

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 (Dir.Dkt.) No. 04-26

SELITA JANEY,

Claimant –Petitioner,

v.

WASHINGTON CONVENTION CENTER AND PMA INSURANCE,

Employer/Carrier – Respondent.

Appeal from an Order of
Claims Examiner Cathy A Scruggs
OWC No. 588716

Mathew Peffer, Esquire for the Petitioner

John D. Rufe, Esquire for the Respondent

Before: E. COOPER BROWN, *Chief Administrative Appeals Judge*, FLOYD LEWIS and SHARMAN J. MONROE, *Administrative Appeals Judges*.

FLOYD LEWIS, *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, and the Department of Employment Services Director's Directive, Administrative Policy Issuance 05-01 (February 5, 2005).¹

¹ 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 2004, Title J, the D.C. 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. Code Ann. §§ 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.

BACKGROUND

This appeal follows the issuance of a Final Order of the Office of Workers' Compensation (OWC) in the District of Columbia Department of Employment Services (DOES). In that Order, which was filed on February 3, 2004, OWC adopted the Claim's Examiner's Informal Conference Recommendation as the Final Order. In that Order, the Claims Examiner denied the request of Claimant-Petitioner (Petitioner) to change treating physicians. Petitioner now seeks review of that Order.

As grounds for this appeal, Petitioner alleges as error that the Order is not supported by substantial evidence and is not in accordance with the law.

ANALYSIS

In the review of an appeal from the Office of Worker's Compensation (OWC), the Compensation Review Board must affirm the Compensation Order or Final Decision 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 & Mezines, ADMINISTRATIVE LAW, § 51.03 (2001).

Turning to the case under review herein, Petitioner specifically asserts that the Claims Examiner committed error by denying her request to change treating physicians, without explaining how the denial was in Petitioner's best interest. Employer-Respondent (Respondent) counters that the Order is supported by substantial evidence and should not be disturbed.

In this matter, the Claims Examiner denied Petitioner's request to change treating physicians from Dr. Douglas Weaver. A review of the Final Order indicates that the Claims Examiner based the determination to deny authorization to change physicians on the fact that Petitioner's treating physician and the independent medical examiner both opined that Petitioner's condition had resolved. However, whether or not her disability has resolved is not the operative standard on the question of change of physicians, especially here where Petitioner has not received medical treatment for her knee injury.

D.C. Official Code § 32-1507 (b) (4) provides that once an employee has chosen an attending physician, OWC may order a change in physicians when a change is necessary or desirable. Moreover, OWC may order a change where it is "in the best interest of the employee." 7 DCMR § 212.13. Additionally, the Director, in *Copeland v. Hospital for Sick Children*, Dir. Dkt. No. 01-40 (July 25, 2001), held that a Claims Examiner, in evaluating an employee's request for a change in physicians, must address that employee's arguments concerning the reasons for seeking authorization to change physicians. *Copeland* also required that the Claims Examiner discuss how the granting or denial of the request is in the best interest of the employee.

After reviewing the record in this matter, it must be noted that in denying Petitioner's request to change physicians, the Claims Examiner failed to address how denying Petitioner's request was in her best interest. As such, the Claims Examiner's Order fails to follow the requirements

outlined in the *Copeland* case for evaluating an injured employee's request for a change in treating physicians. The reasons for the request and the rationale for the denial must be identified and addressed. *Lane v. Linens of the Week*, CRB No. 05-207, OWC No. 594244 (May 6, 2005).

Accordingly, this matter must be remanded to OWC for reconsideration and issuance of a new decision in conformance with the *Copeland* case and the cited code and regulatory provisions.

CONCLUSION

The Order of February 3, 2004, which denied Petitioner's request to change treating physicians, is not in accordance with the law, as the Claims Examiner failed to address how the denial was in Petitioner's best interest.

ORDER

The Order of February 3, 2004 is hereby is VACATED and this matter is REMANDED to OWC for further proceedings consistent with the above discussion.

FOR THE COMPENSATION REVIEW BOARD:

FLOYD LEWIS
Acting Administrative Appeals Judge

October 20, 2005
DATE