

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



ODIE DONALD II
ACTING DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 16-135

**MESKEREM GEBREKIDAN,
Claimant-Petitioner,**

v.

**PARK HYATT HOTEL and
GALLAGHER BASSETT SERVICES,
Employer-Respondent/Third-Party Administrator.**

Appeal from a September 21, 2016 Order
by Administrative Law Judge Douglas A. Seymour
AHD No. 13-529 OWC No. 701919

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2017 FEB 9 PM 12 05

(Decided February 9, 2017)

Benjamin E. Douglas for Claimant
Jose Estrada for Employer

Before GENNET PURCELL, JEFFREY P. RUSSELL, and LINDA F. JORY, *Administrative Appeals Judges*.

GENNET PURCELL for the Compensation Review Board.

ORDER DISMISSING APPLICATION FOR REVIEW

FACTS OF RECORD AND PROCEDURAL HISTORY

This proceeding arises out of an award of workers' compensation benefits granted to Meskerem Gebrekidan ("Claimant") in a September 29, 2014 Compensation Order ("CO") issued following a full evidentiary hearing held before an Administrative Law Judge ("ALJ") in the Administrative Hearings Division ("AHD") of the Department of Employment Services ("DOES"). The CO awarded Claimant temporary total wage replacement benefits from August 26, 2013 to September 6, 2013, as well as temporary partial wage replacement benefits from September 7, 2013 to the present and continuing.

On April 6, 2016, Claimant filed a Motion for Penalties on Unpaid Sums ("Motion I") pursuant to D.C. Code §§ 32-1515(f) and 32-1528(b), asserting that Claimant was entitled to a 20% late payment penalty in the amount of \$1,834.00 pursuant to § 32-1515(f), and past due wages

totaling \$36,174.64 pursuant to § 32-1528(b), from Park Hyatt Hotel ("Employer") for a total due to Claimant in penalties and wages in the amount of \$38,008.64.

On May 18, 2016, pursuant to an April 28, 2016, Show Cause Order issued by AHD, Employer filed its response to the Order to Show Cause Regarding Claimant's Motion I.

In response to Employer's response and at Claimant's request, a conference call was held between the ALJ and counsels for both Claimant and Employer, where it was determined that Claimant's Motion would be decided on the record.

On June 2, 2016, Claimant filed an additional Motion for Penalties on Unpaid Sums ("Motion II", and together with Motion I, the "Motions"), asserting a continuing violation of the CO and requesting additional temporary partial disability benefits owed from 2014 and pursuant to D.C. Code §§ 32-1515(f) and 32-1528(b), penalties stemming from Employer's failure to pay the benefits Claimant alleged she was owed.

On June 9, 2016, Employer filed Employer and Insurer's Motion to Stay Proceedings ("Motion to Stay") until AHD ruled on Claimant's Motion I. Claimant did not file any response to Employer's Motion to Stay.

On June 24, 2016, pursuant to AHD's order, Employer submitted Employer's and Insurer's Brief in Response to Claimant's Motion for Penalties asserting a good faith basis for its denial of Claimant request for benefits.

On June 29, 2016, AHD granted Employer's Motion to Stay and ordered scheduling of a Status Conference to address the Motion to Stay and Claimant's pending motions.

On September 21, 2016, AHD issued an Order Lifting the Stay and Scheduling Formal Hearing for November 17, 2016 (the "Formal Hearing Order").

On October 12, 2016, Claimant filed an Application for Review of the Compensation Order¹ and Memorandum of Points and Authorities in Support of Application for Review ("AFR") with the Compensation Review Board ("CRB"), requesting reversal of the Formal Hearing Order and an order directing AHD to issue a ruling on Claimant's motions.

On October 27, 2016, Employer filed Employer's and Insurer's Memorandum of Points and Authorities in Opposition to Claimant's Application for Review requesting a denial of Claimant's AFR as affirmation of the Formal Hearing Order ("Employer's Brief").

On October 19, 2016, AHD issued an Order holding the matter in abeyance as a result of Claimant's AFR and pending the issuance of an order by the CRB.

ANALYSIS

¹ The AFR is titled Application for Review of the Compensation Order and there are repeated references to the "Compensation Order" throughout the AFR in error as substantively Claimant's counsel's AFR relates to the September 21, 2016 Formal Hearing Order.

An Order that is not based upon an evidentiary record, must be affirmed by the CRB 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 § 51.03 (2001).

Claimant's counsel asserts the Formal Hearing Order scheduling an evidentiary hearing to determine Claimant's entitlement to penalty and bad faith remedies under the D.C. Workers' Compensation Act, "does not specify any authority to schedule a formal hearing *sua sponte*." Claimant alleges further that the Act's penalty provisions do not require any factual inquiry that might be relevant to the ALJ's decision on Claimant's pending Motions as "Employer's stated reasons for not paying rest on legal arguments and not on any factual dispute." Claimant's Brief at 7.

