IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

No. 18-AA-950

LESLIE T. JACKSON
Petitioner,

v. **2018 CRB 43**

DISTRICT OF COLUMBIA
DEPARTMENT OF EMPLOYMENT SERVICES,
Respondent.

BEFORE: Easterly and McLeese, Associate Judges and Washington, Senior Judge.

JUDGMENT

On consideration of petitioner's motion for summary reversal, respondent's cross-motion for summary affirmance, petitioner's opposition thereto, and the record on appeal from the Compensation Review Board (CRB), it is

ORDERED that petitioner's motion for summary reversal is denied. *See Oliver T. Carr Mgmt., Inc. v. Nat'l Delicatessen, Inc.*, 397 A.2d 915 (D.C. 1979). It is

FURTHER ORDERED that respondent's cross-motion for summary affirmance is granted *See Id.* Our review of the application of *res judi* to successive administrative proceedings is *de n* *See Oubre v. District of Columbia Dep't of Emp't Servs.*, 630 A.2d 699, 702 (D.C. 1993). Petitione arguments about the nature, import, and correc of the December 2011 dismissal without prejudi her first-level review of the April 2011 determin of her worker's compensation claim are immate for present purposes, as she eventually did appe the December 2011 dismissal to CRB, which dismissed her second-level review on timeliness

grounds, and this court summarily affirmed in *Jackson v. District of Columbia Dep't of Emp't. Servs.*, No. 17-AA-875 (D.C. Mar. 19, 2018). Petitioner could have either made her current arguments in the prior CRB proceeding or first attempted to re-appeal the April 2011 determination to the Office of Administrative Hearings before appealing in the first instance to CRB; but *res judicata* forecloses her from doing so now. *See Short v. District of Columbia Dep't of Emp't Servs.*, 723 A.2d 845, 849 (D.C. 1998) ("Once a claim is finally adjudicated, the doctrine of [*res judicata*] will operate to prevent the same parties from relitigation of not only those matters actually litigated but also those which might have been litigated in the first proceeding."); *Shin v. Portals Confederation Corp.*, 728 A.2d 615, 618 (D.C. 1999) ("A dismissal without

prejudice does not forever protect a claim from dismissal in a later proceeding on the ground of r *judicata*. If there is subsequent litigation resultir in a decision on the merits, in which a party has t opportunity to litigate an issue and fails to do so, that party may not rely on an earlier dismissal without prejudice to shield his later claim from a *judicata*-based dismissal."); *Askin v. District of Columbia*, 728 A.2d 665, 667 (D.C. 1999) (recognizing that a dismissal of a prior action on timeliness grounds "precludes a second action on same claim in the same system of courts"), Petitioner's reliance on *Artis v. District of Columl* 138 S.Ct. 594 (Jan. 22, 2018), for a contrary resul misplaced to the extent *Artis* does not concern th doctrine of *res judicata*. It is

FURTHER ORDERED and ADJUDGED that the order on appeal is affirmed.

ENTERED BY

DIRECTION OF THE COURT:

/s/

JULIO A. CASTILLO
Clerk of the Court

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

COMPENSATION REVIEW BOARD
CRB No. 18-043

LESLIE T. JACKSON
Claimant-Petitioner,

v

DISTRICT OF COLUMBIA HOUSING AUTHORITY and DISTRICT OF COLUMB OFFICE OF RISK MANAGEMENT,
Employer/Administrator-Respondent.

Appeal from a March 12, 2018 Final Order issu

by Administrative Law Judge Margaret A. Man

District of Columbia Office of Administrativ

Hearings

OAH Case No. 2017-PSWC-00048, DCP No.

3010008802422-001

(Decided August 30, 2018)

Leslie T. Jackson, *pro se* Claimant

Andrea G. Comentale and Milena Mikailova for

Employer

Before JEFFREY P. RUSSELL, HEATHER C. LESLIE, AND GENNET PURCELL, Administra Appeals Judges.

JEFFREY P. RUSSELL, for the Compensation Review Board.

DECISION AND ORDER DISMISSING APPEAL

FACTS OF RECORD AND PROCEDURAL HISTORY

The following facts are taken from the decision issued by the District of Columbia Court of Appeals ("DCCA") in *Leslie T. Jackson v. District of Columbia, et al.*, No. 13-CV-1375 Mem. Op. & J. (D.C. October 28, 2016) ("MOJ"):

> While serving as an attorney for the D.C. Housing Authority, Leslie Jackson experienced two workplace injuries. On January 4, 2006, Ms. Jackson slipped and fell on a floor that had been recently mopped and waxed, and on December 17, 2009, she fell again when a chair collapsed beneath her during an administrative hearing. Ms. Jackson reported her 2009 injuries to her supervisor, and in July 2010 she "contacted" the District of Columbia Public Sector Workers' Compensation

> Program about workers' compensation for her injuries.
>
> On August 4, 2010, the Housing Authority formally reprimanded Ms. Jackson for failing to complete work assignments and insubordination. Ms. Jackson responded by filing a complaint with the Equal Employment Opportunity Commission on August 19, 2010. She claimed the Housing Authority failed to accommodate her disability by rejecting her requests for accommodation and by censuring her. On November 24, 2010, the Housing Authority notified Ms. Jackson that her employment would be terminated for continued failure to perform her work. At some point "[b]efore [she] was terminated," Ms. Jackson filed a claim for workers' compensation.
>
> In April 2011, the Public Sector Worker's Compensation Program accepted her workers' compensation claim only for "cervical and lumbar strain," declining to credit other injuries, including multilevel degenerative changes" and disc displacement," due to a lack of evidence. The notice of determination granted Ms. Jackson certain medical expenses (if treatment was performed or

prescribed by a approved physician) and possible continuation of pay. The notice also provided that "[i]f you disagree with this notice, you must act now by appealing this notice," within 30 days of the date of this notice," to the [Administrative Hearings Division [AHD] [of]] District's Department of Employment Services (DOES).

Ms. Jackson appealed the determination to DOES, filing an application for a formal hearing [AFH] before an Administrative Law Judge (ALJ). The Housing Authority moved to dismiss, and Ms. Jackson opposed the motion, arguing that she had been terminated for seeking workers' compensation. In December 2011, the ALJ dismissed Ms. Jackson's hearing application without prejudice because it lacked a "genuine controversy of law or fact that is ripe for adjudication." The order noted that Ms. Jackson's claim was "accepted and benefits are being paid," and concluded that a "cause of action based on termination for seeking workers' compensation "is not proper for this forum." The ALJ found no basis for jurisdiction in the filings.

Ms. Jackson did not appeal this decision to the Compensation Review Board.

