

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**Department of Employment Services**

VINCENT C. GRAY  
MAYOR



LISA M. MALLORY  
DIRECTOR

**COMPENSATION REVIEW BOARD**

**CRB No. 11-051**

**LILLIE TINSLEY,  
Claimant-Respondent,**

**v.**

**DISTRICT OF COLUMBIA OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION  
Self-Insured Employer-Petitioner.**

DEPT. OF EMPLOYMENT  
SERVICES  
COMPENSATION REVIEW  
BOARD  
2012 JUN 5 AM 11 48

Appeal from an Order by  
The Honorable Fred D. Carney, Jr.  
AHD No. PBL09-036A, DCP No. 30080214753

Frank McDougald, Esquire for Petitioner  
Benjamin T. Boscolo, Esquire for Respondent

Before MELISSA LIN JONES, HEATHER C. LESLIE,<sup>1</sup> and JEFFREY P. RUSSELL,<sup>2</sup> *Administrative Appeals Judges.*

MELISSA LIN JONES, *Administrative Appeals Judge*, for the Compensation Review Board.  
JEFFREY P. RUSSELL, *concurring*

**DECISION AND REMAND ORDER**

JURISDICTION

Jurisdiction is conferred upon the Compensation Review Board ("CRB") pursuant to D.C. Code §1-623.28, 7 DCMR §118, and Department of Employment Services Director's Administrative Policy Issuance No. 05-01 (February 5, 2005).

FACTS OF RECORD AND PROCEDURAL HISTORY

On February 20, 2008, Ms. Lillie Tinsley was injured in a work-related, car accident. Her claim for benefits was accepted, and she received wage loss and medical benefits.

<sup>1</sup> Judge Leslie has been appointed by the Director of the DOES as a temporary CRB member pursuant to DOES Administrative Policy Issuance No. 11-02 (June 13, 2011).

<sup>2</sup> Judge Russell has been appointed by the Director of the DOES as a temporary CRB member pursuant to DOES Administrative Policy Issuance No. 11-01 (June 23, 2011).

Dr. Rida Azer, Ms. Tinsley’s treating physician, recommended surgery on Ms. Tinsley’s right elbow. On August 6, 2010, Sedgwick CMS informed Ms. Tinsley her surgery was not medically necessary.

A formal hearing was scheduled to adjudicate the issues of jurisdiction and entitlement to surgery. On May 2, 2011, an administrative law judge (“ALJ”) issued a Compensation Order. In the Compensation Order, the ALJ ruled the Office of Hearings and Adjudication, Administrative Hearings Division (“AHD”)<sup>3</sup> did not have jurisdiction. Nonetheless, the ALJ ordered the Disability Compensation Program (“DCP”)<sup>4</sup> authorize and pay for the recommended surgery.

On appeal, the District of Columbia Office of the State Superintendent of Education argues the ALJ’s rulings are inconsistent. Specifically, having determined that AHD did not have jurisdiction, the ALJ was without authority to render a decision on the issue of entitlement to surgery.

Ms. Tinsley asserts the Compensation Order is supported by substantial evidence in the record. Ms. Tinsley argues the ALJ had authority to rule on the entitlement issue because the ALJ only determined that she did not have a right to a formal hearing “on the merits of the reasonableness and necessity” issue, not on the issue of jurisdiction as a whole.

#### ISSUE ON APPEAL

Is the May 2, 2011 Compensation Order supported by substantial evidence in the record and in accordance with applicable law?

#### ANALYSIS

The scope of review by the CRB is limited to making a determination as to whether the factual findings of the appealed Compensation Order are based upon substantial evidence<sup>5</sup> in the record and whether the legal conclusions drawn from those facts are in accordance with applicable law.<sup>6</sup> 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.<sup>7</sup>

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<sup>3</sup> The Administrative Hearings Division is now known as Hearings and Adjudication.

<sup>4</sup> The Disability Compensation Program is now known as the Public Sector Workers' Compensation Program.

<sup>5</sup> “Substantial evidence” is relevant evidence a reasonable person might accept to support a conclusion. *Marriott International v. DOES*, 834 A.2d 882, 885 (D.C. 2003)

<sup>6</sup> Section 32-1521.01(d)(2)(A) of Act.

<sup>7</sup> *Marriott International, supra*.

Attached to Ms. Tinsley's Application for Formal Hearing was an August 6, 2010 letter from Sedgwick CMS informing her that her right elbow surgery is not medically necessary; this letter was not issued by DCP or any government representative. Based upon this evidence, the ALJ determined AHD was without jurisdiction to adjudicate Ms. Tinsley's claim:

Claimant contends that she is entitled to a formal hearing by an Administrative Law Judge of the Department of Employment Services. Claimant posited at the formal hearing that the letter of August 6, 2010 serves as a notice of determination under the Act. She contends that because she is seeking authorization for surgery and not a claim for compensation, no decision of the Mayor is required prior to a hearing in this matter. Claimant offered no prior case law to support her contention. Employer posits that the Office of Hearing and Adjudications/Administrative Hearings Division does not have jurisdiction to adjudicate this matter because there has been no decision of the Mayor. Employer cites DC Code §1-623.24 (b) (1) which states in pertinent part:

“Before review of under §1-623.28(a), a claimant for compensation not satisfied with a decision of the Mayor or his or her designee under subsection (a) of this section is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on the claim before a Department of Employment Services Disability Compensation Administrative Law Judge.”

