

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. 04-86

TISHA JONES,

Claimant – Respondent,

v.

WASHINGTON HOSPITAL CENTER AND KEMPER INSURANCE CO.,

Employer/Carrier – Petitioner.

Appeal from an Order of
Claims Examiner Cathy A. Scruggs
OWC No. 598413

John C. Duncan, III, Esquire, for the Petitioner

Tucker V. Clagett, Esquire, for the Respondent

Before: FLOYD LEWIS, SHARMAN J. MONROE and JEFFREY P. RUSSELL, *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

BACKGROUND

This appeal follows the issuance of an 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 July 22, 2004, OWC granted the request by Claimant-Respondent (Respondent) to change treating physicians. Employer-Petitioner (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 alleges that the Claims Examiner's decision to permit Respondent to change physicians was contrary to the Act and the applicable implementing regulations. Specifically, Petitioner argues that the Claims Examiner erred by not explaining why the change was permitted and was in Respondent's best interests. Thus, Petitioner contends the Order must be reversed. Respondent argues that OWC's decision should be upheld.

The Claims Examiner found that on or about January 28, 2004, Respondent injured her back at work and came under the care of Dr. Robert Collins, who then referred her to Dr. James Tossi. In the proceedings before OWC, Respondent argued that since she was not satisfied with the care she was receiving from Dr. Tossi, she requested authorization to change treating physicians. In the Order of July 22, 2004, the Claims Examiner stated, ". . . it appears that the claimant is not satisfied with the medical services being provided at this time and desires a change in physicians. Based on the provisions under Section 212.13, this office finds that a change in physicians is warranted and is in the best interest of the claimant." Order at 2.

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 approving Respondent's request to change physicians, the Claims Examiner failed to address how granting Respondent's request was in her best interest. As such, the Claims Examiner's Order fails to follow the

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.

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 or approval must be identified and addressed. *Lane v. Linens of the Week*, CRB No. 05-207, OWC No. 594244 (May 6, 2005).

This Panel notes that OWC's Order does not reference concerns such as the quality of the care rendered to Respondent to date, the qualifications or expertise of the treating physician, what alternative medical approaches may be considered, the Claims Examiner's view (as opposed to simply the "dissatisfaction" of Respondent) of the efficacy of the care rendered to date and whether the treating physician is considering further treatment options. Moreover, there is no mention of the identity or qualifications of the physician Respondent wants to be responsible for her care.

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 July 22, 2004, which granted Respondent's request to change treating physicians is not in accordance with the law, as the Claims Examiner failed to address how granting the authorization was in Respondent's best interest.

ORDER

The Memorandum of Informal Conference/Order of July 22, 2004, is hereby VACATED and REMANDED to OWC for further proceedings consistent with the above discussion.

FOR THE COMPENSATION REVIEW BOARD:

FLOYD LEWIS
Administrative Appeals Judge

April 7, 2006
DATE