

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA MARÍA MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 11-130

**PATSY D. SUMLER,
Claimant-Petitioner,**

v.

**STG, INC. and TRAVELERS INSURANCE CO.,
Employer/Insurer-Respondent.**

Appeal from a October 26, 2011 Order By
Administrative Law Judge Leslie A. Meek
AHD No. 05-277B, OWC No. 604788

Benjamin T. Boscolo, Esquire for the Petitioner
Amy L. Epstein, Esquire for the Respondent

Before MELISSA LIN JONES, and JEFFREY P. RUSSELL, *Administrative Appeals Judges* and
LAWRENCE D. TARR, *Chief Administrative Appeals Judge*.

MELISSA LIN JONES for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

On July 22, 2011, Ms. Patsy D. Sumler filed an Application for Formal Hearing requesting temporary total disability benefits from October 13, 2005 to the date of the formal hearing and continuing as a result of injuries to her back, neck, right hip, right knee, left hand, right shoulder, and left ankle sustained on January 25, 2001. On September 23, 2001, Ms. Sumler's employer, STG, Inc. ("STG"), filed a motion to dismiss the Application for Formal Hearing. In an Order dated October 26, 2011, Administrative Law Judge ("ALJ") Leslie A. Meek granted the motion on the grounds that Ms. Sumler's Application for Formal Hearing for modification of a prior Compensation Order was not timely and that Ms. Sumler's medical condition had not changed.

On appeal, Ms. Sumler argues there has been a change of condition warranting a formal hearing to adjudicate modification of a prior Compensation Order denying the compensability of any injuries she sustained on January 25, 2001. She asserts STG is equitably estopped from requesting dismissal of her Application for Formal Hearing on the grounds of *res judicata*

because STG did not provide its independent medical examination doctor with a complete medical record prior to his rendering an opinion regarding causation. Finally, even if *res judicata* does apply, in order to avoid “grave injustice,” Ms. Sumler argues it only applies to the period before the independent medical examination doctor’s receipt of the complete medical record. For these reasons, Ms. Sumler requests the Compensation Review Board reverse the dismissal of her Application for Formal Hearing.

In opposition, STG asserts Ms. Sumler’s Application for Formal Hearing requesting modification of the prior Compensation Order was not filed timely. In addition, STG disputes Ms. Sumler’s contention that it engaged in any impropriety which should tarnish it with unclean hands, and because Ms. Sumler’s arguments and assertions already have been addressed in prior proceedings, STG requests the Compensation Review Board affirm the October 26, 2011 Order.

ISSUES ON APPEAL

1. Is Ms. Sumler’s request for modification barred by the statute of limitations?
2. Is STG estopped from raising the defense of *res judicata*?
3. Does *res judicata* bar Ms. Sumler’s current request for benefits?
4. Did ALJ Meek err by dismissing Ms. Sumler’s Application for Formal Hearing?

ANALYSIS¹

On December 18, 2006, ALJ Henry W. McCoy presided over a full evidentiary hearing to resolve Ms. Sumler’s claim for “temporary total disability from August 23, 2004 to December 6, 2004 and from January 13, 2005 to the present and continuing, causally related medical expenses with regard to the both the neck and the lower back, and interest on accrued benefits.”² In a Compensation Order dated April 19, 2006, ALJ McCoy denied Ms. Sumler’s request for benefits because “[t]he substantial evidence in the record does not support Claimant’s position that the problems with her cervical spine and lumbar spine which were treated with surgery were caused or aggravated by the workplace fall on January 25, 2001.”³ This Compensation Order was affirmed by the Compensation Review Board on July 13, 2007⁴ and by the District of Columbia

¹ Because the Order on review is not one based on an evidentiary record produced at a formal hearing, the applicable standard of review by which we assess the determination reached by the Office of Hearings and Adjudication is whether the decision is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. See, 6 Stein, Mitchell & Mezines, *Administrative Law*, § 51.03 (2001).

² *Sumler v. STG, Inc.*, AHD No. 05-277A, OWC No. 604788 (April 19, 2006).

³ *Id.*

⁴ *Sumler v. STG, Inc.* CRB No. 07-104, AHD No. 05-2774 [*sic*], OWC No. 604788 (July 13, 2007).

Court of Appeals on February 5, 2009.⁵ On May 20, 2009, the Court of Appeals denied Ms. Sumler's request for rehearing *en banc*.

On July 22, 2011, Ms. Sumler filed an Application for Formal Hearing seeking modification of the April 19, 2006 Compensation Order. In order to be timely, a request for modification of an existing Compensation Order must be filed "[a]t any time prior to 1 year after the date of the last payment of compensation or at any time prior to 1 year after the rejection of a claim."⁶

Ms. Sumler slipped and fell at work on January 25, 2001. Following the December 18, 2006 formal hearing, her request for temporary total disability benefits commencing August 23, 2004 was denied in the Compensation Order dated April 19, 2006. In this case, the last possible date triggering the calculation of the statute of limitations is May 20, 2009, the date all appeals of the April 19, 2006 Compensation Order were exhausted. Ms. Sumler did not file her Application for Formal Hearing seeking modification of the prior Compensation Order until more than two years later on July 22, 2011; therefore, as ALJ Meek ruled, Ms. Sumler's request was not timely, and we affirm that ruling.

Having affirmed the ruling that Ms. Sumler's request for modification was not filed timely, Ms. Sumler was not entitled to a formal hearing, and any remaining issues are moot. Nonetheless, we must state that we reject Ms. Sumler's argument that ALJ Meek erred by granting STG's motion to dismiss because STG was equitably estopped from requesting a dismissal; Ms. Sumler asserts STG did not provide an independent medical examination doctor with a complete medical record and as a result, STG engaged in inequitable conduct resulting in unclean hands, but Ms. Sumler's assertion is based upon speculation and conjecture, not any proven fact.

CONCLUSION AND ORDER

Ms. Sumler failed to request modification of the April 19, 2006 Compensation Order in a timely manner; therefore, she was not entitled to a formal hearing, and her remaining arguments are moot. We AFFIRM the October 26, 2011 Order dismissing her Application for Formal Hearing.

FOR THE COMPENSATION REVIEW BOARD:

MELISSA LIN JONES
Administrative Appeals Judge

July 31, 2013
DATE

⁵ *Sumler v. DOES*, No. 07-AA-861 (February 5, 2009).

⁶ Section 32-1524(a) of the D.C. District of Columbia Workers' Compensation Act of 1979, D.C. Code, as amended, §32-1501 *et seq.*

A different time period applies to claims for permanent partial disability based upon wage loss.