

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA M. MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 11-102

LAQUITA GREEN,

Claimant- Respondent,

v.

GEORGETOWN UNIVERSITY HOSPITAL,

AND

SEDGWICK CMS,

Employer/Third Party Administrator –Petitioners.

Appeal from a Memorandum of Informal Conference of
Claims Examiner Alice Goldring
OHA No. 11-102, OWC No. 630890

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2012 JUN 26 PM 1:24

Krista DeSmyter, Esquire, for the Claimant
William Sands, Esquire, for the Employer

Before HEATHER C. LESLIE,¹ MELISSA LIN JONES, and JEFFREY P. RUSSELL,² *Administrative Appeals Judges.*

HEATHER C. LESLIE, *Administrative Appeals Judge*, for the Review Panel:

DECISION AND ORDER

OVERVIEW

This case is before the Compensation Review Board (CRB) on the request for review filed by the Employer - Petitioner (Employer) of the September 8, 2011, Memorandum of Informal Conference (Recommendation) issued by a Claims Examiner in the Office of Workers' Compensation (OWC) of the District of Columbia Department of Employment Services (DOES). In that Recommendation, the Claims Examiner recommended the Employer authorize the requested medical treatment.

¹ Judge Heather C. Leslie is appointed by the Director of DOES as an Interim Board Member pursuant to DOES Administrative Policy Issuance No. 11-02 (June 13, 2011).

² Judge Russell has been appointed by the Director of the DOES as a Interim CRB Member pursuant to DOES Administrative Policy Issuance No. 11-02 (June 13, 2011).

BACKGROUND AND FACTS OF RECORD

On August 22, 2006, the Claimant suffered an injury to her low back and left leg while at work. The Claimant sought medical treatment, ultimately coming under the care and treatment of Dr. Leonard Wisotsky.

On August 31, 2011, an informal conference was held on the Claimant's request for authorization for medical treatment with Dr. Wisotsky. The Employer opposed this request. The Employer specifically raised the defense that Dr. Wisotsky was not an authorized physician. On September 8, 2011, the Claims Examiner issued a memorandum of informal conference and recommended the Employer authorize the requested treatment with Dr. Wisotsky.

Subsequently, the Employer appealed to the CRB and then filed an application for formal hearing with the Office of Hearings and Adjudications (OHA). The Employer argues, in part, that Dr. Wisotsky is not an authorized treating physician and that the recommendation should be reversed. The Claimant responded stating that the claim for relief sought at OWC was authorization for medical treatment only³ and that the CRB does not have jurisdiction to render a decision as the matter is pending before OHA and should be dismissed. The Employer responded to the Claimant's opposition by stating that the recommendation is a final decision, reviewable by the CRB.

THE STANDARD OF REVIEW

In review of an appeal which is based not upon factual findings made on an evidentiary record, but rather is based upon review of the administrative record, the filings of the parties, and the orders, 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. See, 6 Stein, Mitchell & Mezones, ADMINISTRATIVE LAW, § 51.93 (2001).

DISCUSSION AND ANALYSIS

As the Employer and Claimant correctly note, DCMR 7-258.1 states,

Any party adversely affected or aggrieved by a compensation order or final decision issued by the Administrative Hearings Division or the Office of Workers' Compensation may appeal the *compensation order* or *final decision* to the Board by filing an Application for Review pursuant to this section. The party filing the Application for Review shall be designated as the "petitioner" for purposes of proceedings before the Board on appeal. (Emphasis added.)

Moreover, the appeal rights outlined on the last page of the recommendation state,

³ The Employer concedes that authorization to switch treating physicians was not a claim for relief sought at the informal conference. Employer's Argument at 6.

If either party disagrees with the Memorandum, that party must file an application for a formal hearing in accordance with Title 5 & DCMR, Section 220 within thirty-four (34) working days after the issuance of the Memorandum of Informal Conference. If an application is not filed, said Memorandum shall become final. Thereafter, the Office shall issue a Final Order that shall be sent by certified mail to the parties and their representatives, and Hearings and Adjudications Section. An aggrieved party may request a review by the Compensation Review Board (CRB), Department of Employment Services.

The Employer argues that the recommendation is indeed a final order which would allow for the CRB to have jurisdiction to review. We disagree. As the appeal rights and regulations recited above make clear, if a party disagrees with a recommendation, they may apply for a formal hearing in front of OHA. The Employer appealed to the CRB on October 11, 2011 prior to 34 business days from the date the recommendation was issued. The recommendation was not a final order at the time of the appeal, pursuant to DCMR 7-219.22.⁴ Thus, as the appeal is from non final order, the CRB does not have jurisdiction.

We assume for purposes of this appeal, the Employer is raising the issue of unauthorized switch of physicians in an attempt to vest jurisdiction in the CRB to review the recommendation. It is well established, under the District of Columbia Court of Appeals decision in *Renard v. DOES*, 731 A.2d 413 (1999), requests for authorization to change an attending or treating physician are within the sole province of OWC. When authorization to switch physicians is raised, OWC issues a final order either granting or denying the Claimant's request to switch physicians which is appealable directly to the CRB.⁵ However, a review of the administrative record reveals that authorization to switch physicians was never a claim for relief neither sought by the Claimant nor addressed by OWC in a final order which could have been appealed to the CRB. This does not mean that the Employer cannot raise this issue as a defense at OWC or at the formal hearing, however, for purposes of an appeal directly to the CRB, OWC must issue a final order either granting or denying a request for authorization to switch physicians. Such is not the case here.

As the CRB does not have jurisdiction, the Employer's application for review is dismissed.

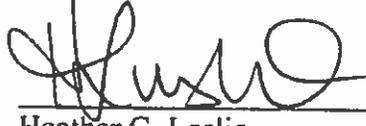
⁴ DCMR 7-219.22, allows for an un-appealed recommendation to turn into a final order *if* an application for formal hearing is not filed in accordance with within thirty-four (34) working days after the issuance of the Memorandum of Informal Conference.

⁵ In *Renard, supra*, the court ruled that, under the statutory and regulatory scheme, there is no right to a "trial type" hearing in connection with requests for a change of an attending physician, and concluded that therefore such questions are not appealable to that court, under the District of Columbia Administrative Procedure Act (DCAPA), because under D.C. Code § 1-1502 (8), such agency proceedings do not constitute a "contested case". Thus, by determining that there was no right under the Act to a formal hearing on this issue, the court has necessarily ruled that AHD does not have jurisdiction to hear such claims.

CONCLUSION AND ORDER

The Employer's application for review is hereby dismissed for lack of jurisdiction

FOR THE COMPENSATION REVIEW BOARD:



Heather C. Leslie
Administrative Appeals Judge

January 26, 2012

DATE