

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA M. MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 11-156

**SANTOS A. GONZALEZ,
Claimant-Petitioner,**

v.

**UNICCO SERVICES COMPANY AND TRAVELERS INSURANCE COMPANY,
Employer and Carrier-Petitioners.**

Appeal of a December 2, 2011, Order by
Claims Examiner Robyn Abrams
OWC No. C2005-604331

David J. Kapson, Esquire, for the Claimant
Douglas A. Seymour, Esquire, for the Employer and Carrier

Before LAWRENCE D. TARR, HENRY W. MCCOY, AND JEFFREY P. RUSSELL,¹ *ADMINISTRATIVE APPEALS JUDGES.*

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

**DECISION AND ORDER
OVERVIEW**

This case is before the Compensation Review Board (CRB) on the request of the claimant, Santos A. Gonzales, for review of the December 2, 2011, Order by Claims Examiner Robyn Abrams of the Office of Workers' Compensation (OWC) that denied the claimant's request for authorization to change physicians from Dr. Danziger to Dr. Batipps. We AFFIRM.

BACKGROUND FACTS OF RECORD AND PROCEDURAL HISTORY

On September 19, 2004, the claimant, Santos A. Gonzales, was employed as a general cleaner for this employer, UNICCO Service Company. On that day, he slipped and fell while cleaning floors, injuring his left shoulder, arm, and back.

¹ Judges Russell has been appointed by the Director of the DOES as a CRB member pursuant to DOES Administrative Policy Issuance No. 11-01 (June 23, 2011).

The claimant received treatment from the Washington Occupational Health Facility on the day of injury and was released to full duty. Two months later, on November 20, 2004, he began treatment with by Christian C. Gregory, D.C. Dr. Gregory determined the claimant was not able to work and conducted about 20 chiropractic sessions. At some point during his treatment, Dr. Gregory stated that if the claimant's complaints persist, the claimant would be referred to an orthopedic or neurology specialist. On December 6, 2004, Dr. Gregory released the claimant from active chiropractic treatment.

On December 15, 2004, Dr. Marc Danziger, an orthopedist, began treating the claimant at the employer's request. Dr. Danziger found the claimant only able to do light-duty work and prescribed physical therapy. A January 20, 2005, MRI showed the claimant had a disc protrusion at L4-5. Dr. Danziger continued light-duty restrictions and prescribed work hardening. Dr. Danziger released the claimant to full duty work on May 10, 2005. The claimant returned to work for the employer but was let go in July 2005. Also in July 2005, Dr. Danziger referred the claimant to Dr. Virgil Bailant who performed an epidural block.

Without authorization from OWC or the agreement of the employer, on November 28, 2005, the claimant placed himself under the care of Dr. Michael Batipps, a neurologist. Dr. Batipps evaluated the claimant once, on November 28, 2005, and also wrote a referral for additional neurological tests by Dr. Gregory and sent claimant's counsel a progress report on December 23, 2005.

In October 2008, an MRI revealed bulging discs at L4-5, S5-S1, and Dr. Danziger restricted the claimant to light-duty work for two weeks after which he released the claimant to full duty. Dr. Danziger reported the claimant was at maximum medical improvement and did not need further medical treatment.

The claimant saw Dr. Danziger again in January 2009. Dr. Danziger reported that although the claimant complained of pain, he "has done quite well with treatment." Dr. Danziger noted there was nothing "from a medical point of view and from a workers' compensation point of view" that would prevent the claimant from doing heavy work. He prescribed anti-inflammatory medicine for two weeks, and advised the claimant to return as needed. The claimant also saw Dr. Danziger in April and July, 2009. Dr. Danziger amended his diagnoses to disc herniation and nerve root compression but has not changed the claimant's work status.

Through the years, the claimant several times has unsuccessfully asked OWC for permission to change treating physicians from Dr. Danziger to Dr. Batipps. On January 19, 2006, OWC denied the claimant's first request and directed him to receive treatment from Dr. Danziger. The claimant did not appeal OWC's order.

On September 19, 2006, an Administrative Law Judge (ALJ), after a formal hearing, denied the claimant's second request to change treating physicians. The ALJ held Dr. Batipps' examination of the claimant was reasonable and necessary, but she did not have jurisdiction to order a change in physicians because the claimant did not appeal OWC's January 19, 2006, decision that denied authorization to switch to Dr. Batipps. *Gonzalez v. UNICCO Service Co.*, AHD No. 06-155, OWC No. 604331 (September 19, 2006)

The claimant appealed the ALJ's decision. On review, the CRB affirmed the decision denying the claimant's request for authorization to change physicians from Dr. Danziger to Dr. Batipps. The CRB further reversed the decision that Dr. Battips' treatment was reasonable and necessary, and remanded this matter so that the parties could institute utilization review proceedings with respect to Dr. Batipps' treatment. *Gonzalez v. UNICCO Service Co.* CRB No. 07-005 (February 21, 2007). It does not appear from the record before us that utilization review ever was done.

