

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

Department of Employment Services

MURIEL BOWSER  
MAYOR



DEBORAH CARROLL  
DIRECTOR

**COMPENSATION REVIEW BOARD**

**CRB No. 15-151**

**WANDA PARSON,  
Claimant–Petitioner,**

**v.**

**DISTRICT OF COLUMBIA PUBLIC SCHOOLS,  
Employer–Respondent.**

Appeal from an August 19, 2015 Compensation Order by  
Administrative Law Judge Gwenlynn D’Souza  
AHD No. PBL 15-006, DCP No. 0468-WC-15-0000159

DEPT. OF EMPLOYMENT  
SERVICES  
COMPENSATION REVIEW  
BOARD  
2016 FEB 19 PM 1 46

(Decided February 19, 2016)

Wanda Parson, *pro se*  
Milena Mikailova for Employer

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

LINDA F. JORY for the Compensation Review Board.

**DECISION AND ORDER**

**FACTS OF RECORD AND PROCEDURAL HISTORY**

On November 12, 2014, Wanda Parson (Claimant) was working as a music teacher for the District of Columbia Public Schools (Employer) when she tripped over a student and fell. She landed on her left hand. The Public Sector Workers’ Compensation Program (PSWCP) accepted Claimant’s claim for a left scapholunate ligament rupture and awarded Claimant temporary total disability and medical benefits for the left wrist injury.

Claimant requested a formal hearing seeking an award of permanent partial disability benefits, authorization for additional occupational therapy and a rug in her classroom, restoration of personal leave and reimbursement of medical and occupational therapy bills from non-panel doctors.

A formal hearing was held on May 19, 2015. On August 19, 2015, an Administrative Law Judge (ALJ) in the Administrative Hearings Division (AHD) of the Department of Employment Services (DOES) issued a Compensation Order (CO) granting in part and denying in part Claimant's claim for relief.

Claimant filed a timely Application for Review and Employer has timely filed an opposition to the appeal.

#### ISSUE ON APPEAL

Whether the Compensation Order is supported by substantial evidence and in accordance with the law.

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

Claimant's Memorandum of Points and Authorities consists of the following bullet points;

- The decision does not reflect the continuation of medical care regarding the injury on November 12, 2014. I am seeking an award of continuation of temporary total disability of benefits and continuance and authorization for medical expenses. My claim regarding the hand/wrist fracture injury is accepted.
- Corvel continues to deny my benefits and medical treatment despite the fact that their own panel doctor (Dr. Ellison) has authorized treatment regarding injury to hand and wrist. (See enclosure)
- Despite the status of this case and my request, Corvel refuses to give me a Notice of Determination on the matter of permanent partial disability benefits regarding hand/wrist injury of November 12, 2014. (See enclosure)
- I am entitled to the recovery of all sick leave that was used during my absence from work: December 8, 2014 to January 30 2015)
- Conclusion of Law: I am unclear regarding the awarded medical benefits statement, including treatment by non-panel physicians between November 12, 2015 and December 2014?

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<sup>1</sup> The scope of review by the Compensation Review Board (CRB) and this Review Panel (the Panel) as established by the District of Columbia Comprehensive Merit Personnel Act of 1978, as amended D. C. Code §1-623.01(the Act) and as contained in the governing regulations is 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. D. C. Code §1-623.28(a) "Substantial evidence", as defined by the District of Columbia Court of Appeals (DCCA), is such evidence as a reasonable person might accept to support a particular conclusion. *Marriott Int'l. v. DOES* 834 A.2d 882 (D.C. 2003) (*Marriott*). Consistent with this scope of review, the CRB and this panel are bound to uphold 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 the reviewing authority might have reached a contrary conclusion. *Marriott*, 834 A.2d at 885.

Claimant attached 5 pages of correspondence, none of which were made part of the original record presented to the ALJ.

In order to submit additional evidence post-hearing, the additional evidence must be material and there must exist reasonable grounds for the failure to present the evidence while the case was before AHD, however it does not appear that Claimant is attempting to submit evidence that was not before AHD. *See Edwards v. DC Department of Youth and Rehabilitation Services*, CRB No. 08-106, (November 4, 2009). The CRB does not have the power to conduct additional fact finding, and "[n]o additional information shall be submitted by the claimant or other interested parties after the date of hearing, except under unusual circumstances as determined by the Mayor." D. C. Code § 32-1520(c).

The purpose underlying the requirement of "unusual circumstances" is "to prevent a hearing from being reopened simply for the purpose of introducing new or additional evidence when that evidence could have reasonably been presented at the hearing." *Charles P. Young Co. v. DOES*, 681 A.2d 451, 454 (D.C. 1996) In other words, reasonable grounds must exist for not introducing the evidence before the ALJ because the CRB does not have the power to accept additional evidence or to compel an ALJ to consider additional evidence unless:

- (a) that the additional evidence is material, and
- (b) that there existed reasonable grounds for the failure to present the evidence while the case was before the Administrative Hearings Division or the Office of Workers' Compensation (depending on which authority issued the compensation order from which appeal was taken).

