U.S. Department of Labor

Benefits Review Board
P.O. Box 37601
Washington, DC 20013-7601

BRB No. 16-0073

ALEXANDER SCOTT	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
PORTS AMERICA LOUISIANA	)	DATE ISSUED: Nov. 14, 2016
	)	
Self-Insured	)	
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	DECISION and ORDER

Appeal of the Order of David A. Duhon, District Director, United States Department of Labor.

Arthur J. Brewster and Jeffrey P. Briscoe, Metairie, Louisiana, for claimant.

Christopher M. Landry and Erzsebet M. Pifko (Pugh, Accardo, Hass, Radecker & Carey, L.L.C.), Covington, Louisiana, for self-insured employer.

Kathleen H. Kim (M. Patricia Smith, Solicitor of Labor; Maia Fisher, Associate Solicitor; Mark A. Reinhalter, Counsel for Longshore), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: HALL, Chief Administrative Appeals Judge, GILLIGAN and ROLFE, Administrative Appeals Judges.

HALL, Chief Administrative Appeals Judge:

Employer appeals the Order (Case No. 07-304998) of District Director David A. Duhon 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). The determinations of the district director must be affirmed unless they are shown to be arbitrary, capricious, an abuse of discretion, or not in accordance with law. *Weikert v. Universal Maritime Service Corp.*, 36 BRBS 38 (2002); *Sans v. Todd Shipyard Corp.*, 19 BRBS 24 (1986).

The facts are not in dispute. Claimant was working for employer on January 30, 2015, when he was struck from behind by a forklift and knocked down. He injured his left hip and low back. He was treated by Dr. Steiner from February to August 2015. In October 2015, an informal conference was held because claimant sought a change of physicians. The claims examiner recommended that Dr. Steiner had not been claimant's choice of physician, so claimant was permitted to change to his choice, Dr. Bostick. As Dr. Bostick found claimant totally disabled, the claims examiner recommended that claimant is entitled to continuing temporary total disability benefits, and because there is a medical dispute between Drs. Steiner and Bostick, the claims examiner recommended that an independent medical examination (IME) be scheduled. EX 1; *see* Order at 2.

Employer requested reconsideration of the recommendations. The district director issued an Order, finding that Dr. Steiner was claimant's choice of physician. However, the district director found that once Dr. Steiner determined claimant could return to work without restrictions, in spite of claimant's statement that he was not comfortable returning to work, Dr. Steiner had effectively discharged claimant and, thus, refused claimant treatment, enabling claimant to change physicians. The district director approved the change to Dr. Bostick, but stated it was too early to assess whether claimant remained totally disabled. Because he found there is a clear disagreement as to whether claimant needs continuing treatment, the district director found that an IME is warranted and would be at employer's expense. CX 1; EX 6; *see* Order at 3-4. Employer appeals the district director's order. Claimant and the Director, Office of Workers' Compensation Programs (the Director), respond, urging affirmance. Employer filed reply briefs.

Pursuant to Section 7(a) of the Act, an employer is liable for reasonable and necessary medical expenses related to the claimant's work injury. 33 U.S.C. §907(a); *see Ballesteros v. Willamette Western Corp.*, 20 BRBS 184 (1988). A claimant is entitled to his initial free choice of physician. 33 U.S.C. §907(b);[1] *Hunt v. Newport News*

[1] Section 7(b) states in pertinent part (emphasis added):

> The employee shall have the right to choose an attending physician. . . . The Secretary shall actively supervise the medical care rendered to injured employees, . . . and may, *on his own initiative or at the request of the employer, order a change of physicians or hospitals when in his judgment*

