

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



ODIE DONALD II
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 17-101

**LESLIE T. JACKSON,
Claimant–Petitioner,**

v.

**DISTRICT OF COLUMBIA HOUSING AUTHORITY
Self-Insured Employer–Respondent.**

Appeal from a September 12, 2017 Order of Dismissal
by Administrative Law Judge Fred D. Carney, Jr.
AHD No. PBL 11-019, DCP No. 30100802422-001

(Decided November 15, 2017)

Leslie T. Jackson, *pro se*
Andrea G. Comentale and Milena Mikalova for Employer

Before LINDA F. JORY, GENNET PURCELL 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

This case has an assorted procedural history with appeals to the Compensation Review Board (“CRB”), the District of Columbia Superior Court and the District of Columbia Court of Appeals (“DCCA”) resulting in several orders issued. We incorporate by reference the history outlined in a prior CRB Decision and Order Dismissing Appeal. *Jackson v. District of Columbia Housing Authority*, CRB No. 17-045 (July 19, 2017)(“Jackson”):

The following facts are taken from the decision issued by the District of Columbia Court of Appeals (“DCCA”) in *Leslie T. Jackson v. District of Columbia, et al.*, No. 13-CV-1375 Mem. Op. & J. (D.C. October 28, 2016) (“MOJ”):

While serving as an attorney for the D.C. Housing Authority, Leslie Jackson experienced two workplace injuries. On January 4,

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2006, Ms. Jackson slipped and fell on a floor that had been recently mopped and waxed, and on December 17, 2009, she fell again when a chair collapsed beneath her during an administrative hearing. Ms. Jackson reported her 2009 injuries to her supervisor, and in July 2010 she "contacted" the District of Columbia Public Sector Workers' Compensation Program about workers' compensation for her injuries.

On August 4, 2010, the Housing Authority formally reprimanded Ms. Jackson for failing to complete work assignments and insubordination. Ms. Jackson responded by filing a complaint with the Equal Employment Opportunity Commission on August 19, 2010. She claimed that the Housing Authority had failed to accommodate her disability by rejecting her requests for accommodation and by censuring her. On November 24, 2010, the Housing Authority notified Ms. Jackson that her employment would be terminated for a continued failure to perform her work. At some point "[b]efore [she] was terminated," Ms. Jackson filed a claim for workers' compensation.

In April 2011, the Public Sector Workers' Compensation Program accepted her workers' compensation claim only for "cervical and lumbar strain," declining to credit other injuries, including "multilevel degenerative changes" and "disc displacement," due to a lack of evidence. The notice of determination granted Ms. Jackson certain medical expenses (if treatment was performed or prescribed by an approved physician) and a possible continuation of pay. The notice also provided that "[i]f you disagree with this notice, you must act now by appealing this notice, within 30 days of the date of this notice," to the District's Department of Employment Services (DOES).

Ms. Jackson appealed the determination to DOES, filing an application for a formal hearing before an Administrative Law Judge (ALJ). The Housing Authority moved to dismiss, and Ms. Jackson opposed the motion, arguing that she had been terminated for seeking workers' compensation. In December 2011, the ALJ dismissed Ms. Jackson's hearing application without prejudice because it lacked a "genuine controversy of law or fact that is ripe for adjudication." The order noted that Ms. Jackson's claim was "accepted and benefits are being paid," and concluded that a "cause of action" based on termination for seeking workers' compensation "is not proper for this forum." The ALJ found no other basis for jurisdiction in the filings. Ms. Jackson did not appeal this decision to the Compensation Review Board.

Before the ALJ dismissed the application for a hearing, Ms. Jackson also filed this case in Superior Court against the District and the Housing Authority. She alleged that she "entered into an implied contract with Defendant for provision of Workers' Compensation benefits, should [she] become unable to work due to a work place injury." Ms. Jackson requested among other relief an injunction "ordering Defendant to pay Workers Compensation in the amount of 75% of her salary in the form of a lump sum beginning December 9, 2010[,] and continuing until the lump sum payment is received." Ms. Jackson later amended her complaint to include claims for discrimination and retaliation in violation of the D.C. Human Rights Act.

On March 22, 2013, the Superior Court dismissed the workers' compensation claims for lack of jurisdiction, concluding that the CMPA "establishes [her] exclusive remedy for such claims". The court stated that "(a)pppeals from decisions made by the Director of DOES are filed directly with the District of Columbia Court of Appeals. The Superior Court's only role in CMPA compensation claims is to consider liens filed against the District." *See* D.C. Code § 1-623.24 (g).

Ms. Jackson proceeded to file a "notice of lien" against both the District and the Housing Authority for more than \$7 million. At a pretrial conference on July 23, 2013, the Superior Court granted the District's motion to strike the lien on the basis of the previous order of dismissal and Ms. Jackson's failure to follow CMPA administrative procedures before seeking judicial relief. During the hearing, the court also heard argument on and granted the defendants' motion *in limine* to preclude any evidence regarding the workers' compensation claims that had been dismissed. The court went on to limit witness testimony that would be irrelevant or cumulative, striking witnesses for whom Ms. Jackson could provide only speculative proffers.

A jury trial began on November 18, 2013. On November 25, 2013, the jury returned a verdict for the Housing Authority, finding that Ms. Jackson failed to "prove[] by a preponderance of the evidence that engaging in a protected activity was a substantial factor in [the Housing Authority's] decision to terminate her[.]" This appeal followed.

* * *

For the foregoing reasons, the judgment of the Superior Court is affirmed.

