GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services

VINCENT C. GRAY
MAYOR

F. THOMAS LUPARELLO
INTERIM DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 13-138

EMILIA ESTRADA,
Claimant–Petitioner,

v.

MARRIOTT CORPORATION,
Self-Insured Employer-Respondent.

Appeal from an October 21, 2013 Final Order of
Claims Examiner Antoinette Green and Claims Supervisor Jevan Edwards
OWC No. 662887

David J. Kapson for the Petitioner
Alan D. Sundberg for the Respondent

Before JEFFREY P. RUSSELL, MELISSA LIN JONES, and HEATHER C. LESLIE, *Administrative Appeals Judges*.

JEFFREY P. RUSSELL, for the Compensation Review Board.

DECISION AND ORDER

BACKGROUND

Emilia Estrada (Petitioner) was injured while working as a pastry chef in Marriott Corporation's (Respondent's) kitchen. The injury occurred on June 1, 2009, when she injured herself lifting a table.

Petitioner filed a claim for benefits which was accepted, and she was provided with causally related medical care from Dr. David Perim, as well as wage loss benefits for various periods. A dispute arose concerning whether the injury was limited to Petitioner's left arm, or also extended to include an injury to her low back. The dispute was resolved in Petitioner's favor following a formal hearing before an Administrative Law Judge in the Administrative Hearings Division of the Department of Employment Services (DOES). In a Compensation Order issued April 20, 2010, the ALJ concluded that the low back injury was causally related to the work injury. In so concluding, the ALJ relied in part upon the opinion of Dr. Perim, who is a specialist in spine injuries.

Petitioner also suffers from unrelated problems with her left leg, for which she obtains treatment from Dr. Eran Kessous, a sports medicine specialist. She sought authorization to change her treating physician for the work injury to Dr. Kessous, but Respondent declined to authorize the change. Petitioner thereupon presented her request for authorization to change physicians to the Office of Workers' Compensation (OWC), where a Claims examiner conducted an informal conference.

The conference was attended by Petitioner, her counsel, and counsel for Respondent. Following the conference, the claims examiner authored, and the claims supervisor approved, a Final Order denying the request.

Petitioner appealed the Final Order to the Compensation Review Board (CRB) by filing an Application for Review on November 14, 2013, and argues that the denial of the request is arbitrary and capricious because it fails to explain why the denial of the request is in Petitioner's best interests.

Respondent filed an opposition to the Application for Review on November 27, 2013, and argues that the Final Order adequately explains the reason for the denial, and that the reasons given are not arbitrary or capricious.

Because the Final Order adequately explains the reasons for the denial of the request, and because those reasons are sufficient to support the Claims Examiner's determination that Petitioner had failed to demonstrate that a change of physicians is in her best interests the Final Order, we affirm.

DISCUSSION AND ANALYSIS

As an initial matter, in its review of an appeal from OWC, the CRB must affirm said decision unless it is determined to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. *See*, 6 Stein, Mitchell & Mezines, ADMINISTRATIVE LAW § 51.03 (2001).

A request for authorization for a change of treating physicians is governed by D. C. Code § 32-1507 (b)(4) and 7 DCMR § 213.13. The code provisions states:

> The Mayor shall supervise the medical care rendered to injured employees, shall require periodic reports as to the medical care being rendered […], shall have full authority to determine the necessity, character, and sufficiency of any medical aid furnished or to be furnished, and may order a change of physician […] when in his judgment such change is necessary or desirable.

The referenced regulation states:

> If the employee is not satisfied with medical care, a request for change may be made to [OWC], [which] may order a change where it is found to be in the best interests of the employee.

In *Copeland v. Hospital for Sick Children*, Dir. Dkt. No. 01-40, OWC No. 536532 (July 25, 2001), the Director interpreted the preceding provisions to require a claims examiner to address a

claimant's arguments "and testimony"[1] concerning the reasons for seeking a change of physicians, if the request is denied, and to explain how such a denial is "in the best interests of the claimant".

