

**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. 06-91**

**DANA SPRIGGS,**

**Claimant - Respondent**

**v.**

**WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY,**

**Employer/Carrier - Petitioner**

Appeal from an Order of  
Claims Examiner Letitia Settles  
OWC No. 597885

Donna J. Henderson, Esquire, for the Petitioner

Heather C. Leslie, Esquire, for the Respondent

Before LINDA F. JORY, SHARMAN J. MONROE, AND FLOYD LEWIS *Administrative Appeals Judges*.

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

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

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 by the Office of Workers' Compensation (OWC) in the District of Columbia Department of Employment Services (DOES) of an Order, which became final and appealable by operation of law. In that Order, which was filed on August 30, 2006, the Claims Examiner concluded that a change in physicians was in Respondent's best interest and granted Respondent's request.

As grounds for this appeal, Petitioner alleges the Claims Examiner's decision is erroneous as the issue before the OWC was limited to those set forth by the CRB in its Decision and Order of February 23, 2006. *See Dana Spriggs v. WMATA*, CRB No. 06-17, OWC No. 579885 (February 23, 2006) (*Spriggs*). Respondent has not filed a response to Petitioner's Application for Review.

#### 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. CRB Emergency Rules of Practice and Procedure, Chapter 2, 7 D.C.M.R. §266.4; *see also* Stein, Mitchell & Mezines, *ADMINISTRATIVE LAW*, §51.93 (2001). For the reasons set forth herein, the Board concludes herein, that the Claims Examiner's August 30, 2006 order is in accordance with the law, and accordingly should be affirmed.

Petitioner asserts that the Claims Examiner's decision is erroneous as the purpose of the CRB's remand was limited and that re-trial of the issues in entirety was improper and also contends that Respondent's allegations are insufficient to support an order granting a change of physicians.

A review of the CRB's remand is in order at this juncture. In CRB No. 06-17, the reviewing Panel stated that they were in agreement with Petitioner (now Respondent) that the reason given by the Claims Examiner in denying the request to change physicians "that being that Petitioner is not 'disabled' and therefore not entitled to a change in physicians is an incorrect statement of the law, if the Claims Examiner was using 'disability to mean a loss of wages resulting from an injury' as the term is defined in the Act. An injured employee is entitled to continuing medical care even in the absence of an ongoing inability to work. *Santos v. District of Columbia Dept. of Employment Serv's*, 536 A.2d 1085 (1988)."

The Panel concluded that because of this ambiguity the matter should be remanded to OWC for reconsideration and clarification. Specifically, the Panel directed the Claims Examiner to grant the request for a change in physicians if the Claims Examiner accepts that Petitioner continues to suffer from the adverse medical effects of the work injury, given that the Claims Examiner had

already determined that the reasons for a switch merit granting the request if there is indeed a continuing need for medical care.<sup>2</sup>

Review of the administrative file reveals Respondent filed another request for informal conference stating the issue to be resolved was a request for a change in physicians as opposed to waiting for the original Claims Examiner to reconsider the matter pursuant to the CRB's remand.

The Claims Examiner assigned to the matter held an informal conference and found Respondent provided convincing and credible reasoning in support of her request to change physicians, specifically that she is in need of further medical treatment, and granted Respondent's request.

While the instant Panel acknowledges that a prior order from OWC had been remanded for reconsideration, the Panel finds that the most efficient manner to address Respondent's request may in fact have been to re-file the request for an informal conference and since we find no reversible error in the more recent Order, *i.e.*, that the Respondent's request to switch was "in the best interest of [Respondent]" pursuant to *Copeland v. Hospital for Sick Children*, Dir. Dkt. No. 01-40, OWC No. 536532 (July 2001) and the Panel recognizes no *res judicata* issues, we will not overturn OWC's approval on this basis.

There simply is no limiting language in this provision on the employee's right to request a change of physician. *See Guerrero v. Clark Construction*, CRB No. 05-213, OWC No. 542187 (June 115, 2005); 7 D.C.M.R. §212.13. Moreover, an employer is free to have an employee examined by a physician of their choice and/or initiate medical management if the need of ongoing care remains in question. Similarly, there is no prohibition on how many requests or for what reasons an injured worker may seek authorization to change physicians.

Accordingly, we must affirm the August 30, 2006 Order granting Respondent's request to change physicians.

#### CONCLUSION

The Order issued by OWC on August 30, 2006 is not arbitrary, capricious, or an abuse of discretion and is in accordance with the law.

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<sup>2</sup>The instant Panel reiterates that the previous Panel stated that the mere need for continuing medical care may not warrant a change request in every instance, but "it is certainly within the discretion of the Claims Examiner to conclude that they are in a given case" *See Spriggs*, CRB No. 06-17 at 4.

**ORDER**

The Order issued by OWC on August 30, 2006 granting Respondent's request for a change of physicians is hereby affirmed.

FOR THE COMPENSATION REVIEW BOARD:

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LINDA F. JORY  
Administrative Appeals Judge

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December 12, 2006  
Date