

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**Department of Employment Services**

MURIEL BOWSER  
MAYOR



DEBORAH A. CARROLL  
DIRECTOR

**CRB No. 15-015**

**SILVIA LOYO,**  
**Claimant–Respondent,**

v.

**THE COMPASS GROUP and**  
**GALLAGHER BASSETT SERVICES.**  
**Employer and Carrier-Petitioners.**

Appeal from a December 31, 2014 Compensation Order by  
Administrative Law Judge Nata K. Brown  
AHD No. 13-215A, OWC No. 678378

DEPT. OF EMPLOYMENT  
SERVICES  
COMPENSATION REVIEW  
BOARD  
2015 MAY 18 PM 1 00

Jose Estrada for the Claimant  
Joseph Tarpine for the Employer

Before HEATHER C. LESLIE, MELISSA LIN JONES, and JEFFREY P. RUSSELL, *Administrative Appeals Judges*.

HEATHER C. LESLIE for the Compensation Review Board.

**DECISION AND ORDER**

**FACTS OF RECORD AND PROCEDURAL HISTORY**

Claimant worked as a cafeteria worker for the Employer. On April 19, 2012, Claimant alleges her supervisor, Mr. Jeff Wingate, stood behind her, yelling and clapping his hands. Claimant began to feel palpitations. Claimant sought treatment at Kaiser Permanent emergency care.

Claimant came under the care and treatment of Dr. Baker-Gurvitch, a psychiatrist and Dr. Barbara Rosenbaum. Dr. Baker-Gurvitch diagnosed her with adjustment disorder with mixed anxiety and depressed mood. Dr. Rosenbaum prescribed Zoloft and Ativan for anxiety symptoms.

Employer sent Claimant for an independent medical evaluation (IME) with Dr. Todd Christiansen on February 14, 2014. Dr. Christiansen took a history of the injury, treatment to date, and performed a psychiatric examination. Dr. Christiansen opined that Claimant’s “anxiety symptoms are a direct result of her treatment by supervisors and her treatment through Kaiser was medically indicated and appropriate.” Employer’s exhibit 4 at 16. In an addendum dated

February 19, 2014, Dr. Christiansen cautioned his opinion was based upon the assumption that the history given by Claimant was truthful and accurate and was limited by having “access to potential witnesses or other direct evidence of such behavior.” *Id.*

A full evidentiary hearing was held on May 19, 2014. Claimant sought an award of temporary total disability from April 19, 2012 through August 20, 2012 and payment for causally related medical treatment. The issues listed to be adjudicated were did Claimant give timely notice of her injury, did Claimant timely file her claim, whether Claimant’s injury arose out of an in the course of Claimant’s employment, and the nature and extent of Claimant’s disability. A Compensation Order (CO) was issued on December 31, 2014 which granted, in part, Claimant’s request. The CO ordered:

It is hereby ORDERED that Claimant’s claim for relief be, and hereby is, GRANTED IN PART. Claimant’s temporary total disability from April 19, 2012 to August 20, 2012 is GRANTED with the exception of working days when Claimant was not excused by her treating physicians. Claimant is GRANTED reimbursement for causally related medical expenses.

CO at 9.

Employer appealed on February 3, 2015. Employer argues that the CO is not supported by the substantial evidence in the record and is not in accordance with the law as the ALJ failed to address all the contested issues raised. Claimant opposes the appeal, stating the CO is supported by the substantial evidence in the record and in accordance with the law and should be affirmed.

#### STANDARD OF REVIEW

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. Workers’ Compensation Act of 1979, as amended, D.C. Code § 32-1501, *et seq.*, (the Act) at § 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.

#### ANALYSIS

Prior to addressing Employer’s arguments, we must address whether or not Employer’s appeal was timely. 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 December 31, 2014 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 Friday, January 30, 2015 to be timely.

A review of the administrative file reveals the Employer filed an Application for Review on Tuesday, February 3, 2015. The Employer's appeal is untimely. As such, the CRB is without jurisdiction to consider the appeal.

#### CONCLUSION AND ORDER

Employer's review request was not filed by the close of business on Friday, January 30, 2015, but several days later on Tuesday, February 3, 2015. Therefore, the Compensation Review Board is not authorized to hear his request and it must be dismissed as untimely filed.

Employer's request for review of the December 31, 2014 Compensation Order, must be, and is hereby DISMISSED.

FOR THE COMPENSATION REVIEW BOARD:

  
HEATHER C. LESLIE  
*Administrative Appeals Judge*

May 18, 2015  
DATE