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| In the Matter of, |) | |
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| THE ESTATE OF MERICHA BLAIR, |) | |
| |) | |
| Claimant, |) | |
| |) | |
| v. |) | OHA/AHD No. PBL 05-012A |
| |) | DCP No. LTDMPS0006365 |
| DISTRICT OF COLUMBIA |) | |
| DEPARTMENT OF CORRECTIONS |) | |
| |) | |
| Employer. |) | |

Appearances

KIRK D. WILLIAMS, ESQUIRE
FOR THE CLAIMANT

ANDREA COMENTALE, ESQUIRE
FOR THE EMPLOYER/CARRIER

Before:

FRED D. CARNEY, JR.
ADMINISTRATIVE LAW JUDGE

COMPENSATION ORDER ON REMAND

STATEMENT OF THE CASE

This matter arises out of a claim for disability compensation benefits filed pursuant to the provisions of Subchapter XXIII of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Official Code, § 1-623.1 *et seq.* (2001 Ed.), (hereinafter, the Act).

and Adjudications/Administrative Hearings Division (AHD) issued an ordered dismissing claimant's December 5, 2005 application for formal hearing on grounds that the application was submitted before a second determination was issued by The Office of Risk Management (ORM) and it was submitted more than 30 days after April 14, 2005, the date that ORM had issued its initial determination. Claimant filed for review of the January 3, 2007, order dismissing her Application for Hearing (AHD) with the

PROCEDURAL HISTORY

On January 3, 2007, the Office of Hearings

Compensation Order Review Board (CRB).¹ On May 30, 2007, the CRB issued an order vacating the January 3, 2007, decision to dismiss claimant's application as premature, and remanded the matter to AHD to determine whether claimant's claim was deemed accepted requiring payment of the claim.

CLAIM FOR RELIEF

Claimant seeks an award under the Act for payment of causally related medical expenses.

ISSUES

1. Whether claimant's claim is deemed accepted based on employer's failure to make a determination for, or against, payment of benefits within thirty days of the date claimant filed a claim.
2. Nature and extent.²

FINDINGS OF FACT

On March 1, 2005, claimant was treated for

¹D.C. Code Ann. § 32-1521.01 (2001) and Title 7 of the District of Columbia Municipal Regulations, Chapter 1, section 118, and Chapter 2, sections 250 *et seq.*, established a Compensation Order Review Board and set forth the authority and responsibilities thereof. The letterhead used for decisions and orders refer to the entity as the "Compensation Review Board", which is the shorter-form designation the Director of the Department of Employment Services used in Administrative Policy Issuance No. 05-01 (February 5, 2005)

²Subsequent to the May 30, 2007 remand order the parties agreed in an informal conference that the issue of nature and extent could be decided based on the record in addition to the issue of whether claimant's claim was accepted.

symptoms diagnosed as military tuberculosis³ (CE -2) On March 10, 2005, Dr. Sheila Anderson, M.D.,⁴ began treating claimant's symptoms and opined that claimant contracted the disease while working at the D. C. Jail.

Claimant gave employer timely notice on or before March 3, 2005, that she was going to file a claim for injuries arising out of the performance of her duties. On April 7, 2005, I find ORM mailed claimant a letter containing the requisite forms to file a claim for benefits, including Forms 1, 2, & 3. On April 14, 2005, the Office of Risk Management (ORM) issued a Notice of Determination in which it controverted the claim based on a lack of supporting documentation. The April 14, 2005, notice was accompanied by a notice to claimant informing her that she could seek reconsideration or request a formal hearing if she disagreed with the determination.

On May 25, 2005, claimant filed an Application for Formal Hearing seeking review of the April 14, 2005, determination. I find claimant's application for formal hearing was untimely filed in excess of 30 days. I find ORM did not receive the completed forms from claimant until April 20, 2005. On September 14, 2005, a formal

³Military tuberculosis, a type that varies from a chronic, slowly progressive debilitating infection to an acute fulminating disease; it is caused by hematogenous or lymphohematogenous dissemination of infected caseous material into the bloodstream and seeding of many organs with the millet seed like tubercles. *Dorland's Illustrated Medical Dictionary*, (hereinafter *Dorland's*) 29th Edition, p 1890.

⁴The record does not indicate whether Dr. Anderson has an espoused specialty.

hearing convened. Claimant's counsel submitted her medical records and release form to employer's counsel and employer's counsel accepted the same.

I find claimant and employer considered the exchange as compliance with the April 2005, determination. On September 20, 2005, I find claimant withdrew her application for formal hearing.

