

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services



MURIEL BOWSER
MAYOR

ODIE A. DONALD II
ACTING DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 16-127

**NADINE WALTON-HOLLIDAY,
Claimant-Petitioner,**

v.

**DISTRICT OF COLUMBIA CHILD AND FAMILY SERVICES AGENCY,
Employer-Respondent.**

Appeal from a September 6, 2016 Order of Dismissal
by Administrative Law Judge Gwenlynn D'Souza
AHD No. PBL 10-039B, DCP No. 0468-WC-06-0500409

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2017 JAN 25 PM 1 59

(Decided January 25, 2017)

Matthew J. Pepper for Claimant
Janea J. Raines for Employer

Before HEATHER C. LESLIE, LINDA F. JORY, and JEFFREY P. RUSSELL, ADMINISTRATIVE Appeals Judges.

HEATHER C. LESLIE for the Compensation Review Board.

**DECISION AND ORDER
AFFIRMING IN PART AND VACATING IN PART**

FACTS OF RECORD AND PROCEDURAL BACKGROUND

Claimant injured her left knee on September 5, 2006. Claimant's claim was accepted and benefits paid. Claimant stopped receiving temporary total disability benefits in 2011. See *Walton-Holliday v. District of Columbia Child and Family Services*, PBL 10-1039A, DCP No. 761006000022006-0018 (December 14, 2011).

On November 15, 2013, Dr. Easton Manderson rendered a permanent partial impairment rating to Claimant's right leg. Claimant subsequently sought a Notice of Determination ("NOD") from the Office of Risk Management for permanent partial disability benefits for the right leg. In an NOD issued February 3, 2016, Employer denied Claimant's request.

Claimant requested a Formal Hearing seeking an award of permanent partial disability benefits. On August 16, 2016, the Administrative Law Judge (“ALJ”) ordered the parties to submit briefs to address jurisdictional questions surrounding the scope of the NOD and the effect of the December 14, 2011 Compensation Order (“CO”).

On September 6, 2016, an Order of Dismissal (“Order”) was issued dismissing Claimant’s request for a Formal Hearing. The Order concluded there was a lack of jurisdiction because the Claimant requested a NOD to be issued addressing entitlement to permanent partial disability to the right leg only. Further, the Order determined that even if Claimant had requested a NOD be issued regarding the left leg, Claimant’s claim would still be denied based upon the prior CO.

On September 14, 2016, Claimant filed a Motion to Reconsider the Second Page of the Order of Dismissal, the page that determined Claimant’s claim for relief to the left leg would fail due to the CO. On September 19, 2016, the ALJ issued an Amended Order of Dismissal which still concluded that the law of the case precluded Claimant from seeking any benefits to the left knee.

Claimant appealed the September 6, 2016 Order to the Compensation Review Board (“CRB”) on September 26, 2016.

Claimant, in her appeal, concedes that Order is correct in determining that her application for a Formal Hearing is not yet ripe as a NOD has not issued regarding her left leg, Claimant argues the Order is in error,

...due to a lack of subject matter jurisdiction, for the Order of Dismissal to address the merits of her claim by finding that she was barred through the doctrine of res judicata from attempting to demonstrate that her current left leg pain is causally related to her work injury of September 5, 2006.

Claimant’s Brief at 1.

Employer opposes Claimants appeal. Employer argues that as Claimant’s appeal is not from a final determination or order, Claimant’s appeal should be denied. Employer relies upon D.C. Code § 1-623.28 and District of Columbia Municipal Regulations (“DCMR”) 7 DCMR § 135.2 in support of this argument.

STANDARD OF REVIEW

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 AL 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).

ANALYSIS

We first address Employer's argument that Claimant's appeal should be denied based upon 7 DCMR § 135.2 which states:

Any party adversely affected or aggrieved by a compensation order or final decision issued by the OHA with respect to a claim for workers' compensation benefits pursuant to Title XXIII of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (D.C. Official Code §§ 1-623.1, et seq. (2006 Repl. & 2012 Supp.)) may appeal said compensation order or final decision to the Board by filing an Application for Review with the Board within thirty (30) calendar days from the date shown on the certificate of service of the compensation order or final decision in accordance with and pursuant to the provisions of 7 DCMR § 258.

Employer argues the September 19, 2016 Amended Order of Dismissal is the final order in the matter before us. Thus, Employer asserts Claimant's appeal of the September 6, 2016 Order should be denied as it is a non-final order. We disagree.

Appeals of compensation orders to the CRB must be made within 30 days of the issuance of the order being appealed. *See* D.C. Code § 1-623.28 (a). *See also* 7 DCMR § 258.2.

7 DCMR § 261.7 provides as follows:

A timely motion for reconsideration of a compensation order filed with the Administrative Hearings Division *shall not stay* the running of the thirty (30) day period for filing an Application for Review with the Board prescribed in section 258.2¹ of these regulations. Where however, a motion for reconsideration is not ruled upon prior to the filing of an Application for Review, the pendency of the motion may serve as a basis for a stay of proceedings on a timely appeal before the Board until the motion is ruled upon by the Administrative Hearings Division.

(Emphasis added.)

Thus, by the express language of the statute, a Motion for Reconsideration does not stay the time to appeal a final order. The final order in this case is the Order issued on September 6, 2016. The Motion for Reconsideration and the Amended Order did not toll the time for Claimant to appeal the September 6, 2016 Final Order. Employer's argument is rejected.

Turning to Claimant's argument, Claimant argues that the ALJ, after correctly dismissing the claim on jurisdictional grounds (an NOD on entitlement to benefits to the left leg had not been issued), should not have resolved the case on its merits.

¹ 7 DCMR § 258.2 states:

An Application for Review must be filed within thirty (30) calendar days from the date shown on the certificate of service of the compensation order or final decision from which appeal is taken.

We agree that after correctly determining that the ALJ did not have authority to proceed with the Formal Hearing because the Administrative Hearings Division ("AHD") did not have jurisdiction requires dismissal of Claimant's Application for a Formal Hearing. The ALJ should not have then considered the Claimant's claim for her left leg as it relates to the CO. Quite simply, ALJ did not have authority to address any facet of Claimant's claim to the left leg as AHD jurisdiction was not proper.

CONCLUSION AND ORDER

The Order of Dismissal is AFFIRMED in part and VACATED in part. That portion of the Order which dismissed Claimant's claim for lack of jurisdiction because no NOD was issued regarding a left leg claim is AFFIRMED.

All other issues decided, specifically those issues addressed on page 2 of the Order of Dismissal are VACATED.

So ordered.