

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services
Labor Standards Bureau

Office of Hearings and Adjudication
COMPENSATION REVIEW BOARD



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CRB No. 05-17

STEVEN MALIK,

Claimant–Respondent,

v.

THE WASHINGTON POST,

Self-Insured Employer–Petitioner.

Appeal from a Supplemental Compensation Order of
Administrative Law Judge David L. Boddie
AHD No. 00-138A, OWC No. OWC No. 508703

Allen J. Lowe, Esquire, for the Respondent

William H. Schladt, Esquire, for the Petitioner

Before E. COOPER BROWN, *Chief Administrative Appeals Judge*, LINDA F. JORY and FLOYD LEWIS,
Administrative Appeals Judges.

LINDA F. JORY, *Administrative Appeals Judge*, for the Compensation Review Panel:

DECISION AND ORDER AMENDING SUPPLEMENTAL COMPENSATION ORDER
AWARDING PENALTIES AND DECLARING A DEFAULT

JURISDICTION

Jurisdiction is conferred upon the Compensation Review Board pursuant to D.C. Official Code §§ 32-1521.01 and 32-1522 (2004), 7 DCMR § 230, and the Department of Employment Services Director's Directive, Administrative Policy Issuance 05-01 (February 5, 2005).¹

¹ Pursuant to Administrative Policy Issuance No. 05-01, dated February 5, 2005, the Director of the Department of Employment Services realigned the Office of Hearings and Adjudication to include, *inter alia*, establishment of the Compensation Review Board (CRB) in implementation of the District of Columbia Fiscal Year 2005 Budget Support Act of 2004, Title J, the District of Columbia Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, *codified at* D.C. Official Code § 32-1521.01. In accordance with the Director's Directive, the CRB replaces the Office of the Director in providing administrative appellate review and disposition of workers' and disability compensation claims arising under the District of Columbia Workers' Compensation Act of 1979, as amended, D.C. Code Ann. §§ 32-1501 to 32-1545 (2005), and the District of Columbia Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Code Ann. §§ 1-623.1 to 1-643.7 (2005), including responsibility for

BACKGROUND

On November 1, 2004, a Supplemental Compensation Order which found Petitioner in default of a Compensation Order previously issued on June 11, 2001, and responsible for penalties in the amount of \$1,151.41 was issued by AHD. The order of penalties was appealed to the CRB.

As grounds for this appeal, Petitioner alleges the Administrative Law Judge's (ALJ) finding that the Compensation Order awarded temporary total disability benefits in the amount of \$5,757.05 is simply not correct, therefore the award of a §32-1515 (f) 20% penalty in the amount of \$1,151.41 is in error. Respondent has not filed a response to this appeal. Petitioner has subsequently notified the CRB that the appeal of this matter was taken on November 30, 2004 to correct a clerical error in which the parties agreed that the correct amount of penalties to be paid by the employer was \$297.70. Petitioner added that the ALJ refused to correct what amounts to a clerical error, indicating that he did not have authority to correct a clerical error in a compensation order. Petitioner requested that the CRB, pursuant to the agreement of the parties, remand this matter to the ALJ with instructions to correct the amount of penalties to \$297.70 and indicated that the penalties have been paid.

ANALYSIS

As an initial matter, the scope of review by the Compensation Review Board (CRB) and this Review Panel (hereafter, the Panel) as established by the Act and as contained in the governing regulations is limited to making a determination as to whether the factual findings of the 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. D.C. Official Code § 32-1521.01(d)(2)(A). "Substantial evidence", as defined by the District of Columbia Court of Appeals, is such evidence as a reasonable person might accept to support a particular conclusion. *Marriott Int'l. v. District of Columbia Department of Employment Services*, 834 A.2d 882 (D.C. 2003). Consistent with this scope of review, the CRB and this panel are bound to uphold a Compensation Order that is supported by substantial evidence, even if there is also contained within the record under review substantial evidence to support a contrary conclusion, and even where the reviewing authority might have reached a contrary conclusion. *Marriott*, 834 A.2d at 885.

A review of the Memorandum of Points and Authorities as well as the Compensation Order reveal that the parties' stipulation that the ALJ erred in stating that the amount owed as a result of the Compensation Order was \$5,757.05 is supported by the evidence of record. The Panel further notes that Petitioner has not asserted that the payment made pursuant to the Order was timely, only that the amount it owed was \$1,488.50 which would result in a penalty in the amount of \$297.70 and not \$1,151.41 as awarded.

Since the creation of the CRB, regulations governing proceedings on appeal to the CRB have been promulgated and became effective December 8, 2005.

administrative appeals filed prior to October 1, 2004, the effective date of the District of Columbia Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004.

Those regulations contain the following provision, at 7 DCMR 267.1:

The designated Review Panel shall dispose of the matter under review, utilizing standards of review contained in section 266 of this Chapter, by issuing a decision:

....

(c) amending the compensation order or final decision based on the Review Panel's findings

Those regulations also provide, at 7 DCMR 267.5:

The Review Panel shall only issue an amended compensation order where a remand to the Administrative Hearings Division or the Office of Workers' Compensation would be unnecessary (*e.g.* where there is but one action that the Review Panel decision would permit), and thus remand would be superfluous.

In this instance, the Supplemental Compensation Order is not in accordance with the law, because it inadvertently referred to an incorrect amount of benefits ordered by the Compensation Order and the 20% penalty assessed against Petitioner as a result was incorrect and there is but one action that this determination permits, that being affirmance of the Supplemental Compensation Order declaring Petitioner in default but reversing the award of penalties. Accordingly, this matter will not be remanded.

CONCLUSION

The Supplemental Compensation Order is in accordance with the law, with respect to the ALJ's conclusion that Petitioner is in default of the July 11, 2001 Compensation Order for failure to timely pay awarded compensation benefits pursuant to §32-1515. and must be reversed. However, the ALJ's assessment of the amount of penalties was not in accordance with the law and must be reversed. The basis of the reversal allows but one result, that being an assessment of the stipulated amount of Penalties pursuant to §32-1515, which the Panel acknowledges have already been paid.

ORDER

The Supplemental Compensation Order is hereby amended to assess penalties pursuant to §32-1515 in the amount of \$297.70. The Amended Supplemental Compensation Order finding Petitioner in default and Petitioner responsible for §32-1515 penalties in the amount of \$297.70 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

LINDA F. JORY
Administrative Appeals Judge

June 14, 2006

DATE