

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 (Dir. Dkt.) No. 03-56

JERRY RUSSELL,

Claimant

v.

VERTRANS, INC., AND TRAVELERS INDEMNITY CO. OF ILLINOIS,

Employer/Carrier – Petitioner/Respondent

Appeal from an Order of
Claims Examiner Peggy Hendricks
OWC No. 579689

Willaim Scott Peterson, Esquire for the Petitioner

D. Stephenson Schwinn, Esquire for the Respondent

Paulette Chapman, Esquire for the Claimant

Before: FLOYD LEWIS, SHARMAN J. MONROE and JEFFREY P. RUSSELL, *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

BACKGROUND

This appeal follows the issuance of a Final Order from the Office of Workers' Compensation in the District of Columbia Department of Employment Services (DOES). In that Order, which was filed on March 25, 2003, the Claims Examiner (CE) concluded that since Employer-Petitioner (Petitioner) only had workers' compensation coverage within the state of Virginia, Petitioner and not Carrier-Respondent (Respondent) was responsible for paying Claimant's disability benefits. Petitioner now seeks review of that Order. Claimant did not submit any pleadings and thus, did not participate in this matter on appeal.

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 & Mezones, ADMINISTRATIVE LAW, § 51.03 (2001).

Turning to the case under review herein, Petitioner alleges that the Claims Examiner erroneously used the "principally localized" test from the prior version of the Act to determine the presence of jurisdiction, that the Claims Examiner failed to make findings on Claimant's weekly benefit amount and the Order's findings on insurance coverage are irrelevant and should be stricken. Respondent counters by asserting that Petitioner is not able to appeal the Final Order or its findings because Petitioner voluntarily withdrew its request for a hearing on the issue, citing *Moore v. Dist. of Columbia Dep't. of Employment Servs.*, 813 A.2d 227 (D.C. 2002). Respondent contends that in waiving its right to a formal hearing, Petitioner was precluded from litigating these issues again by the principles of collateral estoppel and *res judicata*. In the alternative, Respondent argues that the Claims Examiner's findings are supported by substantial evidence.

On September 3, 2002, an Informal Conference was held in this matter and on September 24, 2002, the Claims Examiner issued a Memorandum of Informal Conference. Petitioner rejected the recommendation on October 17, 2002 and filed its Application for Formal Hearing on November 13, 2002. However, on February 2, 2003, Petitioner withdrew its Application for Formal Hearing. On March 23, 2003, the instant Final Order was issued incorporating the findings and conclusions contained in the Memorandum of Informal Conference.

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.

In this matter, Petitioner disputes findings contained in the Memorandum and requests that certain facts and conclusions be stricken from the Final Order. However, since Petitioner voluntarily withdrew its request for a hearing, no hearing was held and Respondent argues that Petitioner waived its opportunity to present arguments and further develop the factual record at the formal hearing. Thus, Respondent contends that Petitioner is bound by the Claims Examiner's findings and conclusions set forth in the Memorandum and adopted in the Final Order and the Final Order is not reviewable by the CRB.

In looking at this matter, it should be noted that the regulations at 7 DCMR § 219.20 provide that the parties have fourteen days after the receipt of the Memorandum of Informal Conference to indicate whether they agree or disagree with the memorandum. As such, the memorandum can be viewed as an offer that the parties can accept or reject. If the parties agree with the terms and no Application for Formal hearing is filed within 34 days as required under 7 DCMR § 219.22, the memorandum becomes final and OWC issues a Final Order.

However, as in the instant matter, if a party disagrees with the terms of a Memorandum of Informal Conference and properly rejects the memorandum within 14 days, this Panel determines that the memorandum becomes null and void. A properly rejected memorandum invalidates the terms and conditions contained therein and that memorandum, in effect, ceases to exist and cannot be revived. Thus, after the Memorandum of Informal Conference has been rejected by a party, that party can either file for a formal hearing or start the informal process at OWC again. On this point, this Panel emphasizes that any party is able to file for a formal hearing, not just the party that rejected the memorandum.

As such, once Petitioner timely rejected the Memorandum of Informal Conference, the memorandum became null and void and could not become final. In this matter, Petitioner is not able to appeal the rejected memorandum, which had been converted into a Final Order, to the CRB. Thus, Petitioner's Application for Review must be dismissed.

Finally, on this point, this Panel notes that to the extent that this decision is in anyway inconsistent with any language contained in the Director's Decision and Remand Order in *Sacko v. Radio Shack*, Dir. Dkt. No. 02-89 (August 23, 2003), the policy contained in this decision is controlling.

CONCLUSION

Petitioner's Application for Review is dismissed, as a rejected Memorandum of Informal Conference is null and void, is not final and may not be appealed to the CRB.

ORDER

Petitioner's Application for Review, filed April 23, 2003, is hereby DISMISSED.

FOR THE COMPENSATION REVIEW BOARD:

FLOYD LEWIS
Administrative Appeals Judge

OCTOBER 7, 2005
DATE