

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

Department of Employment Services

VINCENT C. GRAY  
MAYOR



LISA M. MALLORY  
DIRECTOR

**COMPENSATION REVIEW BOARD**

**CRB No. 10-130**

**JUANITA IRVING,  
Claimant–Respondent,**

**v.**

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

Appeal from an Order by  
The Honorable Belva D. Newsome  
AHD No. PBL08-056B, DCP No. 013894

Pamela L. Smith, Esquire for Petitioner  
Kirk D. Williams, Esquire for Respondent

Before MELISSA LIN JONES, JEFFREY P. RUSSELL,<sup>1</sup> and HEATHER C. LESLIE,<sup>2</sup> *Administrative Appeals Judges*.

MELISSA LIN JONES, *Administrative Appeals Judge*, for the Compensation Review Board.

**DECISION AND REMAND ORDER**

**JURISDICTION**

Jurisdiction is conferred upon the Compensation Review Board (“CRB”) pursuant to D.C. Code §1-623.28, 7 DCMR §118, and Department of Employment Services Director’s Administrative Policy Issuance No. 05-01 (February 5, 2005).

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<sup>1</sup> Judge Russell has been appointed by the Director of the DOES as a temporary CRB member pursuant to DOES Administrative Policy Issuance No. 11-01 (June 23, 2011).

<sup>2</sup> Judge Leslie has been appointed by the Director of the DOES as a temporary CRB member pursuant to DOES Administrative Policy Issuance No. 11-02 (June 13, 2011).

#### FACTS OF RECORD AND PROCEDURAL HISTORY

On December 1, 2003, a Reconsideration Final Order issued from the District of Columbia Disability Compensation Program (“DCP”).<sup>3</sup> Ms. Juanita Irving’s temporary total disability compensation and medical benefits that had been terminated were reinstated retroactively.

Almost five years later, Ms. Irving filed an Application for Formal Hearing. At the formal hearing held on July 16, 2008 before Administrative Law Judge (“ALJ”) Fred D. Carney, Jr., Ms. Irving sought temporary total disability compensation benefits from August 14, 2001 to the date of the formal hearing and continuing and medical expenses from August 14, 2001 to the date of the formal hearing and continuing.<sup>4</sup> In an Order dated February 24, 2009, ALJ Carney dismissed Ms. Irving’s Application for Formal Hearing for failure to present an award of benefits over which he had jurisdiction; ALJ Carney’s Order was not appealed.

In or about April 2009, Ms. Irving filed another Application for Formal Hearing; ALJ Belva D. Newsome was assigned to the case. Ms. Irving requested temporary total disability compensation benefits from August 14, 2001 to January 31, 2008 and medical expenses.<sup>5</sup> In a May 7, 2010 Order, ALJ Newsome directed the District of Columbia Public Schools (“Petitioner”) to either pay the allegedly outstanding medical expenses or issue a Notice of Determination.

On appeal, Petitioner requests we vacate the May 7, 2010 Order because it is not in accordance with the law and is an abuse of discretion. Specifically, Petitioner asserts the May 7, 2010 Order issued in contravention of the law of the case as established by ALJ Carney’s February 24, 2009 Order.

Ms. Irving has filed no response.

#### ISSUE ON APPEAL

Is the May 7, 2010 Order supported by substantial evidence in the record and in accordance with applicable law?

#### ANALYSIS

Although the document issued by ALJ Newsome is titled an “Order,” this document issued after three hearings were held, exhibits were taken, and witnesses had testified. Consequently, the standard of review in this appeal is the substantial evidence standard. In other words, the scope of review by the CRB is limited to making a determination as to whether the factual findings of

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<sup>3</sup> Effective October 1, 2010, the Disability Compensation Program’s name was changed to the Public Sector Workers’ Compensation Program.

<sup>4</sup> July 16, 2008 Hearing Transcript, pp.5-6.

<sup>5</sup> January 13, 2010 Hearing Transcript, pp.18-19. ALJ Newsome held three hearings after the filing of this Application for Formal Hearing- one on July 22, 2009, one on January 13, 2010, and one on March 15, 2010. Our file does not contain any order issued following the July 22, 2009 formal hearing or the January 13, 2010 formal hearing.

the appealed Compensation Order are based upon substantial evidence<sup>6</sup> in the record and whether the legal conclusions drawn from those facts are in accordance with applicable law.<sup>7</sup> Consistent with this standard of review, the CRB is constrained to uphold a Compensation Order that is supported by substantial evidence, even if there also is contained within the record under review substantial evidence to support a contrary conclusion and even if the CRB might have reached a contrary conclusion.<sup>8</sup>

The law of the case doctrine recognizes that “once the court has decided a point in a case, that point becomes and remains settled unless it is reversed or modified by a higher court.”<sup>9</sup> On February 24, 2009, ALJ Carney dismissed Ms. Irving’s Application for Formal Hearing because the parties had not presented an award of benefits over which he had jurisdiction. No such award was presented to ALJ Newsome before she held three formal hearings on the same issues presented to ALJ Carney or before she issued the May 7, 2010 Order directing Petitioner to either pay the allegedly outstanding medical expenses or issue a Notice of Determination.

Ms. Irving’s position that she is entitled to a formal hearing to adjudicate her request for temporary total disability compensation benefits from August 14, 2001 and medical expenses has been resolved by ALJ Carney’s Order which has become final. ALJ Newsome was without authority to reject the procedural posture created by ALJ Carney’s Order.

Furthermore, it is DCP, not Petitioner, that issues Notices of Determination, and we are unaware of any authority that permits an ALJ to issue any directive to the DCP.

#### CONCLUSION AND ORDER

The May 7, 2010 Order is not in accordance with the law. It was beyond ALJ Newsome’s authority to render a decision ordering the payment of medical bills. The order that outstanding medical bills be paid or that a Notice of Determination denying the outstanding medical bills be issued is VACATED; this matter is REMANDED with instructions to dismiss the Application for Formal Hearing.

FOR THE COMPENSATION REVIEW BOARD:

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MELISSA LIN JONES  
Administrative Appeals Judge

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January ^, 2012  
DATE

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<sup>6</sup> “Substantial evidence” is relevant evidence a reasonable person might accept to support a conclusion. *Marriott International v. DOES*, 834 A.2d 882, 885 (D.C. 2003)

<sup>7</sup> Section 32-1521.01(d)(2)(A) of Act.

<sup>8</sup> *Marriott International*, *supra*.

<sup>9</sup> *Kritsidimas v. Sheskin*, 411 A.2d 370, 371 (D.C. 1980).