

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA M. MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD
CRB No. 12-066

TERRI ABBOTT,
Claimant-Respondent,
v.

DISTRICT OF COLUMBIA PUBLIC SCHOOLS,
Self-Insured Employer-Petitioner.

Appeal from a Compensation Order By
Administrative Law Anand K. Verma
AHD PBL 07-065B, OWC No. A984800-0667-0001

Krista N. DeSmyter, Esquire, for the Claimant
Pamela L. Smith, Esquire, for the Self-Insured Employer

Before LAWRENCE D. TARR, HENRY W. MCCOY, and MELISSA LIN JONES, *Administrative Appeals Judges*.

LAWRENCE D. TARR, *Administrative Appeals Judge*, for the Compensation Review Board.

DECISION AND ORDER VACATING ATTORNEY'S FEE ORDER

OVERVIEW

This case is before the Compensation Review Board (CRB) on the request of the petitioner, the District of Columbia Public Schools, for review of the March 27, 2012, Attorneys' Fee Order (Order) entered by an Administrative Law Judge (ALJ) in the Administrative Hearings Division (AHD) of the District of Columbia's Department of Employment Services (DOES).

For the reasons stated, we vacate that Order.

BACKGROUND FACTS OF RECORD

The claimant, Terri Abbott, worked for the petitioner as a bus attendant. In January 2010, an ALJ held the claimant sustained a right knee injury on August 27, 2008, and awarded the claimant continuing temporary total disability benefits beginning on August 27, 2008. *Abbott v. D.C. Public Schools*, AHD No. PBL07-065A, DCP No. 76000600012007-0025 (January 26, 2010). This decision was not appealed.

After the employer notified the claimant on August 17, 2011, that it was ending her temporary total disability benefits, the claimant filed an Application for Hearing with AHD. After a formal hearing, an ALJ issued a Compensation Order (CO) on January 17, 2012, in which he held that the claimant was entitled to reinstatement of her disability benefits. The employer filed an Application for

Review of the ALJ's CO on February 16, 2012. This review is pending before the CRB (CRB 12-019).

Although the employer filed its appeal of the ALJ's CO on February 16, 2012, the ALJ entered an Order on March 26, 2012, awarding fees to claimant's attorney. The employer filed a Motion for Reconsideration of the Award. To date, the ALJ has not issued any decision with respect to that Motion. On April 26, 2012, the employer filed an Application for Review of the ALJ's March 26, 2012, Order awarding attorney's fee.

THE STANDARD OF REVIEW

Where, as here, the decision appealed to the CRB originates from a decision for which no record was produced, the CRB must affirm the decision unless it is be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. See, 6 Stein, Mitchell & Mezines, ADMINISTRATIVE LAW § 51.03 (2001).

ANALYSIS

The employer argues that the ALJ's attorney's fee award is improper because the ALJ awarded the fee under a statute that only applies to private sector employees; the September 24, 2010, amendment to D.C. Code § 1-623.27 prohibits attorney's fee awards in public sector cases; the ALJ issued the Order on March 27, 2012, which was 7 days before the date by which employer could file a response; and erred by not considering employer's response filed on April 2, 2012. The employer in its Petition, and the claimant in her Response, also argues the attorney's fee award was premature because of the pending appeal before the CRB.

We agree with the parties that the ALJ's attorney's fee award is premature and therefore not in accordance with the law. The award upon which the attorney's fee was premised, the award in the January 17, 2012 CO, is pending before the CRB. In the event that the CRB reverses that award, the claimant would not be entitled to an attorney's fee assessed against the employer. See, D.C. Code §1-623.27.

In light of this determination, we do not decide the other assignments of error. We should also state that in the event the CRB affirms the January 17, 2012 award, should claimant's counsel believe she is entitled to an attorney's fee assessment, she may seek a determination by renewing her request.

ORDER

It is hereby Ordered that the March 27, 2012, Attorney's Fee Order is VACATED.

FOR THE COMPENSATION REVIEW BOARD:

LAWRENCE D. TARR
Administrative Appeals Judge

May 30, 2012

DATE