Before the ALJ dismissed the application for a hearing, Ms. Jackson also filed this case in Superior Court against the District and the Housing Authority. She alleged that she "entered into an implied contract with Defendant for provision of Workers' Compensation benefits, should [she] become unable to work due to a work place injury." Ms. Jackson requested among other relief an injunction "ordering Defendant to pay Worker Compensation in the amount 75% of her salary in the form of a lump sum payment beginning December 9, 2010 [,] and continuing until the lump sum payment is received." Ms. Jackson later amended her complaint to include claims for discrimination and retaliation in violation of the D.C. Human Rights Act.

On March 22, 2013, the Superior Court dismissed the workers' compensation claims for lack of jurisdiction, concluding that the CMPA "establishes [her] exclusive remedy for such claims. The court stated that "[a]ppeals from decisions made by the Director of DOES

are filed directly with the District of Columbia Court of Appeals. The Superior Court 's only role in CMPA compensation claims is to consider liens filed against the District." *See* D.C. Code § 1-623.24 (g).

Ms. Jackson proceeded to file a "notice of lien" against both the District and the Housing Authority for more than $7 million. At a pretrial conference on July 23, 2013, the Superior Court granted the District of Columbia's motion to strike the lien on the basis of the previous order of dismissal and Ms. Jackson's failure to follow CMPA administrative procedures before seeking judicial relief. During the hearing, the court also heard argument on and granted the defendants' motion in limine to preclude any evidence regarding the workers' compensation claims that had been dismissed. The court went on to limit witness testimony that would be irrelevant or cumulative, striking witnesses for whom Ms. Jackson could provide only speculative proffers.

A jury trial began on November 18, 2013. On November 25, 2013, the jury returned a verdict for the Housing Authority,

> finding that Ms. Jackson failed to "prove[] by a preponderance of the evidence that engaging in protected activity was a substantial factor in the [Housing Authority's] decision to terminate her[.] This appeal followed.
>
> * * *
>
> For the foregoing reasons, the judgment of the Superior Court is affirmed.

MOJ at 1-4, 7 (footnotes omitted).

On May 10, 1017, Claimant filed an Application for Review ("AFR") of the December 2011 dismissal order issued by AHD with the CR

On July 19, 2017, the CRB issued a Decisi and Order Dismissing Appeal. The CRB held:

> The District of Columbia Housing Authority ("Employer") filed an opposition to the appeal. Among its arguments is that the appeal is untimely, being filed nearly six years after the date of the DO, rather than within thirty days provided for such an appeal in D.C. Code § 1-623.28 (a).

Claimant argues that the statutory time limit is waivable and is also subject to equitable estoppel. She posits that the pendency of the Superior Court and DCCA proceedings should toll the time for filing an appeal with the CRB. She does not suggest any grounds upon which Employer can be said to waive limitation in this case.

We note that even if we were to agree that in some instances the statutory time limit for filing an appeal from and order issued by AHD to the CRB is subject to being equitably tolled, we see no basis for such a finding in this case. Claimant points to no impediment to filing a timely appeal. Further, the attempt to litigate her compensation claim in Superior Court was ended by the court on March 22, 2013 and was reaffirmed by the DCCA upon issuance of the MOJ on October 28, 2016 and the DCCA's reissuance of the mandate on February 8, 2017. Even under the most charitable application of equitable tolling, the five-and-a-half-year-old DO should have been appealed to the CRB by March 10, 2017, within 30 days of the reissued MOJ mandate.

Accordingly, we determine that Claimant's appeal must be dismissed as being untimely.

Leslie T. Jackson v. District of Columbia Housing Authority, CRB No. 17-045 (July 19, 2017), at 3-4 (footnote omitted).

On August 7, 2017 Claimant appealed the CRB's Decision and Order Dismissing Appeal to th DCCA. Among the grounds for that appeal was th the time for appeal of the December 21, 2011 dismissal order from AHD to the CRB should have been tolled while the Superior Court and Court of Appeals cases were pending.

On September 14, 2017, Claimant filed an Application for Formal Hearing with the Office of Administrative Hearings ("OAH"), seeking to have that agency adjudicate the workers' compensation claim.

On March 12, 2018, an Administrative Law Judge in OAH issued a Final Order ("FO") dismissing Claimant's AFR as untimely and in conflict with the prior order of the CRB of July 19, 2017.

On March 19, 2018, the DCCA issued judgment affirming the CRB's July 19, 2017 Decision and Order Dismissing Appeal, ruling as follows:

> On consideration of respondent's motion for summary affirmance, petitioner's opposition thereto, petitioner's brief and appendix, and the record on appeal, it is
>
> ORDERED that respondent's motion for summary affirmance is granted. *See Oliver T. Carr Mgmt., Inc. v. Nat'l Delicatessen, Inc.*, 397 A.2d 914, 915 (D.C. 1979). The Compensation Review of the District of Columbia Department of Employment Services did not err in dismissing petitioner's appeal as untimely because even assuming that the statutory time period for filing her appeal was subject to equitable tolling,

> petitioner failed to file her petition within the statutory 30-day period after the mandate issued on February 8, 2017, or explain her delay in timely filing after all jurisdictional issues were resolved. *See* D.C. Code § 1-623.28 (a) (2001); *Georgetown Univ. v. District of Columbia Dep't of Emp't Servs.*, 971 A.2d 909, 915 (D.C. 2009) ("We affirm an administrative agency decision when (1) the agency made findings of fact on each contested material factual issue, (2) substantial evidence supports each finding, and (3) the agency's conclusions of law flow rationally from its findings of fact."); *Mathis v. District of Columbia Hous. Auth.*, 124 A.3d 1089, 1104 (D.C. 2015) ("[W]hether a timing rule should be tolled turns on whether there was unexplained or undue delay and whether tolling would work an injustice to the other party."). Petitioner's arguments, raised for the first time on appeal, that illness prevented her from timely filing the appeal and that she was lulled into inaction, are unavailing. *See District of Columbia v. Califano*, 647 A.2d 761, 765 (D.C. 1994) ("It is a well-established principle of appellate review No. 17-AA-875 that arguments that are not made [below] may not be raised for the first time on appeal."). It is

FURTHER ORDERED and ADJUDGED that the order on appeal is affirmed.

Leslie T. Jackson v. District of Columbia Department of Employment Services, No. 17-AA-875 (D.C. March 19, 2018).

On March 26, 2018, Claimant filed "Petitioner's Motion for Summary Reversal and Application for Review" (AFR 2) with the CRB, appealing the FO issued by OAH on March 12, 2018.

