GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR

DEBORAH A. CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 16-087

ROBERT L. JOHNSON,
Claimant-Petitioner,

v.

HAMILTON CROWNE PLAZA HOTEL
and ZURICH INSURANCE CO.,
Employer/Carrier-Respondent.

Appeal from a June 3, 2016 Second Compensation Order on Remand
by Administrative Law Judge Gregory P. Lambert
AHD No. 10-563, OWC No. 619635

(Decided December 6, 2016)

Robert L. Johnson, pro se Petitioner
Mark T. Krause for Employer

Before GENNET PURCELL, LINDA F. JORY and HEATHER C. LESLIE, *Administrative Appeals Judges*,

GENNET PURCELL for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

This appeal follows an extended series of motions, pleadings, evidentiary submissions and orders addressing Mr. Johnson's claim for benefits and most relevantly to this appeal, arguments related to his entitlement to penalties and additional compensation related to his claim.

The following background information is taken from the Second Decision and Remand Order issued January 19, 2016, ("DRO 2") by the Compensation Review Board ("CRB"), which is the order upon which the Second Compensation Order on Remand issued June 3, 2016, ("COR 2") at issue in the instant appeal is premised. The bracketed material appeared in the original DRO as footnotes:

> On June 14, 2005, Mr. Johnson injured his back while working as a cook at the Hamilton Crowne Plaza Hotel ("Hotel").
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> In May 2011, an administrative law judge ("ALJ") conducted a formal hearing to adjudicate Mr. Johnson's entitlement to wage loss permanent partial disability benefits from March 16, 2011 to the date of the formal hearing and continuing. In a Compensation Order dated February 27, 2012, the ALJ granted Mr. Johnson the permanent partial disability benefits requested as well as payment and reimbursement of causally related medical expenses. [*Johnson v. Hampton Crowne Plaza Hotel*, AHD No. 10-563, OWC No. 619935 (February 27, 2012).]
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> On March 29, 2013, Mr. Johnson filed with the Office of Hearings and Adjudication, Administrative Hearings Division ("AHD") a Motion for a Supplementary Order Awarding Penalties and Declaring a Default pursuant to D.C. Code §§32-1515(f) and 32-1519 on the grounds that the wage loss benefits awarded in the February 27, 2012 Compensation Order had not been paid timely or had not been paid. [*Johnson v. Hampton Crowne Plaza Hotel*, AHD No. 10-563, OWC No. 619935 (May 7, 2013) (Order to Show Cause).]
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> In response, the ALJ issued an Order to Show Cause directing Mr. Johnson to "set forth the amount of penalties that are to be assessed upon that amount which is due and owing pursuant to D.C. Code §32-1515(f)." [*Id.*] In that same order, the ALJ directed the Hotel "to show cause why a Supplementary Compensation Order Awarding Penalties and Declaring a Default should not be entered in this Case." [*Johnson v. Hampton Crowne Plaza Hotel*, AHD No. 10-563, OWC No. 619935 (May 7, 2013) (Order to Show Cause).]
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> On August 14, 2013, the ALJ issued an Order denying Mr. Johnson's request for penalties and a default. The ALJ ruled that Mr. Johnson had failed "to establish that his wage loss after March 11, 2011 is causally related to and due to his June 14, 2005 work injury;" [*Johnson v. Hampton Crowne Plaza Hotel*, AHD No. 10-563, OWC No. 619935 (August 14, 2013)] since June 14, 2005, Mr. Johnson had returned to work and had sustained several additional injuries, and as of March 11, 2011, Mr. Johnson had stopped working "not on advice of his physicians or due to or because of his June 14, 2005 work injury

> to his back." [*Id.*] The August 14, 2013 Order did not find that Mr. Johnson's work-related back injury had healed, only that his ongoing wage loss was not a result of his back injury.
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> On December 16, 2013, Mr. Johnson filed with AHD a Motion requesting the Hotel "pay him 'all in one lump sum and medical treatment for the rest of my life' " [*Johnson v. Hampton Crowne Plaza Hotel*, AHD No. 10-563, OWC No. 619935 (February 27, 2014).] Mr. Johnson had received a lump-sum payment for an April 27, 2003 right shoulder injury in a prior claim, and apparently, he felt entitled to some type of settlement for his June 14, 2005 back injury.
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> In his December 16, 2013 Motion, Mr. Johnson also seemed to assert he requires additional medical treatment at the Hotel's expense, he is entitled to reimbursement for medical expenses paid through other insurance, and he deserves "an award for medical costs incurred in the amount of $47,655.25, and 12 million dollars, with a 20% penalty assessed against the Employer."[*Id.*] In an Order dated February 27, 2014, the ALJ denied Mr. Johnson's request for a penalty because Mr. Johnson had not met his burden of proof; the ALJ also denied Mr. Johnson's possible request for additional medical treatment on the grounds that Mr. Johnson had not requested a formal hearing to adjudicate that entitlement. [*Id.*] This appeal of the February 27, 2014 Order ensued.

