

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. 06-017

DANA SPRIGGS,

Claimant–Petitioner,

v.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY,

Self-Insured Employer–Respondent.

Appeal from a Compensation Order of
Claims Examiner Peggy Hendricks
OWC No. 579885

Heather C. Leslie, Esquire, for the Petitioner

Donna J. Henderson, Esquire, for the Respondent

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

JEFFREY P. RUSSELL, *Administrative Appeals Judge*, for the Compensation Review Panel:

DECISION AND ORDER

JURISDICTION

Jurisdiction is conferred upon the Compensation Review Board (CRB) pursuant to D.C. Official Code §§ 32-1521.01 and 32-1522 (2004), 7 DCMR § 230, and the Department of Employment Services Director's Directive, Administrative Policy Issuance 05-01 (February 5, 2005).¹ Pursuant

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 2004, Title J, the District of Columbia Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, *codified at* D.C. Official Code § 32-1521.01. In accordance with the Director's Directive, the CRB replaces the Office of the Director in providing administrative appellate review and disposition of workers' and disability compensation claims arising under the District of Columbia Workers' Compensation Act of 1979, as amended, D.C. Code Ann. §§ 32-1501 to 32-1545 (2005), and the District of Columbia Government Comprehensive Merit Personnel Act of 1978, as amended, D.C. Code Ann. §§ 1-623.1 to 1-643.7 (2005), including responsibility for administrative appeals filed prior to October 1, 2004, the effective date of the District of Columbia Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004.

to § 230.04, the authority of the CRB 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 public and private sector Acts.

BACKGROUND

This appeal follows the issuance of a Order, which became final by operation of law and appealable, from OWC, in the District of Columbia Department of Employment Services (DOES). In that Order, which was filed on November 15, 2005, the Claims Examiner denied Petitioner's request for authorization to change physicians from Dr. Stephen Brown to another, unspecified physician.

As grounds for this appeal, Petitioner alleges as error that the denial was arbitrary and capricious, in that the Claims Examiner based the denial upon the fact that Petitioner was not "disabled" from employment, which, according to Petitioner, does not constitute a rational basis for denial of a change of physicians, in light of the fact that Petitioner maintains that she is still in need of medical care, despite the fact that she is currently able to work. Respondent opposes the appeal, asserting that the denial of the request was proper, because according to Respondent, the reason that Petitioner asserted at the informal conference as the basis for the request was dissatisfaction with the medical care provided by Dr. Brown, which in Respondent's view is an inadequate basis upon which to request a change of physicians under the Act.

ANALYSIS

In 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).

Turning to the case under review herein, Petitioner alleges that the Claims Examiner's decision was arbitrary and capricious, in that the Claims Examiner based the denial upon the fact that Petitioner was not "disabled" from employment, which, according to Petitioner, does not constitute a rational basis for denial of a change of physicians, in light of the fact that Petitioner maintains that she is still in need of medical care, despite the fact that she is currently able to work. In support of that argument, she relies upon the case of *Copeland v. Hospital for Sick Children*, Dir. Dkt. No. 01-40, OWC No. 536532 ((Remand Order of the Director, July 25, 2001). Further, she asserts that the reasons she advanced at the informal conference in support of her request, being that she claims that (1) she overheard a conversation between members of Dr. Brown's staff in which the staff members made unspecified comments of a negative nature about Petitioner, causing Petitioner to be uncomfortable in continuing to obtain care from that office, and (2) Dr. Brown does not listen to her complaints and does not answer her questions, are such that the change request should have been granted. She argues that for these reasons, a change of physicians would, as a matter of law, be in her best interests and that the request must therefore be approved.

Respondent asserts in opposition that Petitioner failed in meeting her burden of demonstrating entitlement to the relied request under *Dunston v. District of Columbia Dep't. of Employment*

Services, 509 A.2d 109 (D.C. 1986), and that the stated basis for the request, which Respondent characterizes as “dissatisfaction with the medical care alone”, is not a legally sufficient basis upon which to grant a change of physician request, citing *Lane v. Linens of the Week*, CRB No. 05-207, OWC No. 594244 (May 6, 2005). In their opposition to this appeal, Respondent also asserts that the reason for the change request was that Dr. Brown had concluded that Petitioner could return to her pre-injury employment.

In *Lane*, the CRB panel wrote:

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 [...], shall have full authority to determine the necessity, character, and sufficiency of any medical aid 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 best interests of the employee.