On April 25, 2018, Employer filed Respondent's Memorandum of Points and Authorities in Opposition to Petitioner's Application for Review.[1]

[1] A Consent Motion for Extension of Time to file Employer's opposition was granted April 13, 2018.

On April 30, 2018, Claimant filed Petitioner's Reply to Respondent's Opposition to Motion for Summary Reversal and Application for Review.

We dismiss the appeal under the principle of *res judicata* and for the further reason that we lack jurisdiction to review decisions of the DCCA.

ANALYSIS

The DCCA has issued a final judgment affirming the CRB's dismissal of Claimant's origina AFR. In its March 19, 2018 Judgment, the DCCA considered the same arguments raised in this appe and rejected them. We are without authority and decline to consider this appeal as the matter has been fully and finally adjudicated and is thus barre by *res judicata*.

Claimant raised an additional argument, th in *Artis v. District of Columbia*, 138 S. Ct. 594

(January 22, 2018) the United States' Supreme Court issued a decision which renders the DCCA's March 19, 2018 Judgment erroneous.

The argument is rejected. We have no jurisdiction to review, reverse or otherwise alter a judgment of the DCCA.

CONCLUSION AND ORDER

Claimant's appeal of the Final Order of March 12, 2018 is **DISMISSED WITH PREJUDICE.**

So ordered.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services

In the Matter of

LESLIE JACKSON)
Claimant)

v.)OHA/AHD
)No. PBL 11-
)019
)ORM/DCP
)No.30100088
)02422-001

DISTRICT OF COLUMBIA HOUSING AUTHORITY)
Employer.)

DISMISSAL ORDER

This matter came before the Office of Hearings and Adjudication as a result of Claimant's April 25, 2011 request for a formal hearing. Attached to her request is an April 11, 2011 Notice Determination Regarding Original Claim. The notice of Determination indicates that Claimant's request for benefits was accepted. Claimant's pre-hearings pleadings do not provide and alternative basis for jurisdiction other than the April 11, 2011 notice.

It has been determined that where Employer is voluntary paying benefits Claimant is not entitled to a formal hearing as there is no genuine controversy. On October 18, 2011, Employer filed a motion to dismiss Claimant's request for a formal hearing. On the same day Claimant filed its opposition to Employer's motion. Claimant's opposition suggested that Claimant was terminated for seeking workers compensation benefits. That cause of action is not proper for this forum.

Based on the parties briefs it is hereby determined that Claimant herein filed a claim for disability benefits which has been accepted. The DC Court of Appeals stated in *Thomas v. DOES*, 547 A.2d 1034 (DC App. 1988) that where Claimant's claim is accepted and benefits are being paid that there is no justiciable issue to be resolved and

therefore AHD lacks jurisdiction. Claimant's response brief failed to articulate any reason why the matter should be adjudicated in this forum. Further on December 18, the undersigned contacted the parties [sic] counsel to obtain possible dates for a formal and requested that counsel notify the undersigned of the three dates that the parties will be willing to attend the formal hearing. However later that day the undersigned received not dates for a formal hearing but a motion from Claimant through counsel requesting a decision on issue of jurisdiction. In accordance with counsel's request it is hereby Ordered that Claimant's application for formal hearing be dismissed as lacking genuine controversy of law or fact that is ripe for adjudication. Therefore, Claimant's application for formal hearing is dismissed without prejudice.

IT IS SO ORDERED,

/S/

FRED D. CARNEY, JR.

ADMINISTRATIVE LAW JUDGE

December 21, 2011

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services

In the Matter of

LESLIE JACKSON
Claimant

v.

DISTRICT OF COLUMBIA HOUSING AUTHORITY

)
)
)
)
)
)**OHA/AHD**
)No. 11-019
)**ORM/DCP**
)No.30100088
)0880
)2422-001
)
)
)

Employer.)

ORDER

On August 19, 2013, the Office of Hearings and Adjudications/Administrative Hearings Division (AHD) received "Claimant's Request for Compensation Order". Therein Claimant requested that a compensation order issue in her favor against Employer for injuries she allegedly sustained in the performance of her duties.

A brief review of the administrative file in th matter indicates that on April 25, 2011 Claimant filed an application for formal hearing. That application was dismissed without prejudice by ord dated December 21, 2011. After appeals to the Compensation Review Board (CRB), the District of Columbia Superior Court and the District of Columbia Court of Appeals there was no remand o

reversal order issued. Thus, the December 21, 2011 order dismissing Claimant's application remains the law of the case and there is no pending matter before this tribunal at the present. Therefore, Claimant's request for a Compensation Order is **DENIED**.

The December 21, 2011 dismissal was without prejudice to Claimant filing another application for formal hearing. Therefore, Claimant has the procedural right to resubmit an application for formal hearing on the requisite form.

IS SO ORDERD

/S/

FRED D. CARNEY, JR.

ADMINISTRATIVE LAW JUDGE

Date: 9/12/17

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

LESLIE T. JACKSON,	*
	*
PLAINTIFF,	*Civil Action
	*No. 2011 CA
v	*008731B
	*Judge Brian
DISTRICT OF COLUMBIA, et al.,	*Holeman
	*
DEFENDANTS.	*

PROCEEDINGS

THE DEPUTY CLERK: Calling the matter of Leslie T. Jackson versus District of Columbia, et al, civil action 2011-8731. Parties please identify yourselves for the record. [July 23, 2013]

MS. JACKSON: Leslie Jackson, Your Honor, plaintiff.

THE COURT: Ms. Jackson.

MR. CHINTELLA: Good afternoon, Your Honor. Alex Chintella for the D.C. Housing Authority.

THE COURT: Mr. Chintella.

MR. DOUGLAS: Good afternoon, Your Honor. Frederick Douglas with Mr. Chintella for the D.C. Housing Authority with us is our representative Ms. Nicola Grey.

MR. DOUGLAS: Yes

THE COURT: And Ms. Grey.

MS. GREY: Yes, Your Honor.

THE COURT: Very Well.

MR. ADDO: Good Afternoon, Your Honor. Michael Addo on behalf of the District of Columbia.

THE COURT: Mr. Addo.

* * *

THE COURT: What happened with the payment of the workers compensation benefits? Did they cease?

MR. ADDO: They never commenced, Your Honor.

THE COURT: Never commenced.

MR. ADDO: That's correct, Your Honor

THE COURT: Okay.

* * *

No. _____

In The

SUPREME COURT OF THE UNITED STATES

LESLIE T. JACKSON,
Petitioner,

v.

DISTRICT OF COLUMBIA
Respondent.

