

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services
Labor Standards Bureau

Office of Hearings and Adjudication
COMPENSATION REVIEW BOARD



(202) 671-1394-Voice
(202) 673-6402-Fax

CRB (Dir.Dkt.) No. 02-97

TERENCIO HERNANDEZ,

Claimant – Petitioner

v.

LONG FENCE COMPANY INC.,

Employer/Carrier – Respondent.

Appeal from a Compensation Order of
Claims Examiner Alice Goldring
OWC No. 549677

Benjamin T. Boscolo, Esq., for the Petitioner

William G. McMurtie, Esq., for the Respondent

Before E. COOPER BROWN, Acting *Chief Administrative Appeals Judge*, FLOYD LEWIS and SHARMAN J. MONROE, *Acting Administrative Appeals Judges*.

Sharman J. Monroe, *Acting Administrative Appeals Judge*, on behalf of the Review Panel:

DECISION AND ORDER

JURISDICTION

Jurisdiction is conferred upon the Compensation Review Board pursuant to D.C. Official Code §§ 32-1521.01 and 32-1522 (2004), 7 DCMR § 230, and the Department of Employment Services Director's Directive, Administrative Policy Issuance 05-01 (February 5, 2005).¹

¹ Pursuant to Administrative Policy Issuance No. 05-01, dated February 5, 2005, the Director of the Department of Employment Services realigned the Office of Hearings and Adjudication to include, *inter alia*, establishment of the Compensation Review Board (CRB) in implementation of the D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, D.C. Official Code §32-1521.01. In accordance with the Director's Directive, the CRB replaces the Office of the Director in providing administrative appellate review and disposition of workers' and disability compensation claims arising under the D.C. Workers' Compensation Act of 1979, as amended, D.C. Official Code §32-1501 *et seq.*, and the D.C. Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Official Code §1-623.1 *et seq.*, including responsibility for administrative appeals filed prior to October 1, 2004, the effective date of the D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004.

BACKGROUND

This appeal follows the issuance of a Memorandum of Informal Conference, which became final by operation of law and appealable, from the Office of Workers' Compensation (OWC) in the District of Columbia Department of Employment Services (DOES). In that Memorandum, which was filed on October 24, 2002, the Claims Examiner (CE) denied the plea for authorization to change physicians as requested by Claimant-Petitioner. Claimant-Petitioner now seeks review of that Memorandum.

As grounds for this appeal, Claimant-Petitioner alleges as error that the Claims Examiner denied his request for authorization to change physician without providing an explanation for the denial in contravention of the Director's holding in *Copeland v. Hospital for Sick Children*, Dir.Dkt.No. 01-40, OWC No. 536532 (August 2, 2001).

ANALYSIS

In its review of an appeal from the Office of Workers' Compensation, the Board must affirm the compensation order or final decision 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 & Mezones, ADMINISTRATIVE LAW, § 51.03 (2001). For the reasons hereafter set forth, the Board concludes that the Claims Examiner's decision is not in accordance with the law, and remands this matter to the Office of Workers' Compensation (OWC) for further proceedings consistent with this Decision and Order.

A request for authorization of a change in treating physicians is governed by D.C. Official Code § 32-1507 (b)(4) and 7 DCMR § 213.13.

D.C. Official Code § 32-1507 (b)(4) states:

The Mayor shall supervise the medical care rendered to injured employees, shall require periodic reports as to the medical care being rendered to injured employees, shall have the authority to determine the necessity, character, and sufficiency of any medical aid furnished or to be furnished, and may order a change of physician or hospital when in his judgment such change is necessary or desirable.

7 DCMR § 212.13 states:

If the employee is not satisfied with medical care, a request for change may be made to the Office. The Office may order a change where it is found to be in the best interest of the employee.

In *Copeland, supra*, the Director interpreted the foregoing provisions to require a claims examiner, in rejecting a claimant's request for a change in physicians, to address a claimant's arguments and testimony concerning the reasons for seeking authorization to change physicians. The claims examiner is also required to explain how the denial is in the best interest of the

claimant. In the instant case, the claims examiner did neither. She failed to address the Claimant-Petitioner's reason for wanting to change treating physicians, *i.e.*, that the Claimant-Petitioner wished to have a physician who spoke the same language as he did. She also did not explain why denying this request was in the Claimant-Petitioner's best interest.

As previously noted, the Board's authority upon review of a claims examiner's decision is limited to the determination of whether the decision is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. Absent an explanation by the Claims Examiner of her rejection of the Claimant-Petitioner's request consistent with the requirements enunciated in *Copeland* the Board is constrained to hold that the rejection is not in accordance with the law.

Accordingly, this matter is remanded to the OWC for reconsideration of the Claimant-Petitioner's request and a proper determination and explanation, pursuant to *Copeland* and the relevant provisions of the Act and its regulations, of whether the requested change in treating physicians is necessary or desirable, and otherwise in the Claimant-Petitioner's best interest.

CONCLUSION

The Memorandum of Informal Conference denying the Claimant-Petitioner's request for authorization to change physician was not in accordance with the law in that it failed to address the Claimant-Petitioner's reasons for seeking the change and failed to explain how denied of the requested change in physicians was in the Claimant-Petitioner's best interest.

ORDER

The October 24, 2002 Memorandum of Informal Conference denying the Claimant-Petitioner's request for authorization to change physicians is VACATED and REMANDED to the Office of Workers' Compensation for further proceedings consistent with the above discussion.

FOR THE COMPENSATION REVIEW BOARD:

SHARMAN J. MONROE
Acting Administrative Appeals Judge

March 18, 2005

DATE