Shipbuilding & Dry Dock Co., 28 BRBS 364 (1994), *aff'd mem.*, 61 F.3d 900, 29 BRBS 105(CRT) (4th Cir. 1995); 20 C.F.R. §702.406(b). The district director may, on his own initiative or at the request of employer, order a change in physicians "when in his judgment such change is desirable or necessary in the interest of the employee." 33 U.S.C. §907(b); 20 C.F.R. §702.406(b); *see* n.1, *supra*. Section 7(c)(2) of the Act states that the claimant may not change physicians without the prior written consent from his employer or the district director. The employer or the district director shall give consent if the original physician was not an appropriate specialist. In other circumstances, the employer or district director may give consent upon a showing of good cause. 33 U.S.C. §907(c)(2);[2] *Slattery Assoc. v. Lloyd*, 725 F.2d 780, 16 BRBS 44(CRT) (D.C. Cir. 1984); 20 C.F.R. §702.406(a). Additionally, in order to recover medical expenses, a claimant must request authorization prior to receiving medical treatment. 33 U.S.C. §907(d); *see Pozos v. Army & Air Force Exchange Service*, 31 BRBS 173 (1997); *Mattox v. Sun Shipbuilding & Dry Dock Co.*, 15 BRBS 162 (1982); *cf. Armfield v. Shell Offshore, Inc.*, 25 BRBS 303 (1992) (Smith, J., dissenting on other grounds); *Maguire v. Todd Pacific Shipyards Corp.*, 25 BRBS 299 (1992) (the authorization requirement does not apply to each treatment by an approved provider). An employer's mere knowledge that a claimant has obtained medical care is insufficient to render it obligated to pay medical benefits if the claimant has not sought authorization. *Parklands, Inc. v. Director, OWCP*, 877 F.2d 1030, 22 BRBS 57 (CRT) (D.C. Cir. 1989).

Change of Physicians

Employer contends the district director abused his discretion by authorizing claimant to change doctors. Section 7(b), (c)(2) of the Act and the implementing regulations, Sections 702.406 and 702.407, give the district director the discretionary

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> *such change is desirable or necessary in the interest of the employee. . . . Change of physicians at the request of employees shall be permitted in accordance with regulations* of the Secretary.

[2] Section 7(c)(2) provides in pertinent part (emphasis added):

> An *employee may not change physicians after his initial choice unless the employer, carrier, or deputy commissioner has given prior consent* for such change. Such consent shall be given in cases where an employee's initial choice was not of a specialist whose services are necessary for and appropriate to the proper care and treatment of the compensable injury or disease. *In all other cases, consent may be given upon a showing of good cause for change.*

authority to order a change in a claimant's physician. 33 U.S.C. §907(b), (c)(2);[3] *Jackson v. Universal Service Maritime Corp.*, 31 BRBS 103 (1997) (Brown, J., concurring); *Toyer v. Bethlehem Steel Corp.*, 28 BRBS 347 (1994) (McGranery, J., dissenting); 20 C.F.R. §§702.406, 702.407.[4] Discretionary, or solely legal, issues raised in a district director's decision are appealable directly to the Board. *Id.*; *see also Brown v. Marine Terminals Corp.*, 30 BRBS 29 (1996) (*en banc*) (Brown and McGranery, JJ., concurring and dissenting); *compare with Weikert*, 36 BRBS 38 (while active supervision of a claimant's medical care is performed by the district director, issues which involve factual disputes, as opposed to those which are purely discretionary, are for the administrative law judge to decide).

Initially, we affirm the district director's finding that Dr. Steiner was claimant's chosen physician. In his Order, the district director found that claimant chose Dr. Steiner, the doctor to whom employer originally referred claimant, as his physician, pursuant to the paper he signed so stating. EX 9.[5] Further, claimant concedes he acquiesced to treat

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[3] Section 7(b) appears to apply when the employer requests a change of physicians or the district director determines on his own that a change is warranted. Section 7(c)(2) appears to apply when the claimant requests the change of physician. Although he cited Section 7(b), it is unclear which section the district director actually applied in finding that Dr. Steiner refused claimant treatment (this could be interpreted as either "good cause" under Section 7(c)(2) or "desirable or necessary" under Section 7(b)), as the district director merely stated that claimant is "entitled to select another physician." Order at 3. In any event, it is clear the decision is a discretionary one belonging to the district director.

[4] In accordance with the last sentence of Section 7(b) and the latter part of Section 7(c)(2), 20 C.F.R. §702.406(a) provides that an employee may not change physicians without prior written consent and that consent for change may be given upon a showing of good cause. Section 702.406(b), in accordance with the earlier sentences in Section 7(b), provides that the district director "may order a change of physicians . . . when such a change is found to be necessary or desirable[.]" Section 702.407 provides in pertinent part:

> The Director, OWCP, through the district directors and their designees, shall actively supervise the medical care of an injured employee covered by the Act. Such supervision shall include:
>
> * * *
>
> (c) The determination of whether a change of physicians, hospitals or other persons or locales providing treatment should be made or is necessary[.]

