

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Department of Employment Services**

**VINCENT C. GRAY**  
**MAYOR**



**LISA M. MALLORY**  
**DIRECTOR**

**COMPENSATION REVIEW BOARD**

**CRB No. 10-162**

**PATRICIA NEWBY,**  
**Claimant–Petitioner,**

**v.**

**DISTRICT OF COLUMBIA PUBLIC SCHOOLS,**  
**Employer–Respondent.**

Appeal from an Order of  
Administrative Law Judge Fred D. Carney, Jr.  
AHD No. PBL01-064D, DCP No. LT-PARK001712

Kirk D. Williams, Esquire, for the Petitioner  
Pamela L. Smith, Esquire, for the Respondent

Before MELISSA LIN JONES, LAWRENCE D. TARR, and HENRY W. MCCOY, *Administrative Appeals Judges*.

MELISSA LIN JONES, *Administrative Appeals Judge*, for the Compensation Review Board.

**DECISION AND ORDER**

**JURISDICTION**

Jurisdiction is conferred upon the Compensation Review Board (“CRB”) pursuant to D.C. Code §1-623.28, 7 DCMR §118, and the Department of Employment Services (“DOES”) Director’s Administrative Policy Issuance No. 05-01 (February 5, 2005).

**FACTS OF RECORD AND PROCEDURAL POSTURE**

On November 30, 1998, Ms. Patricia Newby injured her right knee while working for the District of Columbia Public Schools (“Employer”). More than two years later, on April 2, 2001, Ms. Newby reinjured her right knee at work.

On March 24, 2010, Ms. Newby made a claim with the Disability Compensation Program (“DCP”)<sup>1</sup> requesting wage loss benefits. Without receiving a Final Determination,<sup>2</sup> she filed an Application for Formal Hearing.

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<sup>1</sup> Effective October 1, 2010, the DCP’s name was changed to the Public Sector Workers’ Compensation Program.

At the outset of a formal hearing on August 2, 2010, Employer moved to dismiss Ms. Newby's Application for Formal Hearing on the grounds that the Office of Hearings and Adjudications, Administrative Hearing Division ("AHD")<sup>3</sup> lacked jurisdiction because DCP had not issued a Final Determination. On August 5, 2010, an administrative law judge ("ALJ") dismissed Ms. Newby's Application for Formal Hearing because the record did not include a Final Determination terminating or denying wage loss benefits stemming from Ms. Newby's April 2, 2001 work-related injury; the ALJ also pointed out that Ms. Newby's entitlement to medical benefits already had been addressed by the Compensation Review Board in *Newby v. D.C. Public Schools*, CRB No. 09-067, AHD No. PBL01-064B, DCP No. LT4-PARK001712 (December 8, 2009).

On appeal, Ms. Newby argues the ALJ erred by dismissing her Application for Formal Hearing without first determining whether or not DCP unreasonably delayed issuing a Final Determination. She requests we reverse the August 5, 2010 Order dismissing her Application for Formal Hearing.

Employer asserts the Order is not arbitrary, capricious, or an abuse of discretion. Employer requests we affirm the August 5, 2010 Order because AHD did not have jurisdiction over Ms. Newby's claim.

#### ISSUE ON APPEAL

1. Does AHD have jurisdiction over a claim if DCP has not issued a Final Determination?

#### ANALYSIS<sup>4</sup>

Ms. Newby asserts that pursuant to §1-623.24(b)(1) of the Act,<sup>5</sup> AHD has jurisdiction to adjudicate her request for medical benefits and temporary total disability compensation benefits; however, the plain language of §1-623.24(b)(1) of the Act requires "the issuance of a decision" by DCP before an injured worker may request a formal hearing:

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<sup>2</sup> The term "Final Determination" is used generically to refer to any final decision rendered by DCP including but not limited to a Denial of Award of Compensation Benefits or Notice of Loss of Wage Earning Capacity.

<sup>3</sup> As of February 2011, AHD's name changed to Hearings and Adjudication.

<sup>4</sup> Because the Order on review is not one based on an evidentiary record produced at a formal hearing, the applicable standard of review is whether the decision is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. 7 DCMR §266.3; see 6 Stein, Mitchell & Mezines, *Administrative Law*, § 51.03 (2001).