In *Copeland*, the Director interpreted the preceding provisions to require a Claims Examiner to address a claimant’s arguments “and testimony”² concerning the reasons for seeking a change of physicians, if the request is denied, and to explain how such a denial is “in the best interests of the claimant”. In the instant case, the Order does not identify Petitioner’s basis for the request, nor explain how the denial is not counter to the best interests of Petitioner. Absent this information, the Board is unable to review the action of the claims examiner, to determine whether it is arbitrary, capricious, or otherwise not in accordance with the law.

As guidance on this issue, we note that the Act places the burden upon a claimant to establish entitlement to the specific relief requested. *Dunston v. District of Columbia Department of Employment Services*, 509 A.2d 109 (D.C. 1986). Further, the applicable regulation is so structured as to maintain that requirement, requiring a “finding” that the requested change is “in the best interests of” the claimant seeking the change. Dissatisfaction with the medical care alone is insufficient; in the absence

² It should be noted that in proceedings before OWC, there is no oath administered, no opportunity for cross-examination under oath, and no transcript of proceedings, hence there is no “testimony” or “evidence of record”. Because of this, it is even more important that Claims Examiners identify the matters that were conveyed to OWC in support of or opposition to such requests, so that review of the decision for lack of arbitrariness, caprice, or illegality can be done.

of a finding that the change is necessary to foster the best interests of the claimant, a denial of the request is allowed.

The Board recognizes that the Claims Examiner may determine that there is insufficient justification for such authorization, and if there is such lack of justification, the denial of the requested change may be proper, in that said 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 reasons for the request and the rationale for the denial must be identified and addressed.

Lane, supra, page 3. We agree with Petitioner that the reason given by the Claims Examiner in denying the request, that being that Petitioner is not "disabled" and therefore not entitled to a change in physicians is an incorrect statement of the law, if the Claims Examiner was using "disability" to mean "a loss of wages resulting from an injury", as the term is defined in the Act. An injured employee is entitled to continuing medical care even in the absence of an ongoing inability to work. *Santos v. District of Columbia Dep't. of Employment Serv's.*, 536 A.2d 1085 (D.C. 1988).

The Claims Examiner wrote:

I find with the evidence presented authorization to switch physicians *would be* in claimant's best interest when and if claimant provided substantial credible medical evidence of a continuing disability [citing *Copeland*]. Without medical evidence to show a continuing disability the request to switch physicians is unsupported.

Order, unnumbered page 3 (emphasis supplied). It is not clear to us if the Claims Examiner was using the term "disability" in its definitional sense (e.g., loss of wages from injury) or as a synonym for "injury". That is, if the Claims Examiner meant to deny the request on the theory that, since Petitioner was back at work, she was no longer entitled to receive medical care and thus was not entitled to change doctors, the decision is contrary to *Santos* and *Copeland*. If, on the other hand, the Claims Examiner meant to express that she agreed with the position of the Respondent at the time of the conference, that Petitioner was "doctor shopping" for a referral to a new physician merely because Dr. Brown had determined that her injury had resolved, such a decision would be rational (if supported by medical documentation at the informal conference) and could be proper under the Act.

Because of this ambiguity, we have determined that the matter ought to be remanded to OWC for reconsideration and clarification. If the Claims Examiner has determined that Petitioner's injury has resolved and she is in need of no further medical attention, the Claims Examiner is directed to so state and identify upon what basis that determination is made. If, on the other hand, the Claims Examiner accepts that Petitioner continues to suffer from the adverse medical effects of the work injury, the request must be granted, given that the Claims Examiner has already determined, in the above quoted passage, that the reasons for a "switch" merit granting the request, if there is indeed a continuing need for medical care. While we do not hold that the reasons given are sufficient, as a matter of law, to warrant a change request being granted in every instance, it is certainly within the discretion of the Claims Examiner to conclude that they are in a given case.

CONCLUSION

The Order of OWC dated November 15, 2005 is not in accordance with the law, in that the rationale and basis for the decision therein is not clear, and the matter must be remanded for clarification and reconsideration, consistent with the above discussion.

ORDER

The Order of November 15, 2005 is VACATED, and the matter is REMANDED to the Claims Examiner and OWC for the issuance of a new Order clarifying the basis of the decision, and for reconsideration of the request, in a manner consistent with the above discussion.

FOR THE COMPENSATION REVIEW BOARD:

JEFFREY P. RUSSELL
Administrative Appeals Judge

February 23, 2006
DATE