COMPENSATION REVIEW BOARD

CRB 12-157

LISA PARROTT-HEATH,
Claimant-Respondent,

v.
REYNOLDS & ASSOCIATES, INC, and CHARTIS,
Employer and Insurance Carrier, Petitioners.

Appeal of a September 12, 2012, Final Order by
Claims Examiner Antoinette Green
OWC No. 689459

Daniel P. Moloney, Esquire, for the Claimant
Joel E. Ogden, Esquire, for the Employer and Insurance Carrier

Before LAWRENCE D. TARR, HEATHER C. LESLIE, [1] and JEFFREY P. RUSSELL,[2] *Administrative Appeals Judges*.

LAWRENCE D. TARR, *Administrative Appeals Judge*, for the Compensation Review Board.

DECISION AND ORDER

OVERVIEW

This case is before the Compensation Review Board (CRB) on the request of the employer and insurance carrier ("employer") for review of the September 12, 2012, Final Order issued by Claims Examiner Antoinette Green that authorized the claimant, Lisa Parrott-Heath, to change physicians from Dr. Hamid Quarishi to Dr. Joel Fechter. For the reasons stated, we must reverse that decision and vacate that Order.

BACKGROUND FACTS OF RECORD AND PROCEDURAL HISTORY

On March 8, 2012, the claimant was attending a training session in Washington, D.C. when she fell while attempting to sit in a chair that had rollers. She received emergency treatment at the Fort

[1] Judge Leslie has been appointed by the Director of the DOES as a CRB member pursuant to DOES Administrative Policy Issuance No. 12-02 (June 20, 2112).

[2] Judge Russell has been appointed by the Director of the DOES as a CRB member pursuant to DOES Administrative Policy Issuance No. 12-01 (June 20, 2112).

Washington Medical Center on March 9, 2012, and then came under the care of Dr. Hamid Quarishi on March 14, 2012, who continues to serve as her authorized treating physician.

The claimant filed a workers' compensation claim with the Maryland Workers' Compensation Commission and on August 1, 2012, was awarded temporary total disability benefits and medical benefits at the weekly rate of $579.00 beginning March 12, 2012, and continuing.

The claimant also filed a workers' compensation claim in the District of Columbia for this accident. The employer made voluntary payments of benefits until July 16, 2012, when it filed a notice of controversion contesting jurisdiction because of the Maryland award.

An informal conference was conducted by Claims Examiner Antoinette Green on September 7, 2012 pursuant to the claimant's requests for temporary total disability benefits, vocational rehabilitation and to change treating physicians. The employer opposed these requests and also asserted that the District of Columbia does not have jurisdiction because the claimant received workers' compensation benefits for this accident in Maryland.

The claims examiner issued two documents on September 12, 2012; a Memorandum of Informal Conference and a Final Order. In the Memorandum, the claims examiner recommended that jurisdiction was proper in the District of Columbia, that the claimant was entitled to continuing temporary total benefits, and that the request for vocational rehabilitation was premature. The employer has stated it has applied for a formal hearing on these matters.

In her September 12, 2012, Final Order, the claims examiner, as "Background," stated:

> In this matter, Claimant's treating physician, Hamid R. Quarishi, M. D. repaired a complex tear over the posterior horn of the medial meniscus on April 26, 2012. [Claimant] indicated that she repeatedly inquired for treatment to the right shoulder; however, to no avail.

In the Findings of Fact section of the Final Order, the claims examiner identified the statutory and regulatory authority relating to a physician changes and then found:

> At the Informal Conference on this matter, the issue in dispute was whether or not Claimant's request to change physicians [sic]. The Claimant who suffered an injury to her right knee on March 8, 2012, had a complex procedure performed; however, the right shoulder went unattended.
>
> OWC finds and concludes that it is in the best interest to treat with Joel Flechter [sic], M.D., an orthopedic surgeon. Claimant's treating physician ordered an MRI of the arthrogram area on September 6, 2012, six months after the work-related injury, indicating there's [sic] a possible rotator cuff tear.
>
> Counsel for the employer/carrier contested the Claimant's request indicating that OWC does not have jurisdiction. However, her injury occurred at a training session at 1430 G Street, Northeast; therefore it is a District of Columbia claim. Wherefore,

> the Claimant's request for a change of physician is warranted and at this time hereby granted.

