

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA M. MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 11-039(2)

MARYANNE TAGOE,

Claimant- Petitioner,

v.

HOWARD UNIVERSITY AND SEDGWICK CMS

Employer/Carrier - Respondent

Appeal from a Compensation Order of
Administrative Law Judge Belva D. Newsome
AHD No. 03-287F, OWC No. 568310

Maryanne Tagoe, Pro Se Claimant
William Schladt, Esquire, for the Employer

Before HEATHER C. LESLIE,¹ LAWRENCE D. TARR, and JEFFREY P. RUSSELL,² *Administrative Appeals Judges*.

HEATHER C. LESLIE, *Administrative Appeals Judge*, for the Compensation Review Board.

DECISION AND ORDER

OVERVIEW

This case is before the Compensation Review Board (CRB) on the request for review filed by the Claimant - Petitioner (Claimant) of the March 29, 2011, Order issued by an Administrative Law Judge (ALJ) in the Office of Hearings and Adjudication (OHA)³ of the District of Columbia Department of Employment Services (DOES). In that Order, the ALJ dismissed the application for formal hearing with prejudice. We affirm.

¹ Judge Heather C. Leslie is appointed by the Director of DOES as an interim Board Member pursuant to DOES Administrative Policy Issuance No. 11-02 (June 13, 2011).

² Judge Russell has been appointed by the Director of the DOES as an interim CRB Member pursuant to DOES Administrative Policy Issuance No. 11-02 (June 13, 2011).

³ Formerly known as the Administrative Hearings Division.

BACKGROUND AND FACTS OF RECORD

On October 4, 2000 the Claimant suffered a stroke while working as a first-year resident physician for the Employer. The Claimant completed that year of residency but was not offered a position as a second-year resident and stopped working for this Employer at the end of June 2001.

After a brief period of unemployment, the Claimant worked for two assisted living facilities through July 2002. At the time of the formal hearing in July 2003, the Claimant was in graduate school at George Washington University, seeking a master's degree in public health. *Tagoe v. Howard University*, OHA No. 03-287, OWC No. 568310 (August 29, 2003).

In 2003, the Claimant filed a claim for workers' compensation benefits asserting that she was disabled because of migraine headaches caused by the stroke suffered while working for the employer. The Claimant sought an award for temporary partial benefits, temporary total benefits, interest, reimbursement for the cost of graduate school claimed to be vocational rehabilitation, and for payment of medical expenses causally related to the accident.

The Employer did not contest that the Claimant sustained an accident at work. The Employer disputed the nature and extent of the Claimant's disability, whether the Claimant's headaches were medically causally related to the stroke, whether the Claimant gave timely notice, and whether the Claimant voluntarily limited her income. *Id.*

Since the filing of the first formal hearing, the litigation related in this case has resulted in many administrative and judicial decisions. In one such decision, the District of Columbia Court of Appeals (DCCA) in *Howard University, et al v. DOES*, 960 A.2d 603 (November 11, 2008), found the Claimant gave untimely notice of her injury. Specifically, the DCCA found,

The answers that we have received to our questions on remand compel us to conclude as a matter of law that Tagoe did not furnish timely notice of injury, and that her failure to do so was not excused under either statutory exception to the notice requirement. As of October 12, 2000, based on her physician's advice, Tagoe was aware that her stroke was triggered by the stress of her duties as a resident. The thirty-day period set forth in D.C. Code § 32-1513(a) for giving written notice of her injury to the Hospital began to run by that date, but it was not until several months later that Tagoe furnished the required notice. While D.C. Code § 32-1513(d)(1) provides that knowledge on the part of the employer or employer's "agent in charge of the business in the place where the injury occurred" may excuse the failure to furnish written notice, so long as the employer has not been prejudiced by the failure to give timely written notice, the requirements of subsection (d)(1) were not met here. It is undisputed that, for subsection (d)(1) to apply, the employer or its agent must have had the requisite knowledge of the injury within the same thirty-day period specified in subsection (a). Although Dr. Weir certainly knew by October 12 of Tagoe's injury and its relationship to her employment, he cannot be deemed the Hospital's agent for notice purposes, as he was not Tagoe's supervisor (or otherwise in charge of her

work place), nor was he charged with any duty as a Hospital employee to report her work-related injury to his superiors. And though the Hospital knew of Tagoe's stroke within the thirty-day timer period, it lacked actual knowledge within that time frame that the stroke arose out of her employment activity (Dr. Weir no having conveyed that information). Notwithstanding the absence of prejudice, therefore, the exception in subsection (d)(1) is inapplicable (under the construction given by the CRB, which we adopt).

Stated another way, because of this lack of timely notice, the Claimant could not and did not prevail on her claims for any type of wage loss benefits or for reimbursement of vocational rehabilitation expenses. The Claimant's migraine headaches were found to be causally related to her industrial accident and the Claimant received an award for medical benefits causally related to the headaches.

