

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**Department of Employment Services**

MURIEL BOWSER  
MAYOR



DEBORAH A. CARROLL  
DIRECTOR

COMPENSATION REVIEW BOARD

**CRB No. 15-002(1)**

**NEMEIKA JOHNSON,  
Claimant-Respondent,**

v.

**HOWARD UNIVERSITY HOSPITAL and  
SEDGWICK CMS,  
Employer/Insurer-Petitioner.**

DEPT. OF EMPLOYMENT  
SERVICES  
COMPENSATION REVIEW  
BOARD  
2015 JUN 5 PM 11 51

Appeal from December 5, 2014 Compensation Order  
by Administrative Law Judge Amelia G. Govan  
AHD No. 14-315, OWC No. 712584

William H. Schladt for the Employer  
Michael J. Kitzman for the Claimant

Before MELISSA LIN JONES, JEFFREY P. RUSSELL, and HEATHER C. LESLIE *Administrative Appeals Judges.*

MELISSA LIN JONES for the Compensation Review Board.

**ORDER ON RECONSIDERATION**

**FACTS OF RECORD AND PROCEDURAL HISTORY**

Since approximately 2000, Ms. Nemeika Johnson has worked as a laundry technician with Howard University Hospital (“HUH”). Ms. Johnson maneuvered a laundry cart which requires bending, reaching, lifting, standing, walking, and carrying.

On October 26, 2013, a linen cart struck the back of Ms. Johnson’s left leg. She reported to the nurse staffing office for an admission slip to HUH’s emergency room where she was examined on November 2, 2013. Ms. Johnson was taken off of work and was referred to orthopedic specialist Dr. Shelton McKenzie.

On November 27, 2013, Dr. McKenzie placed Ms. Johnson on light duty with no heavy lifting or prolonged walking or standing; these restrictions were imposed until December 4, 2013. On December 19, 2013, Ms. Johnson was excused from work for a work-related medical condition;

this excuse was imposed again on January 13, 2014. Ms. Johnson was released to full duty on February 13, 2014.

A dispute arose over Ms. Johnson's entitlement to workers' compensation benefits, and the parties proceeded to a formal hearing to resolve whether Ms. Johnson sustained an accidental injury to her left knee or back on October 26, 2013 which arose out of and in the course of employment, whether Ms. Johnson gave timely notice, and the nature and extent of Ms. Johnson's disability, if any. In a Compensation Order dated December 5, 2014, an administrative law judge ("ALJ") granted Ms. Johnson temporary total disability benefits from October 26, 2013 through March 25, 2014 with interest and payment of causally related medical expenses on the grounds that Ms. Johnson's left knee injury arose out of and the course of her employment and Ms. Johnson gave timely notice. *Johnson v. Howard University Hospital*, AHD No. 14-315, OWC No. 712584 (December 5, 2014).

On appeal, HUH asserted the ALJ applied the wrong legal standard to the notice issue. HUH also contended the ALJ's finding that HUH had actual notice is not supported by substantial evidence nor is the ruling that the presumption of timely notice was invoked. Finally, HUH asserted the ALJ's award of temporary total disability benefits was not supported by substantial evidence. HUH requested the Compensation Review Board ("CRB") reverse the Compensation Order.

In response, Ms. Johnson argued

[t]he Compensation Order correctly held that the employer presented no evidence that notice was not provided, but rather, only presented evidence that at some stage in the internal bureaucracy, the paperwork was not properly transmitted. The evidence further supports the contention that the claimant followed the instructions of her employer in how she reported her injury and to whom she reported it. Further, the evidence supports the Compensation Order's conclusion regarding the claimant's entitlement to temporary total disability is consistent with the opinion of the treating physician as well as Employee Health.

Memorandum of Points and Authorities in Opposition to Application for Review ("Opposition"), unnumbered p. 3. For these reasons, Ms. Johnson requested the CRB affirm the Compensation Order.

On January 27, 2015, HUH filed Employer/Insurer's Motion to Accept Late Filing. The CRB issued a Decision and Remand Order on May 14, 2015; when reaching the conclusions that the ALJ's rulings that Ms. Johnson gave timely notice is not in error and that the portion of the Compensation Order discussing the nature and extent of Ms. Johnson's disability is in error, the CRB did not consider Employer/Insurer's Reply to Claimant's Opposition to Application for Review ("Reply") filed with the Motion to Accept Late Filing because by HUH's own concession, the Motion to Accept Late Filing and the Reply were filed late.

On May 15, 2015, HUH filed a Motion for Reconsideration. Now, HUH states its Reply was timely and should have been considered when resolving the appeal because it did not receive Ms. Johnson's Opposition until January 23, 2015.

The plain language of 7 DCMR § 258.10 is clear: “Within five (5) calendar days of receipt of a memorandum filed in opposition to an Application for Review, the petitioner may file a reply memorandum (original and three copies) with the Board, and serve copy of same upon the respondent.” Despite HUH’s previous indications that its Reply was filed late, it appears that it, in fact, was filed timely. Consideration of that Reply, however, does not alter the outcome of the appeal.

In the Reply, HUH raises factual disagreements not with the Compensation Order nor with the Decision and Remand Order but with Ms. Johnson’s Opposition. The content of Ms. Johnson’s Opposition in this appeal is argument not evidence. Moreover, the content of HUH’s Reply is argument not evidence. On appeal, the CRB analyzed the contents of the Compensation Order, and given that the CRB lacks authority to reweigh the evidence, the contents of HUH’s Reply provide no legal justification for reaching a different result than the one reached in the Decision and Remand Order.

CONCLUSION AND ORDER

HUH’s Motion for Reconsideration is GRANTED; the contents of HUH’s Reply provide no legal justification for reaching a different result than the one reached in the Decision and Remand Order. Nonetheless, because HUH’s Reply was filed timely, the Preliminary Matter portion of the May 14, 2015 Decision and Remand Order is STRICKEN.

FOR THE COMPENSATION REVIEW BOARD:

*/s/ Melissa Lin Jones*

MELISSA LIN JONES

*Administrative Appeals Judge*

June 5, 2015

DATE