

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

Office of Hearings and Adjudication
COMPENSATION REVIEW BOARD



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CRB (Dir.Dkt.) No. 05-244

HELEN M. KEYES,

Claimant - Respondent

v.

HYATT REGENCY WASHINGTON HOTEL AND GALLAGHER BASSETT SERVICES,

Employer/Carrier – Petitioner.

Appeal from an Order of
Claims Examiner Alice Goldring
OWC No. 591091

John Kelly, Esquire, for the Petitioner

Jeffrey W. Ochsman, Esquire, for the Respondent

Before LINDA F. JORY, SHARMAN J. MONROE, *Administrative Appeals Judges* and E. COOPER BROWN, *Chief, Administrative Appeals Judge*.

LINDA F. JORY, *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 (1994), and the Department of Employment Services Director's Directive, Administrative Policy Issuance 05-01 (February 5, 2005)¹.

¹Pursuant 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 District of Columbia Fiscal Year 2005 Budget Support Act of 20024, Title J, the Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, sec. 1102 (Oct. 1, 1994) *codified at* D. C. Code Ann. §§ 32-1521.01, 32-1522 (2005). In accordance with the Director's Policy Issuance, 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. Code Ann. §§ 32-1501 to 32-1545 (2005) and the D.C. Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Official Code §§ 1-623.1 to 1.643.7 (2005), 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.

Pursuant to § 230.04, the authority of the Compensation Review Board extends over appeals from compensation orders including final decisions or orders granting or denying benefits by the Administrative Hearings Division (AHD) or the Office of Workers' Compensation (OWC) under the public and private sector Acts.

BACKGROUND

This appeal follows the issuance by the Office of Workers' Compensation (OWC) in the District of Columbia Department of Employment Services (DOES) of an Order, which became final and appealable by operation of law. In that Order, which was filed on June 2, 2005, the Claims Examiner concluded that a change in physicians was in Respondent's best interest and granted Respondent's request.

As grounds for this appeal, Petitioner alleges the Claims Examiner's decision is erroneous, contrary to law, unsupported by substantial evidence and should, therefore, be reversed.

ANALYSIS

In the review of an appeal from OWC, the Board must affirm the order under review unless it is determined to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. CRB Emergency Rules of Practice and Procedure, Chapter 2, 7 D.C.M.R. §266.4; *see also* Stein, Mitchell & Mezines, ADMINISTRATIVE LAW, §51.93 (2001). For the reasons set forth herein, the Board concludes herein, that the Claims Examiner's June 2, 2005 order is in accordance with the law, and accordingly should be affirmed.

Petitioner asserts that the Claims Examiner's decision is erroneous, contrary to law and unsupported by substantial evidence because the Respondent failed to identify the physician with whom she wished to treat. Petitioner asserts that without the identity of a new physician, it is impossible to determine whether a change is, in fact, in the best interest of Respondent. Petitioner further argues that whether or not the change is in the best interest must be "weighed against the [Respondent's] choice of new physician" and asks "how can a determination be made if, in fact, the [Respondent] seeks to treat with a doctor who does not specialize in the area of medicine in which the claimant seeks treatment, is not board certified, or has other questionable credentials which would be contrary to claimant's best interest".

The Panel notes Petitioner has failed to cite any authority for its position that without the identity of the new physician, it is impossible to determine whether a change is in fact in the best interest of Respondent². The Panel further adds that neither the language of the statute or its implementing regulations require the new physician be named as a condition precedent to granting a request to change physicians. D.C. Official Code §32-1507(b)(3) provides that an "employee shall have the right to choose an attending physician to provide medical care under this chapter". Thus, the Act clearly recognizes that injured employees in workers' compensation

² The Panel notes that this issue was before the Director in *Guillaume Tafon v. PCC Construction Co.*, Dir. Dkt. 03-103, OWC NO. 586187 (February 10, 2004), however, the Director declined to address it as the Director determined that Tafon did not need an authorization to change physicians because he did not yet have one.

proceedings have the right to select a treating physician of their choice. Moreover, as the CRB stated in *Brown v. WMATA*, CRB No. 05-211, OWC No. 597186 (May 6, 2005), “The personal and private nature of medical care and treatment compels that employees be completely satisfied and comfortable with the treating physician”. The Act does not require that a physician selected by employee to have certain qualifications. Moreover, an employer is free to have an employee examined by a physician of their choice and/or initiate medical management if the qualifications of the treating physician are in question. . Similarly, there is no prohibition on how many or for what reasons an injured worker may seek authorization to change physicians. There simply is no limiting language in this provision on the employee’s right to requests a change of physician. See *Guerrero v. Clark Construction*, CRB No. 05-213, OWC No. 542187 (June 115, 2005); 7 D.C.M.R. §212.13. Nevertheless, the Panel must unequivocally reject Petitioner’s unfounded theory that before a decision can be made on whether a change is in employee’s best interest, the name of the physician must be known and accorded certain weight in the process.

With regard to the best interest of Respondent, the Claims Examiner determined that it was not in the best interest of Respondent to continue to treat with a physician used by Petitioner as an IME physician and who actually performed an IME of Respondent on Petitioner’s behalf resulting in, at best, a conflict of interest. This determination is neither arbitrary, capricious, or an abuse of discretion. This determination is in accordance with the law.

CONCLUSION

The Order issued by OWC on June 2, 2005 is not arbitrary, capricious, or an abuse of discretion and is in accordance with the law.

ORDER

The Order issued by OWC on June 2, 2005 granting Respondent’s request for a change of physicians is hereby affirmed.

FOR THE COMPENSATION REVIEW BOARD:

LINDA F. JORY
Administrative Appeals Judge

October 6, 2005

DATE