

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 No. 05-08

RICHARD MANN,

Claimant - Petitioner

v.

KNIGHT NETWORKING AND ONE BEACON INSURANCE CO.,

Employer/Carrier - Respondent

Appeal from an Order of
Claims Examiner Edith A. Tyler
OWC No. 584557

Stephan D. Karr, Esquire, for the Petitioner

Michael Levin, Esquire, for the Respondent

Before LINDA F. JORY, JEFFREY P. RUSSELL, *Administrative Appeals Judges* and FLOYD LEWIS,
Acting 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

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 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),

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 a Memorandum of Informal Conference, which became final and appealable by operation of law. In that Memorandum, which was filed on September 29, 2004, the Claims Examiner denied Petitioner's request for a change of physicians.

As grounds for this appeal, Petitioner alleges the requested change is both necessary to his treatment and desirable due to the "complete breakdown of the Claimant/Doctor relationship".

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. *See* 6 Stein, Mitchell & Mezines, ADMINISTRATIVE LAW, §51.93 (2001). For the reasons set forth herein, the Board concludes herein, that the Claims Examiner's September 29, 2004 is not arbitrary capricious or an abuse of discretion and is therefore in accordance with the law.

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

The Mayor shall supervise the medical care rendered to injured employees, shall require periodic reports as to the medical care being rendered in injured employees, shall have full authority to determine the necessity, character, and sufficiency of any medical aid furnished or to be 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 bet interests of the employee.

In *Copeland v. Hospital For Sick Children*, Dir. Dkt. No. 01-40, OWC No. 536532 (August 2, 2001), the Director interpreted the preceding provisions to require a Claims Examiner to address

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.

a claimant's arguments "and testimony" concerning the reasons for seeking a change of physicians, if the request is denied, and to explain how such a denial is "in the interests of the claimant."

In the instant case, the Claims Examiner identified various reasons Petitioner provided as his reasons for the change request. In addition to asserting that there was "a complete breakdown of the Claimant/Doctor relationship", Petitioner's reasons included but were not limited to his belief that his treating physician, Dr. Michael A. McClinton of Chesapeake Hand Specialists, misdiagnosed, misjudged and underestimated the original injury. According to Petitioner, Dr. McClinton, did not meet with concern or adequate understanding, the complaints about his work environment, or lengthy commute. Petitioner further is of the opinion that he would receive better overall care from Dr. Steven Friedman who performed Respondent's two independent medical examinations and whom Petitioner "respects greatly," and it would be best for all parties concerned if he were able to seek treatment from Dr. Friedman.

The Claims Examiner outlined the treatment and examinations rendered of claimant as well as the various provider's opinions. Specifically the Claims Examiner noted Dr. Friedman, to whom Petitioner would like to transfer his care, reported he was unable to identify any objective findings on examination that would support claimant's subjective complaints. Dr. Friedman added that despite Petitioner's thorough documentation of multiple complaints, he was unable to explain the symptoms based on any known anatomic or physiologic abnormalities. Dr. Friedman also opined that Petitioner had reached maximum medical improvement.

The Claims Examiner further noted the opinions of Dr. Thomas Graham and Dr. Gayle Schwartz to whom Petitioner was recommended as "excellent" physiatrists by Dr. McClinton. Dr. Graham and Dr. Schwartz reported that the x-rays and MRI of Petitioner's right wrist, revealed in the words of Dr. Graham, "no lunatomalacia or other indicators of any inflammatory arthropathy like rarefaction". The Claims Examiner found Drs. Graham, Friedman, Schwartz and McClinton have been unable to identify any objective findings on examination that would support claimant's subjective complaints. Based on this finding, the Claims Examiner concluded Petitioner's request for a change of physicians should be denied.

Although the Claims Examiner did not say verbatim that a change of physicians is not in the Petitioner's best interest, this omission is not reversible error as the Panel has found the Claims Examiner did explain why a change was not necessary. Specifically, the Claims Examiner's found that Drs. Graham, Friedman, Schwartz and McClinton have all stated that they have been unable to identify any objective findings on examination that would support claimant's complaints. The Claims Examiner's conclusion that the evidence presented by counsel does not warrant a change in physicians based on the diagnostic studies is supported by documents identified by the Claims Examiner and contained in the Agency file. As such, the Panel agrees that a denial of a change of physicians is not arbitrary, capricious or an abuse of discretion.

In *Leroy Lane v. Linens of the Week*, CRB No. 05-207, OWC No. 594244, (May 6, 2005), the Board recognized:

that a Claims Examiner may determine that there is insufficient justification to authorize a change in physicians and for that reason the denial of the requested change may be proper. Such a denial is not inconsistent with a claimant's best interests where it is determined that the change is unlikely to result in medical improvement. However the reason for the request and the rationale for the denial must be identified and addressed.

Id at 3. The Panel concludes that the Claims Examiner properly identified Petitioner's reasons for the request and her rationale for the denial.

In so concluding, the Panel rejects Petitioner's argument on appeal that there was "a complete breakdown of the Claimant/Doctor relationship" or that Dr. McClinton did not show concern or adequate understanding, in response to his complaints about his work environment, lengthy or commute. The record contains no evidence of a lack of concern on Dr. McClinton's part or any reference to a deteriorating Claimant/Doctor relationship. The record also contains no evidence to support Petitioner's charge that he would receive better overall care from Dr. Steven Friedman. Nor does the record contain any evidence that Dr. Friedman suggested any further treatment to claimant's right arm. To the contrary, Dr. Friedman reported on January 20, 2004 "At this point [in] time I do not have any further suggestions for additional treatment with respect to the right hand contusion" and "Mr. Mann's subjective symptoms were out of proportion to the objective findings on physical examination". In addition, as noted above, Dr. Friedman found Petitioner had most likely reached maximum medical improvement with respect to the right hand contusion. CE 2 at 2. Thus it is not clear what treatment, if any, Dr. Friedman would render if Petitioner were authorized to seek treatment from him. Without more, the Claims Examiner could not have found a change of physicians is in Petitioner's best interest.

CONCLUSION

The Claims Examiner's denial of claimant's request to change physician is neither arbitrary, capricious nor an abuse of discretion; and is in accordance with the law.

ORDER

The Memorandum of Informal Conference issued on September 29, 2004 is hereby AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD

LINDA F. JORY
Administrative Appeals Judge

June 28, 2005
DATE