

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

Department of Employment Services

VINCENT C. GRAY  
MAYOR



LISA M. MALLORY  
DIRECTOR

**COMPENSATION REVIEW BOARD  
CRB No. 11-141**

**ANGELA CANNIE,  
Claimant–Petitioner,**

**v.**

**WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY and XCHANGING,  
Self-Insured Employer and Third Party Administrator-Carrier-Respondent.**

Appeal from an Order by  
Administrative Law Judge Leslie A. Meek  
AHD No. 11-181, OWC No. 676606

Benjamin T. Boscolo, Esquire for the Petitioner  
Mark H. Dho, Esquire for the Respondent

Before LAWRENCE D. TARR, HEATHER C. LESLIE,<sup>1</sup> AND HENRY W. MCCOY *Administrative Appeals Judges*.

LAWRENCE D. TARR, *Administrative Appeals Judge*, for the Compensation Review Board Panel

**DECISION AND ORDER**

OVERVIEW

This case is before the Compensation Review Board (CRB) on the claimant's application for review of a November 9, 2011, Order issued by an Administrative Law Judge (ALJ) in the Hearings and Adjudication section<sup>2</sup> of the District of Columbia Department of Employment Services (DOES). In that Order, the ALJ granted the employer's motion to dismiss the claimant's application for formal hearing. We AFFIRM.

BACKGROUND FACTS OF RECORD

The claimant, Angela Cannie, worked for the employer, the Washington Metropolitan Area Transit Authority (WMATA) as a bus operator. On December 13, 2010, the claimant sustained injuries to her neck and back in a workplace accident. After her accident the claimant received

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<sup>1</sup> Judge Heather C. Leslie is appointed by the Director of DOES as an interim Board Member pursuant to DOES Administrative Policy Issuance No. 11-02 (June 13, 2011).

<sup>2</sup> Formerly known as the Administrative Hearings Division.

medical treatment at a nearby hospital's emergency room. On the following day the claimant went to a local clinic where she was examined by Dr. Reddy.

At around the same time, WMATA provided the claimant with a list of recommended physicians within a packet of information that also notified the claimant that she was "free to choose any physician for your injury, as long as they are a licensed medical professional." Additionally, the claimant received the "Employee's Rights and Obligations District of Columbia Workers" which also informed her that she had the right to choose a treating physician and that once chosen, she could not change treating physicians without approval of WMATA or the Office of Workers' Compensation (OWC).

After receipt of this information, the claimant chose orthopedist Dr. Robert E. Collins as her authorized treating physician. The claimant attended one examination by Dr. Collins, during which he performed a physical examination, prescribed certain medication, recommended physical therapy, and advised the claimant to return for a follow-up appointment in one week.

The claimant did not return to see Dr. Collins. Instead, upon advice of her counsel and without the agreement of WMATA, the claimant placed herself under the care of Dr. Joel D. Fechter. The claimant first was examined by Dr. Fechter on January 14, 2011. Dr. Fechter continues to treat the claimant.

WMATA objected to Dr. Fechter's involvement and did not pay his bills. The claimant filed for an informal conference with OWC seeking payment of Dr. Fechter's bills and authorization to switch treating physicians to Dr. Fechter.

After an informal conference on February 25, 2011, OWC issued an Order on April 14, 2011. Consistent with the recommendation of claims examiner, Karen Bivens and approved by Supervisor Jevan T. Edwards, OWC denied the claimant's requests. The Order concluded:

There is no justification in this matter to change the treating physician. The claimant will remain under the care of Dr. Collins. Therefore, authorization to change treating physicians is hereby denied.

The claimant did not appeal OWC's Order.<sup>3</sup>

On May 13, 2011, the claimant filed an Application for Hearing seeking reimbursement for payment of Dr. Fechter's medical bills. WMATA moved to dismiss the claimant's hearing application, asserting AHD did not have jurisdiction to hear the application and also argued the doctrines of collateral estoppels and res judicata bar the claimant's claim.

The ALJ took the motion to dismiss under advisement and proceeded with the formal hearing on August 25, 2011. The claimant was the only witness at the formal hearing. At the formal hearing, the claimant testified that she received the packet of information concerning her right to choose

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<sup>3</sup> Under 7 DCMR §258 the claimant had 30 days to appeal OWC's final decision to the CRB.

an attending physician but “hadn’t read it.”<sup>4</sup> The claimant further testified why she was dissatisfied with Dr. Collins and why she preferred treating with Dr. Fechter.

After receiving written statements from both parties, the ALJ issued the Order that is the subject of this review on November 9, 2011. The ALJ held

Neither the Act nor the DCMR gives this tribunal authority over matters concerning change of treating physicians. As OWC has denied Claimant’s request to change her treating physician to Dr. Fechter, this tribunal has not authority to disturb that determination, and as Dr. Fechter was not Claimant’s treating physician, any treatment he provided to Claimant is unauthorized and not eligible for payment pursuant to the Act.

Having considered the basis upon which employer’s motion was made, employer’s request is hereby GRANTED. Accordingly, it is ORDERED that Claimant’s application for formal hearing is DISMISSED.

The claimant timely appealed.

#### THE STANDARD OF REVIEW

Although the ALJ held an evidentiary hearing and received evidence into the record, the ALJ’s Order granted WMATA’s pre-hearing motion to dismiss the application for formal hearing. This determination was not based upon factual findings made from the evidentiary record at the formal hearing. The ALJ’s determination was based on the contents of the administrative record and the filings of the parties. Therefore, the CRB must determine if the Order was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. See, 6 Stein, Mitchell & Mezines, *Administrative Law*, § 51.93 (2001).

We find the ALJ’s decision is neither arbitrary, capricious, an abuse or discretion and is in accordance with the law. As will be discussed, by Order dated April 14, 2011, OWC denied the claimant’s request to change treating physicians to Dr. Fechter. OWC’s Order was not appealed and is final. Therefore, the ALJ correctly held WMATA was not responsible for payment of Dr. Fechter’s because his treatment was not authorized.

#### ANALYSIS

On review, the claimant argues:

The only stated reason for the dismissal was that “[n]either the ACT nor DCMR gives [Hearings and Adjudication Section] authority over matters concerning change of treating physicians”

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<sup>4</sup> The OWC Order stated the “The claimant stated that she received the package but did not read it thoroughly.”

However, the ALJ's Order also stated that payment of Dr. Fechter's bills was denied "as Dr. Fechter was not Claimant's treating physician, any treatment he provided to Claimant is unauthorized and not eligible for payment pursuant to the Act."

The claimant further argues that OWC's Order should not control because OWC determined whether the claimant could change physicians, not which physician is the authorized treating physician. We disagree with this argument.

First, OWC's Order identified the status of both physicians:

Contrarily, the claimant is requesting authorization to switch her treating physician to Dr. Fechter in lieu of Dr. Collins.

Moreover, even if we were to take the narrow view that OWC's Order should be read as only deciding that the claimant could not switch to Dr. Fechter, by denying authorization, there can be no dispute that OWC decided Dr. Fechter was not the claimant's authorized treating physician.

Therefore, the ALJ properly denied the claimant's request to have WMATA pay for Dr. Fechter's medical bills since his treatment was unauthorized.

#### **CONCLUSION AND ORDER**

The November 9, 2011, Order is neither arbitrary, capricious, an abuse or discretion and is in accordance with the law. The November 9, 2011, Order is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

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LAWRENCE D. TARR  
ADMINISTRATIVE APPEALS JUDGE

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February 27, 2012  
Date