DRO at 1–3.

Following a lengthy and exhaustive discussion of other matters not pertinent here, the CRB ruled as follows:

> The August 14, 2013 Order remains in effect. If Mr. Johnson has not been paid timely or properly in accordance with that Order, he may be entitled to a penalty; in order to be entitled to that penalty, Mr. Johnson must identify for the ALJ any medical bills for reasonable and necessary treatment for his June 14, 2005 back injury that the Hotel refused to pay and that Mr. Johnson paid himself. The portion of the February 27, 2014 Order denying Mr. Johnson a penalty is vacated, and this matter is remanded solely to provide Mr. Johnson an opportunity to prove entitlement to a penalty on medical expenses. The remainder of the February 27, 2014 Order is affirmed.

DRO at 7, "Conclusion and Order".

On October 7, 2014, the Chief ALJ of the Administrative Hearings Division (AHD) sent a letter to Mr. Johnson (Claimant) advising him of his obligation to identify for the ALJ handling the matter on remand any medical bills for reasonable and

necessary treatment for Claimant's back injury that Claimant had been required to pay himself after Hamilton Crowne Plaza Hotel (Employer) refused to make payment. The letter also advised Claimant that upon his submission of the requested documents, the ALJ handling the case would issue a Show Cause Order directing Employer to state why the penalty request should be denied.

On December 10, 2014, the ALJ to whom the remand had been assigned advised Claimant by letter that said documents were required to be submitted on or before January 15, 2015. In response, Claimant filed what is described in the COR as "several hundred pages of unbound exhibits and a supporting brief entitled 'Plaintiff Motion to Pursue His Case'". COR at 2.

On February 18, 2015, the ALJ conducted a status conference attended by Claimant and Employer. At the conference, Claimant advised the ALJ and Employer that he believed that there were additional documents he would like to submit, and the ALJ granted Claimant until March 3, 2015 to submit them. On that same date the ALJ issued an Order to Show Cause as previously described.

Subsequently, Claimant filed an additional six pages of medical documents.

On March 16, 2015, Employer filed Employer/Carrier's Response to Order to Show Cause. Attached to that response was a letter from Employer's counsel to Claimant dated July 3, 2013, and a listing of copayments that Employer claimed it was aware of that Claimant had made totaling $912.43, of which it maintained reimbursements had been made in the amount $267.85, and asserting that it would issue an additional payment for the balance of $644.58. In the body of the response, Employer asserted that it had reviewed the materials submitted by Claimant in the instant proceedings, and argued that they do not comport with the instructions of the Chief ALJ or by the ALJ, in that they lacked sufficient organization and specificity to demonstrate any unreimbursed out-of-pocket medical expenses incurred by Claimant.

On March 3, 2015, the ALJ and AHD issued a Scheduling Order bearing three separate AHD case file numbers, being AHD Nos. 14-389, 10-563, and 10-563A. The instant appeal concerns AHD No. 10-563. The Scheduling Order stated that a formal hearing was to occur on July 16, 2015 on all three cases.

On June 2, 2015, the ALJ issued the COR, in which the ALJ denied the claim for a penalty. On that same date, the ALJ issued an Order in AHD No. 10-563A, dismissing a claim related to Claimant's left elbow, which dismissal is substantively unrelated to the instant appeal. However, the concluding paragraph of the Order stated:

Mr. Johnson has two other matters before the Administrative Hearings Division: AHD Nos. 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.

On June 29, 2015, Claimant filed a document titled "Plaintiff Motion to Pursue His Case" with the CRB. Attached to the document was a copy of the COR, the March 3, 2015 scheduling order, a Joint Pre-Hearing Statement, and five handwritten pages authored by Claimant.

The CRB deems this filing to constitute an Application for Review (AFR) of the COR in AHD No. 10-563.

On July 27, 2015, Employer filed Respondent's Opposition to Application for Review.

On August 3, 2015, Claimant filed a document titled "Order Notice of Application for Review" with 40 pages of attached documents, including a scheduling order, medical records, handwritten lists purporting to set forth the dates of medical office visits, but containing no actual bills or evidence of payment being made by Claimant or anyone on Claimant's behalf.

DRO 2, 1-4

On January 19, 2016, following Claimant's appeal of COR 2, the CRB issued DRO 2 which vacated COR 2 and remanded the issue of whether Claimant was entitled to the assessment of a penalty against Employer under the D.C Workers' Compensation Act, to the Administrative Hearings Division ("AHD") for further proceedings. AHD was instructed to afford Claimant with the opportunity to present his disputed claim for a penalty at a formal hearing on the merits. *Johnson v. Hamilton Crowne Plaza Hotel*, CRB No. 15-116 (January 19, 2016).

Pursuant to the DRO 2, a formal hearing was held on May 5, 2016. The issue presented at the formal hearing was whether penalties related to the alleged refusal to pay medical bills should be assessed against Employer.