On Petition For A Writ Of Certiorari To The District Of Columbia Court Of Appeals

SUPPLEMENTAL APPENDIX FOR WRIT OF CERTIORARI

Leslie T. Jackson, *pro se*
235 Oglethorpe Street, N.W.
Washington, D.C. 20011
(202) 679-5047

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

LESLIE T. JACKSON
Plaintiff,

v. Civil Action No. 2011 CA 008731B

DISTRICT OF COLUMBIA, ET AL.,
Defendants

ORDER

Upon consideration of Defendant District of Columbia's Motion to Dismiss, the Motion is granted in part and denied I part. The Motion is granted with respect to Plaintiff's claims for temporary and permanent injunction. The Motion is denied with respect to Plaintiff's disability discrimination and retaliation claims.

I. BACKGROUND

Plaintiff Leslie Jackson served as an attorney for the District of Columbia Housing Authority ("DCHA").

(Compl. ¶ 10.). While working for the DCHA, Plaintiff experienced multiple workplace incidents which caused her long-term injuries. (*Id.* ¶ 11.) On January 4, 2006, Plaintiff slipped and fell on a concrete floor that was being mopped and waxed by the DCHA, suffering injuries to her neck, head, shoulder, back, and hips. (*Id.* ¶¶ 25-27.) On December 17, 2009, Plaintiff was representing the DCHA at an administrative hearing when the chair she was sitting in collapsed, causing Plaintiff to fall to the floor. (*Id.* ¶¶ 34-35.) As a result of these two incidents, Plaintiff was diagnosed with cervical disc displacement, spinal spondylosis, spinal and lumbar stenosis and nerve damage. (*Id.* ¶ 54.) Plaintiff reported her injuries to her supervisor as required by D.C. Code 1-623.19, (*id.* ¶ 36.), and filed a claim for workers' compensation benefits with the District

of Columbia Public Sector Workers' Compensation Program ("Compensation Program") pursuant D.C. Code 1-623.02(b). (*See id,* ¶¶ 12, 51.) The Compensation Program accepted Plaintiff's claim on April 11, 2011, (*id.* ¶ 51), but stated that her covered injuries did not include "multilevel degenerative changes including foraminal cervical spondylosis [,]stenosis and disc displacement." (*Id.* Ex. 3.)

Plaintiff's injuries prevented her from performing her normal work duties. (Am. Compl. ¶ 27.)[1] Plaintiff provided her supervisors and the District of Columbia with medical documentation of her injuries and requested support staff assistance as an accommodation, but the accommodation

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[1] Plaintiff's Amended Complaint incorporated by reference the entirety of the original Complaint.

requests were denied and Plaintiff was disciplined for her inability to complete work. (*Id.* ¶¶ 25-29.) In response to the discipline and failure to accommodate her disability, Plaintiff filed a complaint with the U.S. Equal Employment Opportunity Commission ("EEOC"). (*Id.*¶ 28.) On November 24, 2010, six days before a scheduled EEOC mediation session, the DCHA notified Plaintiff that she was being terminated effective December 8, 2010. (Compl. ¶ 48.)

On April 25, 2011, Plaintiff requested a formal hearing before the Department of Employment Services ("DOES") pursuant to her April 11,2011, compensation award notice. *Jackson, OHA/AHD No. PBL 11-019, ORM/DCP No. 3010008802422-0001 (D.C. Dep't of Employment Servs. Dec. 21, 2012).* Before DOES took any action on Plaintiff's

administrative request, however, Plaintiff initiated this action on November 3, 2011, seeking a temporary restraining order, preliminary injunction, and permanent injunction, ordering Defendants to pay her approved workers compensation benefits. On November 14, 2011, the Court (J. Tignor presiding) denied Plaintiff's request for a temporary restraining order because the "substance of [the] claim seeking monetary award [was still] pending administrative proceedings before DOES" and scheduled a status hearing for December 16, 2011. (*See* Order, Nov. 14, 2011.) The Court also issued an oral order denying Plaintiff's Motion for Preliminary Injunction. (*Id.*)

On December 9, 2011, Defendant District of Columbia filed its first Motion to Dismiss for lack of jurisdiction. On December 15, 2011, Plaintiff filed a

Motion for Reconsideration of the Court's order denying her temporary restraining order. During this period, Plaintiff's matter before DOES continued. On December 18, 2011, the Administrative Law Judge ("ALJ") requested dates from the parties for a formal hearing, but Plaintiff instead responded with a motion requesting a ruling on the issue of jurisdiction. *Jackson, OAHA//AHD No. PBL 11-019, ORM/DCP No. 3010008802422-0001 (D.C. Dep't of Employment Servs. Dec. 21, 2012).* Three days later, on December 21, 2011, the ALJ dismissed Plaintiff's request for a formal hearing without prejudice, stating that there was no justiciable issue to be resolved "where [Plaintiff's] claim is accepted and benefits are being paid" and Plaintiff "failed to articulate any reason why the matter should be adjudicated." (*Id.*) On the same

day, Plaintiff appealed this Court's order denying her temporary restraining order to the District of Columbia Court of Appeals (Def.'s Supp'l Br. in Opp'n to Pl.'s Mot. for Recons. and in Supp. of D.C.'s Mot. to Dismiss 2). On January 18, 2012, the Court of Appeals ordered that Plaintiff "show cause why [the] appeal should not be dismissed as having been taken from a non-final and non-appealable order." (Def.'s Supp'l Br. In Opp'n to Pl.'s Mot. for Recons. and in Supp. of its Mot. to Dismiss Ex. 2.)

On February 3, 2012, Plaintiff again moved the Court for a restraining order, and the District simultaneously moved the Court for a stay pending a decision on its Motion to Dismiss. (Pl.'s Opp'n to Def. D.C.'s Mot. to Dismiss 4[.]) The court stayed the case and scheduled mediation for June 2012. On March 31, 2012, DCHA joined in the District's

Motion to Dismiss. (DCHA's Supp'l Br. in Opp'n to Pl.'s Mot. for Recons. and in Supp. of its Mot. to Dismiss1.)

On April 3, 2012, Plaintiff moved to amend her complaint. Plaintiff amended complaint incorporated the entirety of her initial complaint and included additional claims for disability discrimination, retaliation and aiding and abetting discrimination in violation of the District of Columbia Human Rights Act. (*See* Am. Compl.) On August 31, 2012, the Court orally granted Plaintiff's Motion to Amend the Complaint, denied Plaintiff's Motion for Reconsideration, and denied Defendants' Motion to Dismiss as moot. (Hr'g Aug. 31, 2012.) Defendant District of Columbia subsequently filed its current Motion to Dismiss on November 12, 2012, which reiterated the jurisdictional arguments made

in the initial Motion to Dismiss but fails to address any of the additional claims found in Plaintiff's amended complaint. (*See* Def.'s Mot. to Dismiss, Nov. 12, 2012.) Plaintiff filed an opposition to this Motion to Dismiss on November 27, 2012.

