

BERNARD HARRIS )  
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 Claimant-Petitioner )  
 )  
 v. )  
 )  
 STEVEDORING SERVICES OF )  
 AMERICA )  
 )  
 and )  
 )  
 HOMEPORT INSURANCE ) DATE ISSUED: JUN 18, 2004  
 COMPANY )  
 )  
 Employer/Carrier- )  
 Respondents )  
 )  
 DIRECTOR, OFFICE OF WORKERS' )  
 COMPENSATION PROGRAMS, )  
 UNITED STATES DEPARTMENT )  
 OF LABOR )  
 )  
 Party-in-Interest ) DECISION and ORDER

Appeal of the Compensation Order of Karen P. Staats, District Director,  
United States Department of Labor.

Bernard Harris, Seattle, Washington, *pro se*.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and  
HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Compensation Order (Case No. 14-138565) of District Director Karen P. Staats rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act). In an appeal by a claimant without representation by counsel, the Board will review the district director's determinations to

ascertain whether they are arbitrary, capricious, an abuse of discretion, or not in accordance with law. *Sans v. Todd Shipyards Corp.*, 19 BRBS 24 (1986).

Claimant injured his neck, back, left hip, and right knee during the course of his employment as a stevedore on September 19, 2002, when he fell through rotten wood planking. Claimant sought treatment from Dr. Young, a chiropractor and naturopath. Dr. Young provided claimant with ultrasound, galvanic muscle stimulation, and manual spine manipulation. Dr. Young also referred claimant to Joseph Yandlow, a nurse practitioner, for pain management medication. Mr. Yandlow prescribed Oxycontin, Valium, Neurontin, and Remeron. Claimant underwent an MRI scan of the right knee on November 8, 2002, which revealed a complete tear of the anterior cruciate ligament, a tear of the medial meniscus, and degenerative osteoarthritis. An MRI of the left hip showed degenerative osteoarthritis.

Dr. Linder, who examined claimant at employer's request, diagnosed degenerative arthritis of the cervical and lumbar spine, left hip, and right knee, which were aggravated by claimant's work injury. Dr. Linder further diagnosed work-related tears of the anterior cruciate ligament and medial meniscus of the right knee. Dr. Young referred claimant for evaluation to Dr. Steedman, an orthopedic surgeon. In his December 16, 2002, report, Dr. Steedman diagnosed the right knee injuries and an exacerbation of previously asymptomatic left hip arthritis. Drs. Linder and Steedman concurred in recommending non-narcotic treatment for claimant's pain symptomatology and arthroscopic surgery to repair the knee injuries. Claimant also had his right knee examined by Dr. Larson, who specializes in orthopedics and sports medicine. In his March 19, 2003, report, Dr. Larson recommended arthroscopic surgery to repair claimant's meniscus tear. Claimant, however, did not undergo knee surgery, but continued receiving treatment from Dr. Young and pain medication from Nurse Yandlow. On April 22, 2003, employer controverted claimant's right to compensation on the basis that it could not determine claimant's current medical/disability status.

In her May 12, 2003, Compensation Order, the district director stated that claimant is entitled to treatment for degenerative arthritis of the cervical and lumbar spine, left hip, and right knee, and for a torn anterior cruciate ligament and complex tear of the medial meniscus of the right knee. The district director found that claimant has not received appropriate treatment for these conditions from Dr. Young and Nurse Yandlow. The district director found that Dr. Young's naturopathic treatment is not authorized by the regulations, and that his chiropractic treatment exceeds the compensable chiropractic services allowed under the Act. *See* 20 C.F.R. §702.404. The district director determined that further treatment of claimant by Dr. Young and Mr. Yandlow was no longer authorized. *See* 20 C.F.R. §§702.406, 702.407. She directed claimant to select an orthopedic surgeon and to notify her and employer of his choice in writing within 14 days; otherwise, she would select a treating physician for him. Finally, the district

director recommended that employer reinstate compensation payments to claimant upon receiving notice from claimant that his medical care has been transferred to an orthopedic physician.

Claimant wrote a letter to the administrative law judge objecting to her decision to terminate his treatment with Dr. Young and Nurse Yandlow. In a letter dated May 26, 2003, the district director provided further rationale for her finding that Dr. Young's course of treatment exceeds the treatment allowed under the Act for chiropractic care, that Nurse Yandlow's prescription of narcotic drugs for pain does not meet an acceptable level of care, and for ordering claimant to select an orthopedic surgeon to treat his right knee condition and degenerative arthritis. After claimant filed an appeal with the Board, the district director issued another Compensation Order on July 17, 2003, in which she selected Dr. Dennis Kvidera as claimant's treating physician, since claimant had failed to make a selection within the time frame allotted by the district director.

