GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR

DR. ROCHELLE L. WEBB
ACTING DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 10-136

EVANGELINE MONK,

Claimant-Respondent,

v.

HOWARD UNIVERSITY HOSPITAL AND SEDGWICK CMS,

Self-Insured Employer and Third Party Administrator-Petitioners.

Appeal from a Final Order of
Claims Examiner Alice Goldring and Claims Supervisor Lisa Baxter
AHD No. 97-373D, OWC No. 506214

Matthew J. Peffer, Esquire, for the Claimant
William H. Schladt, Esquire, for the Self-Insured Employer and Third-Party Administrator

Before: LAWRENCE D. TARR, MELISSA LIN JONES, AND HENRY W. MCCOY, Administrative *Appeals Judges*.

LAWRENCE D. TARR, *Administrative Appeals Judge*, for the Compensation Review Panel.

DECISION AND ORDER

OVERVIEW AND BACKGROUND

This appeal challenges the June 7, 2010,[1] Final Order, issued after an April 21, 2009, Memorandum of Informal Conference, from the Office of Workers' Compensation (OWC) in the District of Columbia Department of Employment Services (DOES). In that Order, OWC granted the claimant's request for authorization to change her attending physician.

The claimant, Evangeline Monk, worked for Howard University Hospital (employer) as a billing manager. She injured her right knee on June 26, 2001, when she fell on some stairs at work. The claimant has had two surgeries on her knee. In September 2001, Dr. Edward Rankin performed

[1] Although the Final Order is dated June 4, 2010, the certificate of service states it was mailed on June 7, 2010.

an arthroscopy. Dr. Vestinia Bridges performed an OATS (osteoarticular transfer system) transplant in September 2003.

There have been several informal conferences in this case. The present appeal relates to the April 10, 2009, informal conference at which the clamant sought authorization to treat with Dr. Hung for her back and with Dr. Nagda for her knee.

After the informal conference, Claims Examiner Goldring issued a Memorandum of Informal Conference on April 22, 2009.[2] The Memorandum of Informal Conference stated the employer did not contest treatment by Dr. Hung and that the claims examiner recommended the employer authorize treatment with Dr. Nagda.

On May 12 2009, the employer filed a Form 11 DCWC, "Notice of Controversion Memo of Denial of Workers' Compensation Benefits".[3] On May 20, 2009, the employer appealed the Memorandum of Informal Conference to the CRB.

The CRB dismissed without prejudice the employer's appeal. The CRB held that it did not have jurisdiction to hear the review request because OWC had not issued a Final Order:

> Because the April 21, 2009 Memorandum of Informal Conference is not a Final Order issued by the Office of Workers' Compensation it is not an Order from which an appeal may be taken, pursuant to D.C. Code § 32-1522(a) or 7 DCMR § 219.22, the Compensation Review Board lacks jurisdiction at this time to conduct a review.

Monk v. Howard University Hospital, CRB No. 09-076, OWC No. 570556 (July 24, 2009).

On July 30, 2009 and December 1, 2009, claimant's counsel asked OWC to convert the recommendation in the Memorandum of Informal Conference into a Final Order. OWC issued a Show Cause Order on December 7, 2009. The employer responded on December 24, 2009:

> The Employer requests that the Order be issued in accordance with the show cause. The Employer is attempting to file an appeal for the Compensation Review Board. The previous appeal was dismissed because the Office of Workers' Compensation had not issued a final Order.

Claimant's counsel requested a Final Order on February 22, 2010, and again on April 13, 2010. On June 7, 2010, OWC issued a Final Order that said in pertinent part:

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[2] According to the certificate of service, the April 21, 2009, Memorandum was mailed on April 22, 2009.

[3] Although this form does not specifically refer to the Memorandum of Informal Conference, this form was filed in response to the Memorandum because it states, as the explanation for the denying the claim, "Referral to Dr. Nagda is not in accordance with DCMR Regulations and Case Law."

Pursuant to Title 7 DCMR 219.22, the Office of Workers' Compensation hereby issues a **FINAL ORDER** setting forth the terms of the Memorandum of Informal Conference.

The employer filed an Application for Review of the June 7, 2010, Final Order on June 24, 2010.

On July 7, 2010, the claimant filed her Motion To Dismiss Employer's Application For Review And Opposition to Employer & Insurer's Application For Review. The employer did not file a response to the Motion To Dismiss.