THE STANDARD OF REVIEW

In review of an appeal which is based not upon factual findings made on an evidentiary record, but rather is based upon review of the administrative record, the filings of the parties, and the orders, the Board must affirm the order under review 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, § 51.93 (2001).

DISCUSSION AND ANALYSIS

Preliminarily, we note much of the Claimant's arguments are difficult to understand and unfocused. We glean from the arguments put forth by the Claimant that she is alleging the Order is contrary to law, represents a manifest error/injustice, that the ALJ was bound to hold a *Snipes* hearing pursuant to her request for modification and violated the Claimant's due process rights by failing to attach appeal rights to the Order.

We first address the Claimant's allegations that the Order violated her due process rights when appeal rights were not attached. We will only note that the Claimant timely appealed the Order to the CRB. No harm resulted from OHA's alleged failure to attach appeal rights to the Order, nor does the Claimant argue as such. The Claimant's appeal is timely.

A review of the administrative record reveals multiple filings, motions, oppositions, appeals, hearings and Compensation Orders. Various filings have been made at Hearings and Adjudications, the CRB, and the DCCA. One theme is constant in most if not all of the filings -- the Claimant continues to pursue wage loss benefits as a result of her October 4, 2000 work injury.

One other theme is also constant -- that the Claimant has been informed repeatedly that she is unable to pursue wage loss benefits. The Claimant has been told numerous times by numerous adjudicators at this agency that pursuant to the DCCA's decision in *Howard University, et al v. DOES*, 960 A.2d 603 (November 11, 2008), the Claimant is no longer entitled to any wage loss benefits that resulted from the injury of October 4, 2000 due to a failure to furnish timely notice of injury. Specifically, the DCCA stated that "as a matter of law, Tagoe did not furnish timely notice of injury, and that her failure to do so was not excused under either statutory exception to

the notice requirement.” The CRB reiterated this finding in a Decision and Order⁴ on February 20, 2009, stating the following:

The decision of the DCCA has resolved definitively the issue of modifying the COR and also rendered Petitioner's severability argument moot. If the Court had ruled otherwise and reversed and remanded the COR on the notice issue, there would exist the possibility in further proceedings that Petitioner might succeed in her quest for wage loss benefits. However, such was not the case as the Court affirmed the ALJ, found Petitioner's claim for disability compensation to be barred and none of her claims entitling her to any relief.

Regardless, the Claimant again filed for an application for formal hearing seeking wage loss benefits, modification of the Claimant's average weekly wage, penalties, to submit new evidence and to have the issue of manifest error/injustice at the 2003 hearing addressed. Claimant's Argument at 4. Subsequent to the filing for a formal hearing, multiple motions were submitted.

The ALJ in light of the motions scheduled a pre hearing conference to hear the parties arguments and to ascertain the issues to be decided in a formal hearing. After the hearing and considering the arguments set forth, the ALJ determined, rightfully, the Claimant was attempting to again address the issue of notice and obtain wage loss benefits. The ALJ then issued an order dismissing the application for formal hearing with prejudice under the doctrine of *res judicata*. We agree.

We reiterate, again, that the Claimant's right to wage loss benefits is barred. It is the law of the case, as affirmed by the DCCA, that as notice was untimely, she is no longer entitled to any wage loss benefits from her injury, or its residual effects, now or in the future. Her allegations of manifest error and injustice have no merit as her case has been before the DCCA several times for review.

The ALJ below, relying on *Carr v. Rose*, 701 A.2d 1065, 1071 (D.C. 1997), stated that under the doctrine of *res judicata*, the “Claimant cannot receive wage loss benefits since the August 29, 2003 Compensation Order and March 15, 2007 Compensation Order on Remand affirmed by the Corut on November 28, 2008 denied Claimant wage loss benefits.” Order at 4. The ALJ then proceeded to dismiss the application for formal hearing with prejudice. We affirm.

⁴This February 20, 2009 Decision and Order was in response to another Application for Review seeking review of AHD's dismissal of her Application for Formal Hearing filed on April 25, 2008. That Application for Formal Hearing listed as issues to be adjudicated at the formal hearing "Modification of ALJ Govan's Compensation order upon remand issued March 15, 2007." and "Severability of issues from those on appeal at DCCA." Additional issues included medical benefits and permanent total and temporary total disability benefits. As the ALJ noted in her dismissal order which the CRB reviewed, the Petitioner had these multiple issues pending before various venues and some of these issues overlapped in the various venues.

CONCLUSION AND ORDER

The Order of March 29, 2011 is **AFFIRMED**.

FOR THE COMPENSATION REVIEW BOARD:

Heather C. Leslie
Administrative Appeals Judge

January 31, 2012
DATE