

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 15-202

JAMES RICE,
Claimant-Respondent,

v.

DISTRICT OF COLUMBIA DEPARTMENT OF MOTOR VEHICLES
Employer-Petitioner.

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2016 MAY 25 AM 10 11

Appeal from an Order of Dismissal
by Administrative Law Judge Gwenlynn D'Souza
AHD No. PBL 15-014, DCP No. 0468-WC-15-0000248

(Decided May 25, 2016)

Richard A. Daniels for Claimant
Frank McDougald for Employer

Before LINDA F. JORY, HEATHER C. LESLIE and JEFFREY P. RUSSELL, *Administrative Appeals Judges.*

LINDA F. JORY for the Compensation Review Board.

DECISION AND ORDER TO VACATE

FACTS OF RECORD AND PROCEDURAL HISTORY

On July 22, 2015, an administrative law judge (ALJ) called to order a pre-hearing conference. Claimant appeared at the pre-hearing conference as well as counsel for Employer. Claimant was advised that the conference was held in order to help the *pro se* Claimant understand the hearing process and that the ALJ's decision will be based upon evidence provided to her at the hearing which was scheduled for September 24, 2015. Claimant subsequently requested that the formal hearing date be continued and a notice of rescheduled hearing was issued scheduling the matter for November 18, 2015.

Claimant appeared at the formal hearing with Richard A. Daniels who was identified as his attorney. Hearing Transcript (HT) at 2, 4. A pre-hearing order (PHO) presented to the ALJ indicated the parties stipulated to an injury date of November 28, 2014, timely claim was made and timely notice was provided. The parties further stipulated that Claimant has not returned to

work. The ALJ signed the PHO and stated that it was her understanding that the issues for adjudication were jurisdiction, employer/employee relationship, whether claimant sustained an injury to his right hip while in the performance of his duties, and whether Claimant's injury is medically causally related to a work injury.

Employer identified five exhibits which were admitted into the record as "joint" exhibits, as the ALJ stated Claimant was relying on Employer's exhibits. HT at 9.

After Claimant's testimony was taken, the ALJ held an off-the-record discussion, took a brief recess and ultimately advised the parties that she was dismissing the Claimant's claim without prejudice and that she would be issuing a written order stating the same. The Order of Dismissal (Order) which issued on December 1, 2015 has been timely appealed by Employer to the Compensation Review Board (CRB).

ANALYSIS

Because the Order on review is not based on an evidentiary record produced at a formal hearing, the applicable standard or review by which we assess the determination reached by the Administration Hearings Division (AHD) is whether the decision is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law. See 6 Stein, Mitchell & Mezones, Administrative, Law, §51.03 (2001).

Employer asserts:

Here, the record shows that Claimant's representative did not submit any medical documentation and chose to rely on the exhibits presented by Employer. The record further shows that only after the ALJ stated that there was no evidence of medical causation did Claimant's representative request to "hold the record open for 30 days to submit that and try once more." Tr at 33. Initially, the ALJ, over objection of Employer's counsel granted the request, but after a recess, dismissed the matter without prejudice. Just as in *Peoples*, [infra] the ALJ recognized that Claimant could not prevail and instead of proceeding with the hearing and ruling accordingly, chose to dismiss the matter. Such a disposition by the ALJ was "arbitrary and capricious because it [was] not based upon a fair and proper application of the law." Moreover, the disposition by the ALJ deprived Employer of a "fair hearing" to which it is entitled. Accordingly, the December 1, 2015 Order should be vacated.

Employer's Brief at 5, 6.

Claimant has not filed a response.

Employer asserts and we agree the CRB's discussion in *Peoples v. District of Columbia Department of Mental Health*, CRB No. 10-048 (June 17, 2011)(*Peoples*) is applicable to the instant matter. In *Peoples*, the CRB stated:

When orally dismissing the Application for Formal Hearing, the ALJ referenced Employer's independent medical examination reports that had been accepted into evidence prior to the ALJ's recess. This reference makes it clear that the ALJ, in fact, did review the documentary evidence prior to rendering her dismissal, and by giving Ms. Peoples an opportunity to "get all [her] ducks in a row," the appearance is that the ALJ had determined that Ms. Peoples could not prevail on her claim, needed additional medical evidence to succeed, and had shown good cause for a continuance in the middle of a proceeding in order to obtain that additional evidence. Such a preliminary disposition, essentially on the merits, is arbitrary and capricious because it is not based upon a fair and proper application of the law.

Peoples at 6.

In the instant matter the ALJ stated:

On November 18, 2015, the Formal Hearing in this matter was convened and Employer clarified on the record that medical causation was at issue. The Formal Hearing proceeded until the end of the direct examination of the Claimant. After a brief recess, the undersigned noted on the record that the issue of medical causation was before the administrative court and Claimant had not submitted any evidence on the issue of medical causation. At that time, Claimant moved to keep the record open for a medical opinion. After the undersigned asked the parties about a possible continuance, Employer objected to a continuance or leaving the record open, arguing that such a procedure would result in prejudice. Thereafter, the Application for Formal Hearing was **DISMISSED** *without prejudice*.

Order at 1 (emphasis in original).

As we cautioned in *Peoples*:

We are aware that an ALJ is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure and may conduct a hearing in a manner so as to best ascertain the rights of the claimant; however tis flexibility is not without limits. The ALJ still is charged with adjudicating a fair hearing for all parties.

Peoples at 5; See D.C. Code §1-623.24(b)(2).

While we do not agree with Employer's assertion at the hearing that "the fact that you don't have sufficient evidence means that the Employer prevailed," we do agree with Employer that the burden was on the Claimant to come in fully prepared with his evidence. HT at 3. Inasmuch as Claimant was afforded a pre-hearing conference when he was not represented by counsel and then was granted a two month continuance, Claimant was provided ample time to obtain medical evidence. The ALJ's determination that there appeared to be nothing in the record related to an

opinion of medical causation gives the impression that she reviewed employer's evidence and was of the opinion that Claimant could not prevail. We conclude that Employer therefore was not afforded a fair hearing and the ALJ's dismissal was arbitrary and capricious.

CONCLUSION AND ORDER

The Order of Dismissal is arbitrary, capricious, and an abuse of discretion and is accordingly VACATED. The matter is remanded for the sole purpose of the issuance of a Compensation Order addressing the issues set forth at the November 18, 2015 hearing.

So ordered.