

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



DR. ROCHELLE L. WEBB
ACTING DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 04-093

FRAN HISLER,
Claimant-Respondent,

v.

GALLAUDET UNIVERSITY AND PMA INSURANCE GROUP,
Employer and Carrier-Petitioner.

Appeal from an Order of
Senior Claims Examiner Charles Watson
OWC No. 510942

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2011 FEB 28 AM 10 18

Matthew J. Peffer, Esquire, for Respondent
Melissa J. Townsend, Esquire, for Petitioner

Before LAWRENCE D. TARR, MELISSA LIN JONES, and HENRY W. MCCOY, Administrative Appeals Judges.

LAWRENCE D. TARR, Administrative Appeals Judge, for the Review Panel.

DECISION AND ORDER

OVERVIEW AND BACKGROUND

This case is before the Compensation Review Board (CRB) on the request for review filed by the claimant (Fran Hisler) of the August 20, 2004, Order issued by a Senior Claims Examiner of the Office of Workers' Compensation (OWC) in the District of Columbia Department of Employment Services. (DOES). In that Order, the senior claims examiner denied the claimant's request for an Order Declaring Default.

The claimant worked for the employer, Gallaudet University, as a pediatric occupational therapist. In 1986, she was diagnosed with chronic fatigue syndrome. There is no dispute that this illness arose out of and in the course of her employment with the employer.

In 1998, the claimant and the employer reached a settlement with respect to her claim for workers' compensation benefits. The Office of Workers' Compensation (OWC) approved the settlement on December 28, 1998.

Under the settlement, the employer agreed to pay the claimant a lump sum (\$100,000) and a monthly payment (\$700) that was payable during the claimant's lifetime. The settlement stated it "represent[ed] the entire resolution of the cause of action arising under the DC Workers' Compensation claim" and that it was made

without any prejudice to the claimant's right to continue to receive reimbursement from the insurance carrier for Chronic Fatigue Syndrome related medical treatment and services for a period of 5 years after the settlement is approved.

After the settlement was approved, the claimant incurred a number of expenses for several different kinds of medical treatment. The employer declined to reimburse the claimant for some of her expenses.

On March 23, 2001, an Administrative Law Judge (ALJ) held that the claimant was entitled to reimbursement for many of the disputed expenses. *Hisler v. Gallaudet University*, OHA No. 97-440C, OWC No. 510942 (March 23, 2001). Also in 2001, an ALJ denied the claimant's request for reimbursement of vocational rehabilitation expenses. *Hisler v. Gallaudet University*, OHA 97-440D, OWC No. 510942 (April 9, 2001).

The claimant filed applications for review of both decisions and the two appeals were consolidated. The Director of DOES affirmed both Compensation Orders. *Hisler v. Gallaudet University*, Dir. Dkt. Nos. 01-38, 01-44, OHA Nos. 97-440C, 97-440D, OWC No. 510942 (May 17, 2002). The claimant appealed the Director's decision regarding both Compensation Orders to the District of Columbia Court of Appeals (DCCA).

On December 24, 2003, while her appeal of the Directors May 17, 2002, decision was pending before the DCCA, the claimant filed an Application for Formal Hearing seeking, among other matters, reimbursement for medical expenses.

On March 5, 2004, an ALJ denied the claimant's request for reimbursement:

Regarding the claimant's issue and claim seeking reimbursement for out of pocket expenses and a proffer of the basis for the claim the claimant again appeared to assert matters that pertain both to the parties voluntarily entered settlement agreement, and the [sic] also the March 23, 2001, Compensation Order which approved and awarded certain medical expenses incurred by the claimant and denied other claimed. This decision was affirmed by the Director, *Hisler v. Gallaudet University*, Dir. Dkt. Nos. 01-38, 01-44, OHA Nos. 97-440C, 97-440D, OWC No. 510942 (Director's Decision, May 17, 2002).

The claimant acknowledges that this decision is still pending review before the District of Columbia Court of Appeals and I therefore find both the parties settlement agreement and the March 23, 2001 Compensation Order affirmed by the Director have established the law of this case until [it] is finally ruled upon by the Court. I therefore also find that the issue of claimant's reimbursement for expenses is not a severable issue for the purposes of modification before me and

the request for a formal hearing for a change of condition pertaining to such is denied.

Hisler v. Guest Services, OHA No. 97-440E, OWC 510941 (March 5, 2004). The claimant did not appeal this decision to the CRB.¹

Shortly after this decision, and while her appeal was pending before the DCCA, the claimant filed a motion with OWC regarding these medical expenses.² The employer's liability under the terms of the settlement expired on December 28, 2003. *Hisler v. Gallaudet University*, CRB No. 10-099, AHD No. 97-440D, OWC No. 510942 (February 9, 2011). Therefore, the medical bills in dispute before the ALJ in March 2004 would be the same medical bills in dispute before OWC.