DISCUSSION

The undersigned has thoroughly reviewed and considered the totality of the evidence and the arguments set forth by the parties on the issues presented for resolution. To the extent an argument is consistent with the findings of fact and conclusions of law contained herein, the argument is accepted; to the extent an argument is inconsistent therewith, it is rejected.⁵

On review by the CRB, claimant argued that the Administrative Law Judge's decision was erroneous, that AHD did have jurisdiction to hear claimant's case because ORM had not rendered a timely determination therefore, claimant's claim "is deemed accepted." Employer argued that claimant's application for formal hearing was premature as there was no determination by the Mayor regarding claimant's entitlement to benefits under the Act. In its motion to dismiss, employer also argued that claimant's application for formal hearing should be dismissed as untimely because it was filed more than 30 days after the April 14, 2005, initial determination

⁵While each documentary exhibit received in evidence is not specifically referenced in the discussion, all evidence of record was reviewed as part of this deliberation.

issued by ORM

The D.C. Code Ann. §§ 1-623.24 (2006) states in relevant part:

(B)(1) Before review under § 1-623.28(a) A claimant who disagrees with a decision of the Mayor or his or her designee under subsection (a) of this section shall have the right to request reconsideration of that decision within 30 days after the issuance of the decision...

The CRB on review noted that after the ALJ issued the Order in this case, CRB addressed this argument concerning D.C. Official Code § 1-623.24 (b)(1) and also language found in D.C. Official Code § 1-623.24(a-3)(1), stating that if there has been a failure to make the necessary findings and a failure to award or deny payment of compensation within 30 days from the date of the filing of the claim, "the claim shall be deemed accepted," thus obligating commencement of the payment of compensation "on the 31st day following the date the claim was filed..." However, this obligation of payment does not apply "if the Mayor provides notice in writing that extenuating circumstances preclude the Mayor from making a decision within this period, which shall include supporting documentation stating the reasons why a finding of facts and an award for or against compensation cannot be made within this period."

After reviewing these provisions, the CRB held that in interpreting § 1-623.24(b)(1), "to read this subsection as permitting the invocation of AHD's jurisdiction only upon the issuance of a formal written decision by the Office of Risk Management (ORM) would

be not only to misconstrue the express language of the subsection, such a construction [would render the provisions of subsections (a-3)(1) and (a-4)(2) meaningless and without recourse". *Tellish v. District of Columbia Public Schools*, CRB No. 07-001, AHD No. PBL 05-028A, DCP No. DCPS 007013 (February 16, 2007) at 4. Therefore, in *Tellish*, the CRB remanded that matter to AHD and held that AHD had jurisdiction because of the lack a formal written determination within the statutorily prescribed 30-day period.

As the CRB noted in *Tellish*, whether the lack of a formal written determination by DPM is sufficient in the instant matter to warrant a determination that Petitioner's claim was "deemed accepted" and as a result, requiring payment of compensation, requires further inquiry by the ALJ. Thus, this matter was remanded to the ALJ to determine, upon a full development of the record, whether Petitioner is entitled to an award of the claim because of the failure of DCP to issue a timely formal written decision.

In the case subjudice both parties acknowledge that DCP issued a Notice of Determination on April 14, 2005, that stated claimant's claim would not be decided until she provides the agency with certain documents. The record indicates that ORM sent claimant a letter on April 7, 2006, containing several forms which needed to be completed and returned to process her claim. The letter was signed by Tina Tanner, Claims Examiner and enclosed were Form 1, *Employer & Employee First Report of Injury or Occupational Disease*, Claim Form 2, *Supervisor's Report* and Form 3, *Physician's Report*. (CE 3) The record further indicates claimant's Form 1, *Notice of Injury* is dated

April 8, 2005, Form 2, *Supervisor's Report* is dated April 14, 2005, and Form 3, *Physician's Notice of Injury* is dated March 25, 2005. Taken together the forms indicate that claimant sustained a respiratory injury while working on March 1, 2005. (CE 1) The evidence of record indicates claimant's Forms 1, 2 & 3 were received by ORM on April 20, 2005. The undersigned takes administrative notice that claimant through counsel provided claimant's medical records to the counsel for employer while at the hearing on September 14, 2005 at the prompting of the undersigned. Claimant offered no evidence that she had provided copies of her medical records to ORM prior to September 14, 2005.

