

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD

CRB 16-099

JAMES GREEN,
Claimant-Respondent,

v.

DISTRICT OF COLUMBIA DEPARTMENT OF CORRECTIONS,
Employer-Petitioner.

Appeal from a June 29, 2016 Order
by Administrative Law Judge Fred D. Carney, Jr.
AHD PBL No. 10-043C, DCP No. 30080837039-0001

(Decided October 11, 2016)

David J. Kapson for Claimant
Frank Mc Dougald for Petitioner

Before LAWRENCE D. TARR, *Chief Administrative Appeals Judge*, GENNET PURCELL and JEFFREY P. RUSSELL, *Administrative Law Judges*.

LAWRENCE D. TARR for the Compensation Review Board

DECISION AND ORDER

VACATING ADMINISTRATIVE HEARING DIVISION'S JUNE 29, 2016 ORDER

The District of Columbia Department of Corrections ("Employer") seeks review of the June 29, 2016 Order to Hold Claimant's Motion for Default In Abeyance ("Order") issued by an administrative law judge ("ALJ") in the Administrative Hearings Division ("AHD") within the Department of Employment Services. For the reasons stated, the Compensation Review Board ("CRB") vacates that Order.

FACTS OF RECORD

On August 26, 2008, James Green injured his neck and back while working as a correctional officer for Employer. On October 7, 2011, Claimant had authorized back surgery that Claimant claimed was caused by the 2008 work injury and which disabled him from working.

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Employer accepted Claimant's claim and paid benefits until it suspended them on May 4, 2011 because Claimant did not attend several additional medical examinations. Claimant challenged the suspension of benefits and filed an Application for Hearing. This claim was assigned AHD No. PBL 10-043A ("A case"). The ALJ held a formal hearing September 26, 2011, and issued a Compensation Order ("CO") on April 10, 2013.

After the formal hearing but before issuing the CO in the A case, Employer notified Claimant that his benefits would be suspended as of December 9, 2011, because an Additional Medical Examination ("AME") doctor had opined that Claimant had fully recovered from his August 26, 2008 work accident and that any further disability after October 7, 2011 was related to the back surgery which the AME doctor stated was not caused by the work accident.

Claimant filed an Application for Hearing to challenge the decision to end his benefits. The case was assigned AHD No. PBL 10-043B ("B case"). A formal hearing was held on July 5, 2012. On September 26, 2012, the ALJ issued a CO in the B Case that reinstated Claimant's benefits as of December 9, 2011.

Employer appealed the B case CO to the CRB. The CRB reversed and vacated the ALJ's CO on February 7, 2013. The CRB remanded the case to the ALJ for a new decision on whether any disability after October 7, 2011 (the date of the back surgery) was medically causally related to the 2008 accident at work. *James Green v. D.C. Department of Corrections*, CRB 12-175 (February 7, 2013).¹

As stated, the ALJ issued his decision in the A case on April 10, 2013. Although the ALJ knew that his now-vacated decision reinstating benefits on December 9, 2011 in the B case was pending,² the ALJ reinstated benefits from May 3, 2011 through August 23, 2011, in the A case. Employer appealed.

On October 31, 2013, the CRB reversed the award of benefits in the A case. The CRB held that because the ALJ had not yet decided the issue of whether any claimed disability after October 7, 2011 was caused by the work accident (B case), the ALJ's awarding benefits in the A case was an improper advisory opinion.

The CRB stated:

Why the ALJ decided to issue this Compensation Order prior to acting upon the much older and still pending remand and resolving the issue of "Claimant being eligible for disability benefits" as a matter of compensability is not clear to us. Nonetheless, in the absence of a determination concerning whether Mr. Green's disabling condition in the time covered by this Compensation Order is causally related to the work injury, there can be no predicate for a legal determination that

¹ Claimant appealed the CRB's decision in the B case to the District of Columbia Court of Appeals ("DCCA"). The DCCA dismissed Claimant's appeal on April 29, 2013, because it was taken from a non-final order. The ALJ has not issued a Compensation Order on Remand in the B case.