The claimant sought a declaration of default, reimbursement and a 20 percent penalty pursuant to D.C. Code §32-1515 (f).³ OWC Senior Claims Examiner Watson issued an Order on August 20, 2004, that concluded:

[The ALJ in the March 5, 2004, Order] also wrote that “the claimant acknowledges that this decision (Director’s Decision, May 17, 2002) is still pending before the District of Columbia Court of Appeals and I find that both the parties’ settlement agreement and the March 23, 2001 Compensation Order affirmed by the Director **have established the law of the case until it is finally ruled upon by the Court.**” (Emphasis added).

Jurisdiction in this matter presently lies with the District of Columbia Court of Appeals. Accordingly, claimant’s Motion for an Order Declaring Default is **Denied**.

The claimant timely appealed OWC’s August 20, 2004, Order and requested “the matter Stayed pending a decision of the District of Columbia Court of Appeals.”⁴ It appears no action was taken

¹ We acknowledge that there is a question as to the severability of unappealed medical expenses. However, the March 4, 2004, Order was not reviewed and that question is not before us.

² We also note in passing that there is a question concerning the propriety of requesting from OWC a default order based on a CO issued by an ALJ. Neither party raised that issue and we shall not discuss it.

³ §32-1515 (f) states:

If any compensation, payable under the terms of an award, is not paid within 10 days after it becomes due, there shall be added to such unpaid compensation an amount equal to 20% thereof, which shall be paid at the same time as, but in addition to, such compensation, unless review of the compensation order making such award is had as provided in § 32-1522 and an order staying payments has been issued by the Mayor or court. The Mayor may waive payment of the additional compensation after a showing by the employer that owing to conditions over which he had no control such installment could not be paid within the period prescribed for the payment.

⁴ Although claimant states on page 2 of her memorandum that her Application for Review was stayed, our file does not contain any document granting a stay.

on this appeal until 2006, when the CRB dismissed without prejudice to the claimant's appeal of the OWC Order. *Hisler v. Gallaudet University*, CRB No. 04-093 (May 17, 2006).⁵

On June 19, 2008, the DCCA issued its decision that affirmed in part, and reversed and remanded in part. *Hisler v. DOES and PMA Insurance Group, et. al., intervenors*, 950 A.2d 738 (June 19, 2008).

The CRB issued an Order on July 21, 2008, that extended the time in which the claimant could reinstate her Application for Review of OWC's August 20, 2004 Order. On March 31, 2009, the CRB issued a Decision and Remand Order that again extended the time in which the claimant could seek reinstatement of her appeal of the 2004 OWC Order. *Hisler v. Gallaudet University*, CRB No. 01-044(R) and CRB No. 04-093 AHD No. 97-440D, OWC No. 510942 (March 31, 2009).⁶ The claimant timely moved to reinstate the Application for Review.

ANALYSIS

This review challenges an OWC Order. In the review of an appeal from OWC, the CRB must affirm the order under review unless it is determined to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. See 6 Stein, Mitchell & Mezines, *Administrative Law*, § 51.03 (2001).

The law of the case doctrine recognizes that "once the court has decided a point in a case, that point becomes and remains settled unless it is reversed or modified by a higher court." *Kritsidimas v. Sheskin*, 411 A.2d 370, 371 (D.C. 1980).

The claimant did not seek review of the ALJ's March 5, 2004, Order dismissing her application. Therefore, the ALJ's decision not to consider the claimant's request for reimbursement until after the DCCA decided her appeal was the law of the case.

OWC's August 20, 2004 Order declined to consider the same claim that an ALJ had just a few months before declined to consider. OWC's decision is consistent with the law of the case as stated in the ALJ's March 4, 2004, Order. Therefore, that Order was neither arbitrary, capricious, an abuse of discretion, and was in accordance with the law.

CONCLUSION

The August 20, 2004, Order issued by OWC is neither arbitrary, capricious, nor an abuse of discretion, and is in accordance with the law.

⁵ The CRB, not the Director, issued the Show Cause because while the claimant's appeal was pending, the law in the District of Columbia was amended and the CRB replaced the Director as the authority providing administrative appellate review under the District of Columbia's Workers' Compensation Act.

⁶ The CRB's March 31, 2009, Decision and Remand Order also consolidated this case with the appeal of the Director's decision affirming the April 9, 2001, Compensation Order. On February 9, 2011, the CRB, in CRB 10-093, issued a separate decision regarding the April 9, 2001, Compensation Order.

ORDER

The August 20, 2004, Order issued by OWC is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

Lawrence D. Tarr

LAWRENCE D. TARR
Administrative Appeals Judge

February 28, 2011

Date