

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services
Labor Standards Bureau

Office of Hearings and Adjudication
COMPENSATION REVIEW BOARD



(202) 671-1394-Voice
(202) 673-6402-Fax

CRB No. 05-11

YOALMA R. PORTILLO-MARQUEZ,

Claimant - Respondent

v.

GREEN SCENE LANDSCAPING AND ERIE INSURANCE,

Employer/Carrier - Petitioner

Appeal from an Order of
Claims Examiner Shelby J. Stephens
OWC No. 601702

Sean D. Hummel, Esquire, for the Petitioner

Michael D. Dobbs, Esquire, for the Respondent

Before: E. COOPER BROWN, *Acting Chief Administrative Appeals Judge*, LINDA F. JORY and SHARMAN J. MONROE, *Administrative Appeals Judges*

LINDA F. JORY, *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 (1994), and the Department of Employment Services Director's Directive, Administrative Policy Issuance 05-01 (February 5, 2005).¹

¹ 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 D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, § 1102 (Oct. 1, 1994), *codified at* D.C. Code Ann. §§ 32-1521.01, 32-1522 (2005). In accordance with the Director's Policy Issuance, the CRB replaces the Office of the Director in providing administrative appellate review and disposition of workers' and disability compensation claims arising under the D.C. Workers' Compensation Act of 1979, as amended, D.C. Code Ann. §§ 32-1501 to 32-1545 (2005) and the D.C. Government

Pursuant to § 230.04, the authority of the Compensation Review Board extends to appeals from compensation orders including final decisions or orders granting or denying benefits by the Administrative Hearings Division or the Office of Workers' Compensation under the public and private sector Acts.

BACKGROUND

The parties had previously entered into an Agreement of Full and Final Settlement which OWC approved on or about September 21, 2004. Subsequently claimant was advised to report without counsel for a disfigurement evaluation before OWC which he did on October 8, 2004. On October 15, 2004, OWC issued an order entitled "Disfigurement Award Order" finding employer responsible for an amount of \$6,500 representing disfigurement of the left middle finger. Thereafter, employer filed a Motion to Vacate Disfigurement Award Order Issued October 15, 2004 on the Basis of Lack of Jurisdiction with OWC as well as an appeal with the Director, DOES on November 12, 2004. In its appeal, Petitioner asserted the Disfigurement Award Order issued on October 15, 2004 must be vacated as OWC was without jurisdiction or authority to consider further benefits.

While the matter was still on appeal, OWC issued another order on November 24, 2004. In that Order, authored by an OWC Claims Examiner and ordered by her Supervisor, Petitioner's request to have a disfigurement award order vacated was denied and a lump sum settlement previously approved by OWC was ordered "modified to compensate claimant equitably in accordance with the statute." A second appeal followed, filed with the Director on December 29, 2004.

In each of Petitioner's appeals the authority of OWC is challenged due to the full and final effect of the approved settlement. Having been filed within two weeks of each other, the Board is in agreement to consolidate both appeals for disposition herewith out of regard for administrative economy.

ANALYSIS

In the review of an appeal from OWC, the Board must affirm the order under review 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, §51.93 (2001). For the reasons set forth herein, the Board concludes that both orders issued by the OWC Claims Examiner are reversible as OWC lacked jurisdiction to award additional benefits after the full and final settlement was approved in accordance with § 32-1508(8) and 7 D.C.M.R. § 226.1.

Employer-Petitioner has asserted in his brief:

Since the settlement was approved and an Order was issued on September 21, 2004, and said settlement represents a final disposition of the case, the agency

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

was without jurisdiction or authority to consider claimant's request for any further benefits relating to this date of injury. Accordingly, the disfigurement Award Order issued October 15, 2004, and the November 24, 2004 denying the Motion to Vacate must be vacated on the grounds of lack of jurisdiction since Claimant, while represented by counsel, agreed to discharge the employer from all further liability, and upon approval his claim for any future benefits was extinguished.

Respondent has filed a response to Petitioner's Application for Review, asserting that although the parties entered into an agreement settling all issues related to the Claimant's scheduled loss, § 32-1508(3)(T), by its terms, clearly contemplates that the Mayor "shall" award compensation for disfigurement, which may be in addition to that agreed to by the parties and approved by the Mayor. Respondent also asserts that OWC maintains the equitable jurisdiction to modify awards pursuant to § 32-1524.

Contrary to Respondent's reading of the Act, § 32-1508(3)(T), does not include any language which would create even an inference that a claim for disfigurement could be entertained after a full and final settlement has been effectuated. Specifically, the language of § 32-1508(3)(T) on its face does not include the language quoted by claimant in his response, namely: "which may be in addition to that agreed to by the parties and approved by the Mayor." Respondent fails to provide any authority for a determination that a full and final settlement does not preclude any further monetary determinations as the settlement is the "complete and final disposition of a case and shall be a final binding compensation order. It is well settled in this jurisdiction that a settlement *"shall be the complete and final disposition of a case"*. D.C. Code § 32-1508(8) (emphasis added).

With the amendments enacted by the City Council and effective as of April 16, 1999, the language of § 32-1508(8), previously § 36-308 (8), was changed. Specifically, the Council added, "The Mayor shall approve the settlement, where both parties are represented by legal counsel who are eligible to receive attorney fees pursuant to §32-1530". In addition, § 32-1505(8) replaces "Such settlements are to be the complete and final dispositions of a case and once approved require no further action by the Mayor" with "These settlements shall be the complete and final dispositions of a case and shall be a [sic] final binding compensation order."²

² Prior to the amendments to the Act, the Director had reiterated the finality of a settlement in the matter of *Howard Frick v. Cirque du Soleil*, Dir. Dkt. No. 95-00, OHA No. 92-731A (November 9, 1995):

A settlement agreement, such as the one approved herein, is governed by statutory language clear on its face; *such settlements are to be the complete and final dispositions of a case*. However, in effectuating the humanitarian principles of the Act, this jurisdiction has on rare occasion addressed the reopening of cases where events surrounding the settlement demonstrate a blatant disregard for a claimant's best interest and/or where alleged conduct is deemed tantamount to tainting or other indicia of impropriety on the part of OWC. In these infrequent, extraordinary instances, the Director habitually stresses he will not readily review every settlement *post hoc*. See *DeWitt v. Baker & Botts*, Dir. Dkt. No. 93-21, OHA No. 92-869, OWC NO. 219753 (Decision of the Director, September 7, 1994). (Emphasis added).

A review of the settlement agreement confirms the settlement was entered into with the legal advice of counsel for which counsel received an attorney's fee. In light of the language added by the 1999 amendments, this forum as well as OWC is without any power to assess whether the settlement reached by the parties through legal counsel is actually in claimant's best interest. Thus, the only assessment this forum can make now is an equitable determination of whether claimant is actually getting the benefit of her bargain pursuant to the approved agreement.

The panel agrees with Petitioner's position that OWC lacked jurisdiction to determine further monetary benefits as it did by arranging a disfigurement evaluation and issuing a disfigurement award on October 15, 2004 or by determining that the Lump Sum Settlement should be modified as so stated in its November 24, 2004 Order.

CONCLUSION

OWC had no authority to go behind the previously approved full and final settlement which, pursuant to § 32-1508(8), is the complete and final disposition of the instant case and is a final binding compensation order,

ORDER

The Disfigurement Award Order dated October 15, 2004 and the subsequent Order issued by OWC on November 24, 2004 are hereby VACATED.

FOR THE COMPENSATION REVIEW BOARD

LINDA F. JORY
Administrative Appeals Judge

May 25, 2005
DATE