The employer timely appealed and applied for review of the September 12, 2012 Final Order.

JURISDICTION AND THE STANDARD OF REVIEW

Pursuant to 7 DCMR § 230.04, the authority of the CRB extends over appeals from compensation orders, including final decisions or orders issued by OWC. The CRB's standard of review for appeals of OWC's order is that the CRB 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).

ANALYSIS

This decision will not address the question of whether there is jurisdiction in the District of Columbia for this claim because that issue is pending before AHD pursuant to the employer's Application for Formal Hearing. For the purposes of only this decision, we shall assume there is jurisdiction.

The CRB has held:

> The terms "treating physician" and "attending physician" are both used in decisions of this Agency and the Court of Appeals in connection with requests for medical care and an employer's responsibility for it. These terms are frequently used interchangeably.

Gonzalez v. Unicco Service Company, CRB No. 07-005, AHD No. 06-155, OWC No. 604331 (February 21, 2007).

The Code and several regulations identify how an attending physician is chosen, and state the procedure by which a physician is changed:

> 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."
>
> 7 DCMR § 212.12 provides "Once a medical care provider is selected to provide treatment under the act, an injured employee shall not change to another medical provider or hospital without authorization of the insurer of the Office [of Workers' Compensation], except in an emergency."
>
> 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.

A recent decision by the District of Columbia Court of Appeals stated the criteria for determining an attending physician, the procedure for changing the attending physician and when that procedure must be used:

> The District of Columbia Workers' Compensation Act, as amended in 1991, provides that an injured employee has the right to choose an "attending physician" to provide medical care. D.C. Code § 32-1507 (b)(3) (2001); *see Washington Hospital Center v. District of Columbia Dep't of Employment Services,* 789 A.2d 1261, 1263 & n.2(D.C. 2002). We have said that "[u]nder workers' compensation, an employee may only be reimbursed," and the employer required to pay, for "medical costs associated with a designated treating physician." *Velasquez v. District of Columbia Dep't of Employment Services,* 723 A.2d 401, 404-405 (D.C. 1999) (citing D.C. Code § 36-307 (a) (1981) (recodified as § 32-1507 (a) (2001)). "Though the employee is free to select a physician initially, later changes must be authorized by the employer or the Office of Workers' Compensation in order to maintain coverage." *Id.; see* 7 DCMR §§ 212.2, 212.13 (2000). This statutory and regulatory scheme strives to achieve "a balance . . . between ensuring reasonable employee choice and [the] right to effective medical treatment against the employer's right to protection against medical shopping and excessive costs." *Washington Hospital Center,* 789 A.2d at 1263 (footnote omitted); *see Ceco,* 566 A.2d at 1064 (statute effects a "compromise [between] the need to provide employees with a meaningful opportunity to choose an attending physician and [the need] to protect employers from doctor-shopping by an employee seeking a favorable diagnosis").

Wiley v. DOES (Washington Hospital Center), 984 A.2d 201 (D.C. 2009).

A request to change physicians may be ordered if the injured worker proves the requested change is in his best interest. *Murillo-Ayala v. Miller & Long Co.*, CRB No. 09-127, OWC No. 659095 (April 28, 2010). The standard for determining if a requested change should be granted or denied is whether the change is likely to result in some type of medical improvement. As the CRB stated in *Janey v. Washington Convention Center*, CRB No. 06-032, OWC No. 588716 (June 21, 2006):

> [T]he CRB has had occasion to discuss more fully the meaning of the 'best interests' standard. In *Lane v. Linens of the Week*, CRB No. 05-207, OWC No. 594244 (May 5, 2005), it was noted and held that the Claims Examiner may determine that there is insufficient justification for the requested change of physicians, and that in the event of such a finding, denial of the requested change may be proper, in that said change is not inconsistent with a claimant's best interests, where it is determined that such a change is unlikely to result in medical improvement.

While the CRB gives great deference to the factual determinations of a claims examiner, a claims examiner's decision must address the arguments for seeking the change and state how granting or denying the request is or is not in the claimant's best interest.

> In evaluating and ruling upon the requested change, a claims examiner is required to address the reasons presented in support of the requested change and articulate the

> rationale for the denial or approval thereof, including addressing the question of whether granting the request is in the employee's best interest.

