

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. 05-207

LEROY LANE,

Claimant-Petitioner

v.

LINENS OF THE WEEK AND LIBERTY MUTUAL INSURANCE COMPANY,

Employer/Carrier-Respondent

Appeal from an Order of
Claims Examiner Charles Watson
OWC No. 594244

Benjamin T. Boscolo, Esquire, for the Petitioner

Chanda W. Stepney, Esquire, for the Respondent

Before JEFFREY P. RUSSELL, LINDA F. JORY *Administrative Appeals Judges*,
and FLOYD LEWIS, *Acting Administrative Appeals Judge*.

JEFFREY P. RUSSELL, *Administrative Appeals Judge*, for the Compensation 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 D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, D.C. Official Code §32-1521.01. In accordance with the Director's Directive, the CRB replaces the Office of the Director in

BACKGROUND

This appeal follows the issuance of an Order, issued following an informal conference, which became final by operation of law, from the Office of Workers' Compensation (OWC)² in the District of Columbia Department of Employment Services (DOES). In that Order, which was dated February 11, 2005 and which was filed on February 14, 2005, the Claims Examiner denied Petitioner's request for authorization to change physicians. Petitioner now seeks review of that decision.

As grounds for this appeal, Petitioner alleges as error that the Claims Examiner's decision is unsupported by "substantial evidence" and is not in accordance with the Act, in that it is alleged to be contrary to the rule established in *Copeland v. Hospital For Sick Children*, Dir. Dkt. No. 01-40, OWC No. 536532, (August 2, 2001). Petitioner asserts that because of this failing, the decision should be reversed, and that this Board should authorize the requested change.

Because we agree that the decision does not comply with the specificity requirements of *Copeland*, the decision is vacated. However, because the shortcomings of the decision are a lack of specificity as opposed to being legal error, we remand the matter to OWC for further consideration and a new Memorandum or Order.

ANALYSIS

As an initial matter, in its review of an appeal from OWC, the Board 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 & Mezones, ADMINISTRATIVE LAW § 51.03 (2001). For the reasons hereafter set forth, the Board concludes that the Claims Examiner's decision is not in accordance with the law, and remands this matter to OWC for further proceedings consistent herewith.

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. Official Code § 32-1501 *et seq.*, and the D.C. Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Official Code § 1-623.1 *et seq.*, 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.

² Petitioner nowhere identifies the matter being appealed. Rather, Petitioner merely asserts that he is appealing "the decision rendered by the Claim Examiner", and no mention is made as to the date of such "decision", or of the form that said decision took, i.e., whether it was in the form of a "Final Order", a "Recommended Decision" or "Memorandum of Informal Conference" which became final by operation of law, or was denominated as an "Order", all of which are forms of issuance from OWC. Parties should bear in mind that a failure to specifically identify the action being appealed, including the method of said action, may jeopardize the ability of this board to review the action, in that multiple "decisions" may be included in a particular OWC file, as is the case herein. Specifically, the agency file certified to this office in connection with this appeal contains the document entitled "Order", dated February 11, 2005 and filed February 14, 2005, signed by the Claims Examiner, as well as a "Memorandum of Informal Conference" dated February 15, 2005, also signed by the same Claims Examiner.

A request for authorization for a change of treating physicians is governed by D. C. Official 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 to injured employees, 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*, the Director interpreted the preceding provisions to require a Claims Examiner to address a claimant's arguments "and testimony"³ 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". In the instant case, the Order does not identify Petitioner's basis for the request, nor explain how the denial is not counter to the best interests of Petitioner. Absent this information, the Board is unable to review the action of the Claims Examiner, to determine whether it is arbitrary, capricious, or otherwise not in accordance with the law.

As guidance on this issue, we note that the Act places the burden upon a claimant to establish entitlement to the specific relief requested. *Dunston v. District of Columbia Department of Employment Services*, 509 A.2d 109 (D.C. App. 1986). Further, the applicable regulation is so structured 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 is 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.

The Board recognizes that the Claims Examiner may determine that there is insufficient justification to authorize a change in physicians, and, for that reason, the denial of the requested change may be proper. Such a denial is not inconsistent with a claimant's best interests, where it is determined that the change is unlikely to result in medical improvement. However, the reasons for the request and the rationale for the denial must be identified and addressed.

³ 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". Because of this, it is even more important that Claims Examiners identify the matters that were conveyed to OWC in support of or opposition to such requests, so that review of the decision for lack of arbitrariness, caprice, or illegality can be done.

Accordingly the matter is remanded to OWC for reconsideration and the issuance of a new Memorandum or other order containing a discussion of the reasons for the requested change, and a decision thereon in conformance with the cited code and regulatory provisions and pursuant to *Copeland*, as discussed above.

CONCLUSION

The OWC Order of February 14, 2005 is not in accordance with the law in that it failed to address Petitioner's reasons for seeking a change of physician and did not address how a denial of that request is not inconsistent with the best interests of the Petitioner.

ORDER

The February 14, 2005 Memorandum of Informal Conference is vacated and remanded to OWC for further proceedings consistent with the foregoing.

FOR THE COMPENSATION REVIEW BOARD:



JEFFREY P. RUSSELL
Administrative Appeals Judge

May 6, 2005
DATE