Claimant did not request a formal hearing until June 3, 2005. Claimant's used a form provided by ORM and attached a cover letter which stated "Please find Claimant's Uniform Request for Review of Eligibility seeking review of the enclosed Notice of Determination Regarding Original Claim for Compensation dated April 14, 2004. Attached also were the Notice of Determination with a notice of claimant's right to request reconsideration or a formal hearing within thirty days of the April 14, 2005 determination.⁶ Thus claimant represented in

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7 - 1 0 6 . R e q u e s t f o r H e a r i n g .

106.1 In accordance with the § 2324 of the Act, the Division shall notify the individual claiming benefits, in writing, of its determination upon the claim submitted and its findings of fact upon which the determination is based as soon as practicable.

106.2 A form for requesting a hearing pursuant to § 2324(b) of the Act shall accompany the notice of determination.

106.3 If the individual claiming benefits under the Act wishes to request a hearing pursuant to § 2324

her application for formal hearing that she had received a notice of determination dated April 14, 2005. There is no dispute that the April 14, 2005 notice indicates that claimant's claim was denied pending further documentation from claimant and that after ORM received her medical reports it would make a determination on her claim. Therefore a written determination indicating that ORM would not reach a determination until claimant presents further supporting documentation was issued within thirty days of claimant's April 2005 claim for benefits. Therefore, ORM issued a notice of determination before April 20, 2005 when claimant's claim forms were received by ORM.

Having found ORM presented evidence of extenuating circumstances that delayed the claims process I do not reach the matter of the nature and extent of claimant's disability as that issue is now rendered moot.

CONCLUSIONS OF LAW

Based upon a review of the record evidence as

a whole, I find and conclude claimant's claim for benefits was not perfected until April 20, 2005 after ORM had issued a notice controverting the claim as incomplete. I further find and conclude claimant did not provide medical records to support her claim until September 14, 2005. I find and conclude that the lack of documentation including the necessary claims forms and supporting medical documentation constituted an extenuating circumstance preventing ORM from initially determining the claim.

(b) of the Act, that individual shall sign the request for hearing which was forwarded to him or her pursuant to § 106.1 of this Chapter and return it to the office designated on that form within thirty (30) days of the issuance of the determination. The individual shall also simultaneously mail a copy of the request for hearing to the Office of the Corporation Counsel at the address designated on t h a t f o r m .

ORDER

It is **ORDERED** claimant's claim for relief be, and hereby is **DENIED**.

FRED D. CARNEY, JR.
ADMINISTRATIVE LAW JUDGE

November 20, 2007

Date

Parties Served:

Kirk D Williams, Esquire
Andrea G. Comentale, Esquire AAG

cc Mericha Blair
Patricia Clinton, AHD

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent this _____ day of _____, 2007 to the following:

Eugene Irvin, General Counsel
Office of General Counsel
Department of Employment Services
64 New York Avenue, N.E.
Washington, D.C. 20002

Hand Delivery

Karen Shepard, Manager
Disability Compensation Program/DCOP
441 4th Street, N. W., Room 800-S
Washington, D.C. 20001

Certified

Kirk D. Williams, Esquire
1717 K Street, N.W., Suite 600
Washington, D.C. 20036

Certified

Andrea Comentale, Assistant Attorney General
Office of Personnel and Labor Relations
441 4th Street N. W.
Washington, D.C. 20001

Certified

Estate of Mericha Blair
2200 Oregon Avenue
Landover, Maryland, 20785
Oxon Hill, MD 20745

Certified

**Terri Thompson Mallet
Chief Administrative Law Judge
Administrative Hearing Division**

APPEAL RIGHTS

This order is effective upon filing with the Mayor pursuant to Section 2102, Title XXIII of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (D.C. Law 2-139, D.C. Code 1981, §§ 1-623.1 *et seq*). Any party aggrieved by this Order may file an application for review with the Chief Judge Compensation Order Review Board, Labor Standards Bureau, Department of Employment Services.

Send Petition for Review to:

Compensation Order Review Board/Chief Judge
Department of Employment Services
Labor Standards Bureau
64 New York Avenue, N.E.
Third Floor
Washington, D.C. 20002

The Petition for Review must be filed within 30 days of the date of this Order with the Mayor as provided in Section 2328(a) of the Act, D.C. Code, as amended, § 1-623.28. A Petition for Review is perfected by filing with the Director one (1) original and one (1) copy of an Application for Review, one (1) original and one (1) copy of a Memorandum of Points and Authorities in support of the Application and certification that copies of the Application and Memorandum have been served by mail or delivery, upon the opposing party(ies) and the Chief Judge Compensation Order Review Board.

