

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 15-098

**ROBERT L. JOHNSON,
Claimant-Petitioner,**

v.

**HAMILTON CROWNE PLAZA HOTEL
and ZURICH AMERICAN INSURANCE Co.,
Employer/Insurer-Respondent.**

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2016 JAN 28 AM 10 27

Appeal from a June 2, 2015 Order by
Administrative Law Judge Gregory P. Lambert
AHD No. 10-563A, OWC No. 619635

(Decided January 28, 2016)

Robert L. Johnson, *pro se* Claimant
Mark T. Krause for the Employer

Before JEFFREY P. RUSSELL, and LINDA F. JORY, *Administrative Appeals Judges*, and LAWRENCE D. TARR, *Chief Administrative Appeals Judge*.

JEFFREY P. RUSSELL for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

On June 2, 2015, an administrative law judge (ALJ) in the Administrative Hearings Division (AHD) of the Department of Employment Services (DOES) issued an Order (the Order) dismissing an Application for Formal Hearing (AFH) filed by Robert Johnson (Claimant) without prejudice. The Order reads as follows:

In February, a Status Conference was held to discuss matters in this case, as well as two others brought by Mr. Johnson. On March 4, 2015, Employer filed a Motion to Dismiss and Memorandum in Support of Motion to Dismiss the Claimant's Application for Formal Hearing. In response, Mr. Johnson filed on March 13, 2015 a "Notice to Withdraw Appearance," which indicated his desire to withdraw the claim that is based on his left elbow. Weeks later, Mr. Johnson filed on April 1, 2015 a paper arguing against the dismissal of his case. On May 20, 2015, Mr. Johnson filed an untitled paper which is functionally a second Motion to Withdraw. On June 1, 2015, Employer filed correspondence with this Agency, which, in part, requests dismissal of 10-563A based upon Mr. Johnson's latest filing. I have carefully reviewed all of these papers.

After review of the record and for good cause shown, the claim related to Mr. Johnson's elbow (AHD No. 10-563A) is **DISMISSED WITHOUT PREJUDICE**.

Mr. Johnson has two other matters before the Administrative Hearings Division: AHD No. 10-563 and 14-389. This Order does not alter in any way the posture of those claims. A hearing is still set for July 16, 2015 at 10:00 a.m.

The Order at 1.

On June 19, 2015, Claimant filed a document titled "Motion to Prusue [sic] My Case" with the Compensation Review Board (CRB), to which was attached a copy of the Order.

On June 26, 2015, Hamilton Crowne Plaza Hotel (Employer) filed Respondent's Opposition to Application for Review (Employer's Opposition).

Because the dismissal of the AFH was not arbitrary, capricious or an abuse of discretion, the dismissal of the AFH is affirmed. Because the Order purports to dismiss "the claim", we amend the Order, striking "dismissal of the claim", and substituting "dismissal of the Application for Formal Hearing".

ANALYSIS

As an initial matter, in our review of an appeal of an Order from the Administrative Hearings Division which is not based upon an evidentiary record, the Board must affirm said decision 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 § 51.03 (2001).

Nothing in Claimant's AFR addresses the dismissal of the AFH. Rather, the posture of this matter and the AFR are aptly and accurately described in Employers Opposition as follows:

4. The June 2, 2015 Order of which Petitioner seeks review granted the precise relief that he requested- withdrawal of his Application for Formal Hearing. In fact, in his Application for Review at page 2, the Petitioner explicitly states that "I Robert

Johnson filed a Motion with the administrative Judge that I have withdraw my claim for my left elbow for medical reason, because I am still under the doctor care.”

5. The remainder of Petitioner’s Application for Review contains nonsensical, rambling statements about whether Judge Lambert and/or undersigned counsel violated his rights by obtaining and referring to medical records from Dr. Mustafa Haque that he did not authorize anyone to obtain. Putting aside the fact that any legitimate issues associated with such a claim are not properly in this forum, the fact is that Dr. Haque’s records were provided to undersigned counsel and Claims Examiner Eucharia Eleweanya at the Informal Conference on September 3, 2014 by the attorney then representing the Petitioner and in support of Petitioner’s claim for payment of medical expenses and authorization for additional medical treatment by Dr. Haque.

5. [sic] It is not clear what relief the Petitioner is seeking in his Application for Review. What is clear is that he twice requested withdrawal of his claim in documents addressed by Judge Lambert. In response, Judge Lambert granted Petitioner’s request. That should end this matter. There is nothing for the Compensation Review Board to review or decide.

Employer’s Opposition at 2-3.

With one exception, we agree with Employer. That exception is that, while dismissal of the AFH was not an abuse of discretion, dismissal of the claim is not the appropriate response to Claimant’s requests.

Nothing in the papers before us suggests that there is any basis at this time to take any action that might in the future foreclose Claimant from seeking benefits in connection with an allegedly work-related injury to his left elbow. What Claimant obviously intended to request, and what we believe the ALJ intended issue, was a dismissal of the AFH, not a claim (assuming one has been made). We deem the references to “dismissal of the claim” to be inadvertent misstatements, and that both the ALJ and Claimant meant “dismissal of the AFH”.

D.C. Code § 32-1521.01 establishes the CRB, the review panels by which it conducts appellate review, and outlines the powers of the CRB. Subsection (d)(2) provides:

The panel shall ... Dispose of the matter under review by issuing an order affirming the compensation order; reversing the compensation order, in whole or in part, and amending the compensation order based on the panel’s findings, or by remanding the order to the Administrative Law Judge for further review....

The District of Columbia Court of Appeals has held that the CRB’s power to amend orders is limited to correction of apparent errors, and does not include the power to make substantive legal changes. Rather, even where there is but one outcome possible, if the CRB determines that an order under review has reached an erroneous conclusion, it must remand the matter to AHD with instructions that a new order be issued in conformance with the CRB’s determination. *See*

Washington Metropolitan Area Transit Authority v. DOES (Juni Browne, Intervenor), 926 A.2d 140 (D.C. 2007).

In this case, we believe that the intention of the ALJ is clear, and that the reference to dismissal of “the claim” as opposed to the AFH was an inadvertent erroneous usage, and not a substantive legal error, akin to a typographical error. Accordingly, we amend the Order striking all references to dismissal of “the claim”, and substituting therefor “the Application for Formal Hearing”.

With that caveat, we affirm the Order.

CONCLUSION AND ORDER

The Order dismissing the Application for Formal Hearing, as amended herein, is not arbitrary, capricious or an abuse of discretion, is in accordance with the law, and is affirmed.

So ordered.