

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA MARÍA MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 13-086

**DIONNE BUTCHER-WALLACE,
Claimant-Petitioner,**

v.

**DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY,
Self-Insured Employer-Respondent.**

Appeal from a July 25, 2012 Order By
Office of Workers' Compensation Claims Examiner Telita Estes
OWC No. 687714

Matthew Peffer, Esquire for Petitioner
Douglas A. Datt, Esquire for the Respondent

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

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

DECISION AND REMAND ORDER

BACKGROUND AND FACTS OF RECORD

Dionne R. Butcher-Wallace was employed as staff accountant, with duties including preparation and documentation of financial transactions for posting, account reconciliation, attending meetings, scanning documents and file maintenance.

On January 6, 2012, while working at her work station, she attempted to close an overhead metal cabinet door, during the course of which attempt the door became detached and fell, striking her right arm and hand from the tips of her fingers to her right elbow. It came to rest in such a position that it pinned her arm on the desk surface. Using her left arm and with the assistance of a co-worker she removed the fallen door.

Almost immediately thereafter, the building was evacuated due to a fire alarm being sounded.

While standing outside, Ms. Butcher-Wallace reported the incident to her employer's (WASA's) Risk Department manager. Ms. Butcher-Wallace felt an unusual sensation in her right hand and wrist area. Upon returning to the building, she began experiencing tingling from the right wrist up to and beyond the elbow. This occurred on a Friday.

The next morning, Ms. Butcher-Wallace felt throbbing pain in the right wrist.

She sought medical care from her primary care physician, Dr. Darcy Ibitoye, who placed her wrist in a splint brace. Dr. Ibitoye also recommended a course of physical therapy and had an MRI taken of the wrist on January 16, 2012, which revealed a torn triangular fibrocartilage ligament complex, or TFCC. He referred Ms. Butcher-Wallace to a hand surgeon, Dr. Lloyd Cox, for further evaluation.

Dr. Cox saw her January 19, 2012. Based upon his examination and the results of the MRI, Dr. Cox diagnosed a wrist contusion with radial neuropraxia, which is a peripheral nerve injury in which the nerve remains in place but, due to the severity of the trauma, it doesn't transmit impulses. Dr. Cox recommended discontinuation of the physical therapy and brace once the already prescribed course was completed.

Dr. Cox released Ms. Butcher-Wallace to return to her regular duties as of January 23, 2012. However, when she attempted to return to her regular work, she was only able to tolerate working for about five hours due to aching, pain and numbness in the wrist and forearm.

She returned to Dr. Cox on January 26, 2012, at which time he recommended occupational therapy, application of a gel, and limited work hours of no more than four per day for a couple of weeks.

WASA arranged for Ms. Butcher-Wallace to be seen and evaluated for the purpose of an independent medical evaluation (IME) by Dr. James Higgins, a hand specialist. The IME was performed on February 3, 2012. Ms. Butcher-Wallace, who had decided to discontinue treatment with Dr. Cox, was advised that, if she chose, she could continue to treat with Dr. Higgins after the IME.

Ms. Butcher-Wallace decided that she would treat with Dr. Higgins, who essentially maintained the same treatment plan as Dr. Cox, adding a cortisone injection. He provided a light duty work slip limiting her work to four hours per day until February 27, 2012, with full regular duty thereafter.

However, when Ms. Butcher-Wallace was seen again on March 7, 2012, he continued his recommendation for therapy and the splint, as well as another week of four hour shifts.

Ms. Butcher-Wallace continued to complain of her symptoms, and on April 2, 2012, Dr. Higgins obtained a nerve conduction study. When he reviewed the results on May 1, 2012, he concluded that neither the TFCC tear shown on the MRI nor the nerve compression were related to the January 2012 work injury.

In his final treatment note, Dr. Higgins wrote that Ms. Butcher-Thomas "might benefit from a second opinion", and that she was free to return to him for treatment in the future on an as needed basis. He also recommended against any surgical intervention, and indicated that she could return to work without further restrictions.

Ms. Butcher-Wallace sought further medical advice from an orthopaedic physician, Dr. Olumuyima Paul, on May 21, 2012. Dr. Paul reviewed the MRI and some other x-rays, and concluded that the TFCC tear was the source of her ongoing complaints. He referred her to another hand surgeon, Dr. Richard Pyfrom.

Ms. Butcher-Wallace saw Dr. Pyfrom on May 23, 2012. He provided a cortisone shot and recommended further medical care, including surgery.

Ms. Butcher-Wallace sought authorization to change her attending physician to Dr. Pyfrom from WASA and the Office of Workers' Compensation, at an informal conference conducted on June 26, 2012. Following the conference, on July 5, 2012, the claims examiner denied the request, a decision that Ms. Butcher-Wallace appealed to the Compensation Review Board (CRB).

