

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
ACTING DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 14-093

GERALDINE TALLEY HOBBY,
Claimant-Petitioner,

v.

DISTRICT OF COLUMBIA PUBLIC SCHOOLS,
Employer-Respondent.

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2015 APR 1 AM 10 10

Appeal from a Recommended Compensation Order by Robert R. Middleton
Adopted as a Final Compensation Order
by Interim Assistant Director for Labor Standards Charles L. Green on August 18, 1999
ECAB No. 09-07, OHA No. 97-36, OBA No. 337470

Geraldine Talley Hobby for the Petitioner
Andrea G. Comentale for the Respondent

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

MELISSA LIN JONES for the Compensation Review Board.

DECISION AND DISMISSAL ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

On February 22, 1990, Ms. Geraldine Talley Hobby slipped and fell while working as a full-time art teacher at Kimball Elementary School and a part-time director at Stoddert Terrace Early Childhood Center. Ms. Hobby had a history of back and neck pain, but on February 22, 1990, she twisted her left ankle and hit her head and neck when she landed on her back.

Ms. Hobby's claim was accepted for sprains to her cervical, dorsal, and lumbar back and her left ankle. Ms. Hobby's benefits were terminated in a March 1, 1997 Denial of Award for Compensation Benefits.

On September 24, 1997, Hearings and Appeals Examiner Robert R. Middleton presided over a formal hearing. At that proceeding, Ms. Hobby sought restoration of temporary total disability

compensation benefits. Examiner Middleton denied Ms. Hobby's claim for relief because her work-related injuries had healed, but he recommend that wage loss benefits that had been paid be recalculated to reflect wage stacking from Ms. Hobby's concurrent jobs and that Ms. Hobby's travel expenses be assessed. *Hobby v D.C. Public Schools*, H&AS No. PBL97-036, ODC No. 337470 (March 30, 1998).

The Deputy Director for Labor Standards adopted the Recommended Compensation Order as a Final Compensation Order on March 30, 1998. Pursuant to the procedures in place at that time, Ms. Hobby appealed her case to the Director of the Department of Employment Services ("Director").

On July 23, 1999, the Director affirmed the rulings regarding wage stacking and travel expenses, but he remanded the matter for clarification regarding Ms. Hobby's request for temporary total disability benefits because Ms. Hobby's medical records

support Petitioner's contention that she is temporarily totally disabled for work as a result of the Petitioner's February 22, 1990 work injuries. Therefore, the Hearing Examiner's conclusion that the aforementioned physicians' medical opinions were too remote to be probative of Petitioner's present medical condition is not supported by the evidence on record.

It is further noted that the decision of the Hearing Examiner failed to make any findings in regards to the medical opinion of Dr. Archer. That decision did not explain with specificity how the Petitioner's medical evidence fails to support a finding that she can no longer return to the duties of an art teacher due to residuals of the 1990 work related injury. *See Chase*, ECAB No. 82-9 (July 9, 1982); *Rose*, ECAB No. 82-57 (August 31, 1983). In addition, the Hearing Examiner failed to make a finding as to why the reports of Petitioner's treating physician's [*sic*] were not given deference over the reports of the independent medical specialists.

Hobby v. D.C. Public Schools, ECAB No. 98-07, H&AS No. PBL97-036, DDCC No. 337470 (July 23, 1999). The Director affirmed the hearing examiner's rulings that Ms. Hobby was entitled to wage stacking and travel expenses. *Id.* at p. 4.

On remand, Examiner Middleton again denied Ms. Hobby's request for temporary total disability benefits. Interim Assistant Director for Labor Standards Charles L. Green adopted Examiner Middleton's Recommended Compensation Order as the Final Compensation Order on August 18, 1999. *Hobby v D.C. Public Schools*, ECAB No. 98-007, H&AS No. PBL97-036, ODC No. 337470 (August 18, 1999). Ms. Hobby filed another appeal, and the Director affirmed. *Hobby v. D.C. Public Schools*, Dir. Dkt. No. 98-07, H&AS No. PBL97-036, ODC No. 337470 (November 18, 1999).

