

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of PHILIP J. KERRIGAN and DEPARTMENT OF THE NAVY,  
PUBLIC WORKS CENTER, NAVAL STATION, San Diego, Calif.

*Docket No. 96-1289; Oral Argument Held November 18, 1997;  
Issued February 4, 1998*

Appearances: *Appellant, pro se; Miriam D. Ozur, Esq.,  
for the Director, Office of Workers' Compensation Programs.*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for further medical treatment with Dr. James T. Webber, a Board-certified family practitioner.

The Board has duly reviewed the case on appeal and finds that the Office properly denied appellant's request for further medical treatment with Dr. Webber.

Appellant filed a claim alleging that on March 19, 1986 he aggravated a back injury sustained on March 3, 1986. The Office accepted appellant's claim for herniated disc on February 5, 1987. Appellant's attorney requested approval of Dr. Webber's services on January 7, 1993 and on April 28, 1994 appellant requested that Dr. Webber become his primary care physician. By decision dated February 21, 1995, the Office denied appellant's request for continuing care by Dr. Webber. Appellant requested an oral hearing and by decision dated February 23, 1996, the hearing representative affirmed this aspect of the Office's February 21, 1995 decision.<sup>1</sup>

The payment of medical expenses incidental to securing medical care is provided under section 8103 of the Federal Employees' Compensation Act.<sup>2</sup> The pertinent provision provides

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<sup>1</sup> The hearing representative remanded several aspects of appellant's claim for further development by the Office including: appellant's claim for an emotional condition, his request for vocational rehabilitation, a determination of appellant's wage-earning capacity, appellant's requests for a lump sum settlement and for a schedule award. The Board's regulations provide that there shall be no appeal with respect to any interlocutory matter disposed of by the Office during the pendency of a case; *see* 20 C.F.R. § 501.2(c). Therefore, the Board may not review these matters on appeal.

<sup>2</sup> 5 U.S.C. §§ 8101-8193

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 considers necessary....”<sup>3</sup>

In this case, appellant first received treatment from Dr. Lance Altenau, a Board-certified neurosurgeon, under emergency circumstances as Dr. Altenau performed a hemilaminectomy on July 17, 1986. Appellant continued to seek treatment from Dr. Altenau on a regular basis as a consequence of this surgery through October 28, 1987. At that point, Dr. Altenau stated appellant’s condition was permanent and stationary and provided his work restrictions. Appellant returned to Dr. Altenau on March 9 and December 23, 1988, August 2, 1989 and June 22, 1992.<sup>4</sup>

Although appellant’s statements establish that he first sought treatment from Dr. Altenau on an emergency basis and that he never formally selected Dr. Altenau as his physician, a Form CA-16, authorization of treatment, shows that appellant chose to return to Dr. Altenau for treatment even after he was released from care following his surgery. Since appellant voluntarily returned to Dr. Altenau for treatment, Dr. Altenau constitutes appellant’s initial choice of physician, pursuant to section 8103(a) of the Act.<sup>5</sup>

Appellant, through his attorney, requested that the Office approve treatment provided by Dr. Webber, a Board-certified family practitioner. By letter dated June 9, 1993, the Office stated that Dr. Webber was not Board-certified in the appropriate specialty to assume appellant’s care and provided the necessary requirements to change physicians.

In a report dated June 23, 1993, Dr. Altenau noted receiving a report of Dr. Webber’s treatment of appellant and stated:

“It appears that the trigger point injections provided by Dr. Webber proved beneficial. It is my opinion that this particular treatment should be covered as part of the patient’s [workers’ compensation] injury treatment. However, I am in agreement with you that further treatment should be requested by the undersigned and approved by your department before services are rendered.”

In a report dated April 19, 1994, Dr. Webber stated that he was willing to coordinate appellant’s care.

By decision dated February 21, 1995, the Office denied appellant’s claim for continuing treatment with Dr. Webber, finding that he was not an appropriate specialist for appellant’s condition and that Dr. Altenau had stated that care and treatment by Dr. Webber should be reviewed. The hearing representative found that Dr. Altenau was an appropriate specialist, for treatment of appellant’s accepted condition, that Dr. Webber did not specialize in disc injuries

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<sup>3</sup> *Id.*

<sup>4</sup> The Office also referred appellant to Dr. Altenau on June 9, 1993.

<sup>5</sup> *Elizabeth J. Davis-Wright*, 39 ECAB 1232, 1237 (1988).

and that allowing Dr. Webber to assume responsibility for medical management of appellant's back condition was not appropriate.

Section 8103(a) also provides:

“The United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation.”<sup>6</sup>

The federal regulation implementing this section of the Act provides, in part:

“An employee who wishes to change physicians must submit a written request to the Office fully explaining the reasons for the request. The Office may approve the request in its discretion if sufficient justification is shown for the request.”<sup>7</sup>

The Office has the general objective of ensuring that an employee recovers from his injury to the fullest extent possible in the shortest amount of time. The Office therefore has broad administrative discretion in choosing the 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 merely show that the evidence could be construed so as to produce a contrary factual conclusion.<sup>8</sup>

In this case, the Office noted that Dr. Altenau was Board-certified in the appropriate specialty for the treatment of appellant's accepted employment injury and that he had followed appellant since surgery in 1986. The Office determined that Dr. Webber was not an appropriate Board-certified specialist to manage the treatment of appellant's accepted condition. The Office concluded that there was insufficient justification to warrant a change in treating physicians. The Board finds that there is no evidence of record that the Office acted unreasonably and abused its discretion in denying appellant's request to change physicians.

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<sup>6</sup> 5 U.S.C. § 8103(a).

<sup>7</sup> 20 C.F.R. § 10.401(b).

<sup>8</sup> *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

The February 23, 1996 decision of the Office of Workers' Compensation Programs is hereby affirmed with regard to appellant's request for further medical treatment.

Dated, Washington, D.C.  
February 4, 1998

George E. Rivers  
Member

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member