[5] Claimant agreed to the following:

with Dr. Steiner. Cl. Br. at 2; CXs 2-3. Such action is evidence of claimant's acceptance of Dr. Steiner as his own doctor. *Hunt*, 28 BRBS 364.

In order to change physicians from this chosen physician, either employer or the district director had to authorize the change. Claimant and the Director assert that the district director had the discretion to authorize a change in physicians pursuant to Section 7(b). Claimant asserts that the plain language of the statute permits the district director to authorize a change in treating physician if "such change is desirable" or it is "necessary in the interest of the employee" to do so, 33 U.S.C. §907(b), and that the Board should not substitute its opinion for that of the district director. Cl. Br. at 4.

The district director found that Dr. Steiner "effectively discharged" claimant from his care, and that, therefore, claimant was entitled to change physicians. Order at 3. The district director relied on Dr. Steiner's July 2015 report wherein he stated:

> The patient sustained a contusion to the left hip. Sufficient time has passed for left hip contusion to have resolved. No objective findings are noted on the most recent MRI of musculature of the left hip. There is no hip effusion. The joints are well maintained.
>
> He has had plenty of physical therapy. He has had injections and medications. He requires no additional treatment. *He is at maximum medical improvement*.
>
> There are *no objective findings that would prevent him from returning to his full duty activity without restriction*.

DX B; EX 8 (emphasis added).

Employer contends the district director abused his discretion in concluding that Dr. Steiner effectively discharged claimant from his care because Dr. Steiner made additional statements indicating he would continue to see claimant and, thus, did not discharge claimant from treatment. Specifically, in addition to the above, employer notes, correctly, that Dr. Steiner stated:

> [Claimant] indicated he did not feel comfortable returning to work but I did

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> By signing this form, I state that I know about my right to choose my own treating doctor, and being so advised, I hereby accept and choose to continue treating with my employer's doctor: Dr. Steiner.

> ask him to give it a try to see how he does. I would like to see him for a checkup in about a month. He has no permanent impairment as a result of the incident in question.
>
> Follow-up exam will be in one month for a checkup.

DX B; EX 8. Nonetheless, we cannot say that the district director abused his discretion in relying on that portion of Dr. Steiner's opinion that claimant's condition was at maximum medical improvement, that no further treatment was necessary, and that claimant could return to work without restrictions. In light of these statements, and Section 7(b)'s proviso that the change may be authorized when "in his judgment such a change is desirable," the district director did not abuse his discretion in concluding that Dr. Steiner effectively discharged claimant from treatment and claimant was entitled to select a new physician. 33 U.S.C. §907(b); 20 C.F.R. §702.406(b). Accordingly, we affirm the district director's decision to permit claimant to select a new doctor.[6] *See Roulst v. Marco Constr. Co.*, 15 BRBS 443 (1983).

Employer next challenges the date its liability for Dr. Bostick's services commenced. The district director ordered employer to pay for all reasonable and necessary medical treatment for claimant's injuries, including treatment by Dr. Bostick.[7] As Dr. Steiner's discharge of claimant cannot be imputed to employer,[8] employer can be held liable for only those services rendered after the district director authorized claimant

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[6] Contrary to our dissenting colleague's position, the plain language of Section 7(b) and its implementing regulation provides the district director with the authority to direct a change of the claimant's physician whenever the district director believes such a change is appropriate, and it does not matter which party requests the change.

[7] The district director stated:

> Based upon a thorough review of the administrative file, including the medical reports provided and employer's choice of physicians form, I hereby order that [employer] shall authorize and pay for all reasonable and necessary medical treatment and devices required for [claimant's] injuries, including treatment by Dr. Douglas Bostick until or unless such treatment is denied by the Administrative Law Judge or District Director.

Order at 4.

