

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

D.L., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
San Francisco, CA, Employer**

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**Docket No. 10-318
Issued: September 8, 2010**

Appearances:
Hank Royal, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 6, 2009 appellant, through her representative, filed a timely appeal from the August 28, 2009 merit decision of the Office of Workers' Compensation Programs, which denied authorization for a change of physician. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUE

The issue is whether the Office abused its discretion in denying authorization for a change of physician.

FACTUAL HISTORY

On May 31, 1994 appellant, then a 34-year-old letter carrier, sustained an injury in the performance of duty while pulling down her route. The Office accepted her claim for right shoulder strain, cervical strain and right shoulder impingement.

In a prior appeal,¹ the Board found that the Office met its burden to justify the termination of compensation for the accepted right shoulder conditions, but did not meet its burden to terminate compensation for the accepted cervical strain. In the most recent appeal,² the Board noted that the Office had expanded its acceptance to include a cervical disc herniation, but it did not advise the impartial medial specialist or request an opinion on whether the herniation had resolved. The Board found that the Office did not meet its burden to justify the termination of compensation for the accepted cervical conditions.

Appellant requested authorization to be treated by Dr. Marilyn M. Robertson, a Board-certified neurologist in, San Francisco, because her longtime treating physician retired. The Office noted that Dr. Robertson practiced 102 miles away from appellant's home in Elk Grove, south of Sacramento, meaning a 204-mile roundtrip. It advised appellant that it could not authorize a transfer of care to Dr. Robertson because it required that the treating physician be located within 25 miles of the claimant's home. The Office added that there were appropriate doctors within a 25-mile radius of her home who provided care for federal workers' compensation patients.

Appellant's representative argued that appellant had a doctor-patient relationship with Dr. Robertson since 2003 or 2004 for treatment and care for her injuries.³ He stated that regulations gave claimants the right to choose a physician as long as that physician was of good standing. "The fact that the Office will not pay mileage for treatment over 25 miles, has not prevented the claimant from seeing her former physician in San Francisco since she moved to Elk Grove, Ca. in 2005."

In a decision dated August 28, 2009, the Office denied authorization for a change of physician. It observed that there was no shortage of neurologists in the Greater Sacramento area and that it regularly dealt with a large number of physicians who worked out of the Sacramento area. The Office found that appellant's condition appeared to warrant against driving 204 miles roundtrip to seek routine medical care. It noted that it was the drive from Elk Grove to San Francisco that prompted appellant to file a notice of occupational injury claiming an aggravation of her preexisting condition.⁴ Indeed, Dr. Robertson herself reported that the commute between Sacramento and San Francisco contributed to appellant's injury, as the vibrations of a moving vehicle placed a strain on her spine. The Office further found that if appellant traveled to her appointments in San Francisco *via* a moving vehicle, the trip could worsen her condition.

The Office found that appellant provided no compelling reason to change physicians. It noted that she had only the initial choice of physician. In the interest of sound medical practice, it was not the policy of the Office to transfer medical supervision unless there was some compelling reason to do so. The Office found that appellant's relationship with Dr. Robertson was not a compelling reason. The extraordinary distance she would have to travel raised serious

¹ Docket No. 05-1905 (issued March 6, 2006).

² Docket No. 08-1843 (issued June 15, 2009).

³ Dr. Robertson saw appellant when the longtime treating physician was unavailable.

⁴ The Office File No. xxxxxx390.

medical questions. The Office denied authorization and stated that appellant must select a physician within a reasonable distance of her home.

On appeal appellant's representative argues that the Office does not have the authority to deny appellant the choice of physician. He characterized the Office's objection to the distance as unreasonable.

LEGAL PRECEDENT

The employee may initially select a physician to provide medical services, appliances, and supplies, in accordance with such regulations and instructions as the Secretary considers necessary and may be furnished necessary and reasonable transportation and expenses incident to the securing of such services, appliances and supplies.⁵

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 the Office for approval. In all other instances, however, the employee must submit a written request to the Office with her reasons for desiring a change of physician. The Office 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.⁶

Office procedures state that the Federal Employees' Compensation Act permits the employee an initial choice of physician and ordinarily, the physician selected should be located within 25 miles of the employee's home or place of employment.⁷

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 the Office must review all such requests. The Office 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 25 miles from the original physician. It must use discretion in cases where other reasons are presented.⁸

The Board has recognized that the Office, acting as the delegated representative of the Secretary of Labor, has broad discretion in approving services provided under the Act. The

⁵ 5 U.S.C. § 8103(a).

⁶ 20 C.F.R. § 10.316.

⁷ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Authorizing Examination and Treatment*, Chapter 3.300.5.c (October 1990).

⁸ *Id.* at Chapter 3.300.6.c (June 2000).

Office has the general objective of ensuring that an employee recovers from 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 the Office'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.⁹

ANALYSIS

Appellant submitted a written request to the Office with her reason for desiring a change of physician. The question on appeal is whether the Office abused its discretion in denying that request.

The retirement of appellant's longtime treating physician warrants a change of physician. But appellant asked the Office to transfer her medical care to Dr. Robertson in San Francisco. Her reason has some merit. Appellant had seen Dr. Robertson in the past for her injuries. So there was already some doctor-patient relationship. She knew Dr. Robertson, maybe felt comfortable with her and Dr. Robertson was already familiar with appellant's injury. But Dr. Robertson was 102 miles away. A roundtrip for any medical appointment would, therefore, be a considerable 204 miles. This was an unnecessary distance to travel because there was no shortage of neurologists in the Greater Sacramento area. Moreover, there was some indication that such a trip might worsen appellant's cervical condition.

It appears that appellant filed a claim for compensation because her commute to San Francisco had aggravated her condition. Her longtime physician reported that it would be prudent for the employer to locate her near her Elk Grove home if further and progressive injuries were to be avoided. Dr. Robertson reported that vibrations from a moving vehicle placed a strain on appellant's spine and contributed to her cervical injury. The Board notes that appellant would not be commuting to see Dr. Robertson every weekday, but the risk of aggravation from unnecessarily long drives was an appropriate Office consideration.

The Board finds that the Office properly exercised its discretion in denying authorization for a change of physician. There is no proof of manifest error or clearly unreasonable judgment or illogical action. Appellant has offered some reason for wanting to see Dr. Robertson, but the Office has presented sufficient reason for denying her request. Such a transfer of care does not appear necessary and reasonable or in the best interest of both appellant and the government. The Board will therefore affirm the Office's August 28, 2009 decision denying authorization.

On appeal appellant's representative argues that the Office does not have the authority to deny appellant the choice of physician. But this is not a case in which the Office has denied appellant her initial choice of physician. She chose a physician long ago and he retired. What she is requesting now is a transfer of her medical care to another physician. The Act gives the Office discretion to grant or deny that request. It is the opinion of appellant's representative that

⁹ *Daniel J. Perea*, 42 ECAB 221 (1990).

the Office's objection to the distance was unreasonable, but given the evidence that driving such a distance had already aggravated appellant's cervical condition and the fact that qualified physicians were easily available much closer to her home, it was an appropriate consideration.

CONCLUSION

The Board finds that the Office properly exercised its discretion in denying authorization for a change of physician.

ORDER

IT IS HEREBY ORDERED THAT the August 28, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 8, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board