

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**Department of Employment Services**

MURIEL BOWSER  
MAYOR



ODIE DONALD II  
DIRECTOR

**COMPENSATION REVIEW BOARD**

**CRB No. 17-103**

**JOSE FERNANDEZ,  
Claimant–Petitioner,**

v.

**WHOLE FOODS CORP., and  
GALLAGHER BASSETT SERVICES,  
Employer/Third-Party Administrator-Respondents.**

DEPT. OF EMPLOYMENT  
SERVICES  
COMPENSATION REVIEW  
BOARD  
2017 NOV 17 PM 10 49

Appeal from a September 26, 2017 Order for Change of Physician by  
Claims Examiner Antoinette Green and Claims Supervisor Jevan Edwards  
OWC No. 745577

(Decided November 17, 2017)

Krista N. DeSmyter for Claimant  
W. Tyler Mays for Employer

Before HEATHER C. LESLIE, GENNET PURCELL, and JEFFREY P. RUSSELL, *Administrative Appeals  
Judges.*

HEATHER C. LESLIE for the Compensation Review Board.

**DECISION AND REMAND ORDER**

**FACTS OF RECORD AND PROCEDURAL HISTORY**

Claimant injured his left knee at work on May 22, 2016. Claimant came under the care and treatment of Dr. Garner who diagnosed Claimant with a meniscus tear. Claimant has undergone two surgical procedures since his injury.

Claimant subsequently became dissatisfied with Dr. Garner and requested an authorization from Office of Workers’ Compensation (“OWC”) to switch physicians from Dr. Garner to Dr. Franchetti. An informal conference was held on September 12, 2017. Thereafter, an Order for Change of Physician (“Order”) was issued on September 26, 2017. The Order stated:

OWC finds that Georgetown MedStar Orthopedic team is a group with a reputation that is above reproach. Therefore, the Claimant’s request to change

physicians to Dr. Samuel Wiesel, M.D., or Brent Wiesel, M.D. with the Georgetown Medstar orthopedics is hereby granted. Additionally, if either physician is not accepting new patients; he is approved to see anyone with the Georgetown Medstar Orthopedics team.

Order at 2.

Claimant appealed to the Compensation Review Board (“CRB”) on October 19, 2017. Claimant argues that the Order erred in authorizing a switch of physicians to Georgetown Medstar (“Medstar”) as Claimant requested authorization to switch physicians to Dr. Franchetti. Claimant argues first OWC does not have authority to select a treating physician and second, that the Order fails to state why it is in Claimant’s best interest to switch to Medstar instead of Dr. Franchetti.

Employer filed an opposition on November 13, 2017.

#### ANALYSIS<sup>1</sup>

First, we address Employer’s Response in Opposition to Claimant’s Application for Review. 7 DCMR § 258.8 states:

Any response in opposition must be filed with the Clerk of the Board within fifteen (15) calendar days from the date of filing of the Application for Review.

Claimant filed his appeal on October 19, 2017. Employer had until Friday, November 3, 2017 to file an opposition. Thus, the November 13, 2017 opposition is untimely and will not be considered.

A request for authorization for a change of treating physicians is governed by D.C. Code § 32-1507(b)(4) and 7 DCMR § 212.13. The code provision 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.

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<sup>1</sup> In its review of an appeal from OWC, 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).

Moreover D. C. Code §32-1507 (b)(3) states:

The employee shall have the right to choose an attending physician to provide medical care under this chapter.

Moreover, the Claimant chooses the treating physician pursuant to D.C. Code § 32-1507 (b)(3). The CRB has held only a Claimant, and not the Employer, has the right to request authorization to switch physician. *Chavis v. Clark Construction*, CRB No. 14-015 (April 22, 2014) (“Chavis”), *aff’d sub nom, Clark Construction v. DOES*, 123 A.2d 199 (D.C. 2015).

Turning to the case before us, it is unclear why the claims examiner authorized a switch to physicians to Medstar in light of the fact that Claimant requested an authorization to switch to Dr. Franchetti. As Claimant argues, neither the parties nor the claims examiner brought up Medstar at the informal conference.

We also agree with Claimant’s argument that while OWC can authorize a switch of physicians when a “change is necessary or desirable,” OWC does not have the authority to choose that treating physician. D. C. Code § 32-1507 (b)(3); *see also* 7 DCMR § 212.2. As stated above, the right to choose a physician lies with Claimant. As explained in *Chavis*:

We recognize that the relationship between a doctor and a patient is 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.

The same rationale applies in the case before us. For OWC to unilaterally authorize a switch of physicians to a different physician than that requested by Claimant is not contemplated by the Act and is contrary to case law.

We must remand the case with instructions to address Claimant’s request to switch physicians to Dr. Franchetti.

#### **CONCLUSION AND ORDER**

The September 26, 2017 Order for Change of Physician is VACATED and REMANDED for further consideration consistent with the above discussion.

*So ordered.*