

**United States Department of Labor
Employees' Compensation Appeals Board**

A.H., Appellant)

and)

**DEPARTMENT OF THE NAVY, NAVAL
FACILITIES ENGINEERING CMD -
STATIONS, San Diego, CA, Employer**)

**Docket No. 16-1835
Issued: May 4, 2017**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On September 15, 2016 appellant filed a timely appeal from a July 19, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether OWCP properly denied appellant's request to change treating physicians.

FACTUAL HISTORY

On September 17, 2014 appellant, then a 28-year-old material engineer, filed a traumatic injury claim (Form CA-1) alleging that on September 8, 2014 she sustained multiple injuries

¹ 5 U.S.C. § 8101 *et seq.*

when her vehicle was rear ended in a motor vehicle accident.² OWCP accepted appellant's claim for neck sprain and later expanded acceptance of the claim to include lumbar, left shoulder, and upper arm sprains. Appellant stopped work intermittently and received medical and wage-loss compensation benefits.

Commencing September 12, 2014, she sought medical treatment with her Kaiser Permanente physician, Dr. Charles Adams, Board-certified in family medicine.

In a February 1, 2016 medical report, Dr. Adams reported that appellant was injured in a motor vehicle accident and was initially treated on September 12, 2014. He noted appellant's history of treatment which included chiropractic manipulations treatment, physical therapy, and muscle relaxants. Dr. Adams explained that these conservative measures resulted in mild improvement. He noted no improvement with nonsteroidal anti-inflammatory drugs (NSAID). Dr. Adams diagnosed neck, lumbar, and left shoulder strain, as well as lumbar disc degeneration, and upper back pain. He also noted that, while appellant had benefited from chiropractic treatment, she complained of continued pain and discomfort in her upper and lower back and wanted to return to her previous activity level and exercise. Dr. Adams discussed the next step in her treatment explaining that her condition was likely not amenable to surgical intervention. Rather, pain management and adjustment of her activities to protect her back from further injury would be critical. Dr. Adams reported that appellant found this plan of action to be unacceptable.

On March 30, 2016 appellant notified OWCP by telephone that Dr. Adams did not want to continue seeing her.

In a May 4, 2016 medical report, Dr. Hannah Homafar, a treating Kaiser Permanente neurologist, reported that appellant was referred to her by Dr. Adams for a neurology consult for continued issues with paresthesia and pain in the left leg after a work-related automobile accident. She noted that the neurologic examination revealed normal findings, but appellant did have tenderness over her left trapezius. With respect to the paresthesias, Dr. Homafar recommended an electromyography (EMG)/nerve conduction velocity (NCV) test.

On May 25, 2016 appellant requested a change in her treating physician. She reported that there had been no progress or resolution in her case since the September 8, 2014 accident. Appellant explained that the only options provided was medication which was only a temporary solution. She requested authorization to be treated by Dr. Michael J. Dorsi, a Board-certified neurosurgeon, located in Ventura, California.

In a June 15, 2016 diagnostic report, Dr. Homafar reported that neurological findings revealed no electrodiagnostic evidence for a neuropathy or left lumbar radiculopathy.

On June 17, 2016 appellant underwent a magnetic resonance imaging (MRI) scan of the thoracic and lumbar spine. The findings were reported as minimal-to-mild multilevel degenerative disc disease with mild foraminal narrowing at multiple levels.

² Appellant reported sustaining muscle spasms, whiplash, pain, headaches, stiff neck, low back pain, left shoulder pain, and left arm and finger pain.

By letter dated June 28, 2016, appellant again requested that OWCP grant her a change of physicians because Dr. Adams was providing treatment which had not improved her condition. She reported that she needed a physician to treat her herniated discs and other injuries from the motor vehicle accident.

In a June 29, 2016 medical report, Dr. Adams reported that appellant's complaints of pain and discomfort were unchanged. He noted that the recent nerve conduction study was negative. The MRI scan of the lumbar spine was unchanged and the MRI scan of the thoracic spine revealed mild degenerative disc disease at multiple levels of the thoracic spine. Dr. Adams provided findings on physical examination and diagnosed neck muscle strain, lumbar muscle strain, upper back pain, and left shoulder muscle strain. He prescribed lidocaine and recommended referral for rehabilitation treatment, services, and evaluation. Dr. Adams further noted that appellant would be transferring care to a physician outside of Kaiser Permanente. He reported that appellant would contact her case manager and that he would help facilitate the change.

By decision dated July 19, 2016, OWCP denied appellant's request to change her treating physician as there was no evidence to indicate that the treatment she was receiving was improper or inadequate. It informed appellant that her attending physician was authorized to refer her to another appropriate specialist for an evaluation.

