

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**Department of Employment Services**

MURIEL BOWSER  
MAYOR



ODIE DONALD II  
ACTING DIRECTOR

**COMPENSATION REVIEW BOARD**

**CRB No. 16-148**

**SABRITHIA DRAINE-ISHAKWUE,  
Claimant-Respondent,**

**v.**

**CHILDREN'S HOSPITAL MEDICAL CENTER and  
ACE AMERICAN INSURANCE COMPANY,  
Employer/Insurer-Petitioners.**

Appeal from an October 11, 2016 Compensation Order  
by Administrative Law Judge Amelia Govan  
AHD No. 15-322, OWC No. 723470

DEPT. OF EMPLOYMENT  
SERVICES  
COMPENSATION REVIEW  
BOARD  
2017 FEB 28 PM 9 46

(Decided February 28, 2017)

Benjamin E. Douglas for Claimant  
David M. Schoenfeld and Lisa A. Zelenak for Employer

Before HEATHER C. LESLIE, LINDA F. JORY, and JEFFREY P. RUSSELL, *Administrative Appeals Judges*.

HEATHER C. LESLIE, for the Compensation Review Board.

**DECISION AND ORDER  
DISMISSING APPLICATION FOR REVIEW**

**FACTS OF RECORD AND PROCEDURAL HISTORY**

On October 11, 2016, a Compensation Order was issued in *Draine-Ishakwue v. Children's National Medical Center*, AHD No. 15-322, OWC No. 723470, (October 11, 2016) ("CO"). In that CO, the administrative law judge ("ALJ"), after considering the claim for relief and the issues presented for adjudication, awarded temporary total disability from October 1, 2014 through May 31, 2015, reasonable, necessary and causally related medical costs and penalties pursuant to § 32-1515 of the District of Columbia Workers' Compensation Act, D.C. Code §§ 32-1501, *et seq.*, ("Act"). The CO denied penalties pursuant to D.C. Code § 32-1528.

On November 15, 2016, Employer appealed the CO and Claimant thereafter opposed the appeal.

#### ANALYSIS<sup>1</sup>

We note that as a matter of law, if an application for review is not timely filed, the CRB does not have the authority to consider an application for review.

D.C. Code § 32-1522(a) states in pertinent part:

A party aggrieved by a compensation order may file an application for review with the Board within 30 days of the issuance of the compensation order.

In addition, 7 DCMR § 258.2 states:

An Application for Review must be filed within thirty (30) calendar days from the date shown on the certificate of service of the compensation order or final decision from which appeal is taken.

The CO herein appealed was issued by the ALJ on October 11, 2016 and served upon the parties the same day. Attached to the CO was a page which outlined the parties "Appeal Rights" stating where an application for review was to be sent and when. Any Application for Review had to be filed within 30 calendar days of the date of the Certificate of Service. Pursuant to the foregoing provisions, an Application for Review should have been filed with the CRB on or before Thursday, November 11, 2016, to be timely.

A review of the administrative file reveals the Employer filed an Application for Review on Monday, November 15, 2016. In a footnote, Employer's counsel stated,

Consent was granted by Claimant's Counsel to extend this filing deadline to November 15, 2015, as the parties were making an effort to resolve the issues.

The Employer's appeal is untimely. Neither the Act nor the Regulations contemplate that parties may modify deadlines established by statute or regulation by consent. Furthermore, Employer failed to file any motion requesting an extension of any filing deadline with the CRB prior to November 11, 2016. Accordingly, the appeal is dismissed as being untimely.

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<sup>1</sup> The scope of review by the CRB is generally 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. *See* D.C. Code § 32-1521.01(d)(2)(A), and *Marriott International v. DOES*, 834 A.2d 882 (D.C. 2003). Consistent with this standard of review, the CRB and this review panel must affirm 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 this panel might have reached a contrary conclusion. *Id.*, at 885.

CONCLUSION AND ORDER

The Application for Review was not filed in a timely fashion.

The Application for Review is **DISMISSED**.

*So ordered.*