On July 24, 2014, Ms. Hobby filed with the Compensation Review Board ("CRB") a "Chronological History An[d] Overall Timeline of Issues and Facts" under cover entitled "Wrongful Fraudulent Termination of Employment Wrongful Fraudulent Termination of

Disability Compensation Benefits” (“Chronology”). In this document Ms. Hobby alleges she was “wrongfully and unlawfully terminated of my employment on May 15, 1995 retroactive to May 4, 1990, while I was receiving disability compensation benefits from my February 22, 1990 work related injury.” Chronology at unnumbered p. 2. Ms. Hobby also alleges that as a result of “a prior work related injury under the U.S. Department of Labor,” her “compensation benefits/disability compensation benefits were terminated without due process of the Law, which violates the U.S. Constitution.” *Id.* Many of Ms. Hobby’s arguments may be summarized by her own words:

The D.C. Government’s Office of Disability Compensation/Risk Management has devised a plan to eliminate claimant’s from the benefits payroll, rat[h]er than exercising sound judgment by the administration of the law and justice, in handling my case, as well as the cases of other employees, who have given years of dedicated and committed service to this great city of Washington, D.C., the Nation’s Capitol and an example to the whole country and the World (under D.C. and Federal Law.[])

Id. at unnumbered p. 3. Specifically, in a complaint dated May 30, 2006, Ms. Hobby alleged the following improprieties (among others):

- Failure to apply a federal treating physician preference rule;
- A subsequent recurrence not addressed by the Office of Disability Compensation or Office of Risk Management;
- An unfair and unjust, fraudulent, erroneous, and unsubstantiated hearing;
- Numerous procedural complaints; and
- Substantial competent evidence including newly discovered evidence that was ignored or not given proper weight.

Id. at unnumbered pp. 3-6. Ms. Hobby raised these, similar, and other complaints before the District of Columbia City Council on multiple occasions. *Id.* at pp. 7-10, 18-20.

At various points throughout her submissions, Ms. Hobby demands restoration of her quality of life, retroactive reinstatement and restoration of workers’ compensation disability benefits, interest, penalties, compensatory damages, and punitive damages.

In response to Ms. Hobby’s submissions, the District of Columbia Public Schools (“Employer”) asserts Ms. Hobby’s appeal is not timely. Employer also raises the defenses of *res judicata* and collateral estoppel. Employer requests the CRB deny Ms. Hobby’s request for review.

In her reply, Ms. Hobby offers detailed lists of her complaints regarding the decisions issued in her case. Ms. Hobby provides a “Historical Summary Of The Public Sector Workers Compensation Disability Program” and requests “a REVIEW of the WHOLE RECORD from the D.C. OFFICE OF RISK MANAGEMENT (O.R.M.) and the CASE FILE/RECORD at the storage of the OFFICE OF LABOR STANDARDS’S OFFICE OF HEARINGS ADJUDICATION and APPEALS,” Geraldine Talley Hobby Response, unnumbered p. 7, so fraud, mistakes, errors, and incompetence can be eradicated and so newly discovered evidence

can be reviewed. In addition, Ms. Hobby asserts Examiner Middleton, Betty Franklin (counsel for Employer at the formal hearing), David Cohen (Ms. Hobby's attorney at the formal hearing), and Gregory P. Irish (former Director of the Department of Employment Services) were not barred in the District of Columbia. Finally, Ms. Hobby asserts *res judicata* does not apply to workers' compensation disability cases in the District of Columbia. For these reasons and others, Ms. Hobby requests the CRB restore payment of workers' compensation disability benefits.

On March 4, 2015, Ms. Hobby filed a "Notice in Response to Your Letters Dated: January 13, 20015 [*sic*] & January 15, 2015." Ms. Hobby asserts her workers' compensation case is a federal matter because she was hired on January 6, 1967.

PRELIMINARY MATTERS

When a party files an appeal, the CRB is limited to making a determination as to whether the factual findings of the appealed 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; if the Compensation Order is supported by substantial evidence, even if there also is contained within the record under review substantial evidence to support a contrary conclusion and even if the CRB might have reached a contrary conclusion, the CRB must affirm that Compensation Order. *Marriott International v. DOES*, 834 A.2d 882, 885 (D.C. 2003).

