

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Department of Employment Services**  
**Labor Standards Bureau**

**Office of Hearings and Adjudication**  
**COMPENSATION REVIEW BOARD**



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**CRB No. 06-75**

**WILLIAM BUTLER,**

**Claimant – Petitioner,**

**v.**

**GEORGETOWN UNIVERSITY AND GALLAGHER BASSETT SERVICES,**

**Employer/Carrier – Respondent.**

Appeal from an Order of  
Claims Examiner Robyn Abrams  
OWC No. C2005-611238

Heather C. Leslie, Esquire, for the Petitioner

Jeffrey W. Ochsman, Esquire, for the Respondent

Before LINDA F. JORY, SHARMAN J. MONROE , *Administrative Appeals Judges* and E. COOPER BROWN, *Chief Administrative Appeals Judge*.

LINDA F. JORY, *Administrative Appeals Judge*, on behalf of the Review Panel

**DECISION AND REMAND ORDER**

JURISDICTION

Jurisdiction is conferred upon the Compensation Review Board pursuant to D.C. Official Code § 32-1521.01 and 32-1522 (2004), 7 DCMR § 230 (1994), and the Department of Employment Services Director's Directive, Administrative Policy Issuance 05-01 (February 5, 2005).<sup>1</sup>

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<sup>1</sup> Pursuant to Administrative Policy Issuance No. 05-01, dated February 5, 2005, the Director of the Department of Employment Services realigned the Office of Hearings and Adjudication to include, *inter alia*, establishment of the Compensation Review Board (CRB) in implementation of the District of Columbia Fiscal Year 2005 Budget Support Act of 20024, Title J, the Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, sec. 1102 (Oct. 1, 1994) codified at D. C. Code Ann. §§ 32-1521.01, 32-1522 (2005). In accordance with the Director's Policy Issuance, the CRB replaces the Office of the Director in providing administrative appellate review and disposition of workers' and disability compensation claims arising under the D.C. Workers' Compensation Act of 1979, as amended, D.C. Code Ann. §§ 32-1501 to 32-1545 (2005) and the D.C. Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Official Code §§ 1-623.1 to 1.643.7 (2005), including responsibility for administrative appeals filed prior to October 1, 2004, the effective date of the D.C.

Pursuant to § 230.04, the authority of the Compensation Review Board extends over appeals from compensation orders including final decisions or orders granting or denying benefits by the Administrative Hearings Division (AHD) or the Office of Workers' Compensation (OWC) under the public and private sector Acts.

#### BACKGROUND

This appeal follows the issuance of a Final Compensation Order from the Office of Workers' Compensation (OWC) in the District of Columbia Department of Employment Services (DOES). In that Order, which was filed on August 2, 2006, the Claims Examiner denied Petitioner's purported request to change treating physicians.

As grounds for this appeal, Claimant – Petitioner (Petitioner) asserts that the Final Compensation Order is void as a matter of law as OWC did not have jurisdiction to enter a Final Order inasmuch as Petitioner's claim was for authorization for medical treatment and not for a change of treating physicians. Employer- Carrier / Respondent (Respondent) has filed a response asserting that the Order "on the change of physician" issue is neither erroneous, arbitrary nor capricious and is otherwise in accordance with the law and supported by substantial evidence.

#### ANALYSIS

In the review of an appeal from OWC, the Board must affirm the order under review unless it is determined to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. *See* 6 Stein, Mitchell & Mezones, *ADMINISTRATIVE LAW*, §51.93 (2001). For the reasons set forth herein, the Board concludes herein, that the Claims Examiner's August 2, 2006 order is not in accordance with the law; is vacated; and the matter remanded to OWC.

Petitioner has asserted in his Memorandum that the sole issue for consideration at the informal conference, which he requested, was the authorization for medical treatment and that he did not make a request for a change in physicians at that time. Petitioner asserts, therefore, that the Claims Examiner did not have authority to issue a Final Order on a request for a change in physicians instead of a Memorandum of Informal Conference on the authorization for medical treatment. Petitioner asserts pursuant to the regulations promulgated to administer the Act, 7 DCMR §219.18, the Claims Examiner had authority only to issue a "recommendation" either granting or denying the claim for relief requested. Petitioner asserted that after the recommendation issues the aggrieved party is given the option to reject the recommendation and request a formal hearing before AHD.<sup>2</sup> In sum, Petitioner asserts the Claims Examiner erroneously construed Petitioner's claim as one for change of treating physicians rather than a request for authorization for medical treatment for which the Claims Examiner did not have the authority to issue a Final Order. Therefore the Order is void for lack of subject matter jurisdiction.

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Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004.

<sup>2</sup> The Panel is mindful that had a denial of a request for a change in physicians properly issued, AHD has no jurisdiction to hear an appeal of this limited issue. *See Renard v. Dist. of Columbia Dept. of Employment Servs.*, 731 A.2d 413 (D.C. 1999). (OWC has sole authority to process a request to change physicians).

In its opposition of Claimant-Petitioner's request for a reversal of the Final Order, Employer-Respondent concedes that Petitioner made a request for authorization for medical treatment<sup>3</sup> recommended by Drs. Schneider and Ford. Respondent asserts that "since [Petitioner] had already requested and been granted permission by [Respondent] to change treating physicians . . . [Petitioner] was requesting authorization to change treating physicians at the informal conference as this was the only means [Petitioner] could receive medical treatment recommended by unauthorized treating physicians..." Respondent further concedes that it raised the issue of change in physicians as a defense; and that it was not a claim asserted by Petitioner.

Review of the OWC's administrative file reveals that the request for an informal conference filed by Petitioner stated the issues to be discussed as "Authorization for medical treatment and underpayment of benefits" and it did NOT indicate that Petitioner was asking for a change in physicians pursuant to 7 D.C.M.R. §212.13. Inasmuch as Respondent has confirmed that Petitioner did not raise the issue but the Respondent did so in its defense, the Panel agrees that the Order issued by the Claims Examiner was not only in violation of D.C.M.R. §219.18 but it addressed a request not made by Petitioner. Thus, the panel agrees with Petitioner that the Claim Examiner did not have authority to issue a Final Order on the request for medical treatment. Rather, pursuant to 7 D.C.M.R. §219.18, a Memorandum of Informal Conference should have issued. The Final Order should be vacated as it is void for lack of subject matter jurisdiction.

#### CONCLUSION

The Final Compensation Order of August 2, 2006 denying a change of physicians instead of addressing Petitioner's request for authorization for medical treatment is not in accordance with the law.

#### ORDER

The Final Compensation Order of August 2, 2006 is hereby vacated and the matter remanded to OWC to consider Petitioner's request for authorization for medical treatment, identify the treatment requested and to issue a Memorandum of Informal Conference approving or denying Petitioner's request pursuant 7 D.C.M.R. §219.18.

FOR THE COMPENSATION REVIEW BOARD

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LINDA F. JORY  
Administrative Appeals Judge

October 26, 2006  
DATE

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<sup>3</sup> Respondent described the requested treatment as physical therapy to the back and a repeat MRI of the cervical spine and participation in a pain clinic for chronic pain management.