LEGAL PRECEDENT

The payment of medical expenses incident to securing medical care is provided for under section 8103 of FECA. The pertinent part provides that an employee may initially select a physician to provide medical services, appliances, and supplies, in accordance with such regulations and instruction as the Secretary of Labor considers necessary.³

OWCP's regulations provide:

“(a) When the physician originally selected to provide treatment for a work-related injury refers the employee to a specialist for further medical care, the employee need not consult OWCP for approval. In all other instances, however, the employee must submit a written request to OWCP with his or her reasons for desiring a change of physician.

“(b) OWCP will approve the request if it determines that the reasons submitted are sufficient. Requests that are often approved include those for transfer of care from a general practitioner to a physician, who specializes in treating conditions like the work-related one, or the need for a new physician when an employee has moved.”⁴

³ 5 U.S.C. § 8103(a).

⁴ 20 C.F.R. § 10.316.

Any transfer of medical care should be accomplished with due regard for professional ethics and courtesy. No transfer or termination of treatment should be made unless it is in the best interest of the claimant and the government. Employees who want to change attending physicians must explain their reasons in writing and OWCP must review all such requests. OWCP may approve a change when: the original treating physician refers the claimant to another physician for further treatment; the claimant wants to change from the care of a general practitioner to that of a specialist in the appropriate field or from the care of one specialist to another in the appropriate field; or the claimant moves more than 50 miles from the original physician (since OWCP has determined that a reasonable distance of travel is up to a roundtrip distance of 100 miles). It must use discretion in cases where other reasons are presented.⁵

The Board has recognized that OWCP, acting as the delegated representative of the Secretary of Labor, has broad discretion in approving services provided under FECA. OWCP has the general objective of ensuring that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time. It, therefore, has broad administrative discretion in choosing means to achieve this goal. The only limitation on OWCP's authority is that of reasonableness. Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts. It is not enough to show merely that the evidence could be construed to produce a contrary conclusion.⁶

ANALYSIS

The Board finds that OWCP properly exercised its discretion in denying appellant's request to change her treating physician.

Section 10.316 of the Code of Federal Regulations⁷ provides that, after initially selecting a treating physician, an employee who wishes to change to another treating physician must submit a written request to OWCP explaining his or her reasons for desiring a change of physician.

By letters dated May 25 and June 28, 2016, appellant requested that OWCP grant her a change of physician to Dr. Dorsi because Dr. Adams was providing treatment which had not improved her condition. She reported that there had been no progress or resolution in her case since the September 8, 2014 accident and the only treatment option provided was medication. By decision dated July 19, 2016, OWCP denied her request as there was no evidence to indicate that the treatment from Dr. Adams was anything other than proper and adequate.

The Board finds that OWCP did not abuse its discretion by denying appellant's request to change physicians to Dr. Dorsi.⁸ The Board notes that, in his February 1, 2016 medical report,

⁵ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Authorizing Examination and Treatment*, Chapter 3.300.6 (February 2012).

⁶ *Daniel J. Perea*, 42 ECAB 221 (1990).

⁷ *Supra* note 4.

⁸ *A.M.*, Docket No. 14-2016 (issued January 16, 2015).

Dr. Adams reported that appellant's condition was likely not amenable to surgical intervention. Dr. Adams recommended pain management and adjustment of her activities to protect her back from further injury. Appellant has sufficiently explained why treatment based on her physician's recommendation was inadequate.⁹

While appellant did request a change from the care of a general practitioner to that of a specialist in the appropriate field, the Board notes that OWCP informed appellant that her attending physician was authorized to refer her to another appropriate specialist for an evaluation.¹⁰

Although appellant offered reasons for requesting to change physicians to Dr. Dorsi, OWCP has broad discretion in approving services provided under FECA and the only limitation on OWCP's authority is that of reasonableness.¹¹ In this case, there is no evidence of manifest error, clearly unreasonable judgment, or illogical action on the part of OWCP.¹² Appellant has not demonstrated that OWCP's decision to deny the change in physicians was an abuse of discretion.¹³

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP properly denied appellant's request to change treating physicians.

⁹ See *C.N.*, 57 ECAB 730 (2006).

¹⁰ *Supra* note 5.

¹¹ *Supra* note 6. See also *J.W.*, Docket No. 13-1852 (issued January 23, 2014).

¹² *T.R.*, Docket No. 14-1514 (issued January 8, 2015).

¹³ *E.B.*, Docket No. 09-123 (issued August 13, 2009).

ORDER

IT IS HEREBY ORDERED THAT the July 19, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 4, 2017
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board