Although *Marriott* is a case decided pursuant to the District of Columbia Workers' Compensation Act of 1979, D.C. Code, as amended, §32-1501 *et seq.*, that act and its caselaw can be instructive on general principles of workers' compensation law, and this jurisprudence has validity and applicability under both the public and private sector statutes and schemes, especially when the statutory provisions are similar. In the absence of such similarities, the private sector workers' compensation act does not apply to public sector workers' compensation cases.

Given the limited scope of the CRB's authority, it does not have jurisdiction to review Ms. Hobby's allegations of wrongful termination or her allegations of due process violations in any U.S. Department of Labor case. In addition, the CRB takes official notice of the fact that many of the Administrative Hearings Division's files regarding Ms. Hobby's claim have been archived and cannot be accessed at this time. Because the resolution of this appeal concerns purely legal matters of timeliness and jurisdiction, it is not necessary to access those files in order to rule on this appeal.

ANALYSIS

As noted above, the CRB's authority is limited to administrative appellate review through an analysis of whether the factual findings of the appealed 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. Comprehensive Merit Personnel Act of 1978, as amended. D.C. Code § 1-623.01 *et seq.*, at § 1-623.28(a) ("Act"). Consistent with this standard of review, the CRB is constrained to uphold a Compensation Order that is supported by substantial evidence even if there also is contained within the record under review substantial evidence to support a contrary conclusion and even if the CRB might have reached a contrary

conclusion. *Marriott, supra*. Equally as important, as a matter of law, if an Application for Review is not filed timely, the CRB does not have not have authority to consider the merits of the appeal.

Section 1-623.28(a) of the Act, in pertinent part, provides

[a]n application for review pursuant to this subsection must be filed within 30 days after the date of the issuance of the decision of the Mayor or his or her designee pursuant to §1-623.24(b)(1).

Similarly, 7 DCMR § 135.2 states

Any party adversely affected or aggrieved by a compensation order or final decision issued by the OHA with respect to a claim for workers' compensation benefits pursuant to Title XXIII of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (D.C. Official Code §§1-623.1, et seq. (2006 Repl. & 2012 Supp.)) may appeal said compensation order or final decision to the Board by filing an Application for Review with the Board within thirty (30) calendar days from the date shown on the certificate of service of the compensation order or final decision in accordance with and pursuant to the provisions of 7 DCMR §258.2 [which states an "Application for Review must be filed within thirty (30) calendar days from the date shown on the certificate of service of the compensation order or final decision from which appeal is taken."]

The most recent Compensation Order issued in Ms. Hobby's case became a Final Compensation Order on August 18, 1999. The Director affirmed the August 18, 1999 Compensation Order on November 18, 1999. Nonetheless, the thirty calendar-day period beginning from the date of the Final Compensation Order ended on September 17, 1999. Ms. Hobby's Application for Review was filed on July 24, 2014 and is not timely.

Arguably, the limitations period may have been tolled if, as Ms. Hobby asserts, fraud was perpetrated on or by the tribunal. The only basis for possible fraud the CRB discerns from Ms. Hobby's submissions rests upon her allegations that her attorney and the opposing counsel were not admitted to practice law in the District of Columbia, that the Compensation Order was issued by a hearing examiner not authorized to do so because he was not licensed to practice law in the District of Columbia, and that the Compensation Order was reviewed by the Director even though he was not a member of the District of Columbia Bar. The CRB has taken Ms. Hobby's assertions seriously; however, she has not offered any legally supported argument or factual proof that these individuals were required to be members of the District of Columbia bar and were not; therefore, the CRB is bound by the limitations period set forth in § 1-623.28(a) of the Act.¹

Finally, Ms. Hobby asserts the federal government has sole authority over all claims pertaining to her accident at work. The CRB lacks authority to determine the jurisdictional parameters of

¹ Given the legal nature of the dispositive issue in this appeal, this matter has been resolved without resort to archived files from the Office of Hearings and Adjudication, Administrative Hearing Division.

the authority of the federal government or its agencies. Similarly, the CRB lacks authority to remand a matter to the federal government or its agencies; any such request must be made to the agency or court in which jurisdiction is alleged.

CONCLUSION AND ORDER

Ms. Hobby's appeal is DISMISSED as untimely filed. Any remaining issues are beyond the CRB's jurisdiction.

FOR THE COMPENSATION REVIEW BOARD:



MELISSA LIN JONES
Administrative Appeals Judge

April 1, 2015

DATE