² The ALJ acknowledged this in a footnote in his A case decision.

his benefits should or should not be suspended during that period. See, *Heyward v. Metro Homes, Inc.*, CRB No. 12-123, AHD No. 12-145, OWC No. 682864 (September 25, 2012).

James Green v. D.C. Department of Corrections, CRB No. 13-054 (October 31, 2013)

This brings us to the current dispute.

On December 10, 2012, Employer notified Claimant that it was again suspending his benefits because he allegedly failed to attend another AME. Claimant filed an Application for Hearing and this case was assigned AHD No. PBL 10-043 C (“C case”). Although the B case is still pending before the ALJ on the CRB’s February 7, 2013 Decision and Remand Order, after an evidentiary hearing on April 23, 2013, the ALJ issued a CO on October 15, 2013, reinstating benefits as of December 20, 2012.

On April 26, 2016, Claimant filed a motion for an order declaring Employer in default on the ALJ’s award in the C case. Employer filed an opposition to Claimant’s motion asserting that the ALJ “had no authority or jurisdiction” to decide the default motion in the C case because he still had not ruled on the B case. Stated another way, Employer argued to the ALJ that since he had not yet decided whether any benefits were owed after October 7, 2011 (the pending B case remand), he should not have decided that benefits were owed after December 20, 2012.

The ALJ did not decide the pending remand in the B case. Instead, he issued an Order To Hold Claimant’s Motion For Default In Abeyance on June 29, 2016, finding Employer in default.

The ALJ, recognizing that his remand decision in the B case would impact enforcement of his Order, the ALJ said he would hold the motion in abeyance “in the interest of judicial economy” until he issued the September 26, 2013 Compensation Order on Remand, (the B case remand), pending since February 7, 2013.

Employer appealed the ALJ’s June 26, 2016 Order to the CRB asserting:

Employer contends that because the ALJ lacked jurisdiction to consider (Claimant’s) Motion because the September 26, 2013 CO was outstanding, the Motion should have been denied. However, in issuing the Order, the ALJ exercised jurisdiction and in doing so acted contrary to law.

Claimant filed a letter response on September 29, 2016 saying the ALJ’s June 29, 2016 order is interlocutory and the ALJ “did not actually decide anything related to the case.” Claimant further says

This matter is not ripe for adjudication by the CRB. Accordingly, Mr. Green respectfully requests the Government’s Application for Review be dismissed and the ALJ be urged to issue the Compensation Order on Remand the parties have been awaiting for more than three years.

DISCUSSION

As an initial matter, in our review of an appeal of an Order from the AHD which is not based upon an evidentiary record, the CRB must affirm said decision 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 CRB finds the ALJ acted improperly by issuing the June 29, 2016 Order.

Our starting point is the fact that the ALJ still has not decided the B case. Therefore, there has been no decision that Claimant is entitled to any indemnity or medical benefits after October 7, 2011.

The ALJ, by deciding the C case and reinstating benefits on December 20, 2012, committed the same error he did in 2013 when he reinstated benefits in the A case -- he improperly issued an advisory opinion.

Despite its title, "Order To Hold Claimant's Motion For Default In Abeyance", which indicates that the motion would not be decided, the ALJ decided the motion; he held that Employer was in default of the C case award:

In the instant claim, a determination that Employer is in default for payment of the benefits awarded is consistent with the Act and record evidence...Therefore, Claimant is entitled to an Order of Default for non-compliance with the outstanding Compensation Order.

Order at 2.

The ALJ's decision does not explain why he issued this decision prior to acting on the much older and still pending remand and resolve whether Claimant is entitled to benefits after October 7, 2011. Nonetheless, in the absence of a determination that Claimant's disabling condition after October 7, 2011 is causally related to the work injury, there can be no predicate for a legal determination that benefits should be awarded beginning December 20, 2012 and no predicate for a default order on those benefits.

CONCLUSION AND ORDER

The ALJ's June 29, 2016 Order to Hold Claimant's Motion for Default in Abeyance is not in accordance with the law and is VACATED.

So ordered.