

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services

VINCENT C. GRAY
MAYOR



F. THOMAS LUPARELLO
INTERIM DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 14-015

JOHN CHAVIS,
Claimant-Petitioner,

v.

CLARK CONSTRUCTION GROUP, INC. and
ZURICH AMERICAN INSURANCE COMPANY,
Employer/Insurer-Respondents.

Appeal from an January 15, 2014 Final Order of
Claims Examiner Myrna Parada and Claims Supervisor Lisa Baxter
OWC No. 694567

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2014 APR 22 PM 12 03

Michael J. Kitzman, for the Petitioner
Sarah M. Burton, for the Respondent

Before HEATHER C. LESLIE, HENRY W. MCCOY, and MELISSA LIN JONES, *Administrative Appeals Judges*.

HEATHER C. LESLIE, for the Compensation Review Board.

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

On June 22, 2012, Claimant was injured in the course of his employment. The claim was accepted by Employer and benefits were paid. Claimant sought treatment for his physical injuries to the neck, shoulder, and lower back as well as headaches.

Claimant also came under the care and treatment of Dr. Faheem Moghal, a psychiatrist, as a result of the work injury and was diagnosed with major depressive disorder. Dr. Moghal recommended a course of psychotherapy, a follow up for pain management, and a course of medication. Claimant continues to receive treatment from Dr. Moghal.

Claimant was subsequently evaluated by Dr. Brian Schulman for an independent medical evaluation at the request of the Employer. Dr. Schulman recommended further treatment.

An informal conference at the Office of Workers' Compensation (OWC) was held on November 15, 2013. The issue presented per the Order was Employer's request to change Claimant's treating

physician. A Final Order was issued on January 15, 2014 where Employer's request for authorization for Claimant to switch physicians was granted.

Claimant timely appealed. Claimant argues that the Order is not in accordance with the law as the Order failed to articulate any legal basis for granting Employer's request and that the statute and regulations do not allow Employer to request authorization to switch physicians.

Employer 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.

THE STANDARD OF REVIEW

As an initial matter, in its review of an appeal from OWC, the Compensation Review Board (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).

DISCUSSION AND ANALYSIS

We first address Claimant's last argument that the Order, based upon the Employer's request for Claimant to switch physicians, is inconsistent with the enabling regulations, relying upon 7 DCMR § 212.13 which 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. (Emphasis added.)

Specifically, Claimant argues,

Neither the Act nor the regulations grant the employer the grounds to request that a claimant have his care transferred against his will to a different provider. Rather, the regulations specifically list that only the claimant can request a change of physicians. Since the claimant did not make the request, and opposed the request, the decision must be vacated and an Order entered dismissing the request for a formal conference.

Claimant's argument, unnumbered at 3.

The Employer, in opposition to Claimant's application for review, relies upon D. C. Code § 32-1507(b)(4),

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.

We agree with Claimant. While D. C. Code §32-1507 (b)(4) does empower OWC to authorize a change in physician when it is in the best interest of the Claimant, we decline to interpret this section as allowing an *employer* to seek a change of Claimant's treating physician. As the enabling regulations state, if an *employee* is dissatisfied, then a request may be made at OWC to change physicians. The regulation does not mention an employer's right to seek a switch in physicians. Moreover, D. C. Official Code §32-1507 (b)(3) states, in pertinent part,

The *employee* shall have the right to choose an attending physician to provide medical care under this chapter. (Emphasis added.)

Thus, taking together D. C. Code § 32-1507(b)(3) and (b)(4) as well as 7 DCMR § 212.13, we find that the right to seek a switch in Claimant's treating physician lies solely with Claimant.

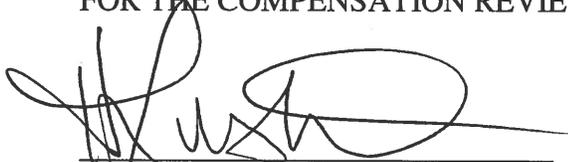
We decline to follow Employer's argument which rests in large part on D. C. Official Code §32-1507(b)(4). We cannot read D. C. Code §32-1507 (b)(4) in a vacuum but must take into account the statute as a whole as well as the enabling regulations and conclude that any request to switch physicians must come from Claimant. We recognize that the relationship between a doctor and a patient to be a unique and recognized relationship. To allow employers to force Claimants to switch to a different treating physician is not something the act and regulations contemplate. We vacate the Order.

As we vacate the Order on the above discussed grounds, the rest of Claimant's arguments are rendered moot.

CONCLUSION AND ORDER

The January 15, 2014 OWC Final Order is VACATED.

FOR THE COMPENSATION REVIEW BOARD:



HEATHER C. LESLIE
Administrative Appeals Judge

April 22, 2014
DATE