[8] *Hunt*, 28 BRBS at 365-366, 371; *see also Lloyd*, 725 F.2d at 785-786, 16 BRBS at 51-52(CRT).

to change physicians. *See Parklands, Inc.*, 877 F.2d 1030, 22 BRBS 57(CRT); *Lloyd*, 725 F.2d at 787, 16 BRBS at 53(CRT); 20 C.F.R. §702.406; *see also Galle v. Ingalls Shipbuilding, Inc.*, 33 BRBS 141 (1999), *aff'd sub nom. Galle v. Director, OWCP,* 246 F.3d 440, 35 BRBS 17(CRT) (5th Cir. 2001), *cert. denied*, 534 U.S. 1002 (2001). Thus, employer's liability for treatment by Dr. Bostick commences only after the date the district director authorized such change, October 28, 2015, and we modify the Order to reflect this. *Parklands, Inc.*, 877 F.2d 1030, 22 BRBS 57(CRT); *Lloyd*, 725 F.2d at 787, 16 BRBS at 53(CRT); *see also* 33 U.S.C. §907(d); *Pozos*, 31 BRBS 173.

IME

Employer contends the district director erred in finding an IME necessary because of a medical dispute and in requiring employer to pay for the cost of the IME. Employer asserts there is no "medical dispute" as contemplated by 33 U.S.C. §907(e) and 20 C.F.R. §702.408 *et seq.* because: 1) claimant chose both Drs. Steiner and Bostick so there is no dispute between "claimant's doctor" and "employer's doctor;" and 2) claimant went "doctor-shopping," so Dr. Bostick's opinion should not have been used to establish the existence of a "medical dispute." The Director urges affirmance on this issue, stating that the Act requires only the existence of a "medical question" and that the district director has the authority to order an IME when there is a medical question with regard to a claimant's diagnosis or treatment.

Section 7(e) provides that if there are medical questions raised, the Secretary, through his designees, may have the injured employee examined by a physician chosen by the Secretary or one of his designees.[9] *See Atlantic & Gulf Stevedores, Inc. v. Donovan*, 274 F.2d 794, *pet. reh'g denied*, 279 F.2d 75 (5th Cir. 1960) (*per curiam*); *Augillard v. Pool Co.*, 31 BRBS 62 (1997); *Shell v. Teledyne Movible Offshore, Inc.*, 14 BRBS 585 (1981); *Grbic v. Northeast Stevedoring Co.*, 13 BRBS 282 (1980) (Kalaris, J., dissenting); 20 C.F.R. §§702.408, 702.409. If an IME is ordered, the results are not

[9] Section 7(e), 33 U.S.C. §907(e), provides:

> In the event that medical questions are raised in any case, the Secretary shall have the power to cause the employee to be examined by a physician employed or selected by the Secretary and to obtain from such physician a report containing his estimate of the employee's physical impairment and such other information as may be appropriate. * * * The Secretary shall have the power in his discretion to charge the cost of examination or review under this subsection to the employer, if he is a self-insurer, or to the insurance company which is carrying the risk, in appropriate cases, or to the special fund in section 944 of this title.

binding on any party but are merely intended to provide the district director with a reliable, independent evaluation of the employee's condition. *Jackson v. Ceres Marine Terminals, Inc.*, 48 BRBS 71 (2014), *aff'd mem. sub nom. Ceres Marine Terminals, Inc. v. Director, OWCP*, 642 F.App'x 231 (4th Cir. 2016); *Cotton v. Newport News Shipbuilding & Dry Dock Co.*, 23 BRBS 380 (1990); *Shell*, 14 BRBS at 588.

Section 702.408 of the regulations explains that "medical questions" may pertain "to the appropriate diagnosis, extent, effect of, appropriate treatment, and the duration of any such care or treatment, for an injury covered by the Act. . . ." 20 C.F.R. §702.408. In *Augillard*, 31 BRBS 62, the claimant injured his back and his treating physician observed that the claimant was still symptomatic with left arm numbness and radiating lumbar pain and could not return to work but should consult a neurosurgeon, whereas another doctor had concluded that the claimant sustained only a low back contusion and cervical strain and should be able to perform light-duty work. As the divergent opinions raised "medical questions" within the plain meaning of Section 7(e) regarding the claimant's diagnosis, treatment, and the nature and extent of the injury, the Board held that the district director did not abuse her discretion in ordering an IME at the employer's expense. *Augillard*, 31 BRBS at 64.