*Bennett v. DOES*, 629 A.2d 28, 30 (D.C. 1993) citing *King v. DOES*, 560 A.2d 1067, 1073 (D.C. 1989).

Claimant's Memorandum of Points and Authorities references two enclosures, however no further explanation was provided. Absent a showing by Claimant that the documents attached to its Application for Review are material and could not reasonably have been presented to the ALJ except for unusual circumstances, the CRB has not reviewed the attached documents because it is not permitted to do so.

Employer asserts:

In her MPA, Claimant does not argue that the August 19, 2015 CO is unsupported by substantial evidence or that is not in accordance with the law. Instead, Claimant raises new issues that were never before ALJ D'Souza and therefore were not considered in the CO. For example, Claimant asserts that 'Corvel continues to deny [her] benefits and medical treatment' and that '[d]espite the status of this case and [her] request, Corvel refuses to give [her] a Notice of Determination on the matter of permanent partial disability benefits.' MPA, p.1. These statements are completely unrelated to the CO because they describe events that allegedly occurred after the CO was issued. While both of these statements

might form the basis of Claimant's future claims, they are irrelevant to the present question of whether the CO is supported by substantial evidence and in accordance with the law.

Claimant also states that the CO 'does not reflect the continuation of medical care' and that she is seeking 'an award of continuation of temporary total disability and continuance and authorization for medical expenses.' MPA, p.1. At the time that Claimant filed her Application for Formal Hearing, ORM had not issued a Notice of Determination terminating her TTD and/or medical benefits. Therefore, the reinstatement of any such benefits was not a type of relief sought by Claimant and was not an issue before ALJ D'Souza. As such, the CO does not contain any language regarding reinstatement of TTD or medical benefits. If the status of these benefits has changed since the formal hearing, Claimant may be able to pursue a new claim. However, her current request for a continuation of TTD and medical benefits in the MPA is unrelated to the August 19, 2015 CO.

Finally, Claimant asserts that she is 'entitled to the recovery of all sick leave that was used during [her] absence from work: December 8, 2014 to January 30, 2015.' MPA, p.1. This is merely a restatement of a claim that Claimant made before ALJ D'Souza and that was fully addressed in the CO. In the CO, ALJ D'Souza explained that D.C. Official Code § 1-623.43 and 7 DCMR § 110.2(b) allow for reinstatement of personal leave used after the continuation of pay period and before a TTD claim is accepted. CO, p.7. However, this 'buy back' process is voluntary and Claimant did not present any evidence that she requested the restoration of her personal leave (used from December 8, 2014 to January 30, 2015) prior to filing a request for a formal hearing. CO, p.7. Consequently, ALJ D'Souza properly denied Claimant's request for restoration of leave without prejudice. CO, p.7.

Employer's Brief at 4, 5.

We agree with Employer that Claimant does not argue that the August 19, 2015 CO is unsupported by substantial evidence or that is not in accordance with the law. Other than a two typographical errors which we will address fully, Claimant has not identified any errors she believes the ALJ made in rendering findings of fact, her discussion or her conclusion of law.

We agree with Employer that points two and three might form the basis of Claimant's future claims, however they are irrelevant to the present question of whether the CO is supported by substantial evidence and in accordance with the law. With regard to point one we also agree that the reinstatement of any such benefits was not a type of relief sought by Claimant and was not an issue before ALJ D'Souza. Further review of the Pre-Hearing Order (PHO) as well as the hearing transcript reveals that Claimant did not indicate she was requesting temporary total disability benefits. To the contrary, the PHO indicates the parties have stipulated that Claimant returned to work. The PHO lists the relief sought by Claimant at the hearing to be:

1. Change NOD to include all injuries.

2. Pay Kaiser
3. Restore personal leave
4. Return music rug to classroom

The PHO notwithstanding we note Claimant indicated she had a permanent injury at the hearing and we conclude the ALJ properly addressed any request for permanent partial benefits related to the injury in the CO:

The facts in this case are similar to the facts in *Sisney* where the claimant sought an award for permanent partial disability and no notice of determination on the subject of permanent partial disability was issued. *Sisney v. District of Columbia Public Schools*, CRB No. 08-200, AHD No. PBL 08-066, DCP No. DCP007970 (July 2, 2012). The Compensation Review Board held in *Sisney* that absent a notice of determination on the subject of permanent partial disability benefits, the administrative law judge did not have jurisdiction to decide the claim. The same result applies here. Therefore, this administrative court lacks jurisdiction to decide the claim.

CO at 4.