II. STANDARD OF REVIEW

Rule 12(b)(6) governs motions seeking dismissal for failure to state a claim upon which relief can be granted. D.C. Super. Ct. R. Civ. P. 12(b)(6) (2012). The Court construes all facts and inferences in favor of the nonmoving party. *Grayson* v. *AT&T Corp.*, 15 A.3d 219, 228 (D.C. 2011; *See also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) ("To survive a motion to dismiss, a complaint must contain sufficient factual matter, *accepted as true*, to state a claim to relief that is plausible on its fact." (citations omitted) (emphasis added)). The complaint requires "more

than an unadorned, the defendant-unlawfully-harmed-me accusation." *Potomac Dev. Corp. v. District of Columbia*, 28 A.3d 531, 544 (D.C. 2011) (quoting *Iqbal*, 556 U.S. at 678). Rather, "[a] claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant if liable for the misconduct alleged." *Id.* (quoting *Iqbal*, 556 U.S. at 678). "When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Id.* (quoting *Iqbal*, 556 U.S. at 679); *see also Bertram v. WFI Stadium, Inc.*, 41 A.3d. 1239, 1243 n.5 (D.C. 2012) (finding that *Potomac Development Corp.* interpreted D.C. Super. Ct. R. Civ. P. 8(a) to include the same plausibility standard outlined in *Iqbal*). "The only issue on

review of a dismissal made pursuant to Rule 12(b)(6) is the legal sufficiency of the complaint." *Grayson*, 15 A.3d at 228-29 (*quoting Murray v. Wells Fargo Home Mortg.*, 953 A.2d 308, 316 (D.C. 2008)).

II. ANALYSIS

Defendants argue that his matter must be dismissed for lack of jurisdiction because the Comprehensive Merit Personnel Act ("CMPA") establishes Plaintiff's exclusive remedy concerning her workers' compensation claims. The Court agrees that Plaintiff's request for injunctive relief must be dismissed for this reason. Defendants, however, have not acknowledged the disability discrimination or retaliation claims filed under the D.C. Human Rights Act ("DCHRA") in Plaintiff's amended complaint. The District of Columbia Court of Appeals has clarified that "the regulations

pertaining to the CMPA expressly exclude from the employee grievance procedures ay allegations within the jurisdiction of the D.C. Office of Human Rights." *Robinson v. District of Columbia*, 748 A.2d 409, 411 (D.C. 2000). Therefore, Defendant's motion is denied with respect to Plaintiff's DCHRA claims.

(a) Applicability of the Comprehensive Merit Personnel Act

The Comprehensive Merit Personnel Act ("CMPA") was designed to be "a mechanism for addressing virtually every conceivable personnel issue among the District, its employees, and their unions-with a reviewing role for the courts as a last resort, not a supplementary role for the courts as an alternative forum." *District of Columbia v. Thompson*, 593 A.2d 621, 634 (D.C. 1991). In

accordance with this purpose, the CMPA provides that:

> The liability of the District of Columbia . . . under this subchapter or ay extension thereof with respect to the injury or death of an employee, *is excusive and instead of all other liability* . . . to the employee . . . [or] any other person otherwise entitled to recover . . . in a direct judicial proceeding, in a civil action, or in admiralty, or by an administrative or judicial proceeding under a workmen's compensation statute or under a federal tort liability statute.

D.C. Code § 1-623.16(c) (2001) (emphasis added). Thus, the CMPA provides "District employees with their exclusive remedies for claims arising out of employer conduct in handling personnel ratings, employee grievances, and adverse actions." *Thompso*n, 593 A.2d at 635.

Plaintiff's request for enforcement of her compensation awards clearly falls within the scope of the CMPA's workers compensation provisions, which

provides that, "[t]he District government shall furnish to an employee who is injured while in the performance of duty the services, appliances, and supplies prescribed or recommended by a qualified physician." D.C. Code § 1-623.03. Plaintiff has implicitly acknowledged that CMPA covers her compensation covers her compensation claims by making her initial filing under the CMPA and subsequently appealing the matter to DOES as directed by the statute. Furthermore, Plaintiff regularly refers to the CMPA throughout her Complaint as the basis for Defendant's liability, (*see e.g.*, Compl. ¶¶ 23, 36, 52, 57, 59), and has conceded that "[a]s a *quid pro quo* for the automatic liability, the [CMPA] provides the employee exclusive remedies for injuries within its reach." (Pl. Opp. to Def. D.C.'s Mot. to Dismiss 8.) Therefore, the

CMPA's provisions are controlling to the extent they provide for Plaintiff's relief. *See Newman v. District of Columbia* 518 A.2d 698, 704-05 (D.C. 1986) ("[G]overnment employees only lose common law rights to recovery if the [CMPA] provides redress for the wrongs they assert.").

Plaintiff's contention that her workers' compensation claims are not subject to the CMPA's exclusive coverage because "DCHA is a separate legal entity from the District of Columbia" and [e]mployees of the DCHA are treated as employees of the DCHA" lacks merit. (Pl.'s Opp. to DCHA's Mot. to Dismiss 4-5.) Plaintiff is correct that DCHA is a separate legal entity from the District, that DCHA employees are not technically employees of the District, and that the CMPA is not *generally* applicable to DCHA employees. D.C. Code §§ 6-202,

6-215. However, D.C. Code § 6-215, which govern the status of DCHA employee, specifically provides that the CMPA's workers compensation provisions "shall continue to apply to [DCHA] employees" unless and until DCHA "change[s] from the public to the private sector workers' compensation program" through an agreement between "the collective bargaining agreement representative and the Authority." D.C. Code § 6-215(a)(3). Plaintiff has implicitly conceded that no such plan has been made; if such a change has been made, Plaintiff would not be entitled to the CMPA compensation award underlying her claim in the first place. *See* D.C. Code § 32-1504 (employer's liability under the private sector workers' compensation program is exclusive and in place of all other liability stemming from workplace injuries). Plaintiff cites *District of*

Columbia Housing Authority v. District of Columbia Department of Human Rights and Local Business Development, 733 A.2d 338 (D.C. 1999), as establishing that "DCHA employees are not subject to the [CMPA]." (Pl.'s Opp. to DCHA's Mot. to Dismiss 3.) In that case, however, the Court of Appeals merely clarified that employees of the Department of Public and Assisted Housing ("DPAH"), the predecessor to DCHA, "would continue to retain [rights as] District government employee[s] after the functions of DPAH, "were transferred to DCHA." *D.C. Housing Auth.*, 733 A.2d at 342. That finding does not support the proposition which Plaintiff attempts to advance.

