GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR

DEBORAH A. CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 15-036

JUANA BENAVIDES,
Claimant–Respondent,

v.

RENAISSANCE HOTEL and
MARRIOT CLAIM SERVICES,
Employer/Third-Party Administrator-Petitioners.

DEPT. OF EMPLOYMENT SERVICES
COMPENSATION REVIEW BOARD
2015 JUN 24 AM 9 42

Appeal from an February 2, 2015 Final Order of
Claims Examiner Myrna Parada and Claims Supervisor Alice Goldring
OWC No. 706009

Joel E. Ogden for the Employer
David J. Kapson for the Claimant

Before HEATHER C. LESLIE, MELISSA LIN JONES, and LINDA F. JORY, *Administrative Appeals Judges.*

HEATHER C. LESLIE, for the Compensation Review Board.

DECISION AND REMAND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

On June 10, 2013, Claimant was injured when she slipped and fell at work. Claimant sustained injuries to her head and right side of her body. The claim was accepted by Employer and benefits were paid.

Claimant came under the care of Dr. Philip Omohundro. After a period of time, Claimant became dissatisfied with her treatment by Dr. Omohundro and requested an informal conference with the Office of Workers Compensation (OWC). Claimant sought authorization to begin treatment with Dr. David Arango.

An informal conference was held on January 22, 2015 and attended by Claimant, her counsel, counsel for Employer and the Claims Examiner. A Final Order was issued on February 2, 2015 granting Claimant's request for authorization to switch physicians.

Employer timely appealed. Employer argues that the Claim Examiner failed to perform the proper legal analysis, relying upon *Janey v. Washington Convention Center*, CRB No. 06-032, OWC No. 588716 (June 21, 2006) and *Lane v. Linens of the Week*, CRB No. 05-207, OWC No. 594244 (May 6, 2005). Employer also argues the Claim Examiner's Order is not supported by the evidence. Claimant opposed, arguing the Final Order is not arbitrary, capricious, nor an abuse of discretion and is in accordance with the law and that the Final Order should be affirmed.

THE STANDARD OF REVIEW

As an initial matter, in its review of an appeal from OWC, the Compensation Review Board (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).

DISCUSSION AND ANALYSIS

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, and if the request is denied, to explain how such a denial is "in the best interests of Claimant".

The CRB has noted in *Lane v. Linens of the Week,* CRB No. 05-207, OWC No. 594244, (May 6, 2005), that the D.C. Workers' Compensation "Act places the burden upon a claimant to establish entitlement to the specific relief requested" citing *Dunston v. DOES* , 509 A.2d 109 (D.C. 1986). Further, the applicable regulation requires a "finding" that the requested change is "in the best interests of" Claimant, the party 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 Claimant.

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[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".

In the Final Order, the Claim Examiner first summarized Claimant's injury and care before stating:

> 5. Claimant continues complaining of pain and she asserted that Dr. Omohundro does not listen to her concerns and she has lost confidence in Dr. Omohundro and believes he will not be able to provide her with any further treatment.

Final Order at 2.

Thereafter, the Claim Examiner noted Employer agreed to send Claimant for further treatment with Dr. Omohundro. The Claim Examiner then concluded:

> In this matter, claimant wants to be authorized to see Dr. David Arango who will provide the necessary treatment and listen to her concerns.
>
> Claimant demonstrated that a change of physician is necessary and in her best interest and the Office believe it to be necessary and desirable.

Final Order at 2.

Employer first argues that the Claims Examiner did not perform the proper legal analysis and did not address the defenses raised by Employer. Specifically, Employer argues:

> The Claims Examiner never even addressed the arguments made by the Employer and Insurer as to the history of the case, the prior Compensation Order and Decision by the Compensation Review Board, or the history of treatment by Dr. Omohundro. She also never explains how the Claimant demonstrated that the change was in her best interest, but just makes a blanket statement that the Claimant wants to be authorized to see another doctor, and grants that request.

Employer's argument at 7.

We agree with Employer. After outlining Claimant's complaints and overall dissatisfaction of her care with Dr. Omohundro, the Claim Examiner without explanation, concluded Claimant had demonstrated a change of physician was necessary and in her best interest, as well as necessary and desirable. No analysis was given as to exactly how the change is necessary or desirable and in the Claimant's best interest, nor was there any acknowledgement or discussion of the defenses raised by Employer. A party is entitled to have its defenses taken into consideration and addressed. *See Perkins v. DOES*, 482 A.2d 401, 402 (D.C. 1984); *Committee of 100 on the Federal City v. D.C. Dep't of Consumer and Regulatory Affairs*, 571 A.2d 195 (D.C. 1990); *See also Braxton v. Marty's Restaurant*, CRB No. 09-032, AHD No. 06-092, OWC No. 618209 (January 29, 2009); *Mendez v. D.C. Public Schools*, CRB No. 08-163, AHD No. PBL 02-024 (May 30, 2009).

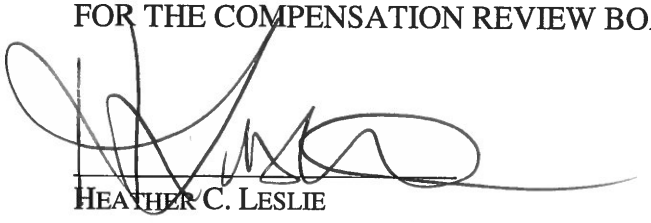
Until such time as the Claim Examiner explains fully why a change of physician was necessary and in Claimant's best interest, as well as necessary and desirable (or not), taking into

consideration the arguments of both parties, we cannot say the Final Order is in accordance with the law.

CONCLUSION AND ORDER

The February 2, 2015 Final Order is VACATED and REMANDED for further analysis consistent with the above discussion.

FOR THE COMPENSATION REVIEW BOARD:



HEATHER C. LESLIE
Administrative Appeals Judge

June 24, 2015
DATE