We reject employer's contention that the district director abused his discretion in ordering the IME at employer's expense. As *Augillard* explains, the issue pursuant to Section 7(e) is whether there are questions about the claimant's medical condition; contrary to employer's assertion, the doctors with differing opinions need not have been chosen by opposing parties. In this case, Dr. Steiner, who diagnosed claimant with a hip contusion and a low back injury, felt claimant should attempt to return to work by July 2015 because he had been treated with physical therapy, medications, and injections, and there was nothing objective to explain the subjective soreness/pain. DX B; EX 8. Thereafter, at the August 2015 follow-up appointment, claimant's continued pain and soreness led Dr. Steiner to recommend a lumbar MRI. DX D. On August 25, 2015, Dr. Bostick noted claimant had continuing hip and back pain and limited lumbar flexion and extension, and he advised claimant to get a crutch, to continue physical therapy, and to take medicine. He stated, however, that claimant could not work. CX 4; DX C. Based on these opinions, the district director could reasonably find that there is a "medical question" concerning claimant's ability to work and whether he needs continuing treatment.[10] Therefore, we reject employer's assertion that the district director abused his

[10] Additional documents in the administrative file which have not been labeled indicate that Dr. Johnson diagnosed multiple strains/sprains of claimant's back, hip, and knee. He first suggested chiropractic and/or conservative treatment but also stated claimant could not work. Later, he advised claimant to have a lumbar MRI, and he prescribed medicine.

discretion in scheduling an IME at employer's expense, and we affirm the Order that employer must pay for the IME.[11] *Augillard*, 31 BRBS at 64.

Accordingly, the district director's Order is modified to reflect that employer's liability for the cost of Dr. Bostick's treatment commences only after October 28, 2015. In all other respects, the district director's Order is affirmed.

SO ORDERED.

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BETTY JEAN HALL, Chief
Administrative Appeals Judge

I concur:

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JONATHAN ROLFE
Administrative Appeals Judge

GILLIGAN, Administrative Appeals Judge, concurring and dissenting:

While I concur with my colleagues' decision to affirm the district director's conclusion that Dr. Steiner was claimant's chosen doctor, I respectfully dissent from their decision to hold that the district director did not abuse his discretion in granting claimant a change in physicians on the facts of this case. I believe that the district director did not consider all the facts and applied an incorrect statutory provision to find that Dr. Steiner refused claimant treatment. Thus, I would vacate the district director's Order and remand the case for him to reconsider all the evidence and apply the appropriate law. Moreover, the district director's finding that, pursuant to Section 7(e), 33 U.S.C. §907(e), there was a "medical question" and his ordering an IME at employer's expense was premature.

[11] We also reject employer's contention regarding claimant's entitlement to temporary total disability benefits hinging on Dr. Bostick's opinion. Claimant correctly asserts there has been no award of temporary total disability benefits, as the district director found consideration of this issue to be premature on this record. Thus, there is no award of disability benefits to challenge.

Therefore, I would vacate that finding as well.

It is undisputed that claimant sought a change of physicians in this case. When a *claimant* seeks a change of physician after having been given his initial free choice, the plain language of the Section 7(c)(2) and its implementing regulation mandates a change of physicians if the treating physician is not of the correct specialty; however, "[i]n all other cases, consent may be given upon a showing of good cause." 33 U.S.C. §907(c)(2);[12] 20 C.F.R. §702.406(a). For example, good cause was found when a claimant's treating physician left private practice. *Lynch v. Newport News Shipbuilding & Dry Dock Co.*, 39 BRBS 29 (2005).

In this case, claimant chose, and treated with, Dr. Steiner, and Dr. Steiner was an appropriate specialist. Claimant then sought to change to Dr. Bostick. Thus, Sections 7(c)(2) and 702.406(a) are applicable, and claimant must show "good cause" before consent for a change "may" be given. However, the district director did not apply this provision. Rather, the district director cited Section 7(b) and its "desirable and necessary in the interest of the employee" standard. He found that Dr. Steiner "effectively discharged" claimant from treatment and that claimant "was entitled to select another physician." Order at 3. It is not a foregone conclusion that application of Section 7(b) and Section 7(c)(2) will result in the same decision by the district director. For that reason, it is important for the district director to apply the evidence to the proper statutory and regulatory provisions. As it is undisputed claimant initiated the request for a change in physician after having selected Dr. Steiner, I would remand the case for the district director to apply Section 7(c)(2) and to ascertain whether claimant established "good cause" for his request to change to another doctor.[13] *See Jackson v. Ceres Marine*

[12] Section 7(c)(2) states: "*An employee may not change physicians after his initial choice unless the employer, carrier, or deputy commissioner has given prior consent* for such change. Such consent shall be given in cases where an employee's initial choice was not of a specialist whose services are necessary for and appropriate to the proper care and treatment of the compensable injury or disease. *In all other cases, consent may be given upon a showing of good cause for change*." 33 U.S.C. §907(c)(2) (emphasis added).

