

**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. 06-10**

**THEARTICE C. RAYNOR,**

Claimant–Petitioner,

v.

**MAY COMPANY, D/B/A HECHT’S AND THE MAY COMPANY,**

Employer/Carrier–Respondent.

Appeal from a Compensation Order of  
Claims Examiner Toni Green  
OWC No. 603440

Gretchen Rogers, Esquire, for the Petitioner

Howard P. Miller, Esquire, for the Respondent

Before JEFFREY P. RUSSELL, SHARMAN J. MONROE, and FLOYD LEWIS, *Administrative Appeals Judges*.

JEFFREY P. RUSSELL, *Administrative Appeals Judge*, for the Compensation Review Panel:

**DECISION AND ORDER**

JURISDICTION

Jurisdiction is conferred upon the Compensation Review Board (CRB) 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).<sup>1</sup> Pursuant

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<sup>1</sup>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 District of Columbia Workers’ Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, *codified at* D.C. Official Code § 32-1521.01. In accordance with the Director’s Directive, the CRB replaces the Office of the Director in providing administrative appellate review and disposition of workers’ and disability compensation claims arising under the District of Columbia Workers’ Compensation Act of 1979, as amended, D.C. Code Ann. §§ 32-1501 to 32-1545 (2005), and the District of Columbia 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 District of Columbia Workers’

to § 230.04, the authority of the CRB extends over appeals from compensation orders, including final decisions or orders granting or denying benefits, by the Administrative Hearings Division (AHD) or the Office of Workers' Compensation (OWC), under public and private sector Acts.

#### BACKGROUND

This appeal follows the issuance of a Memorandum of Informal Conference Memorandum), which became final by operation of law and appealable, from OWC, in the District of Columbia Department of Employment Services (DOES). In that Memorandum, which was filed on October 25, 2005, the Claims Examiner denied Petitioner's request to change physicians pursuant to D. C. Code § 32-1507 (b)(4) and 7 DCMR §212.13. Petitioner appealed that Memorandum to this body. As the basis of that appeal, Petitioner asserts that the denial of said request was erroneous as a matter of law, because (1) the Claims Examiner erred in determining that OWC lacked jurisdiction to entertain the request, and (2) the Claims Examiner's decision was deficient because it failed to explain how denying the request was in the best interests of Petitioner.

#### ANALYSIS

In review of an appeal from OWC, the Board must affirm the order 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, § 51.93 (2001).

As is set forth in Respondent's Memorandum of Points and Authorities in Support of Employer's Response to Claimant's Application for Review (Respondent's Memorandum), and as review of the agency file corroborates, the Memorandum under review herein came about as follows. Petitioner, who sustained an injury on November 24, 2003 while employed by Respondent, requested an informal conference to resolve the issue of nature and extent of disability (under the schedule). As a result of that request, an informal conference was held, and a recommendation issued, by OWC. Respondent rejected said recommendation, and filed an Application for Formal Hearing with AHD on that issue. As a result, AHD scheduled a Formal Hearing to occur on November 3, 2005. Prior to that Formal Hearing, Petitioner filed a second request for an informal conference, seeking to obtain OWC authorization for a change of physicians. The informal conference scheduled as a result of that request was conducted by the Claims Examiner herein on October 18, 2005. At that time, Respondent objected to the proceedings at OWC, asserting that OWC lacked jurisdiction to conduct the informal conference, pursuant to 7 DCMR § 219.23, which provides as follows:

All informal procedures shall terminate when an application for formal hearing is filed.

Further, Respondent opposed the request for change of physicians on its merits, asserting that a change in physicians was not warranted, because Petitioner had reached maximum medical improvement (MMI), had been discharged from further treatment by her physician, and was only seeking the authorization for a change in physicians in order to obtain additional medical care some time in the future, should the need arise. In support of this position, Respondent provided a portion

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Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004.

of Petitioner's deposition testimony, taken in the course of the formal proceedings then pending in AHD. Respondent also provided an independent medical evaluation (IME) report from Dr. Michael Franchetti, asserting Petitioner's MMI status, as well as a report from Petitioner's treating physician, Dr. Richard Grant, similarly asserting that MMI had been obtained.

Although there is nothing in the Agency file to corroborate it, Petitioner asserts in her Memorandum of Points and Authorities in Support of Claimant's Application for Review (Petitioner's Memorandum) that, while she does did not require any specific medical treatment at that time, she nonetheless had attempted to secure an appointment with Dr. Grant to obtain a refill of her prescription medication, but that Dr. Grant's office had declined to see her because she had been released from further care.

The Memorandum so denying said request contained a paragraph, entitled "Conclusion" which read as follows:

District of Columbia Municipal Regulations Title 7 (Chapter 2) Workers' Compensation § 219.23 states all informal procedures shall terminate when an application for Formal Hearing is filed. Since the matter is pending for a Formal Hearing then [sic] OWC does not have any jurisdiction to consider any further issues in this case.

Memorandum, unnumbered page 2. Despite this language, however, the Claims Examiner continued in the Memorandum as follows:

Upon discussion of the issues involved together with due consideration to all information in the administrative file the following recommendation is made.  
Recommendation: According to the medical reports the claimant has reached maximum medical improvement. Both physicians agree that the claimant has reached maximum medical improvement. Therefore it is recommended that the claimant's request be denied.