DISCUSSION

The claimant alleges the Application is untimely. We disagree.

The CRB's July 24, 2009, Order of Dismissal stated it would not consider the employer's challenge to OWC's recommendation in its April 22, 2006, Memorandum of Informal Conference because the Memorandum was not a Final Order. The present appeal was filed within 30 days after OWC issued a Final Order.

The employer's appeal was filed in conformance with the CRB's decision, 7 DCMR § 258.1, which provides for an appeal to the CRB of an OWC Final Order, and 7 DCMR § 258.2, which requires a party file a request for review with the CRB within thirty calendar days from the date shown on the certificate of service of the Final Order. [4]

Here, OWC issued a Memorandum of Informal Conference. The employer filed a notice of controversion to the Memorandum of Informal Conference within fourteen days. OWC issued a final order. The employer appealed the final order to the CRB within thirty calendar days.

We acknowledge that the employer did not file an application for formal hearing. However, requests for authorization to change a treating physician are within the sole province of OWC, appealable only to the CRB. AHD does not have jurisdiction to decided requests to change treating physicians. *Renard v. DOES,* 731 A.2d 413 (1999), *Gonzalez v. UNICCO,* CRB No. 07-137, OWC No. C2005-604331 (September 20, 2007). Since AHD did not have jurisdiction to decide this dispute, the fact that the employer did not file a hearing application with AHD is not an impediment to the present appeal to the CRB.

Therefore, the employer's Application for Review, filed within thirty calendar days of the Final Order, is timely.

The claimant's motion to dismiss the review is denied.

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[4] We note in passing that there is a substantial question concerning the correctness of the 2009 CRB's holding that a party must wait until after a final order is issued before appealing a recommendation in a memorandum of informal conference concerning a request for authorization to change treating physicians. As this issue is not directly before us now, we will not decide it.

ANALYSIS

It is well settled that the CRB will affirm an Order granting or denying a request for authorization to change physicians 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).

The Memorandum of Informal Conference concluded:

> Based on the medical recommendations of the treating physicians (Dr. Carlini and Dr. Engh), I find that the employer/carrier should authorize the request for Dr. Sameer Nagda to treated [sic] the claimant's right knee condition.
> * * *
> It is hereby recommended that the employer/carrier authorize the claimant's request to treat with Dr. Nagda for the work-related right knee [sic].

The factual recitation in the Memorandum of Informal Conference, on which the Final Order is based, stated that on November 17, 2008, one of the claimant's treating physicians, Dr. Carlini, reported that another of the claimant's treating physicians, Dr. Engh, felt the claimant might need "a redo OATS osteochondral transplant. [Dr. Engh] recommended she see either Dr. Bridges or Dr. Nagda. She would like to go to Dr. Nagda and I am approving that. She will follow up with Dr. Nagda for that consideration." April 21, 2009, Memorandum of Informal Conference at second page.[5]

The claims examiner's recommendation was consistent with the opinion of the treating physician that the claimant might need a second OATS surgery and that she should be referred to Dr. Huang so that he can make that determination.[6] Thus, the recommendation is not arbitrary, capricious, an abuse of discretion and is in accordance with the law.

In reaching our decision, we have not overlooked the employer's argument that the referral to Dr. Huang should be invalid because the claimant requested the referral. While Dr. Carlini's November 17, 2008 report noted the clamant suggested the referral to Dr. Huang, Dr. Carlini wrote he "approved" Dr. Huang's treatment. Thus, Dr. Carlini agreed with the referral and it was not made merely to accommodate the claimant.

CONCLUSION AND ORDER

The claims examiner's recommendation is not arbitrary, capricious, an abuse of discretion, and is in accordance with the law. It is AFFIRMED.

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[5] There are no page numbers on the Memorandum of Informal Conference.

[6] A claimant's treating physician has a privileged status under the Act. Not only is that doctor's medical opinion given preferential evidentiary weight, but that doctor acts as the injured worker's regular physician for the industrial accident and coordinates the medical management of the worker's case, such as course of treatment, second opinions, and visits to a specialist or hospitalizations.

FOR THE COMPENSATION REVIEW BOARD:

Lawrence D. Tarr

LAWRENCE D. TARR
Administrative Appeals Judge

February 25, 2011

DATE