(b) Plaintiff's Remedies Under the CMPA

The CMPA establishes clear procedures for employees seeking compensation for workplace

injuries. An employee injured in the performance of her duties must provide notice of the injury to her immediate supervisor and file a disability claim with the Mayor or DOES. D.C. Code § 1-623.19; *see also* D.C. Code § 1-623.20. Once the claim has been filed, DOES must make factual findings and award for or against compensation within thirty days.[2] D.C. Code § 1-623.24(b)(1). If the claimant is dissatisfied with the ALJ's decision, the claimant has another

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[2] A claim will be deemed accepted, with payment to be initiated the following days, if DOES fails to award for or against compensation within thirty (30) days, unless DOES provides notice in writing that explains why DOES is precluded from making a decision within the thirty day period. D.C. Code § 1-623.24(a-3)(1).

thirty days to submit an application for further review by the Director of DOES. D.C. Code § 1-623.28(a). The claimant may challenge the Director's final decision by appealing the matter to the District of Columbia Court of Appeals within thirty days. D.C. Code § 1-623.28(b). Finally,

> [i]f the Mayor or his or her designee fails to make payments of the award for compensation . . . the claimant may file with the Superior Court of the District of Columbia a lien against . . . [any] District fund or property to pay the compensation award. The Court shall fix the terms and manner of enforcement of the lien against the compensation award.

D.C. Code § 1-623.24(g). Thus, the CMPA provides clear procedures for both for claiming an award as well as enforcing one.

Plaintiff cannot avail herself to remedies not included within the CMPA's comprehensive statutory scheme. "[W]hen a legislature makes

express mention of one thing, the exclusion of others is implied, because 'there is an inference that all omissions should be understood as exclusions.'" *McCray v. McGee*, 504 A.2d 1128, 1130 (D.C. 1986). (quoting 2A Sutherland, *Statutes ad Statutory Construction* § 47.23 (4th ed. 1984)). "Hence, a statute that mandates a thing to be done in a given manner, or by certain persons or entities, normally implies that it shall not be done in any other manner, or by other persons or entities." *Id.* at 1130. This doctrine, generally known by the Latin phrase *expressio unius est exclusio alterius*, must be applied with caution, but it is useful "where the context shows that the draftsmen's mention of one thing . . . does really necessarily, or at least reasonably, imply the preclusion of alternatives." *Odeniran v. Hanleywood*, 985 A.2d 421, 427 (D.C. 2009) (quoting

Independent Ins. Agents of Am. Inc. v. Hawke, 211 F.3d 638, 644 (D.C. Cir. 2000)).

Here, Plaintiff has successfully claimed a compensation award from the District but has failed to properly enforce that award according to the CMPA's procedures. The District of Columbia Council expressly established Plaintiff's remedy for the District's "fail[ure] to make payments of the award" by directing Plaintiff to "file with the Superior Court of the District of Columbia a lien against [District property]." D.C. Code § 1-623.24(g). Plaintiff, however, has instead attempted to enforce payment of her compensation award by seeking injunctive relief based on breach of contract theory of liability. This attempt must fail under the *expressio unius d*octrine; the legislature clearly recognized the possibility that the District might fail to pay an

award as required and provided a specific remedy, to the exclusion of others, for such a situation. Injunctive relief is one such excluded remedy, and therefore this Court lacks jurisdiction necessary to provide Plaintiff with the injunctive relief requested. To effectively enforce payment of her compensation award, Plaintiff must instead file a lien against District of Columbia property according to the CMPA's procedures. D.C. Code § 1-623.24(g).

That the District of Columbia Council intended the lien remedy provision to be exclusive of others is further supported by the comprehensive nature of the CMPA. "Statutory meaning is derived, not from the reading of a single sentence or section, but from consideration of an entire enactment against the backdrop of its policies and objectives." *Richman Towers Tenants' Ass'n, Inc. v. Richman*

Towers LLC, 17 A.3d 590, 615 (D.C. 2011) (citation omitted). The Court of Appeals has repeatedly acknowledged the broad scope of the CMPA's preemptive provisions. *See, e.g., Thompson,* 593 A.2d at 635 (CMPA was intended to "create a mechanism for addressing virtually every conceivable personnel issue among the District, its employees, and their unions"); *Robinson v. District of Columbia,* 748 A.2d 409 (D.C. 2000) ("With few exceptions, the CMPA is exclusive remedy for a District of Columbia public employee who has work-related complaint of any kind."). Against this backdrop, the CMPA provision allowing Plaintiff to file a lien against District property should be construed as Plaintiff's exclusive remedy for the District's failure to pay and preclude Plaintiff from obtaining relief through other channels of

enforcement. Therefore, Plaintiff's attempts to enforce the award payments by framing the issue as a breach of contract must fail. Any other result would severely undermine the comprehensive nature of the CMPA.

Plaintiff's reliance on *District of Columbia v. Group Insurance Administration*, 633 A.2d 2 (D.C. 1993), is misplaced. As Plaintiff notes, the Court of Appeals in that case held that "the Superior Court must . . . have the power to issue emergency relief pending the resolution of agency proceedings in cases where, in the first instance, review would lie in the Superior Court." *District of Columbia v. Group Ins. Admin.*, 633 A.2d 2, 14 (D.C. 1993). Under the CMPA, however, review of DOES workers' compensation proceedings never lie in the Superior Court. Appeals from decisions made by the Director

of DOES are filed directly with the District of Columbia Court of Appeals. The Superior Court's only role in CMPA compensation claims is to consider liens filed against the District. D.C. Code § 1-623.24(g).

IV. CONCLUSION

The Court grants Defendant's Motion to Dismiss with respect to Plaintiff's claims for injunctive relief. The Comprehensive Merit Personnel Act establishes the exclusive remedy for Plaintiff's workers' compensation claims. That remedy does not include injunctive relief. Therefore, Plaintiff's claims for injunctive relief are dismissed on the grounds that this Court lacks jurisdiction. The Court denies Defendant's Motion to Dismiss with respect to the remainder of Plaintiff's claims.

WHEREFORE, it is this ___ day of March, 2013,

ORDERED, that the Defendant's Motion to Dismiss is **GRANTED IN PART;** and it is

FURTHER ORDERED, that Plaintiff's claims for injunctive relief are **DENIED.**

SO ORDERED.

