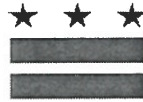


GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



ODIE DONALD II
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 17-004

JUANA BENAVIDES
Claimant-Petitioner,

v.

RENAISSANCE HOTEL and
MARRIOTT CLAIMS SERVICES,
Employer/Third-Party Administrator-Respondents.

Appeal from an December 13, 2016 Order issued
by the Office of Workers' Compensation
Claims Examiner Myrna Parada
OWC No. 706009

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2017 APR 11 PM 12 04

(Issued April 11, 2017)

David J. Kapson for Claimant
Joel E. Ogden for Employer

Before GENNET PURCELL, LINDA F. JORY, *Administrative Appeals Judges*, and LAWRENCE D. TARR, *Chief Administrative Appeals Judge*.

GENNET PURCELL for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

In a prior Decision and Order (“DRO”), the Compensation Review Board (“CRB”) outlined Claimant’s injury, treatment, and the procedural history of Claimant’s claim as such:

On June 10, 2013, Claimant was injured when she slipped and fell at work. Claimant sustained injuries to her head and right side of her body. The claim was accepted by Employer and benefits were paid.

Claimant came under the care of Dr. Philip Omohundro. After a period of time, Claimant became dissatisfied with her treatment by Dr. Omohundro and requested

an informal conference with the Office of Workers Compensation (OWC). Claimant sought authorization to begin treatment with Dr. David Arango.

An informal conference was held on January 22, 2015 and attended by Claimant, her counsel, counsel for Employer and the Claims Examiner. A Final Order was issued on February 2, 2015 granting Claimant's request for authorization to switch physicians.

Employer timely appealed. Employer argues that the Claim Examiner failed to perform the proper legal analysis, relying upon *Janey v. Washington Convention Center*, CRB No. 06-032, OWC No. 588716 (June 21, 2006) and *Lane v. Linens of the Week*, CRB No. 05-207, OWC No. 594244 (May 6, 2005). Employer also argues the Claim Examiner's Order is not supported by the evidence. Claimant opposed, arguing the Final Order is not arbitrary, capricious, nor an abuse of discretion and is in accordance with the law and that the Final Order should be affirmed.

Benavides v Renaissance Hotel, CRB No. 15-036 (June 24, 2015) ("DRO") at 1-2.

On June 24, 2015, the CRB issued the DRO vacating the Claim Examiner's Order and remanding it to OWC for further analysis and for an explanation as to why a change in physician was necessary and in Claimant's best interest, as well as desirable (or not).

On December 13, 2016, on remand, a Claims Examiner issued an Order to Change of [sic] a Treating Physician ("Order") concluding that because Claimant's condition had not changed as a result of her treating with Dr. Arango, and the medical treatment Claimant received from Dr. Arango had not helped her condition. Claimant's request for authorization to change physicians from Dr. Omohundro to Dr. Arango was denied.

On January 12, 2017, Claimant appealed the Order to the Compensation Review Board ("CRB") arguing that the denial of the request is arbitrary and capricious because it fails to explain why the denial of the request is in Petitioner's best interests.

On January 18, 2017, Employer filed documents acknowledging the delivery of Claimant's appeal, CRB No. 17-004, and re-submitted evidence related to previous filings submitted to CRB relating to Claimant's case, CRB No. 14-080.

On January 27, 2017, Employer filed a motion to extend the time to file its response to Claimant's Application for Review ("AFR"), stating that it needs additional time in which to prepare a response to Claimant's AFR. On January 31, 2017, an Order Granting Motion to Extend Time to Respond to Application for Review was issued granting Employer's extension request to February 13, 2017.

On February 10, 2017, Employer filed its opposition to Claimant's AFR.

THE STANDARD OF REVIEW

Because the Order under review is not based on an evidentiary record produced at a formal hearing, the applicable standard of review by which we assess the determination reached by the Claim Examiner is whether the decision is arbitrary, capricious, abuse of discretion, or otherwise not in accordance with the law. *See* 6 Stein, Mitchell & Mezines, ADMINISTRATIVE LAW § 51.03 (2001).

ANALYSIS

A request for authorization for a change of treating physicians is governed by D. C. 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 v. Hospital for Sick Children, Dir. Dkt. No. 01-40*, (July 25, 2001), the Director interpreted the preceding provisions to require a claims examiner to address a claimant's arguments "and testimony" 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".

As the CRB has stated in *Lane v. Linens of the Week*, CRB No. 05-207, (May 5, 2005), the Act places the burden upon a claimant to establish entitlement to the specific relief requested. *Dunston v. DOES*, 509 A.2d 109 (D.C. 1986). Further, in *Lane*, the applicable regulation was noted to be structured so as to mandate the requirement of a "finding" that the requested change of physician was "in the best interests of" the claimant seeking the change. A claimant's dissatisfaction with the current medical care received on its own is insufficient; in the absence of a finding that the requested change is "necessary to foster the best interests of the claimant", a denial of the request is permitted. *Id.*

Notably it was also pointed out that a claims examiner could determine that there is insufficient justification for such authorization, and that since there is such lack of justification, the denial of the requested change could 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. Nonetheless, the Board stressed that the reasons for the request and the rationale for the denial must be identified and addressed by the claims examiner. *See Lane* at 3.

We address first Claimant's argument that the Order is arbitrary and capricious and cannot be supported because the Claims Examiner relied upon a finding that Claimant did not have any

improvement while under Dr. Arango's medical care. Claimant asserts that the Claims Examiner mischaracterized Dr. Arango's medical records and conclusions. In the Order at issue in this case, after listing new evidence presented at the Informal Conference, the Claims Examiner concluded:

After careful reviewed [sic] of the new evidence present at the Informal Conference, I find claimant [sic] medical condition has not change [sic] since Dr. Omohumdro released claimant to work on 12/30/2013. Dr. Arango has been treating the claimant since 2/16/15 thru 8/27/15 and claimant [sic] condition has not change [sic]; therefor, this Examiner fine [sic] the medical treatment from Dr. Arango has not help [sic] claimant's condition. It is therefore, ORDERED that claimant's request for authorization to change treating physician is hereby DENIED.

Order at 4.

We determine that in accordance with *Lane*, the Claims Examiner provided a summary analysis of the medical evidence presented by Claimant including Dr. Arango's medical report and recommended treatment plan. The Order also accurately assessed the nature of the request (that Claimant's treatment with Dr. Arango has not resulted in an improvement in Claimant's condition) and the reasons why no change is mandated (no change in Claimant's medical condition since her release to work, her unremarkable treatment history with Dr. Arango, the Administrative Hearing Division's denial of temporary total disability benefits, and other new evidence presented referencing the CRB's October 6, 2016 reversal of awarded medical benefits recommended by Dr. Arango).

Although Claimant argues in her memorandum in support of this appeal that the Claims Examiner's analysis was arbitrary and capricious, our review of the Order reveals that the Claim Examiner determined that based on the totality of the evidence presented at the Informal Conference, a change of treating physicians, from Dr. Omohumdro to Dr. Arango, was not in Claimant's best interest. We affirm the Order's conclusion.

CONCLUSION AND ORDER

The Claims Examiner's Order to Change of [sic] a Treating Physician denying Claimant the authorization to change her attending physician is neither arbitrary, capricious, an abuse of discretion, is in accordance with the law, and is therefore AFFIRMED.

So ordered.