On appeal, claimant, representing himself, challenges the district director's removal of Dr. Young as his treating physician and the termination of the referral to Nurse Yandlow.<sup>1</sup> Neither employer nor the Director has responded to this appeal.

Initially, we note that the district director has the statutory and regulatory authority to order a change of claimant's treating physician. Section 7(b) of the Act states in pertinent part:

The Secretary shall actively supervise the medical care rendered to injured employees, . . . shall have the authority to determine the necessity, character, and sufficiency of any medical aid furnished or to be furnished, and may, on [her] own initiative or at the request of the employer, order a change of physicians or hospitals when in [her] judgment such change is desirable or necessary in the interest of the employee. . . .

33 U.S.C. §907(b) (emphasis added). The Board has held that, in view of the 1972 Amendments transferring adjudicative functions to the administrative law judge, the statutory references to the "Secretary" are considered to be references to the district director. *Jackson v. Universal Maritime Service Corp.*, 31 BRBS 103, 106 (1997) (Brown, J., concurring); see also *Cooper v. Todd Pacific Shipyards Corp.*, 22 BRBS 37

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<sup>1</sup> We decline to address the effects of various correspondence among claimant, employer, and the district director's office dated after claimant's notice of appeal was filed as our review is limited to the district director's findings in her May 12, 2003, Compensation Order and her May 26, 2003, letter addressing claimant's motion for reconsideration. See generally 33 U.S.C. §921(b); 20 C.F.R. §702.392; *Jackson v. Universal Maritime Service Corp.*, 31 BRBS 103 (1997).

(1989). The implementing regulations authorize the district director to order a change of physicians when such change is necessary or desirable. Specifically, the regulation at Section 702.406(b) provides: “The district director . . . may order a change of physicians or hospitals when such a change is found to be necessary or desirable. . . .” 20 C.F.R. §702.406(b). Section 702.407 of the regulations authorizes the Director, through his designees, the district directors, to actively supervise the medical care of injured employees. In pertinent part, this regulation states:

Such supervision shall include:

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(b) The determination of the necessity, character and sufficiency of any medical care furnished or to be furnished the employee. . . ;

(c) The determination of whether a change of physicians, hospitals or other persons or locales providing treatment should be made or is necessary[.]

20 C.F.R. §702.407(b), (c). Thus, the plain language of the Act and the regulations grant to the district director the authority to change a claimant’s physician *See Jackson*, 31 BRBS at 106; *see also Roulst v. Marco Construction Co.*, 15 BRBS 443 (1983). The district director’s decision to order a change in claimant’s treating physician is a discretionary function, which is directly appealable to the Board.<sup>2</sup> We review the district director’s order terminating claimant’s treatment with Dr. Young and Nurse Yandlow under the abuse of discretion standard. *See Jackson*, 31 BRBS at 107.

The district director’s determination that, due to claimant’s work injury, he requires treatment for degenerative arthritis of the spine, left hip, and right knee, and for a torn right anterior cruciate ligament and complex tear of the right knee medial meniscus is supported by the medical opinions in the administrative file of the district director. An MRI of the right knee and of the left hip on November 8, 2002, showed evidence of the ligament and meniscus injuries, and of osteoarthritis of the right knee and left hip. After examining claimant on November 19, 2002, Dr. Linder, an orthopedic surgeon, and Dr. Marks, a neurologist, additionally diagnosed degenerative arthritis of the spine. Dr. Linder further recommended that claimant come under the care of an orthopedic surgeon, and that claimant undergo arthroscopic evaluation of his right knee. Dr. Steedman, an orthopedic surgeon, examined claimant on December 16, 2002, and diagnosed the right knee injuries and exacerbation of previously asymptomatic left hip osteoarthritis. Dr.

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<sup>2</sup> Thus, claimant is not entitled to a hearing before an administrative law judge on this issue. *See Healy Tibbitts Builders, Inc. v. Cabral*, 201 F.3d 1090, 33 BRBS 209(CRT) (9<sup>th</sup> Cir.), *cert. denied*, 531 U.S. 956 (2000).

Steedman recommended surgery to repair the right knee meniscus tear, and he opined that claimant's left hip may require a total hip arthroplasty. Claimant had his right knee examined on February 12, and March 19, 2003, by Dr. Larson, who practices orthopedics and sports medicine. Dr. Larson recommended surgery to repair the meniscus tear followed by physical therapy.

The district director rationally found that treatment by Dr. Young for these injuries is not authorized under the Act. The letterhead to Dr. Young's September 25, 2002, medical report represents that he is a naturopathic medical doctor and chiropractic physician. Section 702.404 specifically provides,

The term *physician* includes doctors of medicine (MD), surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. The term includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation shown by X-ray or clinical findings. . . . Naturopaths . . . are not included within the term "physician" as used in this part.