/S/

ERIK P. CHRISTIAN

(Signed in chambers)

IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

No. 13-CV-1375

LESLIE T. JACKSON
Appellant,

CAB –8731-11

DISTRICT OF COLUMBIA, ET AL.,
Appellee

Appeal from the Superior Court of the District of Columbia
(Hon. Brian F. Holeman, Trial Judge)

Submitted September 15, 2015 Decided October 28, 2016

BEFORE: Beckwith and Easterly, Associate Judges and Belson, Senior Judge.

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: Appellant Leslie Jackson, a former employee of the District of Columbia

Housing Authority, appeals from a Superior Court order dismissing for lack of jurisdiction[of] her claim for workers' compensation under the District of Columbia Comprehensive Merit Personnel Act (CMPA).[1] Ms. Jackson also argues that the trial court erred in declining to enforce a related lien seeking unpaid disability compensation under D.C. Code § 1-623.24 (g) (2012 Repl.). Finding no error, we affirm.

I. FACTS

While serving as an attorney for the D.C. Housing Authority, Leslie Jackson experienced two workplace injuries. On January 4, 2006, Ms. Jackson slipped and fell on a floor that had been recently mopped and waxed, and on December 17,

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[1] D.C. Code §§ 1-601.01 to –636.03 (2012 Repl.).

2009, she fell again when a chair collapsed beneath her during an administrative hearing. Ms. Jackson reported her 2009 injuries to her supervisor, and in July 2010 she "contacted" the District of Columbia Public Sector Workers' Compensation Program about workers' compensation for her injuries.

On August 4, 2010, the Housing Authority formally reprimanded Ms. Jackson for failing to complete work assignments and insubordination. Ms. Jackson responded by filing a complaint with the Equal Employment Opportunity Commission on August 19, 2010. She claimed the Housing Authority failed to accommodate her disability by rejecting her requests for accommodation and by censuring her. On November 24, 2010, the Housing Authority notified Ms. Jackson that her employment would be terminated for continued failure to perform

her work. At some point "[b]efore [she] was terminated," Ms. Jackson filed a claim for workers' compensation.

In April 2011, the Public Sector Worker's Compensation Program accepted her workers' compensation claim only for "cervical and lumbar strain," declining to credit other injuries, including multilevel degenerative changes" and "disc displacement," due to a lack of evidence. The notice of determination granted Ms. Jackson certain medical expenses (if treatment was performed or prescribed by an approved physician) and a possible continuation of pay. The notice also provided that "[i]f you disagree with this notice, you must act now by appealing this notice, within 30 days of the date of this notice," to the District of Columbia Department of Employment Services (DOES).

Ms. Jackson appealed the determination to DOES, filing an application for a formal hearing before an Administrative Law Judge (ALJ). The Housing Authority moved to dismiss, and Ms. Jackson opposed the motion, arguing that she had been terminated for seeking workers' compensation. In December 2011, the ALJ dismissed Ms. Jackson's hearing application without prejudice because it lacked a "genuine controversy of law or fact that is ripe for adjudication." The order noted that Ms. Jackson's claim was "accepted and benefits are being paid," and concluded that a "cause of action" based on termination for seeking workers' compensation benefits "is not proper for this forum." The ALJ found no basis for jurisdiction in the filings. Ms. Jackson did not appeal this decision to the Compensation Review Board.

Before the ALJ dismissed the application for a hearing, Ms. Jackson also filed this case in Superior Court against the District and the Housing Authority. She alleged that she "entered into an implied contract with Defendant for provision of workers compensation benefits, should [she] become unable to work due to a work place injury." Ms. Jackson requested among other relief an injunction "ordering Defendant to pay Workers Compensation in the amount of 75% of her salary in the form of a lump sum beginning December 9, 2010[,] and continuing until the lump sum payment is received." Ms. Jackson later amended her complaint to include

claims for discrimination and retaliation in violation of the D.C. Human Rights Act.[2]

On March 22, 2013, the Superior Court dismissed the workers' compensation claims for lack of jurisdiction, concluding that the CMPA "establishes [her] exclusive remedy" for such claims. The court stated that "[a]pleas from decisions made by the Director of DOES are filed directly with the District of Columbia Court of Appeals. The Superior Court's only role in CMPA compensation claims is to consider liens filed against the District." *See* D.C. Code §1-623.24(g).

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[2] D.C. Code §§2-1401.01 to – 1403.17 (2012) Repl).

Ms. Jackson proceeded to file a "notice of lien" against both the District and District of Columbia Housing Authority for more than $7 million.[3] At a pretrial conference on July 23, 2013, the Superior Court granted the District's motion to strike the lien on basis of the previous order of dismissal and Ms. Jackson's failure to follow CMPA administrative procedures before seeking judicial relief. During the hearing, the court also heard argument on and granted the defendants' motion *in limine* to preclude

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[3] This alleged amount included annual workers' compensation benefits from the date of her termination until her projected retirement date, cost-of-living increases "[c]urrent and future medical expenses" (estimated at $5 million), and more than two hundred hours of continuation of pay.

any evidence regarding the workers' compensation claims that had been dismissed. The court went on to limit witness testimony that would be irrelevant or cumulative, striking witnesses for whom Ms. Jackson could provide only speculative proffers.[4]

A jury trial began on November 18, 2013.[5] On November 25, 2013, the jury returned a verdict for

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[4] Ms. Jackson had originally listed seventeen witnesses, not including "[a]ll witnesses listed by [the Housing Authority] and the District."

[5] A day after trial started, the court dismissed the only remaining claim against the District---aiding and abetting discrimination and retaliation---after Ms. Jackson's attorney conceded that there was no evidence to support such a claim.

the Housing Authority, finding that Ms. Jackson failed to "prove[ ] by a preponderance of the evidence that engaging in a protected activity was a substantial factor in [the Housing Authority's] decision to terminate her[.]" This appeal followed.

II. Analysis

A. Workers' Compensation Claims and Notice of Lien

Ms. Jackson argues that the Superior Court erred in dismissing her workers' compensation claims for lack of jurisdiction.[6] She also contends

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[6] This court reviews de novo the trial court's decision granting a motion to dismiss for lack of subject matter jurisdiction. *See Grayson v. AT&T Corp.*, 15 A.3d 219, 228 (D.C. 2011) (en banc).

that the trial court erred in declining to enforce a lien filed under D.C. Code § 1-623.24 (g).

