

DISTRICT OF COLUMBIA, DEPARTMENT OF EMPLOYMENT SERVICES,

In the Matter of, VALERIE JONES-COE,
Claimant,

v.

D.C. DEPARTMENT OF MENTAL HEALTH
Employer.

Dir. Dkt. No. 13-03; OHA PBL No. 98-024A; DCP Nos. LT 4-DMH 000405 and 364789

August 26, 2003

OPINION: ORDER OF THE DIRECTOR

This matter is before the Director for consideration of Claimant's Motion for Recusal. On May 9, 2003, Claimant wrote a letter to the Director, demanding that Administrative Law Judge Robert Middleton be removed from the above-captioned case, arguing that the Administrative Law Judge had demonstrated favoritism towards Employer's counsel and had shown bias against her. The Director remanded Claimant's request to the Administrative Law Judge (ALJ) for consideration. By Order dated June 2, 2003, the ALJ denied Claimant's request. The Director will now respond to the ALJ's refusal to recuse himself from this case.

An evidentiary hearing was scheduled in this matter for April 2, 2003. However, Claimant waited outside of the Office of Hearings and Adjudication and sent her sister in to the hearing room, who stated that Claimant wanted to forego the hearing and have the matter decided on the medical reports and evidence submitted by the parties. Employer sought leave to reserve the right to proceed with the formal hearing as originally planned and the hearing was continued until May 7, 2003.

On May 7, 2003 both parties appeared [*2] and participated in a lengthy discussion and a stipulation was reached between the parties, with the approval of the ALJ, that Claimant would undergo an IME and EMG study for not having to go forward with a formal hearing. However, on May 9, 2003, Claimant submitted a letter to the ALJ, attempting to withdraw from her agreement to undergo the tests, in which the Claimant asserted that favoritism was being shown to Employer and bias towards Claimant and contending that Employer had misrepresented facts surrounding the availability of the EMG test and IME. Thereafter, Claimant sent her letter to the Director, seeking to have the ALJ removed from the case.

On May 20, 2003, Employer filed an opposition to Claimant's motion to have the ALJ removed. In its opposition, Employer stated that the ALJ acted in a fair and impartial manner at all times and that Claimant's statements concerning the IME and EKG were inaccurate.

In his Order, the ALJ reiterated that a stipulation was reached between the parties that Claimant would undergo these tests to compensate for Claimant not having to go forward with a hearing and to submit to cross-examination. The results would then be made available [*3] to Claimant's physician who could comment on the results. Then the parties would agree to submit the matter for consideration on the basis of the written documentation and written argument. The ALJ stressed that

he was persuaded that the parties were fully aware of the steps to be taken in order to have clear and accurate medical evidence considered in the case.

As such, the ALJ concluded that Claimant had failed to establish a persuasive reason why he should recuse himself from the regular performance of his duties in this manner, noting that "Claimant has merely presented bald allegations of favoritism or bias with no proof thereof." Claimant then asked the Director to review the ALJ's refusal to recuse himself from this matter.

After reviewing the entire record in this manner, the Director finds that there was no abuse of discretion of the part of the ALJ in the handling of this situation and refusing to recuse himself from this case.

Accordingly, the June 2, 2003 Order Rejecting Claimant's Motion For Recusal is hereby AFFIRMED.

Gregory P. Irish

Director

Date Aug 26, 2003