

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**Department of Employment Services**

**Labor Standards Bureau**

**Office of Hearings and Adjudication  
COMPENSATION REVIEW BOARD**



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**CRB (Dir. Dkt.) No. 03-131**

**BARBARA PARRISH,**

Claimant – Petitioner

v.

**EAGLE LEGAL SERVICES and ROYAL & SUNALLIANCE INSURANCE COMPANY,**

Employer/Carrier - Respondent

Appeal from Order of Claims Examiner Cathy Scruggs  
Office of Workers' Compensation  
OWC No. 568017

Howard B. Ackerman, Esq., for the Petitioner

Alan M. Carlo, Esq., for the Respondent

Before: E. Cooper Brown, *Acting Chief Administrative Appeals Judge*, and Jeffrey P. Russell and Linda Jory, *Administrative Appeals Judges*

E. Cooper Brown, *Acting Chief Administrative Appeals Judge*, on behalf of the Review Panel:

**DECISION AND ORDER**

**JURISDICTION**

Jurisdiction is conferred upon the Compensation Review Board pursuant to D.C. Official Code §§ 32-1521.01 and 32-1522 (2004), 7 DCMR § 230, and the Department of Employment Services Director's Directive, Administrative Policy Issuance 05-01 (February 5, 2005).<sup>1</sup>

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<sup>1</sup>Pursuant to Administrative Policy Issuance No. 05-01, dated February 5, 2005, the Director of the Department of Employment Services realigned the Office of Hearings and Adjudication to include, *inter alia*, establishment of the Compensation Review Board (CRB) in implementation of the District of Columbia Fiscal Year 2005 Budget Support Act of 2004, Title J, the District of Columbia Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, *codified at* D.C. Official Code § 32-1521.01. In accordance with the Director's Directive, the CRB replaces the Office of the Director in providing administrative appellate review and disposition of workers' and disability compensation claims arising under the District of Columbia Workers' Compensation Act of 1979, as amended, D.C. Code Ann. §§ 32-1501 to 32-1545 (2005), and the District of Columbia Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Code Ann. §§ 1-623.1 to 1-643.7 (2005), including responsibility for administrative appeals filed prior to October 1, 2004, the effective date of the District of Columbia

## BACKGROUND

Claimant-Petitioner Barbara Parrish (Petitioner) files this appeal from an Order of the Office of Workers' Compensation (OWC), issued October 2, 2003, denying Petitioner's application for the award of an attorney's fee against Employer/Carrier-Respondent Eagle Legal Services and Royal & SunAlliance Insurance Company (Respondent). Petitioner's fee application, filed with OWC on May 12, 2003, was premised upon the favorable resolution of Petitioner's claim before OWC and subsequently before the Office of Hearings and Adjudication (OHA) under the D.C. Workers' Compensation Act. By Memorandum of Informal Conference issued September 17, 2001, the then-presiding OWC Claims Examiner recommended the payment of temporary total disability benefits, including payment of related medical bills and requested surgery. Subsequently, following Respondent's Application for Formal Hearing filed with OHA, a Compensation Order issued awarding Petitioner the temporary total disability benefits that she had sought. *Parrish v. Eagle Legal Services, et al.*, OHA No. 02-009A (May 31, 2002). No appeal of the Compensation Order was taken by either party.

## ANALYSIS

The Claims Examiner denied Petitioner's application for an award of an attorney's fee against Respondent based upon a determination that neither of the conditions precedent to an award against an employer or its carrier under the Act had been met. *See* D.C. Official Code § 32-1530(a) and (b).<sup>2</sup> Apparently persuasive to the Claims Examiner was Respondent's argument that it was not Employer and Royal/SunAlliance Insurance that had opposed Petitioner's claim for disability benefits before OWC and refused to pay benefits, but another carrier, St. Paul & Marine Insurance, that had mistakenly entered its appearance before OWC in opposition to Petitioner's claim.

On appeal, Petitioner contends that the Claims Examiner, in concluding that Respondent should not be assessed the requested attorney's fee, failed to correctly apply Section 32-1530(a) because, regardless of the confusion before OWC as to the correct insurance carrier, Employer nevertheless was a party to the proceedings and contested Petitioner's claim during the informal proceedings before OWC. Having received a favorable recommendation from the Claims Examiner, and successfully prosecuted her claim at the OHA level, Petitioner argues that she is entitled under Section 32-1530(a) to the payment of her attorney's fees by Respondent.

Respondent argues on appeal that the Claims Examiner's decision should be upheld because the current insurance carrier, Royal and SunAlliance Insurance Company, having not entered an appearance as a party in this matter until after the issuance of the Memorandum of Informal Conference, Respondent cannot be deemed to have opposed or otherwise refused to voluntarily pay Petitioner's claim before OWC; rather, it is argued, the opposition that Petitioner initially

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Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004.

<sup>2</sup> While denying Petitioner's request for a fee award against Respondent, the Claims Examiner ruled that Petitioner's attorney might nevertheless recover his attorney's fees from Petitioner directly.

encountered was by St. Paul Fire & Maine Insurance Company, an insurance carrier that inexplicably erroneously challenged Petitioner's claim until subsequently replaced by Royal and SunAlliance Insurance. Respondent asserts that it should not be penalized for the actions of the former carrier. Citing 7 DCMR § 224.7, Respondent also notes that the attorney's fee application was not filed within six months from the date of issuance of the compensation order in this matter, and argues that the fee application should thus have been rejected by the Claims Examiner as untimely filed.

In the review of an appeal from OWC, the Board must affirm the decision and order under review unless it is determined to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. *Portillo-Marquez v. Green Scene Landscaping, et al.*, CRB No. 05-11 (May 25, 2005). See 6 Stein, Mitchell & Mezines, *Administrative Law* § 51.93 (2001). In the instant case, we have serious question about the legal efficacy of the Claims Examiner's decision, and of Respondent's argument on appeal in support thereof, as the obligation to pay a successful claimant's attorney's fees under D.C. Official Code § 32-1530(a) is imposed where either the employer or the carrier declines to voluntarily pay the disability compensation sought upon notification that a claim for such compensation has been filed, and Employer in the instant case was a named party in opposition to Petitioner's claim before OWC notwithstanding the subsequent change in carriers.

We do not, however, reach and decide the question of Employer's (and thus Respondent's) liability here, because the Board concludes that Petitioner's application for an attorney's fee was not timely filed with OWC within the six month limitations period prescribed by 7 D.C.M.R. § 224.7.<sup>3</sup> As previously noted, Petitioner's attorney's fee application was filed May 12, 2003, almost a year following issuance of the May 31, 2002 Compensation Order which, in the absence of an appeal, became final thirty days thereafter. See D.C. Official Code § 32-1522(a). The application for attorney's fees being untimely filed, OWC lacked the necessary jurisdiction to entertain Petitioner's request.

#### CONCLUSION

Petitioner's attorney's fee application was not timely filed, having been submitted to OWC more than six months following issuance of the OHA Compensation Order and more than six months after the claim in the instant case had become final. Accordingly, OWC lacked the necessary jurisdiction to entertain Petitioner's fee application.

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<sup>3</sup> 7 DCMR § 224.7 states: "An application for attorney fees shall be filed within six (6) months after the compensation order is issued, or a claim for benefits has become final, or all appeals have been exhausted."

**ORDER**

Petitioner's application for the award of an attorney's fee is DENIED.

FOR THE COMPENSATION REVIEW BOARD:

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E. COOPER BROWN  
Acting Chief Administrative Appeals Judge

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August 15, 2005  
DATE