[13] The majority states that the plain language of the Act and regulations permit application of Section 7(b) regardless of which party initiates a change of physicians. *Scott*, slip op. at 6, n.6. This interpretation overlooks, and renders meaningless, the plain language of Section 7(c)(2) which clearly states that it applies when a claimant requests a change of physicians. *See United States v. Menasche*, 348 U.S. 528, 538-539 (1955) (courts have a duty to give effect to every word of a statute rather than to "emasculate an entire section"); *United States v. Kaluza*, 780 F.3d 647 (5th Cir. 2015) (if the statutory

Terminals, Inc., 48 BRBS 71 (2014), *aff'd mem. sub nom. Ceres Marine Terminals, Inc. v. Director, OWCP*, 642 F.App'x 231 (4th Cir. 2016).

Moreover, employer correctly contends the district director did not consider the totality of Dr. Steiner's opinion in finding that he "effectively discharged" claimant from treatment. Rather, the district director accurately stated only a portion of Dr. Steiner's opinion. He did not discuss Dr. Steiner's statement that claimant should try to work and return in one month for a checkup, claimant's follow-up appointment in August 2015 where he had an x-ray taken, Dr. Steiner's recommendation that claimant have a lumbar MRI performed, or Dr. Steiner's statement that he would update claimant's status upon obtaining the MRI results.[14] DXs B, D; EX 8. Although the district director relied on a portion of the doctor's statements, the doctor's remaining statements and his follow-up actions should be considered in determining whether he discharged claimant from his care, especially if the discharge amounts to "good cause" for changing doctors. As the district director did not address all the relevant evidence or apply the proper "good cause" standard in determining whether claimant is entitled to a change in physician, I would vacate the district director's Order and remand the case to him for further consideration of this issue. *See Slattery Assoc. v. Lloyd*, 725 F.2d 780, 16 BRBS 44(CRT) (D.C. Cir. 1984); *Jackson*, 31 BRBS 103.

Additionally, I would not affirm the district director's finding that an IME at employer's expense was warranted at the time of the district director's Order. Although Dr. Bostick stated that claimant cannot work and Dr. Steiner asked claimant to try to work, both were awaiting the results of the most recent MRI before updating claimant's status. At the time the district director ordered the IME, it was premature to say there was a "medical question" in view of the doctors' awaiting the updated MRI.[15] Indeed,

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text is plain and unambiguous, it must be applied according to its terms); *Solano Garbage Co. v. Cheney*, 779 F.Supp. 477 (E.D. Ca. 1991); *Thornton v. Northrop Grumman Shipbuilding, Inc.*, 44 BRBS 111 (2010).

[14] Claimant returned to Dr. Steiner on August 20, 2015, complaining of low back pain and left hip soreness. Dr. Steiner took an x-ray of the lumbar spine, noted multilevel degenerative changes, and recommended claimant have an MRI of the lumbar spine. Although Dr. Steiner did not have recommendations for further continuing treatment and again wanted claimant to attempt to perform his regular work, Dr. Steiner stated he would update that status upon receiving and reviewing the MRI.

[15] The administrative file contains no medical reports after Dr. Bostick's report dated August 25, 2015. CX 4; DX C. From that report, it appears claimant had an August MRI performed because Dr. Bostick reported that he reviewed the February 2015 MRI but had not seen the latest one. *Id.* It is unclear whether claimant's August MRI

the district director advised the parties to provide all diagnostic films to Dr. Bostick and to "obtain his opinion on treatment and disability status after he reviews the films." Order at 3. Thus, I would vacate the district director's decision on this issue.

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RYAN GILLIGAN
Administrative Appeals Judge

was based on Dr. Steiner's recommendation or on Dr. Johnson's August 19 recommendation. It appears Drs. Bostick and Johnson may be affiliated with the same practice. *See id.*