

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 (Dir.Dkt.) No. 05-233

LUZ RODRIGUEZ

Claimant –Petitioner,

v.

SIBLEY MEMORIAL HOSPITAL,

Self-Insured Employer – Respondent.

Appeal from an Order of
Claims Examiner Marcel Monroe
OWC No. 594763

Benjamin T. Boscolo, Esquire for the Petitioner

Katherine Battiste, Esquire for the Respondent

Before LINDA F. JORY, FLOYD LEWIS and SHARMAN J. MONROE, *Administrative Appeals Judges*.

FLOYD LEWIS, *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).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, sec. 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 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.

BACKGROUND

This appeal follows the issuance of an Order of the Office of Workers' Compensation (OWC) in the District of Columbia Department of Employment Services (DOES). In that Order, which was filed on April 27, 2005, OWC denied the motion by Claimant-Petitioner (Petitioner) for a Supplemental Compensation Order Declaring Default. Petitioner now seeks review of that Order.

As grounds for this appeal, Petitioner alleges as error that the Order is not supported by substantial evidence and is not in accordance with the law.

ANALYSIS

In the review of an appeal from the Office of Worker's Compensation (OWC), the Compensation Review Board must affirm the Compensation Order or Final Decision 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, § 51.03 (2001).

Turning to the case under review herein, Petitioner did not file a memorandum of points and authorities in support of her appeal and does not raise any specific arguments, only contending that the "decision is arbitrary, capricious, unsupported by substantial evidence in the record and not in accordance with the law and should therefore be reversed." Employer-Respondent (Respondent) counters by arguing that the decision by the Claims Examiner should be affirmed, as Petitioner did not present substantial evidence to support her claim that she did not receive her settlement check in a timely manner.

The Claims Examiner concluded that Petitioner was not entitled to a Supplemental Compensation Order Declaring Default and an award of a 20% penalty. In rejecting Petitioner's request for a penalty under D.C. Official Code § 32-1515(f), the Claims Examiner emphasized that Petitioner submitted no documentary evidence or proof that she received her settlement check late, on February 22, 2005. In her Motion for an Order Declaring Default, Petitioner suggested that the check was sent directly to her home address by Respondent, however, Respondent provided internal accounting records as evidence that Petitioner's settlement check was mailed directly to her attorney on February 15, 2005, before the due date.

As such, the Claims Examiner rejected Petitioner's request for a penalty, finding that Petitioner failed to present credible and substantial evidence in support of her claim that she did not timely receive her settlement check. After closely reviewing this matter, this Panel can find no reason to disturb the Claims Examiner's conclusion to deny Petitioner's Motion for a Supplemental Order Declaring Default.

CONCLUSION

The Claims Examiner's Order of April 27, 2005 denying Petitioner's Motion for a Supplemental Compensation Order Declaring Default, is not arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law.

ORDER

The Order of April 27, 2005 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

FLOYD LEWIS
Administrative Appeals Judge

December 2, 2005 _____
DATE