

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**Department of Employment Services**

VINCENT C. GRAY  
MAYOR



LISA MARÍA MALLORY  
DIRECTOR

**COMPENSATION REVIEW BOARD**

**CRB No. 13-107**

**ANA M. TORRICO,  
Claimant–Petitioner,**

**v.**

**GRAND HYATT HOTEL and GALLAGHER BASSETT SERVICES,  
Employer/Insurer–Respondent.**

Appeal from an August 7, 2013 Final Order  
of Claims Examiner Karen Bivins and  
Claims Supervisor Jevan Edwards  
OWC No. 700052<sup>1</sup>

David J. Kapson, Esquire, for Petitioner  
John P. Rufe, Esquire, for Respondent

Before MELISSA LIN JONES, HEATHER C. LESLIE, and JEFFREY P. RUSSELL, *Administrative Appeals Judges*.

MELISSA LIN JONES, *Administrative Appeals Judge*, for the Compensation Review Board

**DECISION AND REMAND ORDER**

**FACTS OF RECORD AND PROCEDURAL HISTORY**

On August 6, 2013, the parties attended an informal conference before Claims Examiner Karen Bivins. At that proceeding, Ms. Ana M. Torrico contended she had sustained a right hand injury while working at Starbucks inside the Grand Hyatt Hotel. Ms. Torrico became dissatisfied with the quality of service from Dr. Frank Seinsheimer, and she requested authorization to change physicians from Dr. Seinsheimer to Dr. Mustafa A. Haque. The Grand Hyatt Hotel took the position that Ms. Torrico's work-related injury is at maximum medical improvement and requires no more treatment and that Ms. Torrico's arthritis is not causally related to her compensable right-hand sprain.

---

<sup>1</sup> The caption of the Final Order indicates OWC No. 652933 is the claim number for this matter; however, based upon a review of the Office of Workers' Compensation's administrative file, the CRB takes official notice of the correct claim number.

On August 7, 2013, Claims Examiner Bivins issued a Final Order denying Ms. Torrico's request to change physicians because Ms. Torrico has reached maximum medical improvement and further treatment is not needed for her work-related injury:

I find that the claimant has recovered from her right hand sprain as a result from [*sic*] her work related injury of February 8, 2012. After a thorough review of all evidentiary documentation from both parties, there were no findings that the claimant's inflammatory arthritis is causally related to the original injury.

The claimant has reached maximum medical improvement and therefore, further treatment is not needed or necessary for her right hand sprain. Authorization to switch the hand specialist is not warranted.<sup>[2]</sup>

On appeal, Ms. Torrico asserts she is "uncomfortable and insecure about the future of her treatment with Dr. Seinsheimer and has sought authorization for a switch of physicians based on her best interest as a patient suffering from a work-related injury."<sup>3</sup> Ms. Torrico argues the Final Order lacks analysis of the issue of authorization for change of physician and fails to explain the basis for the ruling that her current symptoms are not causally related to her compensable injury. Ms. Torrico requests the Compensation Review Board reverse the Final Order and authorize her request to change physicians.

In response, Grand Hyatt Hotel argues Ms. Torrico's current malady is not causally related to her accidental injury. Because causation is a threshold inquiry, Grand Hyatt Hotel argues the issue of authorization to change physician is moot, and the Final Order should be affirmed.

#### ISSUE ON APPEAL

Is the August 7, 2013 Final Order arbitrary and capricious or not in accordance with the law?

#### ANALYSIS<sup>4</sup>

If an injured worker is not satisfied with medical care, a request may be made that the Office of Workers' Compensation authorize a change of physician.<sup>5</sup> The request may be ordered if the injured worker proves the requested change satisfies the best interest standard.<sup>6</sup> Mere frustration

---

<sup>2</sup> *Torrico v. Gran[d] Hyatt Hotel*, OWC No. 700052 (August 7, 2013).

<sup>3</sup> Memorandum of Points and Authorities in Support of Claimants' [*sic*] Application for Review, p. 5.

<sup>4</sup> Upon review of an appeal from the OWC, the Compensation Review 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).

<sup>5</sup> 7 DCMR §213.13

<sup>6</sup> *Murillo-Ayala v. Miller & Long Co.*, CRB No. 09-127, OWC No. 659095 (April 28, 2010).

or dissatisfaction with a treating physician's treatment is not itself sufficient to warrant authorization for changing physicians;<sup>7</sup> the standard for determining if a requested change should be granted or denied is whether the change is likely to result in some type of medical improvement:

[T]he CRB has had occasion to discuss more fully the meaning of the 'best interests' standard. In *Lane v. Linens of the Week*, CRB No. 05-207, OWC No. 594244 (May 5, 2005), it was noted and held that the Claims Examiner may determine that there is insufficient justification for the requested change of physicians, and that in the event of such a finding, denial of the requested change may be proper, in that said change is not inconsistent with a claimant's best interests, where it is determined that such a change is unlikely to result in medical improvement.<sup>[8]</sup>

Furthermore, an employer is not a guarantor of an injured worker's health. An employer only is responsible under the Act for reasonable and necessary medical expenses causally related to the industrial accident and its resulting injuries and disabilities;<sup>9</sup> therefore, a determination that a change of physician is not warranted because a claimant is seeking the change in order to obtain care for symptoms unrelated to the work-related injury is not necessarily improper.

When assessing the causal relationship between current symptoms and a compensable accident, pursuant to §32-1521(1) of the District of Columbia Workers' Compensation Act of 1979, D.C. Code, as amended, §32-1501 *et seq.*, a claimant may be entitled to a presumption of compensability ("Presumption").<sup>10</sup> In order to benefit from the Presumption, a claimant initially must show some evidence of a disability and the existence of a work-related event, activity, or requirement which has the potential to cause or to contribute to the disability.<sup>11</sup> In this case, however, the claims examiner has not analyzed the application of the presumption of causal relationship.

---

<sup>7</sup> *Raynor v. May Company, d/b/a Hecht's*, CRB No. 06-010, OWC No. 603440 (December 27, 2005).

<sup>8</sup> *Janey v. Washington Convention Center*, CRB No. 06-032, OWC No. 588716 (June 21, 2006).

<sup>9</sup> See *Swinson v. Gal Tex Hotel*, CRB No. 10-010, AHD No. 07-091B, OWC No. 628287 (March 10, 2011).

<sup>10</sup> Section 32-1521(1) of the Act states, "In any proceeding for the enforcement of a claim for compensation under this chapter it shall be presumed, in the absence of evidence to the contrary: (1) That the claim comes within the provisions of this chapter."

<sup>11</sup> *Ferreira v. DOES*, 531 A.2d 651 (D.C. 1987).

CONCLUSION AND ORDER

The claims examiner determined Ms. Torrico's request to change physician is not warranted because her work-related injury has resolved; however, in making that determination, the claims examiner failed to apply the presumption of compensability. Consequently, the August 7, 2013 Final Order is not in accordance with the law and is VACATED. This matter is remanded for the claims examiner to apply the presumption of compensability to the issue of causal relationship in order to determine if a change of physician is in Ms. Torrico's best interest.

FOR THE COMPENSATION REVIEW BOARD:

---

MELISSA LIN JONES  
*Administrative Appeals Judge*

---

October 10, 2013  
DATE