On June 18, 2007, an OWC claims examiner denied the claimant's third request for authorization to change physicians from Dr. Danziger to Dr. Batipps because OWC and an ALJ previously had denied his earlier request for authorization. On review, the CRB reversed OWC's decision and held that the claimant was not barred from requesting authorization to change physicians even though a similar request previously was denied, so long as the claimant could prove "reasonable grounds," that is, a change of circumstance or condition that would allow OWC to reconsider the earlier denial. *Gonzalez v. UNICCO Service Co.* CRB No. 07-137 (September 20, 2007).

On remand, OWC issued a Final Order on January 13, 2008, which denied authorization to change physicians because the claimant had not proven that his current treatment was inappropriate or that a different course of action would result in medical improvement. The CRB affirmed this decision. *Gonzalez v. UNICCO Service Co.*, CRB No. 08-097 (June 19, 2008).

In 2009, the claimant filed the present request for authorization to change treating physicians to Dr. Batipps. After an informal conference on July 13, 2009, OWC issued an Order on September 8, 2009, that denied the request, finding that OWC did not have jurisdiction to consider the new request because several previous attempts for authorization to treat with Dr. Batipps had been denied and because the claimant presented insufficient medical documentation to justify reconsideration of those denials.

The CRB reversed and remanded OWC's Order. The CRB held, as it had in 2007, that an earlier request for authorization to change physicians does not bar a later request provided the claimant can show circumstances had changed since the earlier request and that a change of attending physicians has a realistic potential to result in medical improvement. The CRB also held the September 8, 2009 Order was insufficiently specific to support the determination that the claimant presented insufficient medical documentation to justify reconsideration of those denials

The CRB instructed OWC on remand to determine whether the claimant presented reasonable grounds, in the form of changed circumstances or conditions to reconsider the earlier decisions denying the change and if so, to determine the merits of the request with sufficient specificity. *Gonzalez v. UNICCO Service Co.* CRB No. 09-138 (October 4, 2011).

On remand, the claims examiner again denied the claimant's request for authorization to treat with Dr. Batipps. The claims examiner held:

The claimant failed to follow the directive of the 9/20/2007 CRB decision to obtain an UR for approval of treatment by Dr. Batipps. Also, the burden of proof

was not met by the claimant in establishing that there is a worsening of condition or circumstances which make a change in his best interest.

The claimant timely appealed OWC's order.

JURISDICTION AND THE STANDARD OF REVIEW

Pursuant to 7 DCMR § 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).

In review of an appeal from OWC, the CRB 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).

ANALYSIS

On review, the claimant's memorandum primarily focuses on why a change in physicians from the doctor who has treated the claimant since 2005 (Dr. Danziger) to a doctor who examined the claimant in 2005 (Dr. Batipps) is in his best interests. However, as our February 21, 2007, and October 24, 2011, decisions noted, because the claimant previously was denied authorization, the claims examiner, before deciding the merits of the request, was required to find that the claimant presented reasonable grounds to reconsider the earlier decisions denying authorization. Also as our earlier decisions held, to establish "reasonable grounds" the claimant has the burden to prove changed circumstances or conditions to reconsider the earlier decisions.

The determination that the claimant has not established changed circumstances is supported by the record and is not arbitrary, capricious, an abuse of discretion and is in accordance with the law. The claims examiner noted the only report submitted by the claimant was the January 7, 2009, office note.² There is nothing in that report, or in the other evidence referenced by the parties, that establishes reasonable grounds (changed circumstances or conditions) to reconsider his request to switch to Dr. Batipps.

In light of this decision, we will not discuss the claims examiner's alternative holding, that the claimant did not obtain a utilization review report with respect to Dr. Batipps' treatment.

² It is true, as noted by the claims examiner, that this report, an office note from a medical examination, is unsigned and not on stationary with any letterhead. At the beginning of the note is the transcription notation "MBD/lkw" which we assume identifies this office note as being from an examination by Dr. Marc B. Danziger.

CONCLUSION AND ORDER

The December 2, 2011, Order is neither arbitrary, capricious, nor an abuse of discretion and is in accordance with the law. That Order is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

LAWRENCE D. TARR
Administrative Appeals Judge

May 15, 2012

DATE