Murillo-Ayala v. Miller & Long Co., supra, citing *Copeland v. Hospital For Sick Children*, Dir. Dkt. No. 01-40, OWC No. 536532 (August 2, 2001).

Here, the claims examiner did not specifically state why she believed the change to Dr. Fechter is in the claimant's best interest. The claims examiner appears to base her decision on the belief that (1) the claimant repeatedly requested treatment for her right shoulder "to no avail" and (2) injury to the claimant's right shoulder "went unattended" for six months until Dr. Quarishi ordered an MRI that showed a possible rotator cuff tear.

The medical evidence submitted at the Informal Conference does not support either that the claimant requested treatment to no avail or that Dr. Quarishi did not attend to her shoulder complaints for six months.

The medical evidence did not state that the claimant repeatedly requested treatment for her shoulder. The emergency room records from Fort Washington Medical Center do not identify any complaint, examination, or treatment for a shoulder problem. These records state the claimant presented with lower back and left leg pain, she was treated for bilateral knee contusion and back strain, and she received a diagnosis of "upper back strain with spasm, left knee contusion (rule out fracture)."

When the claimant first was seen by Dr. Quarishi on March 14, 2012, her chief complaints were "Pain in the neck, lower back and left knee since March 8, 2012." There also is no mention of any complaints regarding the claimant's right shoulder in Dr. Quarishi's office notes of April 4 or April 30, 2012.

Dr. Quarishi's May 3, 2012, office note has the first medical record mention of right shoulder problems. Contrary to the finding that this problem went unattended for six months, the May 3, 2012, office note, written less than two months after the claimant began treating with Dr. Quraishi shows he not only performed a physical examination of her shoulder but also injected her shoulder with a methylprednisolone (Depo-Medrol).

The most recent office note submitted at the September 7, 2012, Informal Conference, was Dr. Quarishi's July 9, 2012, report. It states that his physical examination of the claimant's right shoulder revealed no tenderness and that range of motion was "satisfactory, full and painless."[3]

The facts presented in the Final Order to justify a change in physicians are not supported by the record and the CRB must reverse that finding. Therefore the September 24, 2011 Final Order finding is arbitrary, capricious, an abuse of discretion and not in accordance with the law.

[3] We further note that the May 31, 2012, physical therapy note, written by the physical therapist at Dr. Quarishi's office, reported that the claimant told the therapist that she was awaiting approval for an MRI of her right shoulder. Thus, it appears that Dr. Quraishi requested the MRI about two months after he began treating the claimant, not six months as indicated in the Final Order.

The employer also challenges the claims examiner's finding with respect to jurisdiction. The claims examiner, in the September 9, 2012, Memorandum of Informal Conference recommended that that jurisdiction was proper in the District of Columbia. The employer stated it is appealing this determination by requesting a Formal Hearing.

The claims examiner repeated her finding that jurisdiction for this claim is proper in the District of Columbia in the September 12, 2012, Final Order. The employer argues that it was improper to state any finding regarding jurisdiction in the Final Order, since the finding was stated in the Memorandum of Informal Conference and a Final Order "could conceivably be binding on the issue of jurisdiction." Employer's Memorandum at (unnumbered) page 2.

It could be argued that the claims examiner repeated her finding with respect to jurisdiction in the Final Order merely to establish that she has authority to decide the request for a treating physician change and that this finding is only dicta. However, in light of the language in 7 DCMR § 219.22, that recommendations in the Memorandum are made binding in a Final Order if a Formal Hearing is not timely requested, and in light of the representation that the employer timely applied for a formal hearing, we can understand the employer's concern.

In any event, since the CRB now vacates and reverses the Final Order for other reasons, this concern is moot. As stated earlier, the CRB will not now decide the question of jurisdiction because that issue is pending before AHD.

CONCLUSION AND ORDER

The September 12, 2012, Final Order is arbitrary, capricious, an abuse of discretion and not in accordance with the law. That Final Order is VACATED and the findings that the claimant proved her best interests are served by changing treating doctors to Dr. Fechter is REVERSED.

FOR THE COMPENSATION REVIEW BOARD:

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LAWRENCE D. TARR
Administrative Appeals Judge

November 14, 2012
DATE