Claimant further asserts:

The parties in this case held a Formal Hearing regarding Claimant's work-related injury which has prevented her from achieving her former earning capacity at any point since February 23, 2013. After a fair hearing of all relevant factual evidence, the ALJ ruled that Claimant was entitled to wage loss benefits under D.C. Code Sec. 32-1508(5). Employer/Insurer are refusing to comply with their legal obligations under this order for reasons that have nothing to do with any contested issue of fact. Under these circumstances, the ALJ's refusal to rule on Claimant's penalty petitions and insistence on pursuing a Formal Hearing without the presence of contested facts is a violation of the Act, and an abuse of discretion.

Claimant's Brief at 11-12.

In response, Employer questions Claimant's standing to appeal the Formal Hearing Order to the CRB and argues that the Formal Hearing Order is not appealable as it is not a compensation order or a final order pursuant to the Act.

Employer asserts:

With regard to the jurisdiction and ability to review matters, 7 DCMR § 251.2 states:

The authority of the Board is quasi-judicial in nature, involving the review and determination of appeals from compensation orders (including final decisions or orders granting or denying benefits) by the Administrative Hearings Divisions and/or the Office of Workers' Compensation under the Public Sector and Private Sector Acts, consistent with statutory authority.

[emphasis added]. (*See also* 7 DCMR § 258.1, noting that an appeal to CRB is from a compensation order or final decision of the AHD). A final decision or judgment is a court's last action that settles the rights of the parties and disposes of all issues in controversy that are presented to the court for resolution at a given time. *See* Black's Law Dictionary (7th Ed.) at 847. On the other hand, a decision

or order that is an interim or temporary action, not constituting a final resolution of the whole controversy presented to the court for resolution at a given time is considered an interlocutory order. An interlocutory order is, unless otherwise stated, not appealable. Hensley v. Cheechi & Co., 2007 WL 6083390, at *1-2 (Apr. 23, 2007) (citing Black's Law Dictionary at 819, 1123 (7th Ed.)).

Employer's Brief at 5.

The law is clear with regard to interlocutory appeals of collateral orders in this jurisdiction. As outlined in *Bible Way Church of Our Lord Jesus Christ of the Apostolic Faith v. Beards*, 680 A.2d 419, 425 (D.C. 1996), and noted in our recent decision in *Rhonda Dahlman v. AARP*, CRB No. 16-056 (October 7, 2016):

The Supreme Court cautions that the collateral order doctrine is "modest" in scope and described the conditions required for its application as "stringent." *Will v. Hallock*, 546 U.S. 345, 349-50 S. Ct. 952, 163 L. Ed. 2d 836 (2006). In order to qualify for immediate appellate review, the ruling must satisfy three requirements: (1) it must conclusively determine a disputed question of law; (2) it must resolve and important issue that is separate from the merits of the case itself; and (3) it must be effectively unreviewable on appeal from a final judgment.

A single final judgment serves the purpose of efficient judicial administration. Noting only "immaterial exceptions", none of which apply to the case *sub judice*, the District of Columbia Court of Appeals has held:

Normally, an order or judgment is deemed to be final 'only if it disposes of the whole case on its merits so that the court has nothing remaining to do but to execute the judgment or decree already rendered.'" *Id.* at 745-46 (quoting *In re Estate of Chuong*, 623 A.2d 1154, 1157 (D.C. 1993) (en banc)). The requirement that the trial court proceeding be concluded in its entirety before an appeal may be taken "serves the important policy goals of preventing the 'unnecessary delays resultant from piecemeal appeals' and 'refraining from deciding issues which may eventually be mooted by the final judgment.'" *Rolinski*, 828 A.2d at 745 (quoting *Crown Oil & Wax Co. v. Safeco Ins. Co.*, 429 A.2d 1376, 1379 (D.C. 1981)). The requirement discourages "the harassment and cost of a succession of separate [interlocutory] appeals" and fosters "efficient judicial administration." *Rolinski*, 828 A.2d at 745 n.8 (quoting *Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 374, 66 L. Ed. 2d 571, 101 S. Ct. 669 (1981) (internal quotation marks and citations omitted)).

Galloway v. Clay, 861 A.2d 30, 32 (D.C. 2004).

In the matter before us, the ALJ's Formal Hearing Order does not conclusively resolve a question of law. Claimant's assertion that her request for penalties do not require "any factual inquiry that might be relevant, given that Employer's stated reasons for not paying rest on legal

arguments and not on any factual dispute”, is an argument on which we will not opine in rendering this dismissal.

The Motions at issue also contain claims of bad faith on the part of Employer; claims which are related to the case, and for which the burden of proof statutorily rests on Claimant. Moreover, while the Formal Hearing Order at issue is not a “final” order, the order to be issued after the evidentiary hearing will be.

CONCLUSION AND ORDER

Claimant has not established that the September 21, 2016 Order Lifting Stay and Scheduling Formal Hearing qualifies for CRB review under the collateral order doctrine and in accordance with the Act and applicable regulations. Claimant’s request for CRB review of the September 21, 2016 Order Lifting Stay and Scheduling Formal Hearing is an interlocutory appeal for which the CRB lacks jurisdiction; Claimant’s Application for Review is accordingly DISMISSED.

So ordered.