

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services

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DIRECTIVE: Administrative Policy Issuance No. 05-01 – Change 2
DATE: September 19, 2025
TO: Compensation Review Board
Administrative Hearings Division
Office of Workers' Compensation
FROM: Dr. Unique Morris-Hughes
Director
SUBJECT: Second Amendment to Administrative Policy Issuance No. 05-01

I. Purpose

The purpose of this Administrative Policy Issuance is to further amend [Administrative Policy Issuance 05-01](#) to clarify the criteria to be applied by the Custodian of the Special Fund in making a Determination of Payment from the Special Fund in cases where a judgment cannot be satisfied by reason of the employer's insolvency or other circumstances precluding payment of compensation.

On January 3, 2025, the Director issued [Administrative Policy Issuance No. 05-01 – Change 1](#) (Change 1) to provide specific delegation of authority to the Office of the Director to review decisions of the Custodian of the Special Fund. Change 1 clarified the delegation of the Director's authority to the Compensation Order Review Board, added a new section delegating the Director's authority as the Custodian of the Special fund to the Office of Workers' Compensation, and established a process by which to review the Custodian's Determination of Payment from the Special Fund.

Noting the Director's broad authority to interpret the Act, *Smith v. District of Columbia Department of Employment Services*, 548 A.2d 95, 97 (D.C. 1988), Change 1 to Administrative Policy Issuance No. 05-01 clarified that a Special Fund Order is not a contested case, an award, or a compensation order, under the Act and its implementing regulations. Accordingly, a discretionary payment from the Special Fund was renamed a "Determination of Payment from the Special Fund" to clarify its legal status.¹

¹ The legal status of Special Fund Orders was addressed in *Cisneros-Campos v. D.C. Dep't of Emp. Svcs.*, No 22-AA-640, Mem. Op. & J. (June 7, 2024) ("*Cisneros-Campos DCCA*"), where the District of Columbia Court of Appeals (DCCA) held that Special Fund Orders were not reviewable "agency actions" in contested cases. *Cisneros-Campos DCCA* at 4. Consequently, in cases where judgment cannot be satisfied because of the employer's insolvency, the claimant was not entitled to a trial-type hearing by statute, regulation or the Due Process clause.

This change incorporates Change 1 by reference and the legal authorities cited therein and makes further changes to section 4(B)(ii), (iii), and (iv) to clarify the process to be followed by the Custodian in determining whether to make a payment from the Special Fund in cases where a judgment cannot be satisfied by reason of the employer's insolvency or other circumstances precluding payment of compensation.

II. Background and Legal Authority

The District of Columbia Workers' Compensation Act of 1979, effective July 1, 1980, (D.C. Law 3-77, D.C. Code § 32-1501-1545 (the Act)), provides that in any proceeding for the enforcement of a claim for compensation, there is a legal presumption that the "claim comes within the provisions of [the Act]." D.C. Code § 36-321(1). The presumption is designed to effectuate the humanitarian purposes of the statute and reflects a "strong legislative policy favoring awards in arguable cases." *Wheatley v. Adler*, 132 U.S.App.D.C. 177, 183, 407 F.2d 307, 313 (1968) (*en banc*).

To further these purposes, the Act establishes a Special Fund in the Treasury of the District of Columbia to make discretionary payments for the benefit of claimants in selected circumstances. Under section 32-1540(a) of the Act, the Special Fund may make payments for vocational rehabilitation services, certain supplemental medical examinations, and, at issue here, compensation awards where the employer has defaulted in the payment of compensation.

If an employer defaults on an award for compensation under the WCA, the claimant may apply to the Administrative Hearings Division ("AHD") for a supplementary order declaring the amount in default. "After investigation, notice and hearing," the Director "shall make a supplementary order, declaring the amount of the default..." D.C. Code § 32-1519(a). The claimant may then file that supplementary order with the Superior Court to obtain a judgement for the amount declared in default. If the claimant is unable to collect on that judgment, D.C. Code § 32-1519(b) comes into play. It provides:

In cases where judgment cannot be satisfied by reason of the employer's insolvency or other circumstances precluding payment, the Mayor may, in his discretion, and to the extent he shall determine advisable after consideration of current commitments payable from the special fund established in § 32-1540, make payment from such fund upon any award made under this chapter, and, in addition, provide any necessary medical, surgical, and other treatment required by § 32-1507 in any case of disability where there has been a default in furnishing medical treatment by reason of the insolvency of the employer. Id. § 32-1519(b).

The Associate Director for OWC serves as the Custodian of the Special Fund, and "shall observe the customary duties and obligations of a fiduciary." 7 DCMR § 231.1. A claimant who has obtained a supplementary order and a judgement for the amount declared in default may apply to the Custodian for payment of benefits from the Special Fund. The application must include copies of the original compensation order, the supplementary order declaring the amount in default, a certified copy of the judgment for the amount declared in default from Superior Court, "together with a statement of the efforts made to enforce the judgment." 7 DCMR § 231.18. The application

may be supported by the submission of court documents, financial records, insurance verifications, employer/insurer admissions, public notices, or database listings.