The CMPA governs workers' compensation claims for District of Columbia employees, providing compensation for an employee's disability "resulting from personal injury sustained while in the performance of his or her duty." D.C. Code § 1-623.02 (a) (2012 Repl.). The CMPA was designed as "a mechanism for addressing virtually every conceivable personnel issue among the District, its employees, and their unions---with a reviewing role for the courts as a last resort." *District of Columbia v. Thompson*, 593 A.2d 621, 634 (D.C. 1991). The statute's workers' compensation scheme expressly extends to Housing Authority employees like Ms. Jackson. *See* D.C. Code § 6-215 (a)(3) (providing that the CMPA's workers' compensation provisions

"shall continue to apply to Authority employees" unless and until the Housing Authority "change[s] from the public to the private sector workers' compensation program").

The CMPA prescribes certain procedures that covered employees must use when seeking compensation for workplace injuries. An injured employee must provide notice of the injury to her supervisor within thirty days after the injury occurs and then file a claim for disability compensation. *See* D.C. Code § § 1-623.19 (a), 1-623.21. Within thirty days of the claims filing, the Public Sector Workers Compensation Program must make findings of fact on the claim followed by "an award for or against payment of compensation." D.C. Code § 1-623.24 (a). If the Program fails to make a determination within thirty days, "the claim shall be

deemed accepted," and the Mayor "shall commence payment of compensation." D.C. Code § 1-623.24 (a-3)(1). A claimant who disagrees with the determination may request a hearing before a DOES ALJ within thirty days. D.C. Code § 1-623.24 (b)(1). If the claimant disagrees with the ALJ's decision at the hearing, she may file an application for review with the Compensation Review Board within thirty days of the decision. D.C. Code § 1-623.28 (a). The claimant may seek review of the Board's decision by filing an application for review with the Court of Appeals within thirty days. D.C. Code § 1-623.28 (b). If the Program "fails to make payments of the award for compensation as required," the claimant "may file with the 'Superior Court of the District of Columbia a lien against the Disability Compensation Fund, the General Fund of the District of Columbia,

or any other District fund or property to pay the compensation award." D.C. Code § 1-623.24 (g).

Here, Ms. Jackson properly filed her workers' compensation claim with the Public Sector Workers' Compensation Program, and the Program accepted her claim as to some injuries but denied it for others. The Program then made an award that included compensation for certain approved medical expenses and a possible continuation of pay. Ms. Jackson appealed this decision to DOES, filing an application for a formal hearing. The ALJ dismissed Ms. Jackson's request for a hearing because there was "no genuine controversy" to adjudication in light of Ms. Jackson's continued receipt of benefits. Rather than comply with the CMPA's procedures and appeal this decision to the Compensation Review Board, however, Ms. Jackson brought an action in Superior

Court seeking an injunction requiring payment of additional workers' compensation benefits. As the trial court properly recognized, the CMPA "establishes [Ms. Jackson's] exclusive remedy" for workers' compensation claims, and "[t]he Superior Court's only role in CMPA compensation claims is to consider liens filed against the District under D.C. Code § 1-623.24 (g).

Ms. Jackson contends that the trial court erred in granting the motion to strike lien, arguing that the court "should have applied the plain language of the CMPA or applied its humanitarian purpose to grant a lien and order compensation for the unpaid compensation award." But the District points out, Ms. Jackson failed to identify any unpaid compensation award that would be enforceable in the Superior Court under D.C. Code § 1-623.24 (g).

To the extent Ms. Jackson claims unpaid compensation in connection with the April 2011 notice of determination, that notice awarded benefits different from the compensation sought in her Superior Court complaint (temporary total disability benefits) or the subsequently filed notice of lien (permanent total disability benefits). In this regard, Ms. Jackson's lien did not seek to enforce any unpaid compensation to which she was entitled under the April 2011 notice. And to the extent that Ms. Jackson argues that her disability claim was "deemed accepted" under D.C. Code § 1-623.24 (a-3)(1)---thereby entitling her to disability benefits that went unpaid----because the Workers' Compensation Program failed to make a determination within thirty days, the April 2011 notice of determination would have extinguished any

right Ms. Jackson had to unpaid compensation. *See* D.C. Code § 1-623.24 (a-3)(2) (providing that "[i]f after commencement of payment, the Mayor makes a determination against payment of compensation, payment shall cease," and stating that "the Mayor or his or her designee may recoup benefits under § 1-623.29"). In sum, the Superior Court did not err in declining to enforce Ms. Jackson's lien.

B. Remaining Claims

Ms. Jackson also advances several additional claims, none of which has merit. First, she argues that the trial court erred in striking certain witnesses from the District and the Housing Authority whose testimony Ms. Jackson wanted to present at trial. Ms. Jackson provided only vague and conclusory proffers about the proposed testimony of these witnesses, however, as she failed

to specify how such testimony would bear on the relevant issues in the case. The trial court therefore did not abuse its discretion in striking the witnesses. *See Clark v. Bridges*, 75 A.3d 149, 156 (D.C. 2013) (finding no abuse of discretion where the trial court "excluded evidence after landlord's counsel failed to explain how that evidence had any relevance to either issue being tried").

Ms. Jackson next argues that the trial court erred in dismissing her D.C. Human Rights Act claims against the District for retaliation. At trial, however, Ms. Jackson's counsel acknowledged that the evidence did not support the retaliation claim on any ground other than the alleged withholding of workers' compensation benefits, and the court viewed Ms. Jackson's proffers as "representations based upon speculation that some witness who was

present for a meeting might have information that would establish a claim." The trial court therefore concluded that dismissal was proper under either Super. Ct. Civ. R. 41 (a) or R. 50 (a) because "there's no evidence that will implicate the District of Columbia either by a separate act of retaliation or by aiding and abetting in any actions taken by the [Housing Authority]." We discern no error.

Finally, Ms. Jackson contends that the trial court erred in giving jury instructions that failed to explain that a plaintiff bringing retaliation or discrimination claims need not show that the improper motive was the sole motive behind the adverse action. As an initial matter, Ms. Jackson never objected to the jury instructions at trial. And in any event, the trial court gave the standardized civil jury instructions, which make clear--consistent

with this court's case law, *see e.g., Propp v. Counterpart Int'l*, 39 A.3d 856, 870 (D.C. 2012)--that Ms. Jackson's protected activity need only be "a substantial contributing factor" to the adverse action. With respect to Ms. Jackson's other challenges to the jury instructions, we are not persuaded that the standard instructions were inadequate, that the trial judge's failure to *sue sponte* instruct the jurors caused significant confusion, or that Ms. Jackson was prejudiced by such confusion.

III. Conclusion

For the foregoing reasons, the judgment of the Superior Court is affirmed.

ENTERED BY DIRECTION OF THE COURT

Julio A. Castillo
Clerk of the Court