In the COR 2, the ALJ made findings of fact and conclusions on the following pertinent matters:

(1) that based on Claimant's own testimony, no causally-related medical bills had been submitted to the insurance carrier in this matter since 2007;

(2) that no bills for payment were submitted to the insurance carrier after 2007; and as such, no bills from 2008 onward could form the basis for a determination of penalties;

(3) that Claimant's private insurer received and paid medical bills, including an MRI scan dated February 9, 2010, submitted to Claimant's private insurer and not to Employer/Carrier under the Act; and such payments, did not form the basis for penalties since Employer/Carrier never had the opportunity to refuse to pay it; further, that this reasoning applied to other documents submitted into evidence by Claimant;

(4) that although Claimant's doctors did not submit medical bills for payment to Employer/Carrier and notwithstanding Employer's counsel's repeated attempt to rectify the issue of unpaid medical bills, if any, with Claimant directly, none were made available to Employer/Carrier;

(5) that notwithstanding not having received any medical bills from Claimant, in good faith, Employer/Carrier reimbursed Claimant for copayment(s) without evidence that Claimant actually made said payments himself. *See* COR 2 at 4.

In the COR 2, the ALJ also concluded that based on the documentary evidence, Claimant's testimony, and the record, no persuasive evidence supports the argument that penalties should be assessed, nor that there are medical costs associated with the claim that Employer/Carrier has not, but should have, paid. Claimant's claim for relief was denied.

On July 1, 2016, Claimant filed a document titled "Memorandum of Points and Authorities in support of the Application for review; and Background and Procedural History" with the CRB. Attached to the document was a copy of the COR and thirteen (13) handwritten pages authored by Claimant. The CRB deemed this filing to constitute an Application for Review (AFR) of the COR in AHD No. 10-563.

On July 14, 2016, Employer filed Respondent's Opposition to Application for Review stating that Claimant did not meet his burden of proving entitlement to penalties in this case. We agree, and affirm the COR 2.

ANALYSIS

A review of Claimant's AFR reveals that with regard to the ALJ's conclusion that Claimant did not identify any causally-related medical bills and as such, is not entitled to a penalty, Claimant has not presented any substantive challenge of the COR 2. The content of Claimant's AFR is largely a restatement of both the CRB's DRO 2 and the COR 2, interspersed with commentary offered by the Claimant relating to the history of his claim, his overall disagreement with the conclusions reached by the ALJ, as well as others, at varying stages throughout his claim history.

It is with no judgment and without aspersion that we take this opportunity to acknowledge that Claimant's statements evince a fundamental misunderstanding of the intricacies of the District of Columbia Workers' Compensation laws that which have guided and supported the posture of his case to this point. Moreover, Claimant appears to have conflated the issue of penalties as assessed under the Act, with his ongoing assertion that he is entitled to medical treatment and the payment of wage loss-based/contingent disability benefits previously awarded in this case.

The sole legal issue ordered to be reheard at the May 5, 2016 formal hearing was whether Claimant was entitled to the assessment of a penalty against Employer for Employer's failure or refusal to make payments for causally related medical bills.

Under specific circumstances, a claimant's payment of medical bills may qualify as compensation and, as a result, can qualify for a default and penalty pursuant to § 32-1519 and § 32-1515 (f) of the

Act. While neither § 32-1519 nor § 32-1515 specifically articulate the default order and penalty to be an available remedy for non-payment of medical expenses, we have routinely held medical expenses constitute compensation when an employer refuses to pay such expenses and is thereafter required to reimburse an employee pursuant to an award, *see Middledorf v. Washington Hospital Center*, CRB No. 08-190, (June 17, 2010), quoting *Tagoe v. Washington Hospital Center*, CRB No. 08-187 (February 13, 2009).

In making this determination in COR 2, the ALJ appropriately assessed that:

> (1) Claimant's exhibits did not show the submission to the Employer/Carrier of any unpaid medical bills "from 2007, before then, or otherwise"; and,
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> (2) that by Claimant's own testimony at the May 5, 2016, formal hearing, he has not submitted any causally related medical bill to the Carrier since 2007;

There can be no doubt that Claimant has not met his burden of proving entitlement to penalties in this case, not only by virtue of the admission he made at the formal hearing and in his AFR, but also as evidenced by the absence of eligible medical bills/requests for payment records in the record. Indeed, in his AFR, Claimant asserted:

> "Blue Cross/Blue Sheild [sic] paid the bill. I didn't pay anything."

Claimant's Brief at 4.

There is no basis for penalties to be imposed in this case. As previously referenced, Claimant's remaining arguments reflect his disagreement with both the CRB's and the ALJ's characterization and discussion of factual evidence over the term of this case. Outside of this review of the penalty issue on remand, we reject the remaining arguments set forth in Claimant's AFR regarding the settled historical matters of this case.

CONCLUSION AND ORDER

The conclusion that no penalties are to be assessed against Employer/Carrier for its refusal to pay Claimant's medical bills is based upon substantial facts in the record and is in accordance with the law. The Second Compensation Order on Remand is AFFIRMED.

So ordered.