We find no error committed by the ALJ. We further find the ALJ's denial of Claimant's claim for return of the music rug and additional physical therapy to be in accordance with the law. The ALJ concluded:

As to requests for an of order authorizing the provision of a classroom rug and additional physical therapy, this administrative court lacks jurisdiction to provide such specific relief because Claimant has not shown that all the preliminary steps have occurred, particularly the requested relief was part of a prescribed course of treatment by a panel doctor, a request for utilization review was made by the Claimant after a denial of the prescribed course of treatment and a notice of determination affirming the denial of the prescribed treatment occurred, and a request for hearing followed. These preliminary steps are necessary for jurisdiction to vest pursuant to D.C. Code §1-623.23 and 7 DCMR 123.18. In this case, it does not appear that a continued course of occupational therapy was authorized by the panel doctor. It appears to have been recommended by a non-panel doctor. (CE 1) Claimant has not provided any evidence of written request for a utilization review. Absent persuasive evidence regarding all these steps, this particular claim cannot be decided.

*Id.*

With regard to Claimant's request for restoration of leave for leave used between December 8, 2014 to January 30 2015, we agree with Employer that Claimant did not present any evidence that she requested the restoration of her personal leave (used from December 8, 2014 to January 30, 2015) prior to filing a request for a formal hearing. CO, p.7. Consequently, ALJ D'Souza

properly denied Claimant's request for restoration of leave without prejudice. CO, p.7. We find no error committed by the ALJ.

Finally we address Claimant's statement "I am unclear regarding the awarded medical benefits statement, including treatment by non-panel physicians between November 12, 2015 and December 14, 2014". Inasmuch as the ALJ discussed the urgent care Claimant received on November 12, 2014 and November 13, 2014, the day after the work injury we find it reasonable that the ALJ meant to state November 12, 2014 as opposed to November 12, 2015. In the analysis the ALJ reasoned:

The DCMR does not bar reimbursement for the cost of services provided by non-panel doctors, however, if urgent care is needed. 7 DCMR 123.7.

In this case, claimant was injured on November 12, 2014, received Emergency Medical Treatment on November 12, 2014 and follow-up medical treatment on November 13, 2014 for mobilization of the wrist, a MRI scan was performed on December 3, 2014 and the MRI results were reviewed on December 4, 2014. (EE 4 at 14). It appears that between November 13, 2014 and December 4, 2014, Employer did not provide Claimant with a list of panel physicians. The earliest Claimant was informed about panel doctors was December 5, 2014 (HT 36, 51, 54). Absent evidence regarding the actual provision of notice prior to December 5, 2014, reimbursement for medical benefits during the intervening time period is not barred. Accordingly, Claimant's bills from Kaiser Permanente from the date of injury, which was November 12, 2014 until December 5, 2014 are covered as initial medical treatment.

Claimant sought treatment on December 11, 2014, for placement of a hard cast and on December 16, 2014 for cast replacement because of pain. I find based on the medical records that the placement of two hard casts in December 2014 was urgent care for wrist pain because the panel doctor, Dr. Ellison, was unavailable to provide treatment during this time period. Therefore, even though Claimant sought treatment from a non-panel doctor, I find the medical treatment provided on December 11, 2014, and December 14, 2014 was compensable as urgent care because of the wrist fracture. I, however, find that all non-panel physician treatment subsequent to Claimant's treatment with Dr. Ellison beginning on December 29, 2014 including physical therapy, is not compensable.

CO at 7.

After a review of the records, provided by Employer we understand Claimant's confusion with the ALJ's Conclusion and Order. Claimant did not receive any medical treatment on December 14, 2014, and as the ALJ correctly stated, Claimant had her wrist re-cast on December 16, 2014. Since the ALJ included two treatments involving Claimant's cast we find it reasonable that the ALJ intended to say December 16, 2014 in her Conclusion of Law and not December 14, 2014.

The District of Columbia Court of Appeals has held that the CRB's power to amend orders is limited to correction of apparent errors, and does not include the power to make substantive legal changes. Rather, even where there is but one outcome possible, if the CRB determines that an order under review has reached an erroneous conclusion, it must remand the matter to AHD with instructions that a new order be issued in conformance with the CRB's determination. *See Washington Metropolitan Area Transit Authority v. DOES (Juni Browne, Intervenor)*, 926 A.2d 140 (D.C. 2007).

This Panel concludes that the ALJ's award includes a typographical error that we are able to amend without remand. Accordingly, this Decision and Order shall serve to amend the ALJ's CO to provide that Claimant is awarded medical benefits including treatment by non-panel physicians between November 12, 2014 and December 16, 2014.

#### CONCLUSION AND ORDER

The August 19, 2015 Compensation Order is supported by substantial evidence and in accordance with the law and is AFFIRMED. The award is amended to award Claimant medical benefits including treatment by non-panel physicians between November 12, 2014 and December 16, 2014.

*So ordered.*