<sup>5</sup> Section 1-623.24(b)(1) of the Act states:

Before review under §1-623.28(a), a claimant for compensation not satisfied with a decision of the Mayor or his or her designee under subsection (a) of this section is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on the claim before a Department of Employment Services Disability Compensation Administrative Law Judge. At the hearing, the claimant and the Attorney General are entitled to present evidence. Within 30 days after the hearing, the Mayor or his or her designee shall notify the claimant, the Attorney General, and the Office of Personnel in writing of his or her decision and any modifications of the award he or she may make and the basis of the decision.

The authority of this Agency to review disputes arising out of the Public Sector Workers' Compensation Act is wholly governed by the terms of that Act. D.C. Code §1-623.24(b)(1) provides for an appeal or review of a final decision of [DCP] Determinations by an ALJ in DOES. As a general principle, the only matters that DOES has authority to review are matters upon which [DCP] has rendered a decision, and it is that decision that is reviewed by DOES. In the absence of an operative decision, there is nothing for DOES to review and rule upon.<sup>[6]</sup>

In other words, the Act is clear that the actual issuance of a Final Determination is a prerequisite to AHD's adjudication of the request for benefits:

While the courts have broad grants of authority to adjudicate matters, the adjudicatory authority of an administrative agency is limited by an enabling act. Under the Act governing this matter, a claim for benefits for a work-related injury must first be made to the Public Sector Division of the Office of Workers' Compensation, that is, the OBA. See D.C. Official Code §1-623.24 (a); 7 DCMR §§104, 105, 106, 199. The OBA, now the TPA, is responsible for conducting necessary investigations into an injured worker's claim and then making an initial determination either to award or deny disability compensation benefits for that claim. It is only if the injured worker is dissatisfied with the determination the worker can request a hearing before the ALJ. See D.C. Official Code §1-623.24 (b)(1). Thus, an ALJ is without ancillary authority to adjudicate claims for compensation that have not been first presented to the OBA, or the TPA, for investigation and resolution.”<sup>[7]</sup>

As stated by the ALJ, letters sent by a claims examiner to Ms. Newby's medical providers regarding an October 12, 2008 injury do not satisfy the statutory requirement that DCP's issuance of a Final Determination is a condition precedent to AHD obtaining jurisdiction. Furthermore, Ms. Newby relies on *Winstead v. D.C.*,<sup>8</sup> for the proposition that an ALJ must assess whether or not there is a reasonable basis for DCP's failure to issue a Final Determination; however, although workers' compensation disability benefits are a protected interest under the U.S. Constitution and as such an unreasonable delay in the administrative processing of workers' compensation claims may be actionable in another forum,<sup>9</sup> nothing in *Winstead I* or *Winstead II* confers jurisdiction upon AHD in the absence of a Final Determination. To the contrary, consistent with the language enacted by the City Council in §1-623.24(b)(1), DCP's failure to issue a Final Determination prevents AHD from obtaining the authority to conduct a formal hearing to adjudicate Ms. Newby's claim for benefits.<sup>10</sup>

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<sup>6</sup> *Minter v. D.C. Office of the Chief Medical Examiner*, CRB Nos. 11-024 and 11-035, AHD No. PBL073A, DCP No. 761035-0001-2006-0014 (December 15, 2011).

<sup>7</sup> *Burney v. D.C. Public Service Commission*, CRB No. 05-220, OHA No. PBL97-016A, DCP No. 345126 (June 1, 2005) (Emphasis added.)

<sup>8</sup> 620 F. Supp. 2d 119 (D.D.C. 2009) (“*Winstead I*”).

<sup>9</sup> See *Winstead v. District of Columbia*, 840 F. Supp. 2d 149 (D.D.C. 2012) (*Winstead II*).

<sup>10</sup> See *Dorsey v. D.C.*, 917 A.2d 639, 641 (D.C. 2007).

ORDER

The August 5, 2010 Dismissal Order is not arbitrary or capricious and is in accordance with the law.  
The August 5, 2010 Dismissal Order is AFFIRMED.<sup>11</sup>

FOR THE COMPENSATION REVIEW BOARD:

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MELISSA LIN JONES  
*Administrative Appeals Judge*

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September 11, 2012  
DATE

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<sup>11</sup> Having determined that Ms. Newby was not entitled to a formal hearing, any argument regarding an ALJ's authority to conduct a formal hearing in a manner designed to best ascertain the rights of the claimant is moot.