

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Department of Employment Services**

**VINCENT C. GRAY**  
**MAYOR**



**LISA M. MALLORY**  
**DIRECTOR**

**COMPENSATION REVIEW BOARD**

**CRB No. 12-068**

**SHAWN ROGERS,**

**Claimant–Petitioner,**

**v.**

**WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY,**

**Employer- Respondent.**

Appeal from a Compensation Order on Remand of  
Administrative Law Judge Amelia G. Govan  
AHD No. 10-213, OWC No. 660164

Matthew Peffer, Esquire, for the Petitioner

Sarah O. Rollman, Esquire, for the Respondent

Before JEFFREY P. RUSSELL, HEATHER C. LESLIE<sup>1</sup> AND LAWRENCE D. TARR, *Administrative Appeals Judges*.

JEFFREY P. RUSSELL, for the Compensation Review Board.

**DECISION AND ORDER**

**BACKGROUND**

A formal hearing was conducted by an Administrative Law Judge (ALJ) in the Department of Employment Services (DOES) on August 4, 2010. Following that formal hearing, the ALJ issued a Compensation Order on February 18, 2011 in which she found that the contested medical condition to Shawn Rogers’s left knee was causally related to his employment with WMATA as a bus driver, that that left knee condition resulted in Mr. Rogers requiring certain medical care that had been provided up to the date of the formal hearing (the pre-hearing medical care), that as a result of the injury Mr. Rogers was temporarily totally disabled from September 29, 2009 through the date of the formal hearing and continuing, and that Mr. Rogers was “in need of ongoing medical care”.

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<sup>1</sup> Judge Russell is appointed by the Director of DOES as a Board Member pursuant to DOES Administrative Policy Issuance No. 11-03 (June 23, 2011).

WMATA appealed these findings and the award to the CRB, which in a Decision and Partial Remand Order issued October 6, 2011, upheld all of the matters as determined by the ALJ except the finding that Mr. Rogers was in need of ongoing medical care. The Compensation Order did not identify what specific medical care was deemed to be needed, and contained no reference to WMATA's Utilization Review (UR) report which WMATA contended provided opposition evidence countering the supposed claim for additional medical care. The CRB determined that the ALJ's finding on this point was "ambiguous", and remanded the matter for further consideration, including consideration of the UR report.

On remand, the ALJ considered the UR report and on April 6, 2011 issued a Compensation Order on Remand in which she determined that Mr. Rogers was in need of no additional medical care. Mr. Rogers appealed, to which appeal WMATA has filed a response.

#### STANDARD OF REVIEW

The scope of review by the CRB, as established by the Act and as contained in the governing regulations, is generally 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. *See*, D.C. Workers' Compensation Act of 1979, as amended, D.C. Official Code § 32-1501, *et seq.*, at § 32-1521.01 (d)(2)(A), (the Act), and *Marriott International v. DOES*, 834 A.2d 882 (D.C. 2003). Consistent with this standard of review, the CRB and this review panel must affirm 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 this panel might have reached a contrary conclusion. *Id.*, at 885.

#### DISCUSSION AND ANALYSIS

In the original appellate proceedings, the CRB was operating under the assumption that Mr. Rogers was seeking specific ongoing medical care. As can be seen from the Decision and Partial Remand Order, the CRB was under the impression that there existed "proposed medical care" the need for which was in dispute. *See, Rogers v. WMATA*, CRB No. 11-022 (October 6, 2011).

From the briefs of the parties in this appeal, it is now apparent that what Mr. Rogers was seeking and what WMATA was opposing before the ALJ in the formal hearing, and before the CRB in the first appeal, was an advisory opinion concerning whether, if Mr. Rogers hypothetically seeks to obtain medical care in the future, he is entitled to it. As Mr. Rogers's own brief in this appeal puts it, "Mr. Rogers was not requesting any future medical treatment, however, so the question of whether medical treatment was reasonable or necessary was not ripe for review". Claimant's Memorandum of Points and Authorities in Support of Application for Review, unnumbered page 5.

WMATA does not disagree with this formulation of the matter, stating in their brief:

At the time of the Formal Hearing, Claimant raised a claim for authorization for medical treatment. That claim was denied in the Compensation Order on Remand.

Claimant now claims that his claim was not ripe because no medical treatment had been ordered. WMATA agrees that if no medical treatment had been ordered or recommended, Claimant should not have wasted limited judicial resources by raising the claim. WMATA also agrees that if no medical treatment had been ordered or recommended the issue is not ripe for adjudication.

Self-Insured Employer's Response to Claimant's Application for Review, page 1.

It is apparent that there was a failure of the parties to adequately identify the issues that were in dispute and which were to be litigated at the formal hearing. Where "authorization for medical treatment" is raised, it is incumbent upon the parties to identify what that treatment is in the prehearing process, and to formulate a presentable theory of their case. Otherwise is not clear how a claimant can in good faith seek the care, or an employer can in good faith deny it. Further, if either party had made these points concerning the lack of a specific claim for medical care to the CRB in the first appeal, this matter would not be pending.

It has long been the policy of the DOES not to conduct formal hearings on issues where there is no pending claim for a specific benefit. See, *Powell v. Wrecking Corp. of America*, H&AS No. 84-540, OWC No. 051161 (Decision of the Director March 4, 1987). This policy was reviewed by the District of Columbia Court of Appeals and found to be reasonable, rational, and consistent with the Act in *Thomas v. DOES and the Washington Post, Intervenor*, 547 A.2d 1034 (D.C. 1988).

Had the CRB been aware of the fact that there was no medical care specifically at issue, the prior Decision and Partial Remand Order would merely have been a Decision and Order affirming the ALJ's causal relationship and nature and extent of disability determinations, and stating that in light of the fact that there is no pending claim for medical care, any determination concerning reasonableness and necessity of future care is premature as no claim for such benefits was ripe, and to the extent that the Compensation Order contained any findings or rulings on that question they would have been vacated.

Now that we are cognizant of the lack of any claim for any specific medical care, we will take the opportunity to do precisely what would have been done had the CRB been aware that there was no claim for medical care.

Through no fault of the ALJ, the Compensation Order on Remand's determinations concerning the need for ongoing medical care are not in accordance with the law. We will vacate any findings of fact, conclusions of law, awards or denials concerning the provision of medical care. Inasmuch as the original remand was solely for the purpose of considering what we now know is a non-existent claim for such care, the entire Compensation Order on Remand is vacated.

#### CONCLUSION

The Compensation Order on Remand's determinations concerning the need for ongoing medical care are not in accordance with the law.

**ORDER**

The Compensation Order on Remand issued April 6, 2012 is reversed and vacated.

FOR THE COMPENSATION REVIEW BOARD:

*/s/ Jeffrey P. Russell*

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JEFFREY P. RUSSELL  
Administrative Appeals Judge

May 30, 2012

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DATE