Thus Employer posits that the notice on which Claimant relies for this appeal is merely a letter and not a “decision of the Mayor” (hereinafter referred to as a NOD) that creates in Claimant the right to a formal hearing before an Administrative Law Judge. At the formal hearing Employer posited that:

“It would be our position, having spoken with the employees that the matter is not properly before Your Honor. Because first of all, this letter is not an NOD. Within the process an NOD would be issued and we are quite frankly within that process. In other words what I mean by that is that Dr. Azer has been sent a copy of Dr. Danzinger's AME. Once Dr. Azer reviews that and says for instance, “I don't agree with that, your assessment,” than [*sic*] that is sent to Sedwick. And it's at that point that Sedwick would issue a thirty-day NOD. So with that being the process, this matter is not properly before Your Honor.” The letter states in pertinent part:  
[*sic*]

The record indicates that the letter informing Claimant that her requested surgery was denied as “unnecessary,” was sent on Sedgwick CMS letter head, it was not signed by any individual and it did not indicate that it was to be a utilization, review report or a NOD. Further the letter states that Claimant can seek reconsideration through the “appeal process.”

“If you disagree with this decision, you may request reconsideration through the appeal process. To appeal this determination, submit a written request within 30 days of receipt of this notice and provide additional information which documents the medical necessity of the service. Please send the appeal request and information to the address listed on this letter or fax to (877)922-7236. Sedgwick will respond to appeals as quickly as possible usually within five to ten business days.”

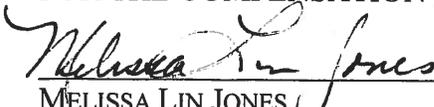
Thus there is no indication on this notice that DCP has made its final determination on this matter from which Claimant can seek a formal hearing. Therefore it is determined that Claimant does not have a right to a formal hearing on the merits of her claim at this time.<sup>[8]</sup>

Contrary to Ms. Tinsley’s argument that the ALJ merely determined she is not entitled to a formal hearing on the merits of the reasonableness and necessity of her claim, the ALJ actually ruled AHD is without authority to conduct a formal hearing. Despite the ruling that AHD lacked jurisdiction, the ALJ still went on to render a decision on Ms. Tinsley’s entitlement to surgery.

CONCLUSION AND ORDER

Having ruled that AHD lacked jurisdiction to adjudicate Ms. Tinsley’s claim, it is beyond the ALJ’s authority to render a decision regarding Ms. Tinsley’s entitlement to surgery. The order that the DCP authorize and pay for surgery is VACATED; this matter is REMANDED with instructions to dismiss the Application for Formal Hearing.

FOR THE COMPENSATION REVIEW BOARD:

  
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MELISSA LIN JONES  
*Administrative Appeals Judge*

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January 5, 2011

DATE

Jeffrey P. Russell *concurring*:

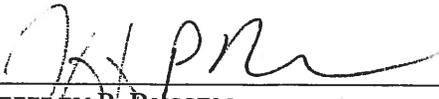
Although I agree with the outcome and rationale of the decision, the procedures employed in this case place an employee in Ms. Tinsley’s position in a precarious place. Having been advised by Sedgwick that her surgery request has been denied, and having further been advised by Sedgwick that she has certain specific, time limited “appeal rights”, a person in Ms. Tinsley’s position could reasonably conclude that Sedgwick was standing in the shoes of DCP and was issuing an NOD.

<sup>8</sup> *Tinsley v. D.C. Office of the State Superintendent of Education*, AHD No. PBL09-036A, DCP No. 30080214753 (May 2, 2011), unnumbered pages 3-4.

How and why Sedgwick is involved in reviewing a request for authorization for medical care is not apparent to a person receiving a letter such as that received by Ms. Tinsley in this case, and why such a letter should not be viewed as being a determination by her employer to deny the requested care is not evident. The procedures employed in this instance are confusing and create misleading appearances which can only cause delay and uncertainty in an area where the goal should be promptness and clarity.

For myself, I would look askance upon any claim by the employer in such a situation that some failure to exercise an "appeal right" as is referred to in the letter in this case in any way impairs a claimant's entitlement to have a claim for medical care considered under the Act.

Claimants are entitled under the Act to prompt notices of determination when medical care or other benefits are sought. A procedure in which notices purporting to deny such requests for benefits are routinely sent out which are nonetheless not "Notices of Determination" promises nothing but to cause undue distress to claimants and stress on limited adjudicatory resources. This should be avoided.

  
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JEFFREY P. RUSSELL  
*Administrative Appeals Judge*