

**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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WILLIAM ELEY,

Claimant – Respondent

v.

INTERLOCK HOLDINGS AND FEDERAL INSURANCE COMPANY,

Employer/Carrier – Petitioner.

Appeal from a Compensation Order of
Claims Examiner Cathy A. Scruggs
OWC No. 593820

Robert C. Baker, Jr., Esq., for the Petitioner

Ryan Foran, Esq., for the Respondent

Before LINDA F. JORY, FLOYD LEWIS, and SHARMAN J. MONROE, *Administrative Appeals Judges*.

SHARMAN J. MONROE, *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, 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 2004, Title J, the D.C. 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 (2005). In accordance with the

BACKGROUND

This appeal follows the issuance of a Final Order² from the Office of Workers' Compensation (OWC) in the District of Columbia Department of Employment Services (DOES). In that Final Order, which was filed on November 23, 2005, the Claims Examiner (CE) declined to exercise jurisdiction over this case because the case was on appeal for similar issues. The Employer-Petitioner (Petitioner) now seeks review of that Final Order.

As grounds for this appeal, the Petitioner alleges that the decision below is erroneous as a matter of law and should be reversed.

ANALYSIS

In its review of an appeal from the Office of Workers' Compensation, the Board must affirm the compensation order or final 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, § 51.03 (2001).

Turning to the case under review herein, the Petitioner asserts that the issue before the CE was change of physician, an issue clearly within the ambit of OWC jurisdiction. It maintains that the June 28, 2005 CRB Decision and Order affirmed an ALJ's finding that the Claimant-Respondent's (Respondent) percutaneous surgical procedure was reasonable and necessary, and that that issue is the subject of the pending appeal before the D.C. Court of Appeals (DCCA). Therefore, the Petitioner argues that since change of physician was not at issue before the Administrative Hearings Division or CRB, it is not at issue before the DCCA and the CE can exercise jurisdiction over this matter. Moreover, the Petitioner asserts that as the Respondent's current treating physician is subject to an administrative suspension, a change of physician is in the best interest of the Respondent.

The issue in dispute before the CE as stated in the Final Order is '[t]he employer/carrier questions the reasonableness and necessity of the claimant's current medical treatment.' The Final Order further states:

The employer/carrier requested an informal conference to discuss the reasonableness and necessity of claimant's current medical treatment pursuant to Section 32-107 of the Act. Employer/carrier had the claimant examined

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. 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 D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004.

² The Memorandum of Informal Conference dated November 23, 2005 became a Final Order by operation of law. 7 DCMR § 219.22

independently and wants the claimant to change physicians contending that claimant's current services are not necessary or reasonable.

From reading the Final Order, it is not clear to the Panel what issue was placed before the CE for resolution, to wit: whether the issue is reasonableness and necessity of the Respondent's current medical treatment or whether the issue is change of physicians or both. If the issue is the reasonableness of current medical treatment, the OWC may be precluded from exercising jurisdiction at this time. The evidence needs to be examined to see whether the parties are contesting the same medical treatment(s) that were addressed by AHD and CRB decisions. If the issue is change of physician, the OWC is vested with jurisdiction. If both issues are open, the CE may need to bifurcate this matter and decide only one issue. Because the Final Order as written is unclear, the Panel is unable to determine whether the CE action was in accordance with the law and thus, cannot rule on this appeal. This matter must be remanded.

On remand, the CE must state the issue(s) presented for resolution as indicated by the parties at the informal conference, not based upon the request for informal conference as the issue(s) may have changed. If the CE declines to exercise jurisdiction, the CE must set out in detail the basis for not exercising jurisdiction, *i.e.*, where appeal filed, when appeal filed, what issue(s) on appeal.

CONCLUSION

The Final Order of November 23, 2005 is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.

ORDER

The Final Order of November 23, 2005 is REMANDED for further proceedings, including if necessary the convening of another informal conference, consistent with the above discussion.

FOR THE COMPENSATION REVIEW BOARD:

SHARMAN J. MONROE
Administrative Appeals Judge

October 12, 2006
DATE