

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD

CRB Nos. 15-055 and CRB No. 15-113

**ZINA HUNTER,
Claimant-Respondent,**

v.

**DISTRICT OF COLUMBIA DEPARTMENT OF YOUTH REHABILITATION SERVICES,
Employer-Petitioner.**

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2015 OCT 20 PM 12 39

Consolidated appeals from a March 13, 2015 "Order"
and a June 18, 2015 "Order Awarding an Attorney's Fee"
by Administrative Law Judge Fred D. Carney, Jr.
AHD No. PBL 13-092A, DCP No. 30100852406-0001

(Decided October 20, 2015)

Harold L. Levi for Claimant
Andrea G. Comentale for Employer

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

JEFFREY P. RUSSELL for the Compensation Review Board.

DECISION AND ORDER DISMISSING CONSOLIDATED APPEALS

FACTS OF RECORD AND PROCEDURAL HISTORY

A Compensation Order (CO 1) was issued by an Administrative Law Judge (ALJ) in the Administrative Hearings Division (AHD) of the Department of Employment Services on September 23, 2013 in which Claimant's claim for workers' compensation benefits was granted.

Employer filed an Application for Review (AFR) of CO 1 with the Compensation Review Board (CRB).

On January 28, 2013, the CRB issued a Decision and Remand Order remanding the matter for further consideration.

On January 2, 2015, the ALJ issued a Compensation Order on Remand (CO 2), again awarding the requested benefits.

On January 8, 2015, Claimant filed a fee petition seeking \$11,280.00 in attorneys' fees for services rendered at AHD representing Claimant in the successful prosecution of her claim.

On January 29, 2015, Employer filed an AFR of CO 2 with the CRB. On February 3, 2015, Employer filed with AHD an "Employer's Motion to Dismiss and Opposition to Claimant's Fee Petition", arguing that CO 2 was on appeal and, relying upon *Dixon-Cherry v. District of Columbia Public Schools*, CRB No. 12-173, AHD No. PBL 11-039 (November 28, 2012) (*Dixon-Cherry*), requested that the fee petition be dismissed.

On March 13, 2015, the ALJ issued an Order denying Employer's motion to dismiss. However, that order did not award a fee.

On April 10, 2015, Employer filed an AFR (AFR 1) with the CRB of the March 13, 2015 Order denying the Motion to Dismiss. Employer argued that under *Dixon-Cherry* the fee petition was premature, because CO 2 was on appeal and not a final decision, and thus the denial of the stay was an abuse of discretion. That appeal is one of the two consolidated cases before us, CRB No. 15-055.

On April 13, 2015 the ALJ issued an Order Awarding an Attorney's Fee awarding Claimant's counsel a fee in the amount of \$11,280.00. That Order has not been appealed.

On April 23, 2015, Employer filed a Motion to Stay the April 13, 2015 Order awarding an Attorney's fee with the AHD.

On June 9, 2015, the CRB issued a Decision and Order affirming CO 2.

On June 18, 2015, the ALJ denied Employer's Motion to Stay the fee award.

On July 15, 2015, Employer filed an Application for Review (AFR 2) seeking reversal of the June 18, 2015 order, which it also referred as "Order Awarding Attorney's Fee". That case, CRB No. 15-113. is the other of the two consolidated appeals which are the subject of this Decision and Order.

Because the issues in these two appeals are inextricably intertwined, the two AFR's filed by Employer are consolidated in this Decision and Order Dismissing Consolidated Appeals.

STANDARD OF REVIEW

In the appeal of Orders which are not based upon an evidentiary record, the scope of review by the CRB is limited to making a determination as to whether the Orders under review are arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law. *See* 6 Stein, Mitchell & Mezines, Administrative Law § 51.03 (2001).

DISCUSSION

D.C. Code § 1-627.27(b)(2) is the statutory basis upon which an attorney's fee may be assessed against Employer. It reads as follows:

If a person utilizes the services of an attorney-at-law in the successful prosecution of his or her claim ... there shall be awarded, in addition to the award of compensation, *in a compensation order*, a reasonable attorney's fee, not to exceed the 20% of the actual benefit secured

(Emphasis added). Thus, appeals to the CRB of orders awarding attorney's fees are appeals of compensation orders, and are subject to the same rules, regulations and review principles as any other compensation order.

Appeals of compensation orders to the CRB must be made within 30 days of the issuance of the order being appealed. *See* D.C. Code § 1-623.28 (a). *See also* 7 DCMR § 258.2.

7 DCMR § 261.7 provides as follows:

A timely motion for reconsideration of a compensation order filed with the Administrative Hearings Division shall not stay the running of the thirty (30) day period for filing an Application for Review with the Board prescribed in section 258.2 of these regulations. Where however, a motion for reconsideration is not ruled upon prior to the filing of an Application for Review, the pendency of the motion may serve as a basis for a stay of proceedings on a timely appeal before the Board until the motion is ruled upon by the Administrative Hearings Division.

Although 7 DCMR § 260.3 authorizes the CRB to stay a compensation order, neither the Public Sector Workers' Compensation statute nor the governing regulations provide for a party to request a stay of a compensation order by AHD.¹ No motion for a stay of either of the orders relating to fees which are at issue before us were filed with the CRB.

No appeal of the April 13, 2015 the ALJ issued an Order Awarding an Attorney's Fee awarding Claimant's counsel a fee in the amount of \$11,280.00 has been filed with the CRB.

Employer filed a Motion to Stay the fee award with the ALJ in AHD, which was denied June 18, 2015. It did not file a motion for reconsideration of the April 13, 2015 Order Awarding an Attorney's Fee in AHD.

Although the order denying the stay was titled "Order Awarding Attorney's Fee", it did not in fact award a fee; it merely restated that the prior award was to be paid. The Order contains the

¹ That is not to say that an ALJ could not stay a fee award *sua sponte*, or issue a stay at a party's request once an appeal has been filed. However, in this case, Employer's stay request preceded the relevant AFR.

following operative language:

Having given due and sufficient consideration to 7 DCMR § 260.1 and Carrington v. District of Columbia Public Schools, [CRB No. 13-093, AHD No. PBL 12-041, DCP No. 30100942563-001 (August 29, 2013)], Employer's Motion to Stay Order Awarding Attorney's Fee is hereby **DENIED**. Employer is hereby **ORDERED** to pay the attorney's fee pursuant to the April 13, 2015 Order Awarding Attorney's Fees.

On July 15, 2015, Employer filed an AFR seeking reversal of the June 18, 2015 order denying a stay, which motion Employer also referred to as an "Order Awarding Attorney's Fee".

In neither of the appeals filed in connection with the fee awards in this case has employer objected to amount of the fee, asserted that the award exceeds statutory limits on attorney fee awards, or that an award in this case is for any reason not allowable. There is no question that the fee application was timely, and that CO 2 is now final. There has been no substantive objection to the award being made or the amount thereof.

Any error that may have been committed by the ALJ in denying the Motion for Stay is now moot, inasmuch as CO 2 has now been affirmed.

Any error the ALJ may have committed in denying the Motion to Dismiss the fee petition is also moot, for the same reasons.

In neither of these appeals has Employer advanced cognizable legal argument why the fee award ought be vacated as the case now stands.

CONCLUSION AND ORDER

All matters relating to these consolidated appeals are rendered moot, and the appeals are therefore **DISMISSED**.

So ordered