-1522 (2001); 7 DCMR § 230 (1986). Substantial evidence is such relevant evidence as a reasonable mind might find as adequate to support a conclusion. *George Hyman Construction Company v. Department of Employment Services*, 498 A.2d 563, 566 (D.C. 1985).

7 DCMR § 219.20 (1986) gives parties 14 days in which to reject a recommendation and 7 DCMR § 219.22 states that if an application for formal hearing is not filed in accordance with 7 DCMR § 220 within 34 working days after the issuance of the Memorandum of Informal Conference, the memorandum becomes final, OWC shall enter a Final Order and an aggrieved party may request review by the Director.

At the hearing, Claimant argued that the issue of medical causal relationship concerning her right shoulder and the work-related injury was barred by *res judicata* before OHA, because it was litigated previously before the Office of Workers' Compensation (OWC) and OWC's memorandum of recommendation was not challenged by Employer. Employer

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argued that neither party requested the issuance of a Final Order pursuant to the claims examiner's memorandum, thus there was no final order from which to appeal and OWC was not acting in a judicial capacity during which Employer had an adequate opportunity to litigate the issue.

The Administrative Law Judge concluded that since at the informal process before OWC, none of the parties had an opportunity to make opening and closing statements, to call and cross-examine witnesses, introduce exhibits, etc., the OWC level is not a forum of sufficient litigation formality to be considered a judicial proceeding. As a result, the Administrative Law Judge decided the issue of medical causal relationship and Claimant's right shoulder.

In reviewing this matter, the record reveals that after Claimant requested an Informal Conference, an Informal Conference recommendation was issued to both parties on July 14, 2000, finding that Claimant's right shoulder condition was medically causally related to the work injury of July 27, 1997. This recommendation was not rejected and a formal hearing was not requested. Employer paid for the surgery to Claimant's right shoulder and voluntarily paid her temporary partial disability benefits while she was recuperating, through July 16, 2001.

Claimant argues that the procedures detailed in the regulations are similar to the situation in the instant matter, as a recommendation was issued, more than 34 days passed and no objection was filed and no hearing was requested. As such, Claimant contends that the July 14, 2000 recommendation became a final adjudication of the issues presented at the informal conference, even though OWC never formally issued a Final Order. Claimant asserts that the regulations require OWC to issue a Final Order and OWC's failure to do so, does not change the effect of Employer's failure to reject the recommendation of July 14, 2000.

The Director must agree with Claimant on this point, as the Office of Hearings and Adjudication did not have jurisdiction to determine the causal connection between Claimant's work injury and her right shoulder condition. As indicated in *Sandoval v. Washington Metropolitan Transit Authority*, Dir. Dkt. No. 99-57 (Decision of the Director, November 1, 1999), a Memorandum of Informal Conference becomes final with the simple expiration of 34 days. In *Sandoval*, the Director emphasized that if not rejected, the memorandum becomes final by operation of law. The Director also noted that if a hearing could be requested at any time, there would be no incentive for parties to request a hearing after receiving an unfavorable memorandum, which could stall the proceedings at the informal level. Thus, because Employer failed to reject the recommendation establishing that Claimant's right shoulder injury was medically causally related her work injury, the recommendation on that issue became final.

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As a result, since Employer failed to reject the recommendation that Claimant's right shoulder injury was medically causally related to her work injury, the Administrative Law Judge did not have jurisdiction over this issue.

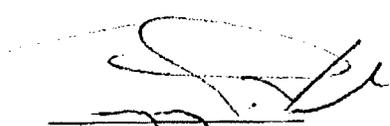
Accordingly, that portion of the Compensation Order that concluded that Claimant's right shoulder injury was not medically causally related to the work injury is not in accordance with the law.

### Conclusion

The OHA erred in exercising jurisdiction over whether Claimant's right shoulder injury was medically causally related to her work injury.

### Decision

That portion of the Compensation Order of February 28, 2002 that concluded that Claimant's right shoulder injury was not medically causally related to the work injury of July 27, 1999 is hereby **REVERSED**.

  
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Gregory R. Irish  
Director

Date DEC 09 2002