

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA M. MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 12-007

**CHUKWUMANYA UNIGWE,
Claimant–Respondent,**

v.

**DOMINION ENTERPRISES and ST. PAUL TRAVELERS,
Employer/Insurer–Petitioner.**

Appeal from an Order by
The Honorable Karen R. Calmeise
AHD No. 10-387B, OWC No. 659883

Kathryn L. Harman, Esquire for Petitioner
David J. Kapson, Esquire for Respondent

Before MELISSA LIN JONES, JEFFREY P. RUSSELL,¹ and HENRY W. MCCOY, *Administrative Appeals Judges*.

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

DECISION AND ORDER

JURISDICTION

Jurisdiction is conferred upon the CRB pursuant to D.C. Code §§32-1521.01 and 32-1522 (2004), 7 DCMR §250, *et seq.*, and the Department of Employment Services (DOES) Director’s Administrative Policy Issuance 05-01 (February 5, 2005).

FACTS OF RECORD AND PROCEDURAL HISTORY

On March 10, 2007,² Mr. Chukwumanya E. Unigwe injured his left shoulder on the job. Mr. Unigwe was a manager for Dominion Enterprises (“Dominion”).

¹ Judge Russell has been appointed by the Director of the DOES as a Compensation Review Board (“CRB”) member pursuant to DOES Administrative Policy Issuance No. 11-01 (June 23, 2011).

² The stipulations listed in the Compensation Order misidentify the date of Mr. Unigwe’s accident as September 28, 2008.

Initially, Mr. Unigwe sought treatment with his primary care physician, Dr. Michael Lieberman. Dr. Lieberman referred Mr. Unigwe to Dr. Stephen C. Saddler.

Dr. Saddler treated Mr. Unigwe both before and after Mr. Unigwe's November 21, 2007 arthroscopic surgery. Mr. Unigwe grew dissatisfied with Dr. Saddler's treatment and began authorized treatment with Dr. John J. Klimkiewicz for bilateral shoulder conditions.

Dr. Klimkiewicz intended to treat Mr. Unigwe's right shoulder before reassessing the status of the left shoulder injury. In October 2010, Dr. Klimkiewicz completed a fill-in-the-blank letter indicating Mr. Unigwe's left shoulder would improve with further treatment and was not at maximum medical improvement.

Mr. Unigwe has been assessed by multiple independent medical examination doctors. On March 9, 2010, Dr. Jeffrey H. Phillips opined Mr. Unigwe had reached maximum medical improvement and had sustained a 29% permanent partial impairment of his left arm; Dr. Frank L. Barnes opined Mr. Unigwe had sustained a 15% permanent partial impairment of his left arm.

The parties disagreed as to the extent of Mr. Unigwe's permanent partial disability and proceeded to a formal hearing. In a Compensation Order dated March 10, 2011, an administrative law judge ("ALJ") awarded Mr. Unigwe a 25% permanent partial disability to his left arm.

Mr. Unigwe filed a motion for penalties pursuant to §32-1515(f) of the Act.³ On May 13, 2011, the ALJ awarded Mr. Unigwe penalties for Dominion's failure to timely pay pursuant to the March 10, 2011 Compensation Order. Although Dominion appealed the May 13, 2011 Order, the appeal was not timely, and it was dismissed.

On September 22, 2011, another formal hearing was held; this time, Mr. Unigwe requested workers' compensation benefits for a right shoulder injury. In a Compensation Order issued on December 16, 2011, his claim for relief was granted.

On January 20, 2012, Dominion filed an appeal of the December 16, 2011 Compensation Order.

ISSUE ON APPEAL

1. Was Dominion's Application for Review filed timely?

³ Section 32-1515(f) of the Act states

If any compensation, payable under the terms of an award, is not paid within 10 days after it becomes due, there shall be added to such unpaid compensation an amount equal to 20% thereof, which shall be paid at the same time as, but in addition to, such compensation, unless review of the compensation order making such award is had as provided in §32-1522 and an order staying payments has been issued by the Mayor or court. The Mayor may waive payment of the additional compensation after a showing by the employer that owing to conditions over which he had no control such installment could not be paid within the period prescribed for the payment.

2. Is the May 13, 2011 Order granting penalties for untimely payment pursuant to §32-1515(f) of the Act arbitrary, capricious, an abuse or discretion or otherwise not in accordance with the law?

ANALYSIS

Regardless of whether the issue is raised by a party, as a matter of law, if an Application for Review is not filed timely, the CRB does not have authority to consider the merits of the appeal.

Section 32-1522(2A)(A) of the Act, in pertinent part, provides

[a] party aggrieved by a compensation order may file an application for review with the [CRB] within 30 days of the issuance of the compensation order. A party adverse to the review may file an opposition answer within 15 days of the filing of an application for review.

Also, 7 DCMR §258.2 provides

[a]n Application for Review must be filed within thirty (30) calendar days from the date shown on the certificate of service of the compensation order or final decision from which appeal is taken.

7 DCMR §257.1 states

[f]ilings with the Board of any permitted pleading, including the Application for Review, shall be deemed effective upon actual receipt by the Office of the Clerk.

Finally, 7 DCMR §299 defines the word “day” as a “calendar day, unless otherwise specified in the Act or this chapter;” however, pursuant to 7 DCMR §256.3,

[t]he Office of the Clerk of the Board shall be open from 8:30 a.m. to 5:00 p.m. on all days except Saturdays, Sundays, and legal holidays, for the purpose of receiving Applications for Review and such other pleadings, motions and papers as are pertinent to any matter before the Board.

Thus, when the thirtieth (30th) calendar day falls on a Saturday, Sunday, or legal holiday, the deadline is extended to the next business day. *See Jackson v. ECAB*, 537 A.2d 576, 578 (D.C. 1988).

The Compensation Order on appeal issued on December 16, 2011. The thirty (30) calendar day period beginning on that date ended on January 15, 2012, a Sunday. Thus, in order to meet the statutory timeframe and to be a timely filing, Dominion’s Application for Review must have been filed by the close of business on January 16, 2012. The Application for Review was filed on January 20, 2012 and is not timely.

CONCLUSION AND ORDER

Dominion's Application for Review is **DISMISSED** as untimely filed. Any remaining issues are moot.

FOR THE COMPENSATION REVIEW BOARD:

MELISSA LIN JONES
Administrative Appeals Judge

April 3, 2012
DATE