

**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 No. 06-62**

**RONALD L. FLEMMING,**

**Claimant – Petitioner**

**v.**

**D.C. DEPARTMENT OF PUBLIC WORKS,**

**Employer – Respondent.**

Appeal from a Compensation Order of  
Administrative Law Judge Fred D. Carney, Jr.  
OHA No. PBL 94-051A; DCP No. LTDMOPS003450

Ronald L. Flemming, *Pro se* Petitioner

Ross Buchholz, Esquire, for the Respondent

Before: E. COOPER BROWN, *Chief Administrative Appeals Judge*, 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).<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 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 a Compensation Order from the Administrative Hearings Division (AHD) of the Office of Hearings and Adjudication (OHA) in the District of Columbia Department of Employment Services (DOES). In that Compensation Order, which was filed on June 23, 2006, the Administrative Law Judge (ALJ) denied the request for an award of a lump sum payment of wage loss, medical and vocational rehabilitation benefits made by Claimant-Petitioner (Petitioner). Petitioner now seeks review of that Compensation Order.

As grounds for this appeal, Petitioner alleges as that the ALJ committed error by denying his request for a lump sum settlement of his benefits.

## ANALYSIS

As an initial matter, the scope of review by the Compensation Review Board (CRB) and this Review Panel, as established by the Act and as contained in the governing regulations, is limited to making a determination as to whether the factual findings of the Compensation Order are based upon substantial evidence in the record, and whether the legal conclusions drawn from those facts are in accordance with applicable law. D.C. Official Code § 1-623.28(a). “Substantial evidence,” as defined by the District of Columbia Court of Appeals, is such evidence as a reasonable person might accept to support a particular conclusion. *Marriott Int’l. v. Dist of Columbia Dep’t. of Employment Servs.* 834 A.2d 882 (D.C. App. 2003). Consistent with this scope of review, the CRB and this Review Panel are constrained to uphold a Compensation Order that is supported by substantial evidence, even if there is also contained within the record under review substantial evidence to support a contrary conclusion, and even where the reviewing authority might have reached a contrary conclusion. *Marriott*, 834 A.2d at 885.

Turning to the case under review herein, Petitioner alleges that the ALJ’s decision that Petitioner’s claim for a lump sum settlement of his benefits is a non-justifiable claim for relief is erroneous. In addition to denying Petitioner’s request for a lump sum settlement, the ALJ concluded that Petitioner’s application for a formal hearing was timely. The ALJ also concluded that Petitioner had no cessation of medical benefits and thus, Petitioner’s claim for medical benefits was denied. In addition, the ALJ determined that as to Petitioner’s request for vocational rehabilitation, since there had been no final denial on that issue, that request was premature and as such, was denied.

After reviewing the evidence of record, it is concluded that the ALJ’s conclusion that Petitioner’s application for a formal hearing was timely should not be disturbed. In addition, the ALJ’s conclusions on Petitioner’s requests for medical benefits and vocational rehabilitation should not be disturbed.

On the issue of a lump sum settlement, Petitioner argued at the formal hearing that he was entitled to a lump sum settlement of his benefits under the Act. Respondent contended that

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Petitioner did not have the right to a lump sum settlement and that Respondent's decision to deny Petitioner a settlement was not subject to review by the ALJ.

In rejecting Petitioner's argument that he was entitled to a lump sum settlement, the ALJ noted that the applicable provision concerning lump sum settlements is D.C. Official Code § 1-623.35. Under this provision of the Act, as the ALJ correctly emphasized, lump sum settlements are allowed only when a claimant and the Mayor agree on this issue. In this matter, Respondent and Petitioner did not agree on a settlement of his claim. On April 25, 2005 Respondent sent Petitioner a letter, noting that since Petitioner had rejected Respondent's \$25,000.00 offer as a full and final settlement of his claim, the offer was withdrawn. On May 13, 2005, Petitioner filed an Application for Formal Hearing.

As such, since the parties did not agree on a settlement, there was no abuse of discretion by the ALJ in denying Petitioner's request for a lump sum settlement. Under the Act, the claimant and the Mayor must agree on this issue and in this matter, there simply was no agreement. Thus, the ALJ properly denied Petitioner's request for a hearing on Respondent's response to his demand for a lump sum settlement.

Accordingly, this Panel concludes that the ALJ's denial of Petitioner's request for a lump sum settlement is supported by substantial evidence, is in accordance with the law and should not be disturbed.

#### CONCLUSION

The Compensation Order of June 23, 2006 is supported by substantial evidence in the record and is in accordance with the law.

#### ORDER

The Compensation Order of June 23, 2006 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

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FLOYD LEWIS  
Administrative Appeals Judge

November 30, 2006  
DATE