20 C.F.R. §702.404 (emphasis added). Under this regulation, none of Dr. Young's services provided in his capacity as a naturopath are compensable, and he may not be claimant's treating physician for the work-related injuries. *Id.*

With regard to Dr. Young's chiropractic treatment, compensable services are limited to manual manipulation of the spine to correct a subluxation. *Id.* Subluxation is defined as an incomplete or partial dislocation. DORLAND'S ILLUSTRATED MEDICAL DICTIONARY 1488 (25<sup>th</sup> ed. 1974). In his September 25, October 8, and November 9, 2002, reports, Dr. Young diagnoses claimant with cervical, lumbosacral, and left hip sprain/strain. Dr. Young describes his treatment of claimant in his September 25, 2002, report and April 30, 2003, letter, as ultrasound, high volt galvanic muscle stimulation, stretching, range of motion exercises, and manual spinal manipulation to joints exhibiting restrictions in normal range of motion. In his April 30, 2003, letter, Dr. Young further states that manual spinal manipulation is applied to subluxation complexes. Pursuant to Section 702.404, Dr. Young's treatment with ultrasound, high volt galvanic muscle stimulation, stretching, and range of motion exercises is not authorized chiropractic treatment, as this treatment does not entail manual spinal manipulation. *See Bang v. Ingalls Shipbuilding, Inc.*, 32 BRBS 183 (1998). Moreover, in her May 26, 2003, letter, the district director found "questionable" Dr. Young's statement in his April 30, 2003, letter that claimant received spinal manipulation for subluxation complexes because this treatment was not described until after claimant was provided a photocopy of the regulation at Section 702.404 by a claims examiner. This finding is rational. None of Dr. Young's reports prior to April 30, 2003, states that claimant is

undergoing spinal manipulation for subluxation. Moreover, no other medical report of record diagnoses an incomplete or partial dislocation of the spine. Accordingly, we hold that the district director did not abuse her discretion by finding that spinal manipulation provided by Dr. Young for alleged subluxation complexes exceed the chiropractic treatment authorized under Section 702.404. *Bang*, 32 BRBS 183. As a naturopath may not be a treating physician under the Act, and as the district director rationally found that none of Dr. Young's treatment is compensable pursuant to Section 702.404, we affirm the district director's determination that claimant's selection of Dr. Young as his treating physician is inappropriate for the treatment of claimant's injuries, and her order that claimant choose an appropriate orthopedist as his treating physician. 20 C.F.R. §702.407.

The district director also found that Dr. Young's referral of claimant to Nurse Yandlow for counseling and narcotic pain medication was inappropriate. The documents in the administrative file support the district director's findings in her May 26, 2003, letter that Nurse Yandlow stipulated to an informal disposition of allegations by the state of Washington that he repeatedly failed to document administration and/or wastage of narcotic medication provided to patients. Nurse Yandlow agreed to restrictions on his employment as a nurse in the state of Washington for 24 months, and he further agreed to take a minimum of eight hours instruction on the legal aspects of nursing with a focus on documentation. The district director's finding that Nurse Yandlow's prescriptions for Oxycontin, Remeron, Valium, and Neurontin are not warranted is also supported by the administrative file, as the doctors examining claimant agreed that he should be taking anti-inflammatory medication and not narcotic medication. Specifically, Dr. Steedman opined that it was "essential" that claimant find non-narcotic pain medications to control his symptoms, and that arthritis and meniscus pain can be controlled with anti-inflammatory medication and Tylenol. Dr. Linder opined that treatment of claimant's arthritis should consist of anti-inflammatory medication and therapy. Based on this evidence, we hold that the district director rationally concluded that Nurse Yandlow's prescribing of multiple narcotic and anti-depressant medications fails to meet an acceptable standard of care. Accordingly, we affirm the district director's determination that treatment by Nurse Yandlow for claimant's work-related injuries is not appropriate. 20 C.F.R. §702.407.

Finally, in her Order, the district director directed claimant to select from a list of orthopedic surgeon to treat his injuries. The district director further stated that should claimant fail to select a physician from the list within 14 days, or another qualified orthopedic surgeon, she would select a treating physician for him. Based on the reports of Drs. Linder, Marks, Steedman, and Larson, the district director rationally determined that claimant requires the services of an orthopedic surgeon to treat his work-related degenerative arthritis and right knee injuries. These physicians were unanimous in recommending that claimant undergo surgery to repair his right knee meniscus tear. Accordingly, we hold that the district director acted within her authority under Section

7(b) of the Act and Section 702.406, and 702.407 of the implementing regulations to order claimant to select an orthopedic surgeon. *Jackson*, 31 BRBS 103.

Accordingly, the district director's Compensation Order is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge