GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR

LISA MARÍA MALLORY
DIRECTOR

DEPT. OF EMPLOYMENT SERVICES
COMPENSATION REVIEW BOARD
2013 SEP 3 AM 10 19

COMPENSATION REVIEW BOARD

CRB No. 12-181(1)

ROBERTA WEST,
Claimant-Petitioner,

v.

WASHINGTON HOSPITAL CENTER and SISCO,
Employer/Insurer-Respondent.

In re: Petitioner's Motion for Reconsideration of the CRB's Decision and Order of August 15, 2013 concerning an Appeal from an October 11, 2012 Compensation Order on Remand By Administrative Law Judge Linda F. Jory
AHD No. 99-276A, OWC No. 281076

Richard W. Galiher, Jr., Esquire for the Petitioner
William P. Dale, Esquire for the Respondent

Before MELISSA LIN JONES and HENRY W. MCCOY, *Administrative Appeals Judges* and LAWRENCE D. TARR, *Chief Administrative Appeals Judge.*

MELISSA LIN JONES for the Compensation Review Board.

ORDER DENYING MOTION FOR RECONSIDERATION

On August 19, 2013, Petitioner filed "West Motion for Reconsideration of the Panel's August 15 2,013 [*sic*] Decision and Order." Although Ms. Roberta West acknowledges that the scope of review by the Compensation Review Board ("CRB") is limited to making a determination as to whether the factual findings of the appealed Compensation Order are based upon substantial evidence in the record and whether the legal conclusions drawn from those facts are in accordance with applicable law,[1] Ms. West objects to the CRB's reliance on the findings of fact already established in this matter. Ms. West would prefer the CRB elevate her testimony to a conclusory position; in particular, but not exclusively, Ms. West contends "the Board has rejected the [D.C. Court of Appeals'] finding that West. . . had in fact obtained 'specific permission['] from the Hospital's Employee Health Unit to change her care to Dr. Batipps;"[2]

[1] Section 32-1521.01(d)(2)(A) of the District of Columbia Workers' Compensation , as amended, D.C. Code §32-1501 to 32-1545.

[2] Motion at unnumbered p. 2.

however, the Court made no such finding. The quote from the citation provided in Claimant's Memorandum of Points and Authorities in Support of Her Application for Review reads

> Roberta West (Claimant) sustained a back injury when she slipped on a paper towel while working as a labor and delivery nurse at Washington Hospital Center (WHC) on January 16, 1995. Since the date of her work-related injury Claimant has been examined by at least ten different doctors in connection with this injury. The details with respect thereto are intricate and somewhat imprecise, but may for present purposes be summarized as follows. For a period after her injury, Claimant was treated by Dr. Gordon and other orthopedic physicians in his office. Then, with permission from her employer, Claimant went to see Dr. Batipps, a neurologist, who in turn referred her to Dr. Cooney, a neurosurgeon.[3]

Moreover, this argument was squarely addressed in the Decision and Order:

> [T]he medical expenses in dispute are those for care on and after April 30, 1996, the date Ms. West's work hardening program at the National Rehabilitation Hospital ended.[4] Upon completing that program,
>
> > Claimant returned to either Dr. Cooney or Dr. Batipps in this deteriorated condition, and was referred by one of them to Dr. Martin R. McClaren for the purpose of obtaining facet block injections. In conversation with Dr. McClaren, claimant expressed her growing sense of sadness and depression, and he referred claimant to a psychologist, Dr. Philip L. Briley, who treated claimant for approximately 2 months. [Footnote omitted.]
>
> Ms. West's condition did not improve in work hardening, and
>
> > Because her condition failed to improve, the claimant, with the agreement of Dr. Gordon and upon approval of the employer, sought further evaluation from a neurologist, Dr. Michael E. Batipps, with whom the claimant had treated in the past for a prior injury. In turn, Dr. Batipps referred claimant to a neurosurgeon, Dr. F. Donald Cooney, for further evaluation. [Footnote omitted.]
>
> It is not clear from this passage whether the "approval of the employer" for "further evaluation from" Dr. Batipps constituted a change of physician or authorization for specific treatment with Dr. Gordon retaining control of Ms. West's course of treatment, and although ALJ Russell ruled Dr. Batipps was Ms. West's treating physician:

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[3] *Washington Hospital Center v. DOES*, 789 A.2d 1261, 1262 (D.C. 2002).

[4] *West v. Washington Hospital Center*, OHA No. 99-276A, OWC No. 281076 (November 9, 1999).

> In this case, claimant's treating physician is, in my view, Dr. Batipps, not Dr. Norris. Although employer may reasonably have believed otherwise, as I view the evidence, claimant's overall care has been managed by Dr. Batipps. He agreed with a recommendation made by the claimant herself to try a course of therapy at NRH. There was no indication in that recommendation that he was abandoning his relationship with the claimant's case, or that he was in some sense relinquishing the care of the claimant to Dr. Norris for all purposes and for all time. [Footnote omitted.]

the Court of Appeals demanded close analysis of "the specific circumstances surrounding the several actions of WHC [regarding Dr. Batipps' status]." [Footnote omitted.]