In considering whether to grant or deny the application for Special Fund relief, the claimant is not required to produce conclusive evidence of the employer's insolvency. The claimant need only provide "a statement of the efforts made to enforce the judgment." 7 DCMR § 231.18. Moreover, the Act makes clear that insolvency is only one of the possible reasons why the judgment cannot be satisfied: it also authorizes payment if there are "other circumstances precluding payment." The Custodian should therefore consider whether there are other circumstances that led to the default.

Change 1 made extensive amendments to Section 4 of Administrative Policy Issuance No. 05-01, adding a section delegating the Director's authority as the custodian of the Special Fund to the OWC and establishing a process to address a claimant, beneficiary or attorney's request to review the custodian's Determination of Payment from the Special Fund. Those amendments will not be restated here. This change affects only amended sections 4(B)(ii), (iii), and (iv).

III. *Amendment to Section 4 – Criteria to be applied in making a Determination of Payment from the Special Fund*

Sections 4(B)(ii), (iii) and (iv) are deleted in their entirety and replaced with the following:

- (ii-1) Claimant shall file an application for a formal hearing with AHD for a Supplementary Order declaring the amount in default. An application for a formal hearing for a Supplementary Order shall not be treated as an Initial Application for Formal Hearing and shall be scheduled for hearing by the ALJ assigned to the matter within a reasonable timeframe.
- (ii-2) After investigation, notice and hearing, as provided in D.C. Code § 32-1520, AHD shall issue a supplementary order, declaring the amount of the default, as follows:
 - (1) The administrative law judge shall have all the powers enumerated in D.C. Code § 32-1529(a), including but not limited to issuing subpoenas, administering oaths, and compelling the attendance and testimony of witnesses, or the production of books, papers, documents, and other evidence.
 - (2) The administrative law judge may order the claimant to submit to a physical examination by a medical officer of the District of Columbia or by a duly qualified physician or panel of physicians.
 - (3) If the compensation order awards claimant with benefits that are payable to the present and continuing, the claimant must seek a new Supplementary Order for each period of default requested.

- (4) The ALJ shall, at minimum, make findings of facts, supported by and in accordance with reliable, probative, and substantive evidence, of the following:
 - (a) The amount of compensation that is due and payable;
 - (b) The claimant's average weekly wage at the time of injury;
 - (c) Whether the payment in default is an installment of the compensation award, and if so then the ALJ may declare the full amount of the award in default in the Supplementary Order; and
 - (d) Whether the claimant's medical condition and employment status warrant the continuing payment of disability benefits;
 - (e) If the claimant or employer contends that a change of conditions has occurred sufficient to justify a review of a previously rendered compensation order under D.C. Code § 32-1524, the ALJ shall conduct a *Snipes* hearing to determine if there is reason to believe a change of conditions has occurred, prior to holding a hearing to determine the amount of the default and issuing a Supplementary Order;
- (5) The Supplementary Order shall be filed in the same manner as a compensation order pursuant to D.C. Code § 32-1519.
- (6) Claimant shall file a certified copy of the Supplementary Order with the Clerk of the Superior Court, and the Court shall enter a judgment for the amount declared in default by the Supplementary Order.

(iii-1) An Application for Payment Determination shall include:

- (1) The Supplementary Order issued in accordance with (ii-2) of this Issuance²;
- (2) A copy of the Superior Court judgement for the amount declared in default: and
- (3) Documentation demonstrating the efforts made by the Claimant to enforce the underlying Compensation Order, including but not limited to:
 - (a) Any payments made by the Employer including the amount and date of payment;

² For any matter currently before the D.C. Superior Court on the date of this issuance, the claimant may request the Special Fund Custodian reconsider a Final Determination of Payment from the Special Fund pursuant to the requirements set forth in this Administrative Issuance.

- (b) Court documents, financial records, insurance verifications, employer/insurer admissions, public notices, database listings, affidavits; and
- (c) Other relevant evidence demonstrating that the claimant has made such investigation as is reasonably necessary to determine whether the employer possesses real or personal property, a beneficial interest in property, or other assets which are liable to be sold or applied in satisfaction of the final judgment.

(iii-2) To determine whether to make a payment from the Special Fund, the Custodian shall only consider:

- (1) Whether the Claimant submitted both a supplementary order declaring the amount in default from AHD and a judgement for the amount declared in default from the Superior Court;
- (2) The efforts made by the Claimant to enforce the judgment, including any relevant documentation or testimony;
- (3) Whether the employer or carrier is insolvent or other circumstances preclude satisfaction of the Superior Court judgement for the amount declared in default; and
- (4) Whether current commitments payable from the Special Fund make the requested payment inadvisable.

(iv) In determining whether the employer or carrier is insolvent or other circumstances preclude satisfaction of the judgment for the amount declared in default, the Custodian may consider factors such as:

- (1) Whether employer is able to pay the claimant the amount declared in default;
- (2) Whether the employer is unable to pay its debts as they become due in the usual course of business;
- (3) Whether the employer's debts are greater than the value of the employer's assets;
- (4) Whether the employer has access to alternative sources of finance;
- (5) Whether the employer has overdue tax obligations;
- (6) Whether the employer maintains timely and accurate financial information;

- (7) Whether creditors have issued demands or initiated legal proceedings against the employer;
- (8) Whether there has been a formal determination of insolvency by a court of competent jurisdiction, or bankruptcy proceedings have been instituted; or
- (9) Whether the Employer is uninsured or defunct.

IV. Effective Date

This administrative issuance is effective immediately.