

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services



Gregory P. Irish
Office of the Director

LAWANDA COPELAND,)
)
 Claimant,)
)
 v.) Dir. Dkt. No. 01-40
) OWC No. 536532
 HOSPITAL FOR SICK CHILDREN,)
)
 and)
)
 EBI COMPANY,)
)
 Employer/Carrier.)
 _____)

Appeal of the Compensation Order of
Karen Bivins, Claims Examiner

Benjamin T. Boscolo, Esquire
for the Claimant

No appearance
for the Employer/Carrier

REMAND ORDER OF THE DIRECTOR

I. Preliminary Statement

This proceeding arises out of a claim for workers' compensation benefits filed pursuant to the provisions of the District of Columbia Workers' Compensation Act of 1979, as amended, D.C. Law 3-77, D.C. Code §§ 36-301-345 (1981) ("Act").

On March 14, 2001, Claims Examiner Bivins issued an Order that denied Claimant's authorization to change physicians.

II. Background

At the informal conference on this matter, the Claims Examiner was faced with the issue of Claimant's request to change physicians. Claimant, who suffered an injury to her back in January of 1999, has been treating with Dr. Gregory M. Ford. However, Dr. Ford is no longer in private practice and can no longer treat her. Claimant asserts that she is still having problems with her back and needs treatment.

The Claims Examiner denied the request for authorization to change physicians. Claimant, in her Application for Review, contends that the Claims Examiner's decision is unsupported by substantial evidence, is not in accordance with the law and should be reversed.

III. Discussion

The Director of the Department of Employment Services ("Director") must affirm the Compensation Order under review if the findings of fact contained therein are supported by substantial evidence in the record considered as a whole and the law has been properly applied. See D.C. Code § 36-322 (1981); 7 DCMR § 230 (1986). Substantial evidence is such relevant evidence as a reasonable mind might find as adequate to support a conclusion. *George Hyman Construction Company v. Department of Employment Services*, 498 A.2d 563, 566 (D.C. 1985).

The Claims Examiner, in denying the request to switch physicians, concluded that the Claimant had returned to regular work without restrictions and had reached maximum medical improvement according to the independent medical examination by Dr. Willie Thompson. Claimant, on appeal, asserts that the decision to deny her authorization to switch physicians is unsupported by substantial evidence and is not in accordance with the law. After a complete review of the record, it is concluded that this matter must be remanded to the Claims Examiner for further findings of facts and conclusions of law.

Lawanda Copeland

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Under the Act, "an employee shall have the right to chose an attending physician to provide medical care under this chapter." D.C Code § 36-307(b) (3) (1991). In addition, "[t]he Mayor . . . may order a change of physicians or hospital when in his judgment such change is necessary or desirable." D.C. Code § 36-307(b) (4). Also, the regulations allow for a change of physicians if it is "in the best interest of the employee." 7 DCMR § 212.14 (1986).

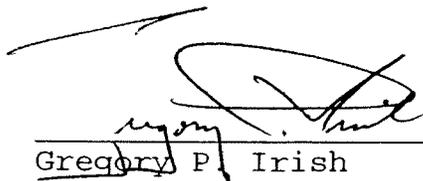
In this matter, Claimant's treating physician, Dr. Ford, is no longer in private practice and as a result, Claimant now does not have a physician. Although the Claims Examiner concluded that Claimant has returned to work without restrictions, this does not mean that she may not need additional medical care. Claimant asserts that since she has chronic lumbar strain, she needs on-going treatment by a physician.

The Claims Examiner in denying Claimant's request, failed to address Claimant's arguments and testimony concerning the reasons she was seeking authorization to switch physicians. In addition, the Claims Examiner did not explain how the determination to deny Claimant's request to switch physicians was "in the best interest" of Claimant, as set forth in the regulations.

As a result, this matter must be remanded to the Claims Examiner to fully and adequately address Claimant's reasons for seeking authorization to switch physicians.

IV. Disposition

Accordingly, for the reasons more fully set forth above, the Order of March 14, 2001 is hereby **VACATED** and this case is **REMANDED** to the Office of Workers' Compensation (OWC) for further proceedings consistent with this Order. OWC shall issue a decision de novo within twenty days from the date of this Order.



Gregory P. Irish
Director

JUL 25 2001

Date

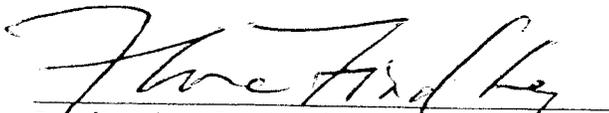
CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of August 2001, a copy of the foregoing **Remand Order of the Director** was mailed by certified mail to the following:

Benjamin T. Boscolo, Esquire
Chasen & Boscolo
6411 Ivy Lane, Suite 411
Greenbelt, Maryland 20770
Certified No. 7099-3400-0011-8300-8296

The Hospital for Sick Children
1731 Bunker Hill Road
Washington, D.C. 20017
Certified No. 7099-3400-0011-8300-8229

EBI Company
10320 Little Patuxent Parkway
Suite 200
Columbia, Maryland 21044
Certified No. 7099-3400-0011-8300-8302



Authorized Clerk
Office of the General Counsel