MOJ at 1 - 4, 7 (footnotes omitted).

Jackson, supra at 1-3.

On December 21, 2011, an Administrative Law Judge (“ALJ”) dismissed Claimant’s claim. On August 19, 2013 Claimant filed “Claimant’s Request for Compensation Order” with the Administrative Hearings Division (“AHD”).

On November 27, 2013, an ALJ with AHD issued an Order which denied Claimant’s request for a Compensation Order. The Order was not appealed at the time.

On May 10, 2017, Claimant filed an appeal of AHD’s December 21, 2011 dismissal. On July 19, 2017, the CRB dismissed Claimant’s appeal of AHD’s December 21, 2011 dismissal as the CRB found Claimant’s May 10, 2017 appeal to be untimely. *Jackson, supra*. Claimant has filed an appeal of the CRB’s July 19, 2017 order with the DCCA, which is pending.

On September 12, 2017 the ALJ issued a subsequent order which again denied Claimant’s request for a Compensation Order. It is this order that is now on appeal to the CRB via “Petitioner’s Application for Limited Review” (“AFR”) which Claimant filed on October 10, 2017. Employer filed Respondent’s Response in Opposition to Petitioner’s Application for Limited Review (“Employer’s Response Brief”).

ANALYSIS

Because the Order under review is not based on an evidentiary record produced at a formal hearing, the applicable standard of review by which we assess the determination reached by the ALJ is whether the decision is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law. See 6 STEIN, MITCHELL & MEZINES, *Administrative Law*, § 51.03 (2001).

Claimant’s AFR asserts:

In ALJ Carney’s attached August 2017 order he finds his December 21, 2017 order to be “the law of the case.” Therefore, ORM and DC Housing Authority should have commenced payment because they must have agreed with the order. To the extent that ALJ Carney’s order finds payment was received or that ORM actually commenced payment, Petitioner appeals that finding in the order as being “the law of the case,” but accepts the finding that ORM voluntarily agreed on December 21, 2011 to commence payment.

If ALJ’s December 31, 2011 order is the “law of the case” he should have issued a compensation order based on ORM and DC Housing Authority’s agreement. And this application for review extends to that denial.

Because the order was without prejudice to bringing subsequent actions, any subsequent action relates back to the original action. Thus, a request for a

compensation order is appropriate subsequently here. *See Shirley A. Stewart-Veal v. District of Columbia*, No. 05-CV-342 (April 13, 2006) and Fed Rule Civ. Proc. 41 that mirrors Sup. Ct. Civ. Rules 41.

Petitioner agrees with ALJ Carney that the order without prejudice to requesting a hearing now based on the original breached agreement and there is no limitation issue because of the order and because it involved a breached agreement. This application extends to the denial of a compensation order and relief relating to the breached agreement to voluntarily commence payment. To the extent that the ALJ's order is construed to mean otherwise, Petitioner requests a review.

Finally, Petitioner request [sic] a review of the order requiring her to resubmit her application for a formal hearing on a particular form as opposed to in a pleading or on any other appropriate form.

AFR at 1-2.

Employer asserts:

As the ALJ noted in his December 2011 Order, the April 2011 NOD indicates that Petitioner's request for benefits was accepted. Because Petitioner did not present an alternative basis for jurisdiction, the ALJ dismissed her application for a formal hearing. Nearly six and a half years later, Petitioner is once again improperly requesting OHA to preside over this matter without providing a basis for the OHA's jurisdiction other than the April 2011 NOD. Moreover, as the ALJ explained, neither the Superior Court nor the DCCA issued a remand or reversal order with regard to the ALJ's 2011 decision to dismiss Petitioner's application for a formal hearing. Therefore, the ALJ has properly denied Petitioners' request to issue a Compensation Order.

Employer's Response Brief at 3-4.

Claimant filed "Petitioner's Brief Supplement In Response to Respondent's Opposition" on November 8, 2017. Therein, she asserts that the courts as well as AHD are "misguided into believing" that Employer was voluntarily paying compensation. We must point out to Claimant that whether or not Employer was paying benefits or stopped paying benefits does not give the ALJ jurisdiction to enter a Compensation Order after the original AFR was dismissed as Claimant is now requesting. Claimant further asserts that she did use a particular DOES form to request a formal hearing and that she was advised to submit her request to the Employer's workers' compensation administrator, the D.C. Office of Risk Management. Our scope of review pertains only to the September 12, 2017 order issued by AHD. Any activity or pleadings filed by Claimant after the order issued cannot now be reviewed.

We further reject Claimant's argument that if the ALJ's December 31, 2011 order is the "law of the case" he should have issued a compensation order based on ORM and DC

Housing Authority's agreement. Issuing an opinion without a hearing would constitute an advisory opinion which the ALJ lacks authority to render. *See Green v. D.C. Dept. of Corrections*, CRB No. 16-099 (October 11, 2016) *citing Heyward v. Metro Homes, Inc.*, CRB No. 12-123 (September 25, 2012).

Although not mentioned by either party, the same ALJ who issued the order on appeal had already denied Claimant's request for a Compensation Order on November 27, 2013. Our review of AHD's administrative file reveals no indication as to what triggered the ALJ's decision to issue the subsequent denial which is currently on appeal. Nevertheless, we find the ALJ lacked jurisdiction to issue another order in this matter. Claimant's Application for Review is rendered moot and is accordingly dismissed.

CONCLUSION AND ORDER

The Administrative Hearings Division lacked jurisdiction to issue the September 12, 2017 Order and it is accordingly VACATED.

So ordered.