*Id.*

Regarding the first assertion of error, we agree with Petitioner that the filing of the Application for Formal Hearing by Respondent following the first informal conference and recommendation in connection with the nature and extent of disabilities issue did not operate to divest OWC from jurisdiction to consider this request for authorization to change physicians. The obvious intent of the regulation cited by Respondent is to halt OWC action on issues that are properly removed to AHD prior to being addressed by OWC at an informal conference. In that AHD has no jurisdiction to consider such requests (see, *Renard v. District of Columbia Department of Employment Services*, 731 A.2d 413 (D.C. 1999), at 415), they can not be "properly removed" and placed before AHD in any instance.<sup>2</sup> While there may be circumstances in which, for reasons peculiar to the facts of a particular case, the pendency of formal proceedings in a claim may require deferment by OWC of

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<sup>2</sup> This does not mean that AHD does not have authority to adjudicate whether there has been such an authorization to change physicians, or to consider whether a change from one physician to another constituted such unauthorized change, thereby relieving an employer of responsibility for charges incurred for treatment rendered.

resolution of change of physician request,<sup>3</sup> no such circumstance is presented here. Respondent's assertion that the regulation requires termination of informal proceedings on an issue unrelated to those pending in AHD, and over which AHD has no jurisdiction, is unsustainable, and in this instance conflicts with the humanitarian purposes of the Act, which include seeing to the prompt and effective provision of causally related, reasonable and necessary medical care for work related injuries. Accordingly, the Claims Examiner's statement that 7 DCMR § 219.23 deprives OWC of jurisdiction in this case was erroneous.

However, despite making this statement, the Claims Examiner proceeded to consider the request on its merits, as set forth in the second quoted portion of the Memorandum. Thus, the error committed in the first instance was rendered harmless, which leads to consideration of the second asserted error, that being that the decision rendered was not in accordance with the Act, because it failed to explain how the denial of the request is in Petitioner's best interests.

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 [...], 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"<sup>4</sup> 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 Memorandum describes the reasons asserted by the Petitioner in his request as follows: "The Claimant stated that he does not need medical care now; however, he would like to change his treating physician to Dr. Franchetti when needed". No mention is made of the assertion

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<sup>3</sup> That is, there may be a circumstance, of which we presently have no example but consider may arise, in which a determination of a contested issue pending before AHD might be inextricably linked and not severable from the request to change physicians, and in such a case, the risk of conflicting orders from two separate offices in the Agency on the same case might require that the informal process be delayed or deferred pending resolution of the related, linked issue.

<sup>4</sup> 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.

contained in Petitioner's Memorandum that the change was requested because Petitioner was unable to obtain an appointment with Dr. Grant in order to have a prescription refilled.

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. Notable is Petitioner's acknowledgement that he has achieved MMI and seeks no specific further medical treatment at this time.

The Board recognizes that the Claims Examiner may determine that there is insufficient justification for such authorization, and if there is such lack of justification, the denial of the requested change may be proper, in that said denial is not inconsistent with a claimant's best interests, where it is determined that the change is unlikely to result in medical improvement. Also, the reasons for the request and the rationale for the denial must be identified and addressed. See, *Lane v. Linens of the Week*, CRB No. 05-207, OWC No. 594244 (May 5, 2005).

Because no record is created, and none is contemplated by the statutory and regulatory scheme governing informal proceedings, it is not possible for us, in considering an appeal from OWC, to determine with confidence what reasons were given by a claimant at an informal conference in support of the requested relief. Unless we are provided with something in the nature of stipulation or agreement between the parties as to what those reasons were, or are directed to and provided with something of a written nature that was submitted to OWC delineating those reasons,<sup>5</sup> we are limited to the contents of the Memorandum or other order of the claims examiner in OWC. We have no such additional materials before us in this case, and are therefore constrained to review the action of the Claims Examiner herein based upon the contents of the Memorandum.

In this instance, the reason identified in the memorandum for wishing to change physicians is that Petitioner would like to change physicians to Dr. Franchetti, in the event that future medical care is required. While the Claims Examiner did not couch her decision in terms explicitly addressing how the denial is in Petitioner's best interests, she did state that the denial was based upon the apparently uncontested fact that Petitioner's medical condition is at MMI, and she stated that Petitioner was not seeking any specific additional medical care at this time. Therefore, we are satisfied that the Claims Examiner's reasons are identified and are consistent with *Lane, supra*, in that nothing in the request would appear likely, at this time, to result in additional medical improvement.

Nonetheless, we hasten to add that we have also previously held that nothing in the Act or regulations precludes a claimant from making additional requests for authorization to change

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<sup>5</sup> The only written document in the Agency file that we have seen that identifies the issue as one to be addressed is contained in Petitioner's counsel's letter to the claims examiner to whom the earlier request for informal conference had been assigned and before whom it was then pending. That letter, dated June 20, 2005, states "Please accept this letter as claimant's request to amend the issues to include authorization to switch physicians." It contains no description of the reasons for this request.

physicians, merely because an earlier request has been denied by OWC. See, *Guerrero v. Clark Construction*, CRB No. 05-213, OWC No. 592187 (June 1, 2005).<sup>6</sup>

CONCLUSION

The Memorandum of Informal Conference of October 25, 2005, is in accordance with the law.

ORDER

The Memorandum of October 25, 2005, is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

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JEFFREY P. RUSSELL  
Administrative Appeals Judge

December 27, 2005  
DATE

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<sup>6</sup> As of the issuance of the instant case, the Guerrero decision can be found at 2005 DC Wrk. Comp. LEXIS 220. The citation included in that database, however, does not accurately identify the CRB number, instead listing "05-003", which is the AHD number, but is not the CRB number, as the only numerical identifier.