The CRB has noted in *Lane v. Linens of the Week,* CRB No. 05-207, OWC No. 594244, (May 5, 2005), that the Act places the burden upon a claimant to establish entitlement to the specific relief requested. *Dunston v. DOES,* 509 A.2d 109 (D.C. 1986). Further, the applicable regulation was noted to be structured so as to maintain that requirement, requiring a "finding" that the requested change is "in the best interests of" the claimant seeking the change. Dissatisfaction with the medical care alone was said to be insufficient; in the absence of a finding that the change is necessary to foster the best interests of the claimant, a denial of the request is allowed.

It was also pointed out that a claims examiner could determine that there is insufficient justification for such authorization, and that since there is such lack of justification, the denial of the requested change could be proper, in that said denial is not inconsistent with a claimant's best interests, where it is determined that the change is unlikely to result in medical improvement.

Nonetheless, the Board stressed that the reasons for the request and the rationale for the denial must be identified and addressed by that the claims examiner. *See, Lane*, at 3.

In the Final Order, the Claims Examiner wrote:

> During the informal conference on this matter, the issue in dispute was whether or not the Claimant's request to switch should be allowed The Claimant who suffered an injury to her lower back bilateral legs [*sic*] on June 1, 2009, was treated by Dr. Perim, M.D., with Greater Washington Orthopedics Group, PA.
>
> Counsel for employer/carrier contested the switch of physicians, due to the fact that the current treating physician is a spinal specialists [*sic*], and the MRI findings are remarkable[*sic*]- all are normal with curvature of the lumbar spine, and the vertebral heights are all well maintained. There is no evidence of fractures or prevertebral soft tissue swelling; and there is no evidence of spondylolisthesis.
>
> She participated in work hardening sessions and completed 6, and has 24 remaining as of March 14, 2013. The Claimant has not demonstrated or provided significant evidence to have a change of physicians; and, testified that the physician she is requesting is closer to her current addressed [*sic*]. However, when checking the location, they all are near in proximity.
>
> OWC finds and concludes that it appears not to be in the best interest of the Claimant to change physicians due to location. Furthermore, all the objective studies are remarkable, and there is no reason to change physician. Therefore, at this time, it is hereby **denied.**

Final Order, page 1 – 2.

[1] It should be noted that in proceedings before OWC, there is no oath administered, no opportunity for cross-examination under oath, and no transcript of proceedings, hence there is no "testimony" or "evidence of record".

While this is not a highly detailed discussion, it appears to accurately assess the nature of the request (a change would be more convenient) and the reasons why no change is mandated (the medical condition appears to be objectively under control, is in the process of being treated by an ongoing treatment plan, and the locations of the two physicians are not so different from one another to be of significance to the overall value of the medical care already being received).

Although Petitioner argues in her memorandum in support of this appeal that there are transportation issues involving public transit that actually do make the change a more convenient option to Petitioner, there is no argument that there is any impediment to Petitioner currently obtaining transit to see Dr. Perim, who has been her physician for several years. Convenience and the likelihood that a change of physicians will likely improve the medical outcome are not the same.

The failure to specifically address the fact that Petitioner would feel "more comfortable" changing to Dr. Kessous is unavailing: asserting a subjective preference for one physician over another without some underlying basis related to the likelihood of the change resulting in a better medical outcome renders consideration of so subjective a reason irrelevant to the issue.

CONCLUSION AND ORDER

The Claim's Examiner's Final Order denying Claimant authorization to change her attending physician is neither arbitrary, capricious, an abuse of discretion, and is in accordance with the law, and is therefore AFFIRMED

FOR THE COMPENSATION REVIEW BOARD:

/s/ *Jeffrey P. Russell*
JEFFREY P. RUSSELL
Administrative Appeals Judge

March 31, 2014
DATE