In response, ALJ Jory found Ms. West did not make a request to change treating physicians to Dr. Batipps [footnote omitted] and dispelled Ms. West's exaggeration that she had received "specific permission" from WHC to change physicians to Dr. Batipps:

> Counsel's assertion that claimant received "specific permission" from the Hospital's Employee Health unit to change to Dr Batipps is an exaggeration at best and not supported by her vague testimony in her deposition. Claimant testified in her deposition that after Dr. Gordon discussed the MRI results with her Dr. Gordon told her she should see a neurosurgeon. Claimant further testified that she told Dr. Gordon she did not want surgery and asked if she could go to her neurologist. Claimant testified that Dr[.] Gordon said yes.
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> * * *
>
> The fact that her treating physician did not oppose her seeking treatment from a neurologist does not meet the requirement of obtaining authorization from the Office of Workers[']Compensation or the insurer. [Footnote omitted.]

ALJ Jory clearly found:

> Dr. Batipps was accepted as a physician Dr. Gordon referred claimant to but *not as a treating physician*, therefore, Dr. Batipps' referral to another physician does not render employer responsible for payment of medical bills unless claimant asked either OWC or the employer/carrier if she could make a change in her treating

> physician [which ALJ Jory found she did not]. [Footnote omitted.][5]

The Court directed an analysis of "the specific circumstances surrounding the several actions of WHC [regarding Dr. Batipps' status;]"[6] Judge Jory provided that analysis; the CRB is without authority to reweigh the evidence.[7]

Furthermore, the dispute over medical expenses regards those for care on and after April 30, 1996. "[A]s of March 13, 1996, Dr. Norris was Ms. West's attending physician, and in order for WHC to be obligated to pay for treatment by referral, the referral must have come from Dr. Norris."[8] Thus, there is no merit to Ms. West's disagreement that Washington Hospital Center is obligated to pay for Dr. Batipps' bills because Dr. Gordon referred Ms. West to Dr. Batipps.

In addition, Ms. West's argument that she did not have an affirmative duty to make sure treatment was rendered by an authorized physician is contrary to the caselaw cited in the Decision and Order as well as her ongoing treatment with Dr. Gordon and her affirmative request to change physicians from Dr. Gordon to Dr. Norris. Eleven appointments over 6 month's time with Dr. Gordon before requesting a change to Dr. Norris "extended beyond reasonable limits and so became a constructive selection."[9]

Finally, Ms. West's argument that she was entitled to change physician without permission because Dr. Norris discharged her from his care also has been addressed:

> The undersigned also disagrees with claimant's position that claimant's request to treat with Dr. Norris was not a request for a change in physicians as Dr. Norris was providing or overseeing only a work hardening "program" and when the "program" was completed claimant would then return to her treating physician.
>
> This argument fails not only because Dr. Batipps was never considered claimant's treating physician and whether or not claimant would keep treating with Dr. Norris when the work hardening program ended is speculation and self serving speculation at that. <u>The fact that the work hardening program ended and that Dr. Norris had no other treatment to offer claimant</u>

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[5] *West v. Washington Hospital Center*, CRB No. 12-181, AHD No. 99-276A, OWC No. 281076 (August 15, 2013), pp. 6-7.

[6] *Washington Hospital Center v. DOES*, 789 A.2d 1261, 1264 (D.C. 2002).

[7] *Marriott International v. DOES*, 834 A.2d 882, 885 (D.C. 2003).

[8] *West v. Washington Hospital Center*, CRB No. 12-181, AHD No. 99-276A, OWC No. 281076 (August 15, 2013), p. 9.

[9] *Ceco Steel, Inc. v. DOES*, 566 A.2d 1062, 1064 (D.C. 1989).

> or that he had no objection to claimant returning to Dr[.] Cooney, if claimant did not request authorization from employer or OWC to switch her treating physician, employer is not responsible for making payments for treatment rendered by Dr. Batipps or any of the physicians he referred her to, with the exception of Dr[.] Cooney, who Dr. Norris has agreed to return claimant to but Dr. Norris cannot relinquished his title as the treating physician until authorized by employer or OWC. [Footnote omitted.]

Thus, ALJ Jory appropriately ruled that as of March 13, 1996, Dr. Norris was Ms. West's attending physician, and in order for WHC to be obligated to pay for treatment by referral, the referral must have come from Dr. Norris.[10]

Ms. West raises no new issues on reconsideration, and her mere disagreement with the outcome of the appeal is not sufficient grounds for reconsideration. Ms. West's Motion is DENIED.

FOR THE COMPENSATION REVIEW BOARD:

MELISSA LIN JONES
Administrative Appeals Judge

September 6, 2013
DATE

[10] *West v. Washington Hospital Center*, CRB No. 12-181, AHD No. 99-276A, OWC No. 281076 (August 15, 2013), p. 9. (Emphasis added.)