At that same conference, Ms. Butcher-Wallace also requested certain wage replacement benefits for various periods of time she claimed to have lost from work. In a separate written recommendation, the claims examiner recommended awarding some of the claimed wage loss benefits, and denied others. Ms. Butcher-Wallace rejected the recommendation, and filed an Application for Formal Hearing with the hearings section of the Department of Employment Services (DOES).

While the appeal to the CRB and the AFH were pending, Ms. Butcher-Wallace proceeded to obtain the recommended care from Dr. Pyfrom. He provided the cortisone injection, and recommended physical therapy. On July 2012 he performed surgery on Ms. Butcher-Wallace's right wrist, and on September 2012, he operated on her right elbow.

A formal hearing was held on December 5, 2012 at which the claim for the wage loss benefits was presented. On February 22, 2013, prior to the ALJ issuing a Compensation Order, the CRB issued an order dismissing the appeal of OWC's denial of authorization to change attending physicians without prejudice to it being re-filed upon issuance of the Compensation Order that was to result from the formal proceedings pending in the hearing section. This was done in order to avoid conflicting outcomes concerning medical causation, a subject that could have had an impact not only upon the disposition of the appeal to the CRB, but upon any decision on reconsideration by the claims examiner should the CRB direct such further consideration be given the request.

On March 12, 2013, the ALJ issued a Compensation Order finding that the medical conditions for which Dr. Pyfrom had provided care, including the two surgeries, were causally related to the work injury and were disabling, and that the time lost from work was therefore compensable. *Butcher-Wallace v. District of Columbia Water and Sewer Authority*, AHD No. 12-464, OWC No. 687714 (March 12, 2013). In so doing, she accepted Dr. Pyfrom's opinion, and rejected that of Dr. Higgins.

WASA appealed the Compensation Order to the CRB on April 11, 2013 with WASA seeking reversal of the award. Ms. Butcher-Wallace opposed the appeal.

On that same date, Ms. Butcher-Wallace re-filed her appeal of the OWC Order denying authorization to change attending physicians, which is the appeal that we address herein.

On August 6, 2013, the CRB issued a Decision and Order affirming the Compensation Order of March 12, 2013. *Butcher-Wallace v. District of Columbia Water and Sewer Authority*, CRB No. 13-046, AHD No. 12-464, OWC No. 687714 (August 6, 2013).

We now vacate the OWC Order of July 5, 2012, and remand the matter to OWC for further consideration.

DISCUSSION AND ANALYSIS¹

The basis of the denial of the request to change attending physicians is contained in the following paragraph of the July 5, 2012 OWC Order:

Notwithstanding claimant's claim that she needs medical care for her right wrist pain and discomfort; [sic] however, based on Dr. Higgins' May 1, 2012 report, the finding of TFCC injury on the MRI nor [sic] the finding of ulnar nerve compression of the elbow are related to her injury of January 6, 2012. The office [OWC] has determined that a change of physician is not in the best interest of claimant based on the fact that there is insufficient evidence to warrant a change.

OWC Order of July 25, 2012, page 2.

The claims examiner's reasoning as expressed in this passage is not entirely clear. However, one thing that comes across without doubt is that the claims examiner considered a lack of medical causal relationship between the TFCC and the positive findings of ulnar compression on the one hand, and the work injury on the other, to be of significance.

That issue was presented to the ALJ in the hearings section, and it was found that such a causal relationship did exist. *Butcher-Wallace v. District of Columbia Water and Sewer Authority*, AHD No. 12-464, OWC No. 687714 (March 12, 2013). That finding was appealed by WASA to the CRB, and on August 6, 2013 it was affirmed. *Butcher-Wallace v. District of Columbia Water and Sewer Authority*, CRB No. 13-046, AHD No. 12-464, OWC No. 687714 (August 6, 2013).

Thus it appears that the basis for the denial of the change of attending physician request, a lack of medical causation, has now been decided in the AHD proceedings in a fashion contrary to the claims examiner's determination. It is now the established law of this case that these conditions are medically causally related to the work injury. Accordingly, we must return the matter to OWC for further consideration in light of the findings and conclusions contained in the Compensation Order, as addressed by the CRB in the Decision and Order of August 6, 2013.

¹ In reviewing an OWC Order issued under circumstances in which there is no evidentiary record, the CRB must affirm said decision 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 § 51.03 (2001).

CONCLUSION AND ORDER

The Order of July 25, 2012 was rendered based upon an erroneous assumption concerning the issue of medical causal relationship and is thus not in accordance with the law, and it is vacated. The matter is remanded to OWC for further consideration taking into account the Compensation Order of March 12, 2013, and the CRB Decision and Order of August 6, 2013 affirming the finding in the Compensation Order that the TFCC and ulnar compression are causally related to the work injury of January 6, 2012.

FOR THE COMPENSATION REVIEW BOARD:

JEFFREY P. RUSSELL
Administrative Appeals Judge

August 14, 2013
DATE